

**BOONE COUNTY PLANNING & ZONING COMMISSION**

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, March 17, 2005

Chairperson Smith called the meeting to order at 7:00 p.m., with a quorum present. Roll Call was taken by Commissioner Heitkamp.

Present:	Pat Smith, Chairperson	Perche Township
	Mary Sloan, Vice-Chairperson	Rocky Fork Township
	Kristen Heitkamp, Secretary	Katy Township
	Mike Morgan	Bourbon Township
	Russell Duker	Missouri Township
	Carl Freiling	Cedar Township
	David Mink	Public Works

Absent:	Larry Oetting	Three Creeks Township
	Rob Brown	Rock Bridge Township
	Vacant Seat	Centralia Township
	Vacant Seat	Columbia Township

Also present:	Stan Shawver, Director	Uriah Mach, Staff
	Thad Yonke, Staff	Paula Evans, Staff

The minutes of the February 17, 2005 meeting were approved with no corrections. Approved by acclamation.

Chairperson Smith read the procedural statement which stated that the Boone County Planning and Zoning Commission is an advisory commission to the County Commission. The Commission is made up of individuals representing each township of the county and the county engineer.

The Planning and Zoning Commission makes recommendations to the County Commission on matters dealing with land use. Tonight's agenda includes two conditional use permit requests and one plat review.

In general, the Planning and Zoning Commission tries to follow Robert's Rules of Order, however, they are authorized by the Missouri State Statutes to follow their own by-laws. The by-laws provide that all members of the Commission, including the Chairperson, enjoy full privileges of the floor. The Chairperson may debate, vote upon or even make any motion.

The following procedure will be followed:

The agenda item will be announced, followed by a report from the Planning Department Staff. At that time, the applicant or their representative may make a presentation to the commission. The Commission may request additional information at that time, or later following the hearing. After the applicant's presentation, the floor will be opened for anyone wishing to speak in support of the request. We ask that any presentation made to the Commission be to the point.

Please give your name and mailing address when you address the commission. We also request that you sign the sheet on the staff table after you testify.

Next, the floor will be given over to those who may be opposed to the request. Direct all comments or questions to the Commission and please restrict your comments to the matter under discussion. Please be considerate of everyone here. The agenda tonight may not be lengthy and while we wish to extend an opportunity to everyone that wishes to speak, we ask that you not be repetitious with your remarks. We also recognize that many issues can be quite emotional. In that regard we ask that you refrain from any signs of support or displeasure. Please afford those with a different point of view than yours the same respect and consideration you would like yourself.

After those opposed to the request have had a chance to speak, the applicant will have an opportunity to respond to the concerns of those opposed to the request. Next the staff will be given an opportunity for any additional comments, as appropriate. The public hearing will then be closed and no further comments will be permitted from the audience or the applicant unless requested by the Commission. The Commission will then discuss the matter and may ask questions of anyone present during discussion. Finally, a motion will be made to either recommend the approval or denial of the request to the County Commission. Please note that the Boone County zoning regulations and subdivision regulations are considered to be a part of the record of these proceedings.

All recommendations for approval are forwarded to the County Commission. They will conduct another public hearing on Tuesday, March 29, 2005. Interested parties will again have the opportunity to comment on the requests at that time. The County Commission generally follows the recommendations of the Planning and Zoning Commission; however, they are not obligated to uphold any recommendation. Requests that are denied will not proceed to the County Commission unless the applicant files an appeal form within 3 working days. Please contact the Planning Office to see if a request that has been denied has filed an appeal as there will be no further public notification due to the short time between this meeting and the County Commission hearing. The County Commission hearing scheduled for Tuesday, March 29, 2005 will begin at 7:00 p.m. and will convene in this same room.

## **CONDITIONAL USE PERMITS**

1. Request by Carl and Marjorie Thomas and Ralph and Rosalee Higgins on behalf of Capital Quarries and APAC Missouri, Inc., for a temporary asphalt plant on 100 acres located at 23300 S. Hwy 63, Hartsburg.

Planner, Thad Yonke gave the staff report stating that the site is located on the east side of U.S. 63, approximately one-mile north of the Callaway County line. The current use of the property is for a rock quarry. The quarry was probably opened prior to 1973. In 1974 a conditional use permit to allow construction of underground warehouses in the underground mine area of the quarry. The property is zoned A-2 as is property to the west and south. Adjacent zoning to the north is A-R and Callaway County adjoins to the east.

The request is to allow temporary placement of a portable asphalt plant. The asphalt will be used fulfill a contract with Missouri Department of Transportation for repaving U.S. 63 South between Jefferson City and Columbia. The contract terminates December 1, 2005. The contract requires the hours where paving activities will occur to be between 7:00 P.M. and 6:00 A.M.

Operation of a portable asphalt plant used for a specific construction project is allowed in the A-2 district as a conditional use.

The application must meet the criteria for issuance of a conditional use permit. Those criteria are addressed as follows:

*(a) The establishment, maintenance or operation of a conditional use permit will not be detrimental to or endanger the public health, safety, comfort or general welfare.*

Several possible sets of impacts have been identified including: air emissions, groundwater contamination and noise.

APAC is required to hold an air quality permit issued by the Missouri Department of Natural Resources Air Pollution Control Program. APAC has been issued such a permit and has submitted a relocation request to have the permit applied to this site.

APAC has a general stormwater discharge permit issued by the Water Pollution Control Branch of DNR. DNR conducts periodic inspections at the sites in use. An annual report is submitted to DNR which includes the outfall number and a soil sample from the year (March, June, November, December) when rainfall occurred.

The United State Environmental Protection Agency requires APAC to develop a Spill Prevention, Control and Countermeasures Plan. The plan must be prepared by a registered civil engineer. The plan establishes procedures for storage of large quantities of fuel or petroleum products and procedures for dealing with spills. APAC's plan is on file with the planning department.

State and federal agencies have regulations in place to ensure that impacts to air quality, groundwater or surface water quality will not endanger the public health, safety or welfare.

Neighboring property owners have raised concerns about noise. The proposed use will generate additional noise. Much of the additional noise will be generated during nighttime hours due to restrictions in the contract. It should be noted however, that the proposed plant will be located in a quarry where there are no restrictions on hours of operation.

*(b) The conditional use permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted by these regulations.*

Noise and odors will be noticeable and will temporarily diminish but not be injurious to the enjoyment of other property in the immediate vicinity. Regulations enforced by state and federal agencies should be adequate to ensure that there are no long term impacts to ground or surface water.

*(c) The conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood.*

There is no indication that the proposed use will have a negative effect on property values.

*(d) All necessary facilities will be available, including, but not limited to, utilities, roads, road access and drainage.*

The site has direct access to U.S. 63, which is also the project site. Other utilities already exist on site.

*(e) The establishment of a conditional use permit will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the zoning district.*

The proposed use will not impede the development of the surrounding area. It may have a long term positive effect on the area due to the resulting upgraded surface of U.S. 63.

*(f) The establishment of a conditional use permit will not hinder the flow of traffic or result in traffic congestion on the public streets. This will include the provision of points of access to the subject property.*

The contract between MoDOT and APAC requires all heavy activity to be done during off peak traffic hours. In addition, the purpose of locating the asphalt plant at this location is to minimize the distance that asphalt has to be hauled, which reduces impact to the road system.

*(g) The conditional use permit shall in all other respects conform to the applicable regulations of the zoning district in which it is located. The County Commission shall find that there is a public necessity for the conditional use permit.*

The proposal conforms to other applicable regulations of the A-2 zoning district.

Staff recommends approval subject to the following conditions:

1. All equipment and materials used for the production of asphalt at this location shall be removed within 90-days of the date the paving project is complete.
2. Asphalt produced at this location may only be used on the U.S. 63 repaving project under the contract between MoDOT and APAC that expires December 1, 2005.

Present: Brett Geger, Environmental Director, APAC, 1591 E. Prathersville Rd., Columbia.  
Tim Paulson, Vice President of Operations, APAC, 4104 Valleywood Ct., Columbia.  
Chris Schwedtmann, Environmental Specialist, (did not sign in).

Mr. Geger stated that staff has reviewed the application and recommended approval. In talking with several landowners there are outside concerns by the landowners that the applicants would like to address.

Mr. Geger stated that four of the most common things that he has heard and discussed with landowners are dust control, water control or contamination, noise, and odor.

Regarding dust control; the applicants will be obtaining a Missouri Department of Natural Resources air pollution control program permit that regulates the dust control. APAC does two things which fully comply with all of the department's regulations.

The first would be dust that emanates off the roads during the traffic periods. APAC uses an all natural, environmentally friendly chemical called magnesium chloride which is the most highly recognized application that the department has for controlling 90 percent of dust off of the roads. The other item would be the dust generated from the actual production of the asphalt. The plant has a bag house, which is a large filter system which has been tested in accordance with Federal regulations and controls 99.9 percent of all dust that comes from the generation of asphalt. The dust and dust pollution has been fully addressed by the Department of Natural Resources and it is within their standards.

The second issue is water and water pollution control. The applicants will be operating within an active quarry site and will be operating under the confines of a water pollution control permit with the Department of Natural Resources. Over and above that, federal regulations also require that the applicants develop a spill prevention control and counter measure plan. APAC had their consultant put together the plan that allows them to fully evaluate their situation and prepare for incidences that otherwise you wouldn't prepare for. One of the main things is that petroleum products are stored with the plant - but with this spill plan, 100 percent of their products are enclosed in a secondary container to protect the ground. Once the APAC plant leaves the site you will have no way of knowing that this plant was on this ground. There will be no contamination, no soil contamination and no water contamination. 100 percent of their products are stored in the secondary containment so should there be a release of some sort it is fully contained with a PVC liner which lines the entire ground the tanks are on. Also with the spill prevention plan there are a number of other things we must do in order to comply. The other important thing is that APAC keeps a number of spill kits which are 55 gallon drums full of spill prevention materials and containment materials and all the employees are trained on how to use them and how to react in response. Should there be some sort of incident we have the materials necessary immediately on site to address this. APAC is fully prepared for that sort of thing and we are fully in compliance with regulations.

The third thing would be noise. Mr. Geger stated that he understands that this could be an issue with people and the applicants understand this. Some things that the applicants have said to the adjoining property owners are if you can't hear the crushing plant, which some people could not, then you will not hear the asphalt plant because crushing operations are much louder than an asphalt plant operation. In fact, the consultant that the applicants hired had gone and done decibel meter testing, a decibel meter is a noise meter, and at three different locations surrounding the asphalt plant at 500-feet, and there is no one within 500-feet of the plant, 800-feet would be the closest; but at 500-feet the decibel level reading was 47 over an 8 hour period. Just to give an idea of what 47 decibels might relate to, a lawn mower is 107 decibels, normal conversation between people within 3 to 5 feet is 60 to 70 decibels, an office building is around 53 decibels. That kind of gives you an idea of where the asphalt plant stands. All that information can be pulled up on the internet.

The fourth thing is odor. Mr. Geger stated yes, there will be odor that generates off the asphalt plant. That is unavoidable given the situation. The highway will be paved regardless of where the asphalt plant sits. The majority of that odor will come off the pavement as they are laying the hot asphalt, that is where the odor comes from when the asphalt is hot. When they lay that down you are going to smell that asphalt as it is being laid down on that road. Prevailing winds generally come from the west to the east so fortunately for the people that the applicants have spoken to the location of the asphalt plant is such that the prevailing winds ordinarily should be taking any odor out to the east. Probably the most important thing about the odor is that we've had some tests run to try to check out the odor. If you were to call and file a noise or odor complaint with the department of natural resources they will send a complaint inspector out with a Barnebey & Sutcliffe Scentometer which is a meter that measures the odors in the air. They will go to the property with the complaint and set up the scentometer and a reading of 7 indicates that perhaps the generator of that odor needs to take some measures to control that

odor. In hiring Mr. Schwedtmann, he has gone around and done this at similar asphalt plants. At 600-feet, which was the nearest property line, the reading was exactly zero. At 400-feet immediately downwind of the plant in 5 to 10 mile winds the reading was a 2. To get a reading of 7 you had to stand immediately adjacent to the actual loading of the asphalt in to the truck.

Mr. Geger stated that those are some of the things he wanted to cover; Mr. Geger understands that the neighbor's homes are around the plant but also notes that APAC is taking every consideration in making sure this is an environmentally friendly operation and are willing to talk to the neighboring landowners and discuss operations. It is a very temporary operation, APAC will come in, do the job of paving Highway 63 and they are getting out. There will be no additional plant; APAC has no intention of staying.

Commissioner Freiling asked the applicants what other sites they have looked at.

Mr. Geger stated that due to its location and access, ingress and egress right on to the job site this was primarily the best spot it could be located. The other options in looking at sites is talking to additional landowners up and down highway 63 and if they find a landowner that doesn't mind that then the applicants might be in a position where they have to clear their lot or knock down trees and prepare a site. Given the location that this was an already existing rock quarry made it an ideal spot.

Open to public hearing.

No one spoke in favor of the request.

Present, speaking in opposition to the request:

Allan Deutsch, 6940 North Shore Drive, Hartsburg.

Mr. Deutsch presented a map of the location of the proposed asphalt plant.

Mr. Deutsch stated that he is a member of the homeowners association of Lake Champetra. The applicants did a nice Texas two-step around the fact that you have to burn petroleum products to heat the asphalt to make it workable and that gives out fumes. These fumes are known by the EPA to be a major hazardous air pollutant. If you think of a nice quiet evening out on the lake and the wind is relatively still and here comes these fumes over the hill, which would set off his wife's asthma and would be detrimental to the health of anyone using the lake. Yes we need progress, yes we need to have highway 63 paved but no we don't need to have it in a rock quarry. Sure the applicants are going to contain all their spills, but the spills aren't what concern the neighbors, it is the noxious fumes coming over the hill. Mr. Deutsch stated that he is only a half-mile from the plant, prevailing winds are south to north. Lake Champetra is going to be like the LA basin. The fumes are going to come in there and they are going to stay. Mr. Deutsch stated that he could read the Commission all kinds of internet studies on what to do if an asphalt plant comes in to your neighborhood. A lot of these are backed by the EPA; there is information on where the pollutants come from. Every step of an asphalt plant is not compatible with a habited area. There is a large area next to Cedar City in the old flood plain that is not being used, there is a large sand pit down there; Mr. Deutsch stated it is his understanding that Callaway County has no zoning laws. Mr. Deutch stated that he is going to voice his opposition and opposition of all the land owners of Lake Champetra.

Commissioner Heitkamp asked how many landowners are in Lake Champetra.

Mr. Deutsch stated 42. Each one lives within  $\frac{3}{4}$  mile of the proposed plant. After these fumes come up and get in to the trees and it rains the toxins get in to the lake.

Commissioner Heitkamp stated that from Ashland to the Jefferson City bridge is going to be paved. Will it be both lanes north and south.

Mr. Geger stated yes. It will be paved from Route A to Jefferson City.

Brenda Woods, 7250 E. North Shore Dr., Hartsburg.

Ms. Woods stated that she has an auto-immune disorder, there are a number of people in the area that have auto-immune disorders and pollutants in the air have been known to exacerbate those diseases. Ms. Woods stated that she is opposed to having an asphalt plant in the area due to general health. Talking about the noise, we are further away from Jefferson City than we are the asphalt plant and Ms. Woods hears the train go by every night so Ms. Woods doubts they will escape the noise, noise will be an issue.

Greg Bradley, 24000 S. Hwy 63, Hartsburg.

Mr. Bradley stated that his land is the dwelling that is directly south of the quarry. Mr. Bradley feels that Capital Quarries is a Cole County company and doesn't know where APAC comes from but there is going to be a lot of paving in Cole County as well as Boone County. We are Boone County constituents and would like the Commission to represent their interests. Mr. Bradley stated that he is the closest dweller to the quarry. Whenever they blast at the quarry a representative from the quarry comes to his house and tells him they are going to blast and they put sensors in his backyard.

Brett Scott, 6944 North Shore Dr., Hartsburg.

Mr. Scott stated that he is the landowner immediately north of Carl Thomas' land and the quarry. Mr. Scott stated that he is not opposed to this operation per se but it is having a direct monetary effect on him now. Mr. Scott stated that he applied to Mr. Thomas for an easement to access his property and can understand his monetary involvement and he is unwilling to grant Mr. Scott an easement because it passes in to the quarry. Mr. Scott stated that he has a contract for the sale of his property and contingent upon that purchase and easement would have to be granted by Mr. Thomas so Mr. Scott is financially involved and it is detrimentally affecting him because of the operation in the quarry and the asphalt plant. An easement and his traffic through the easement would not cause any interference with the operations there because the quarry itself is ongoing on the southern half of that property. Mr. Scott stated that he feels his sale will not take place if he does not obtain that easement. Mr. Scott stated that he is immediately concerned with what is going on and will be negatively impacted if he can not get that easement.

Rick Boshard, 7054 North Shore Dr., Hartsburg.

Mr. Boshard stated that he takes exception with the staff report that states there are no hazards associated with this project. Russ basically advised the Commission about the fumes with the production of asphalt. Those fumes contain certain deadly carcinogens that are hazardous to the workers and hazardous to residents who are in close proximity. Mr. Boshard asked an audience member, Darrell Marian, to stand up and stated that Mr. Marian is the closest in proximity to the proposed plant and he has serious respiratory conditions. An asphalt plant even if in operation for only 6 months would have a negative affect. Mr. Boshard asked the Commission to consider the health hazard to area residents.

Brian Nodine, 23600 S. Missouri River View Dr., Hartsburg.

Mr. Nodine stated that he has already heard noise from this facility. Another issue that hasn't been addressed is the lights. Last week Mr. Nodine came home and a bright light was shining in his face and the wall echo's sound right up the hill. Mr. Nodine stated that he can appreciate the fact that the highway needs to be resurfaced and there have to be accommodations made however, he has not been shot straight with by County officials before on issues they have dealt with so we don't always trust that this is going to be temporary. Mr. Nodine stated that he didn't know what kind of assurances he was going to get from the County when they tell us it is going to be temporary and everything will be packed up and taken away when the project is done.

Randy Sell, 7501 E. Hartman Rd., Hartsburg.

Mr. Sell stated that his property adjoins the Thomas land to the north and west. Mr. Sell stated that his concerns are that he sees components of an asphalt plant already at the site. Mr. Sell stated that his neighbor got a letter from APAC which stated that this meeting is not occurring, it doesn't need to occur. Mr. Sell stated that he doesn't appreciate the people of Boone not having a say in this thing occurring. This thing is happening whether we are here or not.

Commissioner Sloan asked if the applicants are already doing work.

Mr. Sell stated that they are stock-piling rock on this property that is looking to be temporarily zoned; they are stock-piling for the upcoming job. Mr. Sell stated that he has concerns that the plant will stay longer than 3 to 4 months; logically this is the best place for the plant but would like to see the plant removed when the job is completed. Mr. Sell stated that he doesn't appreciate getting a letter about this meeting when he knows that there is going to be an asphalt plant there anyway. Mr. Sell stated that he sees mineral bins and rock being stock-piled through the night.

Chairperson Smith stated that she is not disputing what Mr. Sell says but there certainly has been no kind of guarantee that this is going to happen. This meeting is very important. Chairperson Smith told Mr. Sell to be assured that it doesn't work that way.

Commissioner Mink stated that he visited the site yesterday and saw no part of the asphalt plant there. If they are stock-piling rock it is a normal activity for a rock quarry.

Mr. Geger stated that the applicants will be bringing a plant in which is right now along the Iowa border; 100-percent of that plant is still up there. Mr. Geger stated that APAC is not doing the stock-piling of rock; APAC has done absolutely nothing at that site. Coincidentally, right around the same time frame, Capital Quarries has started doing work at their quarry site. It has nothing to do with APAC or what they have going on. APAC is not even getting their rock from that site.

A member from the audience stated that after 20 years of there being no activity on that site they have now all of a sudden started up again.

Mr. Geger stated that it has nothing to do with APAC. Capital Quarries has made a business decision; if they want answers they will have to talk to Capital Quarries about it; they are generating rock. Mr. Geger stated that anyone is welcome to check APAC's records regarding purchase of materials. 100 percent of the plant is still up by the Iowa border. APAC can not move that plant without an air pollution permit.

Chairperson Smith stated that we are not going to have a debate going on.

A member asked if Capital Quarries should be a part of this meeting.

Chairperson Smith stated that Capital Quarries can do what they are doing, they are already under regulation. This request is just for APAC.

A member stated that Capital Quarries is permitted by DNR on 22 acres. They have gone beyond those 22 acres and are now on the land that we are talking about at this meeting; the 100-acres of the Thomas'.

Chairperson Smith stated that it is sort of a parallel concern that is not related to this request.

Commissioner Mink stated that quarry operations did resume and they submitted a bid to the County to sell the County rock because that operation was resuming.

Wayne Hause, 23460 Missouri River View Dr., Columbia.

Mr. Hause stated that the smoke and smell will travel even though it is a temporary plant. For several reasons he would like to see consideration given for this request not being approved. Mr. Hause stated that his wife has respiratory problems, he and his wife are both retired and have enough problems with sickness and don't need added carcinogens because of their situation with their health. Mr. Hause stated that he and his wife would like to keep their health and don't need added complications. Noise is also a complication; he and his wife are both retired and need peace and quiet and would like it to remain. In the valley between Mr. Hause and the quarry is an amphitheater effect as a valley and the hills so the noise is amplified and it is amplified even by traffic. It will be amplified by a day and night operation, very disturbing huge lights, and night operations running 24-hours a day probably. It is very disturbing for a rural homestead. Mr. Hause stated that he is very proud of his neighbors for speaking out for better healthful living and trying to protect the environment. It is Mr. Hause's hope that the Commission would have that same effect by not considering approval of this request.

Ralph Struchtemeyer, 7325 E. South Shore Dr., Hartsburg.

Mr. Struchtemeyer stated that when he received notice on this request he could see the understanding of the location of this plant. The question came up in an earlier statement that he would like to have addressed; that is if the rock is being brought in from another location where is it being brought from and are we multiplying the amount of transportation that is being utilized. In addition to that he would like to know about the operations of the plant as far as the timeline goes. Mr. Struchtemeyer asked if this plant will be operating on Friday, Saturday, and Sunday night or is there a specific time frame. There is a monetary, emotional, and PR reason for this and that is on September 24, 2005 Mr. Struchtemeyer is supposed to have a garden wedding at his home. There are people that are presidents and senior vice-presidents of major banks out of New York, major insurance companies out of Seattle and Los Angeles that are coming in for this wedding and the Struchtemeyer's would like to be able to represent Boone County as being a very nice place that people would want to do business with. He does not want to deal with the noise, light and smell associated with this asphalt plant. Mr. Struchtemeyer stated that he and his wife own a farm in the river bottoms in Jefferson City. There are two rock quarries on highway 94 Beck quarries, and another they use for rock for the raising of the property where the National Guard facility is. The applicants said they hadn't looked at any other locations and that is their right but this is an economic issue for them; distance, time, materials, those are issues. That is not a large distance from highway 63, it runs right in to it and one facility would be no more than 2 miles from highway 63. Mr. Struchtemeyer stated that asphalt plants can dispose of toxic waste; it is allowed. Most people won't

know and won't consider whether they are going to do that or not. There may not need to be any special permits to bring that in to this facility. But there is either a pending case or there has been a case where there has been alleged and prosecution on that. It doesn't give the neighbors a strong feeling on believing the information presented tonight. The Commission is the neighbor's line of defense for finding the particular issues and addressing them.

Penny Roscoe, 23441 Missouri River View Dr., Hartsburg.

Ms. Roscoe stated that the in the St. Louis Post it stated that the new DNR Director, Doyle Childers, stated that any new application that is rejected by the DNR staff will basically be kicked upstairs and approved. How are we to trust the ability of any DNR permit issued to APAC will protect public health and the environment? Ms. Roscoe asked the Commission to think about this in terms of what if it was in their backyard. We have a wonderful community but it feels like we are losing the fight down there. So far in the last couple of years we have had a major crack house that was in the neighborhood, there was a major marijuana bust. There is a cell phone tower in the neighborhood that the neighbors fought against. Ms. Roscoe asked the Commission to let the neighbors have this one. There are neighbors that are elderly and sick and it is going to be smelly and noisy. The neighbors are just trying to exist in the peace and quiet of the country. Asphalt is liquid and ships that carry petroleum, which is the same product, have double safety containers and how many times have you heard of those kinds of spills.

Closed to public hearing.

Mr. Paulson stated that some great questions were brought up and the applicants would like to address those concerns. This project is a two stage project; one is that the applicants intend to come out of this facility of Capital Quarries. The time frame that APAC will be there is April, May, June, and July after that time period that portion of the project will be complete. The question was brought up as to why they are not using rock from Capital Quarries. The reason is the quality of rock is not sufficient for this project. Part of the smooth roads initiative which MoDOT has passed requires that the project be designed with super paved asphalt, which is a federally mandated asphalt. The quality of rock is very crucial to the success of this asphalt. Boone Quarries will be supplying rock for this project, that is how the project has been bid. Someone asked about Capital Quarries being a Cole County corporation and APAC is a Boone County corporation, it will be Boone County rock, and Boone County asphalt.

Mr. Paulson stated regarding another location, those facilities are not the same quality of rock; the only other setup would be in Holts Summit that contractor could not quote that rock due to their availability and time frame.

Chairperson Smith stated that one of the questions was that the applicants hadn't looked at any other locations. The applicants have done this before, were other locations looked at on other projects. Was this site so perfect that there was no reason to look elsewhere?

Mr. Paulson stated yes. To address why this site; this site is on the project, adjacent to the project with good access to the project. The other facilities that were referenced, none of them can produce the rock and Capital Quarries is not producing the rock. It is a matter of closest site to the project that allows for quicker access to the project, higher productivity because this project could literally drag on all summer. The applicants want to get in and get the project done.

Commissioner Heitkamp stated that if you didn't go to this site would the applicant go to the Boone Quarry site.

Mr. Paulson stated that part of the project approximately 85,000 tons of this project is currently scheduled to come out of the applicant's Columbia plant, which is the portion near Columbia. APAC has a plant in Prathersville.

Commissioner Sloan stated the applicants had stated April, May, June, and July is the time frame.

Mr. Paulson stated for this permit, yes. The applicants should have 100,000 tons run and depending on weather we should have 30,000 to 35,000 tons per month.

Commissioner Sloan asked what conditions are going to drag this out.

Mr. Paulson stated primarily the only thing that would hold them up is rain, damp conditions, and temperature. In April we are not going to see a lot of production just because of the cooler temperatures and spring conditions.

Commissioner Sloan asked how much rock do the applicants need; how much will be used for this particular project.

Mr. Paulson stated there is 185,000 tons asphalt; approximately 90 percent of that will be rock from Boone Quarries.

Commissioner Sloan stated that the applicants are bringing the rock from Boone Quarries because it is a better quality rock and you have to transport that a fairly good distance but the applicants are saying this is the best site because of the close proximity.

Commissioner Heitkamp stated that if you are bringing the rock from Boone Quarries why aren't the applicants starting at Route A.

Mr. Paulson stated that there is a better availability of trucks for stock piling material. Stock piling material would be raw aggregate that we are going to bring to the asphalt plant. With the smooth roads initiative the amount of tonnage laid statewide and APAC on average does about 2.4 million tons around the state. APAC has 17 asphalt plants in a lot of communities in the State of Missouri. APAC lays a lot of asphalt; the key to having a productive job is to get the asphalt plant as close to the project to do the asphalt on which we call the "wet haul" or the "hot haul". Asphalt product goes in to a truck at a temperature of 325 degrees. The less you have to haul the material the better because it is temperature dependant when it is laid. There are specific specifications with temperature requirements. That is another reason the applicants want to be as close to the project as they can get.

Commissioner Sloan asked how big a detriment it would be to haul it another couple of miles; is it going to make that much difference, does it cool off that fast.

Mr. Paulson stated it can, yes. We are probably talking about delaying the project a month before we can start just in proximity to the project and the availability of trucks; you are talking about adding upwards to 20 to 25 trucks to the haul.

Commissioner Heitkamp asked if it would add that much to go a mile south.

Mr. Paulson stated that is going from Columbia versus the temporary use permit.

Commissioner Sloan stated that she was talking about somewhere closer but maybe not where the company is from. Commissioner Sloan stated that she was talking about maybe finding another site in that area that may work.

Commissioner Freiling stated that had the applicants crossed Cedar Creek there would have been no residential issues. For the general understanding staff read the criteria for a conditional use permits which are the standards the Commission has to believe are satisfied. If the Commission believes they are satisfied the Commission has to issue the permit. Commissioner Freiling stated that his concern with this proposal has to do with the second issue on under conditional use permits which is "shall not be injurious to the use and enjoyment of other property in the immediate vicinity". Clearly an asphalt plant is not compatible with residential settings. Oddly, but truly in all of southern Boone County that is the greatest density of residences. APAC must have run in to this before. When those trucks leave that quarry starting up that hill they are going to be to the golf course before they hit highway speed. If they would at least enter in the bottoms they would have a chance not to be obstructing traffic for so many miles. This operation is different than a quarry and the offsite impacts are different. There are sites very near by where these offsite impacts wouldn't matter. Commissioner Freiling stated that it surprises him that the applicants didn't have a back up position.

Commissioner Sloan asked staff if they knew anything about the quarry resuming operations.

Mr. Yonke stated that there is already a quarry there. There has been a quarry there pretty much since zoning was in effect. There is a conditional use permit from the beginning of zoning in 1974 that would allow warehousing. The nature of quarries are such that once you've got a quarry it is almost impossible for the quarry to go away because they are seasonal with respect for the rock, depending on when there is demand for that grade of rock, whether or not the cost of shipping of rock makes it economical to use so they sit until the market is right for that type of rock to be used.

Commissioner Sloan stated that even though this might have not been in use they have a right to begin using the facility.

Commissioner Freiling stated that they had to get a re-issuance from DNR.

Commissioner Sloan stated that if that quarry is up and running again and that is a noisy and dusty operation then this comes in to the neighborhood and this is a noisy, smelly operation there could be a lot of stuff going on out there in a highly residential neighborhood this summer and possibly in fall. Commissioner Sloan asked when the contract began.

Mr. Geger stated that the contract ends December 1, 2005. MoDOT requires that it be 100 percent done by that time.

Commissioner Sloan stated even though the applicants are expecting this to be a four month operation this could go on for several more months beyond that.

Mr. Paulson stated that it is the applicant's intent to begin with a conditional use permit on the south end of the project and do those 100,000 tons so it should be around 4 months production time. It is a portable plant, not a permanent plant; the rest of the project will be in Columbia and that part of the project has to wait until a bridge that bids next week which is the Hominy Creek bridge, when that is bid and completed which is July 15 the remainder of that project has to be completed and that will be out of the applicant's permanent facility out of Columbia.

Commissioner Sloan asked the hours of operation.

Mr. Geger stated that it is required to be done between 7:00 p.m. and 6:00 a.m. In regards to the issue of the site he can understand the concept of finding another site which is away from the residential areas. Unfortunately the asphalt plants, given the amount of aggregate which is stock piled, you can't just prep any site for an asphalt plant. Ideal conditions would be exactly what is found at the rock quarry where you have a hard floor already established. To go in to the bottoms where there is a great deal of softer material present would require a tremendous amount of preparation of that site so you didn't lose all that aggregate in to the soils that were present down there. You would need to construct a solid base which would be a very permanent feature that you would see as opposed to the rock quarry. Once they are gone from the rock quarry there is no evidence that an asphalt plant ever sat there. The other thing is as an environmental person; Mr. Geger would have concerns about putting a plant with that amount of petroleum inside a flood plain. In the event some weather condition would cause the water to rise up Mr. Geger wouldn't recommend putting the plant down there. As a side note APAC is a Columbia, Boone County Company if the plant was relocated to Callaway County almost \$200,000 of the taxes would be going to Callaway County instead of staying here with Boone County.

Mr. Geger stated that he wanted to make sure the people were well aware that there is a definite distinction between the rock quarry and APAC. It is true that Capital Quarries is a Cole County corporation; APAC is a Boone County corporation. APAC intends to move in, pave highway 63, resurface it, and be gone; they will be out and won't be there again. Mr. Geger stated to Mr. Struchtemeyer that they definitely intend to be out by September 22 but hope to be out by August. The applicants need the location immediately adjacent to the site. As Mr. Paulson stated when we haul the rock in that is a cold material but the asphalt, although it is a liquid product, it is liquid at 300 degrees. If you were to take a tanker the size of this room and cut it open, once it hits that cold air there have been studies shown about how far it would go before it hardens; it makes roads, it doesn't go very far. The asphalt itself, although liquid, it has to be at a high temperature and for that reason APAC needs the immediate ingress and egress on to the highway. In regards to the air pollutants, Mr. Geger understands the health considerations, however there are health based standards developed by the EPA, those are the national ambient air quality standards. At 200 feet away from the asphalt plant they are well below the EPA standards for pollutants. The pollutants are so far below standard that the government sets out; APAC wouldn't put their own people in harms way as was mentioned earlier. We are well below OSHA standards for permissible exposure to the employees. APAC and the asphalt plant will be well below any standard. Mr. Geger stated that he has gone through the testing of both noise and odor and all of these tests have shown by the DNR that they are well within compliance on those standards.

Mr. Geger stated that on the website for Missouri Asphalt Pavement Association came out with the standards that an asphalt plant in one year has approximately the same amount of emissions as a bakery has in 2 weeks. No one is going to protest a bakery coming in but it was just a point that was made in order to put it on the same level.

A member of the audience asked if any noise studies were done.

Mr. Geger stated that noise studies were done on the plant. As far as the trucks that haul....

A member stated that the trucks were going to be right below the road.

Chairperson Smith asked that Mr. Geger address the Commission as the public hearing has already been closed.

Mr. Geger stated that noise studies have been done and they are within the standards. If the request is approved APAC will welcome any concerns and give out his phone number so the neighbors can call him. Mr. Geger stated that he would take any one with concerns out to the site and work with the neighbors.

Commissioner Mink asked if this was going to be a 7 day a week operation.

Mr. Geger stated that right now MoDot doesn't have any specific requirements as far as the operation, with the exception of certain holidays. Should the project extend in to something like the football season there are considerations made that are considered to be higher traffic volume days where they would want to keep their vehicles and trucks off the road. Generally they would not be working Sunday nights, often times we wouldn't be working Saturday nights. If the project goes on, should weather become a factor and slow up the project we would probably want to catch up. If they were starting from the south and working north the only time they would be working on Saturday and Sunday it would be pushed up in to the northern section where they would be working out of their own quarry.

Commissioner Sloan asked how far the Boone Quarry is from the southern part of the northern section.

Mr. Geger stated that it is about 15 to 20 miles.

Commissioner Mink stated that he believed it was a little further that.

Commissioner Sloan stated that the applicants will drive a great distance to go there but this asphalt plant has to be right there.

Commissioner Duker asked where else APAC has had plants in Boone County.

Mr. Geger stated that their permanent plant is in the Rocky Fork quarry off of Route VV.

Mr. Shawver stated that they also had a temporary plant at the Riggs quarry.

Commissioner Duker stated that all the asphalt that is south of Boone County, where does it come from, does it always come from the north of Boone County.

Mr. Geger stated that this is the first time they have had measurable asphalt there. In other parts of Boone County there have been small tonnages. Ashland is about as far south as the applicants have gone with mix coming out of the Columbia facility. The applicants went down to Route A last year.

Commissioner Mink stated that he went through the quarry yesterday and it looks like this would be a good site for this and the project is very important. It is important that it is done efficiently for the tax payers of Missouri that are paying for this project.

Commissioner Mink made and Commissioner Morgan seconded a motion to **approve** the request by Carl and Marjorie Thomas and Ralph and Rosalee Higgins on behalf of Capital Quarries and APAC Missouri, Inc., for a temporary asphalt plant on 100 acres located at 23300 S. Hwy 63, Hartsburg **with the following conditions:**

1. All equipment and materials used for the production of asphalt at this location shall be removed within 90-days of the date the paving project is complete.

- Asphalt produced at this location may only be used on the U.S. 63 repaving project under the contract between MoDOT and APAC that expires December 1, 2005.

David Mink – Yes	Mike Morgan – Yes
Mary Sloan – NO	Kristen Heitkamp – NO
Carl Freiling – NO	Russ Duker – Yes
Pat Smith – NO	

Motion to approve the request does not carry.                      3 YES                      4 NO

Commissioner Heitkamp stated that her concern is the health effect to the residential area immediately adjacent. Commissioner Heitkamp doesn't believe the current EPA regulations protect residential areas. Commissioner Heitkamp understands the need for it being close to the road.

Commissioner Freiling made and Commissioner Sloan seconded a motion to deny the request by Carl and Marjorie Thomas and Ralph and Rosalee Higgins on behalf of Capital Quarries and APAC Missouri, Inc., for a temporary asphalt plant on 100 acres located at 23300 S. Hwy 63, Hartsburg for the following reason:

- Failure to meet criteria under paragraph B. "The location of that plant in that area will be injurious to the use and enjoyment of other properties in the immediate area for the purposes already permitted by the regulations."

Pat Smith – Yes	Kristen Heitkamp – Yes
Mary Sloan – Yes	Mike Morgan – NO
Carl Freiling – Yes	Russ Duker – NO
David Mink – NO	

Motion to deny the request carries.                      4 YES                      3 NO

Chairperson Smith informed the applicants if they wished to appeal to the County Commission they would need to file and appeal form with the Planning Department within 3 working days. Chairperson Smith informed interested parties to check with the Planning Department to see if this request is appealed as there will be no further public notice.

\* \* \* \* \*

- Request by Gary and Alice Weil on behalf of Cingular Wireless for a transmission facility including a 180' tower on 115.05 acres, located at 1111 E. Oakland Church Rd., Columbia.

Planner, Thad Yonke gave the staff report stating that this property is located approximately 1 & 1/4 miles north of the municipal limits of the City of Columbia. The property is zoned A-2 (agriculture), as is property to the north. Property to the west across Highway 63, east, and south are zoned A-R (agriculture residential). The zoning of the subject tract and all surrounding properties is the original 1973 zoning except for the property to the south which was rezoned from A-2 to A-R in 1980. A legal description for the lease area site has been provided by the applicants. The lease area for the tower

describes a 400 feet by 400 feet (3.67-acre) area out of the approximately 115-acre parent parcel. No proposal has been made to divide the property and it is unlikely that the lease area could be divided from the parent parcel in compliance with county regulations. The parent parcel is vacant except for an Ameren UE facility compound. A 180 ft tower is proposed along with small ground facilities inside a fenced compound. The application is complete enough for the Commission to consider the request. The site is located within the Columbia school district and the Boone County Fire Protection District. Electric service is provided by the Boone Electric Cooperative. The master plan designates this area as being suitable for residential land uses. Staff notified 9 property owners about this request.

The zoning regulations list the criteria that the Commission is to consider before granting a conditional use permit. Staff analysis of the request is based upon the application and public comments received following notification of the surrounding property owners.

- (a) The establishment, maintenance or operation of a conditional use permit will not be detrimental to or endanger the public health, safety, comfort or general welfare.

If operated in conformance with existing county regulations, the use should comply with this criterion.

- (b) The conditional use permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted by these regulations.

The subject site is close to one residence on an adjoining property and while the surrounding zoning will allow for a significant number of residential units there is a lack of an adequate public road network to the surrounding properties to support the densities allowable under the current zoning. Screening or adjustment in the tower location within the parent parcel could help mitigate potential impact to the one residence near the proposed site. Public testimony may be indicative as to whether this criterion can be met.

- (c) The conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood.

The application meets this criterion as per the zoning ordinance Section 15B subsection (e).

- (d) All necessary facilities will be available, including, but not limited to, utilities, roads, road access and drainage.

The use has limited needs with respect to utility infrastructure and so the site has adequate facilities to support the proposal.

- (e) The establishment of a conditional use permit will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the zoning district.

This area is zoned A-2, with residential uses limited to 2-½ acre tracts or larger. Future development of the area will be accomplished through the existing zoning, or will require rezoning to achieve a higher density of development. The nature of the site and its location with respect to road infrastructure will likely have a greater negative impact on the area development than the proposal. However, public testimony may be indicative as to whether this criterion is met.

(f) The establishment of a conditional use permit will not hinder the flow of traffic or result in traffic congestion on the public streets. This will include the provision of points of access to the subject property.

The proposed use is a minimal traffic generator and should not hinder traffic or cause congestion on public streets.

(g) The conditional use permit shall in all other respects conform to the applicable regulations of the zoning district in which it is located. The County Commission shall find that there is a public necessity for the conditional use permit.

The proposal conforms to other applicable regulations of the A-2 zoning district, especially since no land division is proposed.

Present: Eric Schmitt, Attorney for Cingular Wireless, 168 N. Meramec, St. Louis.  
Sarah Perry, Engineer for Cingular, 13075 Manchester, St. Louis.  
Doug Dolan, 7718 Fousy, St. Louis.

Mr. Schmitt stated that the explosion and demand for wireless service and cell phone usage has grown immensely over the past few years. In the process to better serve their clients and members of the community Cingular looked for sites that meet the current holes in their infrastructure. That is a long process that includes site acquisition. Doug Dolan who is in charge of the site acquisition is here tonight along with Sarah Perry who is an engineer with Cingular Wireless. This site will allow Cingular to better serve their customers in the area and also provide 911 service that is due to come online. The applicants are proposing a 180-foot monopole tower. It has the ability for co-location on the site so if another company comes along they will be able to locate on this tower.

Mr. Schmitt stated that in reviewing this area no other existing cell towers meet the demand for what the needs currently are. It would be much more economical to co-locate; the construction of a new tower is in the neighborhood of \$250,000 it is much cheaper and much quicker to co-locate on an existing cell tower. The Commission was submitted a map showing the coverage areas, in general, the more green you see the better this allows for in home or in building service. This is a 100' by 100' fenced in area to protect the storage facility for the equipment. There are no residences anywhere within 200 feet, outside of 200-feet there is a home. These towers are over-engineered and have never known of one to collapse.

Commissioner Morgan asked what the maximum mileage range of this new tower would cover.

Mr. Schmitt stated 3 miles maybe.

Ms. Perry stated about a mile radius for good in building coverage.

Commissioner Morgan stated that theoretically speaking you would have to put one of these towers every mile.

Ms. Perry stated that the tower covers a 3 mile radius. This being a 180-foot tower it would provide good in building coverage for a 2 mile radius. You would also get highway coverage which doesn't need that level.

Commissioner Morgan asked if Cingular had a tower on Highway VV.

Ms. Perry stated no.

Mr. Shawver stated that was a US Cellular tower.

Commissioner Freiling stated that none of the Commissioners have the technical expertise to judge the engineering behind this but in rejecting the possibility of the FM tower with height elevations of 220 or 250 and it is 9/10 of a mile away.

Mr. Schmitt stated that having a tower that high interferes with the existing towers that are further away. We won't be gaining anything by having a taller tower; in fact we might lose the ability to have coverage on other cell sites. Although it might be higher it might seem you would be able to get a wider radius but we are prohibiting or interfering with other existing sites in this region. 180-feet is the optimal range to cover without interfering.

Commissioner Heitkamp stated that we have cell phone towers that are less than 180-feet at 90-feet. What is the difference between 180-feet and 90-feet?

Ms. Perry stated that there is a significant coverage difference. In the City of Columbia Cingular would prefer to have the cell sites at a lower height as it does cause interference and there are also capacity issues. If it covers to big an area and you have too many people on one site and they can't keep up with the capacity. At some point you reach capacity issues and can't add anything else. In a more densely populated area we like to keep the towers smaller. The site the applicants are looking at now is in a more rural area so the 180-feet will work much better than trying to do a 90-foot tower; you would need 2 to 3 90-foot towers to try to get the same coverage area.

Mr. Schmitt stated that the smaller towers are not necessarily for coverage but for capacity.

Commissioner Freiling asked what the coverage limits are. If you design a tower to give you maximum coverage area.

Ms. Perry stated that Cingular has some sites that are 400-feet tall that will cover close to 10 miles but those are very rural areas like Dexter, Sikeston, and Poplar Bluff; those are also older sites and Cingular is trying to get away from it now as they start to fill in more coverage and pinpoint the area they are trying to cover.

Commissioner Freiling stated when you put this tower in place do you then entertain offers for additional users.

Mr. Schmitt stated that there is a process when another user wants to come in to the area they are required to check with the existing companies that have towers to see if those will meet their requirements and also go through the County with that process. If we were going to Kirksville to place a tower then Cingular would be required to look in to the proper ordinances if there was an existing tower that met their needs and had co-location ability they would co-locate on that tower. The proposed tower has the ability to co-locate 2 or 3 additional sites.

Ms. Perry stated that she has been through applications from different carriers within the last week.

Commissioner Morgan asked if the tower is required to have a light.

Mr. Shawver stated they are not required to have a light since the tower is lower than 200-feet.

Open to public hearing.

No one spoke in support of the request.

Present speaking in opposition:

Larry McBee, 1120 E. Oakland Church Road, Columbia.

Mr. McBee stated that he lives directly adjacent to the proposed cellular tower site. He and his wife have invested a lot of time and money on their new house. A few years ago they dealt with Pan Handle Eastern putting in a pumping station. They promised all sorts of things that did not happen. Mr. McBee has had to call the fire department on numerous occasions; he has had to call the State regulatory commission to regulate them. Mr. McBee stated that there are two cell phone towers that he can see from his property with lights already. He understands the County is growing and is going to develop out in that area and he is not opposed to that. What he is opposed to, according to the staff report, whether or not the Commission wants to admit it or not, it will affect the McBee's property value. Mr. Weil has several hundred acres that the cell tower can be put on that won't be next to houses or property. Mr. Weil's house is on that property; Mr. McBee wonders why the cell tower is not next to Mr. Weil's house. He doesn't want it there because he doesn't want a cell tower next to his house like most people don't.

Commissioner Heitkamp asked Mr. McBee if he was saying that he objects to the particular placement on the Weil property. If they moved it to a different spot on the Weil's property would Mr. McBee still object.

Mr. McBee stated that it depends on where it is moved to. If it is moved to where it isn't going to be detrimental to his property value and esthetics then Mr. McBee would not be opposed to the tower. He doesn't have a problem with the tower being at Mr. Weil's house but doesn't want it next to his house. We already have the pumping station there that he has to deal with on a daily basis. The gas company told him that they put the smell in so you can detect a leak. How does he know that it is that and not a gas line leak, he doesn't, so he calls the fire department. He had the phone company putting lines across his property without permission; he had to stop them on that. People drive down his road at high rates of speed, he has children. Mr. McBee stated that he is not opposed to a tower, just opposed to the placement.

Commissioner Duker stated that the applicants presented the Commission with some photos of the site. Commissioner Duker asked Mr. McBee if he had seen these pictures.

Mr. McBee stated no. He has seen where the applicants have already drilled to test the land; it is directly across from his house.

Commissioner Duker stated that the photos are labeled north, south, east, and west and he doesn't see any houses in the photos.

Mr. McBee stated that the photos were taken across the road from it. His house is directly across the road from the site.

Commissioner Sloan asked how far his house is from the site.

Mr. McBee stated less than 200-feet.

Mr. Schmitt stated that it was more than 200-feet.

Mr. McBee stated that he not concerned with the structural integrity of the tower and is not afraid of it falling on his property, he is concerned about the esthetics and the amount of money and time that he has put in to his property, it is an investment. There is already a pumping station and two other cell towers with lights on that he can see from his property. There are other places that this cell tower can go.

Mr. Schmitt stated that the site is actually more than 300-feet from the McBee's house.

Mr. McBee stated that if it is more than 300-feet then why were they drilling where they were drilling.

Mr. Schmitt stated that he didn't know.

Mr. McBee stated he can still see it at 300-feet.

Mr. McBee stated that there are a couple of things that don't coincide with what staff said, it will affect property values.

Linda McBee, 1120 E. Oakland Church Road, Columbia.

Mrs. McBee stated that staff had made a comment about the lack of road conditions and it is very ironic because a few years ago when she started building her dream house they tried to get the road closed because the Weil's own everything on one side of the road and the McBee's own everything on the other side; it is a dead end road. The McBee's tried to get the road closed and the Weil's fought them on it. Mrs. McBee stated that she saw people at the proposed site drilling and she asked them what they were doing and they were testing the soil for a cell tower. The people asked if they could park and she told them they couldn't block the road. The drillers were the ones who told the McBee's about the tower, they didn't know. If you walk out the McBee's front steps you can see their equipment drilling the hole. Mrs. McBee stated that she didn't know how many feet it was but you can see it. The McBee's are not against progress but there are several hundred acres this tower could be placed.

Commissioner Morgan asked if there were topography maps.

Mr. Yonke stated that staff did try to get topography maps but the server was down so staff wasn't able to get one generated. There is some topographic information in the Commissioners packets on the site plans.

Commissioner Morgan stated that he was curious as to the elevations.

Mr. Yonke stated that may be a question that could be addressed to the applicants.

Closed to public hearing.

Chairperson Smith asked the applicants if they had looked at other places on the Weil property.

Mr. Schmitt stated yes; this particular spot gives the most coverage and it gives the ability to do what they are trying to do.

Commissioner Freiling asked if it was an issue of topography.

Mr. Schmitt stated that he didn't know.

Mr. Dolan stated that topography is always an issue. Another thought of this is that there has to be 400 feet by 400 feet and that is to take in to account the setback of the 200-foot tower so you need a rather large area.

Commissioner Morgan stated that it had to be 400 feet square and asked how far from the McBee house this site is.

Mr. Dolan stated 300-feet. The tower sits in the middle of the 400-foot area.

Commissioner Morgan stated that if it is 300 feet from their house and it is a 400-foot square area.

Mr. Dolan stated that the tower is in the center of the 400-foot area.

Commissioner Mink asked if the house was 300-feet from the leased area not from the tower itself.

Mr. Dolan stated it is over 300-feet from the tower itself to their home.

Commissioner Duker stated that if the tower was put at a lower location could the tower be built higher.

Commissioner Freiling asked the elevation at the rest of the site and if it was level to the highway.

Mr. McBee stated it goes down. But where the tower is it also goes down in elevation. His house sits higher than what they want to put the cell tower. Mr. Weil's house sits higher than where they are wanting to sit the tower.

Mr. Schmitt stated that if the issue is Mr. McBee seeing the cell tower, in all honesty he is going to see it anyway. If there is something the applicants can do to help screen the shelter with some landscaping the applicants would be willing to do that. In moving it to another site, Mr. McBee is still going to see it. What we are dealing with is in the engineering what is the optimum site. The applicants have looked and the proposed site is it.

Commissioner Sloan asked Mr. McBee if his house faced south.

Mr. McBee stated that his house faces north.

Commissioner Heitkamp asked what if the applicants placed the tower on Mr. Weil's next 136 acres north of Clay Fork Creek. Commissioner Heitkamp asked the applicants if they looked at that property.

Mr. McBee stated that it was higher ground.

Mr. Schmitt stated that the proposed site was the best site. The other property would have to be analyzed for access to power.

Commissioner Morgan stated that the road comes right around.

Commissioner Heitkamp stated that the other property is right next to highway 63.

Mr. Schmitt stated that there is a lot that goes in to it. It is not just as simple as finding the spot that is furthest away from the McBee's.

Mr. Schmitt stated that County staff has done a good job in making the applicants show that they have exhausted all the other areas.

Mr. Yonke stated that he made the applicants check every single tower he could find in the area. The applicants had to show staff a propagation study when they came back with a propagation study the response from the FM tower at 180-feet had available space at the 220 and 250. The applicants had to go back and show that the 220 and 250 wouldn't work. The applicants have been good at meeting the criteria because if they don't do that they don't even get to the hearing.

Mr. Shawver stated that the regulations require that the applicants evaluate existing towers; there are literally a million possible sites in Boone County; the regulations don't say they have to evaluate every piece of property. There may be other sites, but is based on this request.

Commissioner Freiling asked staff why they didn't make a recommendation.

Mr. Yonke stated that staff addresses each criteria as they can; some of it is more factual than others. The main condition that seems to be at question that is outstanding here is condition B which is the use and enjoyment of property. Staff is never in a position to make a recommendation on the use and enjoyment because that is really a question that is left for the Commission. That is not a technical question. For example, one thing that does need to be clarified that is a little different with a tower than other conditional use permits is that criteria C, which is a conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood. Normally that requires some kind of affirmative action on showing testimony or other that shows it won't affect it via an appraiser or some other data or study. With respect to a tower it is different. It says in the regulations, section 15.B.E that if you meet that particular criteria, which is looking at other tower, sites you automatically to not be lowering property value. That is particular to the regulation. In this instance what more is a matter of opinion or otherwise is taken out and is a matter of actual fact, if you meet that portion of the regulations the value question comes out of it. The reason staff made no recommendation for approval or denial is because if you look at things that can be analyzed it really comes down to criteria B. Staff never makes a recommendation based on criteria B.

Chairperson Smith stated that it seems that one time in the past when we were looking at cell towers there was some studies that looked at the impact of cell towers on neighborhoods and communities. Commissioner Smith asked staff if they remembered that.

Mr. Shawver stated that we have had several submissions of appraisals by certified appraisers submitted to the record; the opinion of the appraiser was that a tower would not affect property values.

Mr. Yonke stated that in general it is a moot point with respect to the regulation because in this instance the tower regulations specify by default what constitutes diminishing property values.

Commissioner Sloan stated that the driveway to her house is 300-feet long; that is not very long. If she had to look at a cell tower that close to her house she would not be happy about it. When a cell tower was proposed in the Rocheport area a few years ago the towns people came out in mass against it because they didn't feel it was necessary in that area. The inconvenience doesn't have to override good judgment. Commissioner Sloan understands that everyone wants their cell phone service when they want it but feels that in looking at all the property that this family has this site may be the best site for the

applicants because of its proximity to the highway but if it destroys the esthetic value whether it be actual value to these people who have been here then it is not a good thing. While it may not be the best, there are other sites in the area where this cell tower could be put and that should have been addressed. It is being a good corporation and a good neighbor if you are going to build a tower there. The applicants could have gone to the McBee's and told them what they were thinking about and let the McBee's have a say. Commissioner Sloan stated that she sees that leases are signed, business goes out and does things and then they ask other people to approve what they have done because it is business because they need it or want it. In this case even though it is one house and one area this is not the only place the cell tower could go.

Mr. Schmitt stated that even if the tower was moved to a different location on the property it would still be visible.

Commissioner Sloan stated that she is not talking about visibility but looking out your front door.

Mr. Schmitt stated that if it is visibility they applicants will landscape.

Commissioner Sloan stated that doesn't help the tower.

Commissioner Heitkamp informed the applicant that the Commission has ruled on cell towers in Pierpont and Rocheport on the basis of convenience versus people who already live there. In the past it has been this Commission's view that the convenience of having a cell phone does not override a persons property rights to enjoy their property. The fact that the applicants are considering a spot that is right in the line of sight of someone's dream home or even someone's shack is suspect. Commissioner Heitkamp stated that she would wonder why not go 400 feet another direction and save the applicants and the Commissions from the time they are spending on this.

Commissioner Heitkamp made a motion to deny the request.

Mr. Schmitt stated that if that is the difference between acceptance and denial this is the optimum site but if there is a condition placed that it be moved a certain distance away then the applicants would entertain that. This is the parcel that works but if the Commission wants the tower a certain amount of feet away from the home that is something that the applicants will entertain.

Mr. Yonke stated that the problem is we look at screening requirements as a condition a lot of times, staff didn't feel that they could even make a laughable argument that you could screen reasonable on this tower that is why it wasn't proposed as a condition. The problem with moving the tower is that there may very well be another acceptable place being 100 or so acres but a new application would be required. You can't condition this because of the way the regulations are structured. All the information upon with the decision gets based is based upon the presumption that this site, if you are moving it a significant distance away a new application would be required.

Commissioner Duker stated that he was going to vote no on the motion but now the applicants are willing to move the tower but they chose to place it so close to the McBee's property anyway but now they are willing to move it.

Commissioner Heitkamp made and Commissioner Sloan seconded a motion to **deny** the request by Gary and Alice Weil on behalf of Cingular Wireless for a transmission facility including a 180' tower on 115.05 acres, located at 1111 E. Oakland Church Rd., Columbia **due to the following:**

1. Unable to meet condition B under conditional use permit criteria.

Pat Smith - Yes  
Mary Sloan – Yes  
Carl Freiling – Yes  
David Mink – NO

Kristen Heitkamp – Yes  
Mike Morgan – Yes  
Russ Duker – Yes

Motion to deny the request carries.                      6 YES                      1 NO

Chairperson Smith informed the applicants if they wished to appeal to the County Commission they would need to file an appeal form with the Planning Department within 3 working days.

## **REZONING REQUESTS**

None.

## **PLANNED DEVELOPMENT**

None.

## **PLAT REVIEWS**

1. G and J Farms. S14-T48N-R14W. A-2. Jeffrey and Rachel Griffin, owners. J. Daniel Brush, surveyor.

The following staff report was entered in to the record:

This 1-lot minor plat is located on the east side of Hickory Grove School Road approximately 3200 feet north of the intersection of State Route O and Hickory Grove School Road. The site is approximately 3 miles west of the main municipal limits of the City of Columbia. The area being subdivided contains 5.14-acres out of an approximately 19.65-acre parent parcel. The remainder of the parent parcel is to be surveyed as an administrative survey. The property is zoned A-2 (agriculture) as is all the surrounding property. All surrounding zonings are the original 1973 zonings. The property contained within the area of the proposed plat is vacant. Sewage treatment will be provided by on-site wastewater systems and an appropriate wastewater plan is in the file. Any on-site wastewater system must meet all County Health Department requirements. The site is in Consolidated Public Water District #1. Fire hydrants are not required for minor plats containing less than 4 lots, as is the case here. The site is in the Columbia School District. A waiver from traffic analysis and a waiver of cost-benefit analysis for central sewage have been requested. Staff concurs with the granting of these waivers. The site is in the Boone County Fire Protection District and Boone Electric Service areas. This plat has 32 points on the point rating scale.

Staff recommends approval along with the granting of the waiver requests.

**Commissioner Freiling made and Commissioner Heitkamp seconded a motion to approve G and J Farms. S14-T48N-R14W. A-2. Jeffrey and Rachel Griffin, owners. J. Daniel Brush, surveyor with waiver requests:**

Pat Smith - Yes	Kristen Heitkamp – Yes
Mary Sloan – Yes	Mike Morgan – Yes
Carl Freiling – Yes	Russ Duker – Yes
David Mink – Yes	

Motion to approve request carries unanimously.

\* \* \* \* \*

**OLD BUSINESS**

Mr. Shawver updated the Planning and Zoning Commission of the decisions made by the County Commission.

The rezoning request and review plan for Midway Electric/Brandon Spry was approved as recommended. (without the cell tower).

The final development plan by Sells Development was approved as recommended.

The plats for Biggs Corner, Southern Boone County Fire, and Golf plat 2 were approved by the County Commission as recommended.

The plats for Kinkaid Crossing 1, 2 & 3, Old Plank Meadows, and East Goodwater are being held back for infrastructure. In all likelihood East Goodwater is going to be annexed in to the City of Centralia.

**NEW BUSINESS**

Chairperson Smith asked for an update on the Billy Sapp property.

Mr. Shawver stated that the County hasn't received an application. They have asked to have a concept review and that is scheduled for Monday, March 21<sup>st</sup>. At this point the County has no applications.

Mr. Yonke stated that staff has a comment sheet for an annexation from the City for the exact same property.

**ADJOURN**

Being no further business, the meeting was adjourned at 9:05 p.m.

Respectfully submitted,

Kristen Heitkamp,

Secretary

Minutes approved on this 21st day of April, 2005.