

**BOONE COUNTY PLANNING & ZONING COMMISSION**

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, October 19, 2006

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

|          |                                 |                       |
|----------|---------------------------------|-----------------------|
| Present: | Pat Smith, Chairperson          | Perche Township       |
|          | Russell Duker, Vice Chairperson | Missouri Township     |
|          | Boyd Harris, Secretary          | Centralia Township    |
|          | Larry Oetting                   | Three Creeks Township |
|          | Mike Morgan                     | Bourbon Township      |
|          | John Schloot                    | Rocky Fork Township   |
|          | Paul Zullo                      | Rock Bridge Township  |
|          | David Mink                      | Public Works          |

|         |                  |                   |
|---------|------------------|-------------------|
| Absent: | Carl Freiling    | Cedar Township    |
|         | Michael Morrison | Columbia Township |
|         | Vacant Seat      | Katy Township     |

|               |                        |                    |
|---------------|------------------------|--------------------|
| Also present: | Stan Shawver, Director | Thad Yonke, Staff  |
|               | Uriah Mach, Staff      | Paula Evans, Staff |
|               | Bill Florea, Staff     |                    |

The minutes of the August 17, 2006 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, four rezoning requests, one revised review plan, and three subdivision plats.

In general, the Planning and Zoning Commission tries to follow Robert's Rules of Order, however, it is authorized by the Missouri State Statutes to follow its 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 the applicant's 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 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 who wishes to speak, we ask that you not be repetitious with your remarks. We also recognize that some issues can be quite emotional. In that regard we ask that you refrain from applause, cheers, or other 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 Monday, October 30<sup>th</sup>. 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 the hearing tonight and the County Commission Hearing. The County Commission hearing scheduled for Monday, October 30<sup>th</sup> will begin at 7:00 p.m. and will convene in this same room.

Chairperson Smith asked if there were any questions about how the meeting will be conducted.

## **CONDITIONAL USE PERMITS**

1. Request by B C Baseball League on behalf of Verizon Wireless for a transmission facility, including a 124' tower on 32.83 acres, located at 535 N. Purdy Ln., Columbia. Pending construction of this tower, applicant has requested a permit for a temporary "cell on wheels" at the same site.

Planner Uriah Mach gave the staff report stating that the property is approximately ½ mile to the west of the county border with Callaway County. The property is zoned A-2 (Agricultural). This property has A-2 zoning to the north, south, and west, with A-1 (Agricultural) zoning across Purdy Lane to the east. The zoning of the subject property and the surrounding tracts are all original 1973 zonings.

A description of the lease area sites has been submitted by the applicant as Exhibit F in the application materials. The lease area for the tower is approximately 10,000 square feet out of the 32.83 acre parent

tract. The lease area for the Cell on Wheels (COW) tower is 800 square feet and shown in the same site plan as the permanent tower. No proposal has been submitted to subdivide the property. Given the proposed tower locations, subdivision would be possible, but there would be issues of access to discuss as part of that subdivision. The parent parcel has several baseball diamonds and four structures present. A 124' monopole tower, small ground facilities, and the COW are proposed, with the tower and ground facilities inside a fenced compound.

The property is located inside the Columbia C-1 school district and the Boone County Fire Protection District. The Master Plan describes this area as being suitable for agricultural and rural residential land use. Staff notified 32 property owners about this request.

The following criteria are the standards for approval of a conditional use permit, followed by staff analysis of how this application may meet those standards. 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.

Staff analysis of this application indicates that it does not comply with section 15B (4) (a) 1 and 1.3 and (4)(b). This indicates that this criterion is not being met per section 15B (1) (a) which states, "These regulations are intended to regulate the placement and construction of telecommunications transmission towers and transmission facilities in order to protect and promote the public health, safety and welfare, to protect the environment, to promote the efficient use of land and to preserve property values." Therefore, if you are not meeting the regulations of section 15B, you are not meeting approval standard (a) of the general conditional use permit criteria.

(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 currently the location for the BC Baseball League's fields. The site plan in the application places the COW behind one of the existing ball fields, and the permanent tower approximately 300 feet from the southernmost field as identified on aerial photos. 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. 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 section 4, subsection (e). However, this is a purely technical analysis as constructed by the regulations. Public testimony may better reflect any impacts on property values.

(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, particularly since no land division is proposed. It is staff's belief that public necessity for the conditional use permit not been demonstrated based on the information provided in the applicant's propagation maps, which is reinforced by the approval standards for a new transmission facility are described in the Boone County Zoning Ordinance, Section 15B (4).

The application does not meet sections 15B (4) (a) 1 & 1.3, which state "Planned telecommunication equipment cannot be accommodated on an existing or approved transmission tower if: existing or approved towers do not have space on which planned telecommunication equipment can be placed so it can function effectively and at least in parity with other similar telecommunication equipment in place or approved by the Boone County Commission." As described by the application, the Spectrasite tower does have space to support the telecommunications equipment proposed by the application. While the application has indicated that there is insufficient ground space available at Spectrasite, they have not shown that there is no way to gain sufficient ground space. With this being the case, the application fails the general conditional use criteria a) & g). That the establishment, maintenance or operation of this conditional use permit will not be detrimental to or endanger the public health, safety, comfort or general welfare has not yet been proven under section 15B, and public necessity has not been proven, as there is a means to gain coverage in the area proposed by making use of existing towers in Boone County and constructing a new tower in Callaway County.

The site proposed by this application is a replacement for the site proposed in April as COLP-Millersburg. As such, it faces some of the same questions as that site. The first of which is the possibility of gaining coverage by co-locating on the Spectrasite tower and constructing a new tower in Callaway County at the location identified by the COLP-Millersburg application as Millersburg(New). In the COLP-Millersburg application and in the current application, it appears that the only restriction on the Spectrasite tower is that additional ground space would need to be acquired to support Verizon's equipment. It is reasonable to infer that the property owner for the Spectrasite tower would be will to lease additional ground space for another cell phone service provider, given that this would mean additional income for them. There is no information to indicate otherwise, and per section 15B (4)(b), which states, "No application for a new transmission facility shall be considered unless the applicant is

unable to lease or otherwise secure space on an existing or planned transmission tower,” such information is required to prove that placing their equipment on the Spectrasite tower is impossible. At this time, there is no information to indicate that the staff’s recommendation of co-location on the Spectrasite tower and constructing a new tower in Callaway County would be impossible for the applicant.

Additionally, there was the issue of encroachment of this tower into Callaway County, where the applicant does not possess an F-block license. At the April Planning & Zoning Commission meeting, the applicant’s representative stated that they cannot propagate their F-block signal across county lines. As this was an issue with the COLP-Millersburg application, which was 1-mile from the county line, it would be aggravated with this application as it is only ½ mile from the county line. The applicant has recently provided an explanation for the encroachment issue. In general, when the encroachment is above a specific threshold, consent must be gained from the service provider whose area is being encroached upon. In this case, T-Mobile holds the license for the F-block signal band in Callaway County, which is the license Verizon holds in Boone County. Verizon has submitted a draft agreement in which T-Mobile grants that consent, and a copy of the e-mail from T-Mobile indicating that they will sign that consent agreement. This information answers the question of encroachment into T-Mobile’s license area.

While the issue of encroachment has been resolved, the information provided by Verizon describing this as a commonplace and easily remedied problem serves to further the argument of co-location on the Spectrasite tower and the construction of a new tower in Callaway County. If the encroachment issue is such a small problem, there should be no difficulty in providing the coverage desired by building the new tower in Callaway County and seeking a similar agreement with the appropriate license-holder in Boone County to allow for the Callaway County tower’s encroachment across the county line. It is incumbent upon the applicant to provide evidence indicating that this potential solution to the coverage problem is impossible.

Staff recommends denial of this conditional use permit based on failure to meet criteria a) and g) of the general criteria for approval of a conditional use permit and failure to meet section 15B (4) (a) 1, and 1.3, and (4) (b) of the approval standards for a new transmission facility. In the case that this permit is approved, staff recommends the following conditions:

1. That the COLP-Millersburg appeal be withdrawn from the table of the Boone County Commission.
2. That the COW (Cell on Wheels) be removed within 60 days of the completion of the permanent tower.

Present: Curtis Holland, Attorney representing Verizon Wireless, 6201 College Blvd, # 500, Overland Park, KS.

Mr. Holland stated he has been representing Verizon Wireless with respect to their build out of a new network here in Boone County and has appeared before this body many times concerning applications for communication towers. The Commission has heard quite a bit about their build out of the new network and the fact that Verizon is a new licensee in Boone County and where they can they attempt to collocate on existing communication tower structures. Where they can’t collocate the applicants are forced to build new communication support structures. Under the Boone County regulations, in most cases, require applications for conditional use permits.

This particular application, as mentioned in the staff report, is the replacement of an earlier application that the applicants had site approval of and is still pending on appeal before the County Commission. That site is being called the Millersburg site. That was the very first application the applicants submitted and had a hearing about. Mr. Holland spent quite a bit of time that evening educating the Commission about Verizon's build out at that time. There was some opposition with regard to the Millersburg site location. There were several adjoining property owners nearby that particular site that had raised objections to its location. The planning staff did recommend denial of that site essentially for some of the same reasons that we are hearing tonight. The request was denied by the Planning and Zoning Commission and the applicants filed an appeal to the County Commission. Subsequent to that there has been many applications. Thankfully all but one had been approved by the Planning and Zoning Commission, one of the sites was not approved and that was the Perche Creek site which was a facility located on a property that had a commercial green house. In that case there were some residents that came out opposed to it. All of the other cases were approved and the applicants appreciate that. The applicants did a good job of locating those facilities on properties that didn't draw a lot of attention from adjoining property owners which is an important factor, however it is not the only factor that should be considered. In any event, those were approved.

The very first site, Millersburg, was not approved. Going through these applications over the course of the last several months Mr. Holland has had opportunities to speak to Commissioners about their program and relative to this specific site, the gap that the applicants are trying to fill here, the Millersburg site. Mr. Holland was approached by Commissioner Elkin and he was inquiring whether or not the applicants could solve their issues with coverage in this particular area of the County by using the Boone County baseball league facility. Mr. Holland informed Commissioner Elkin that he would look in to this. The applicants visited with Verizon wireless' radio frequency engineers and they determined that they could make that site work. It was thought by Commissioner Elkin to be a preferable site to the Millersburg site for a couple of reasons. One it is a larger tract of ground, it is approximately 33 acres and two, there is not a lot of residential around it so the applicants may not garner the same opposition to it that the earlier site did. It also provides lease income to the baseball league. After the applicants evaluated it and determined that it could work from a radio frequency (RF) perspective the applicants approached the owners of the little league complex. Through some negotiation they ended up with a lease arrangement with them for a site on their property subject to getting approval. The application was made in good faith too Boone County. The applicants agree that from a land use perspective it is probably a better site than the earlier site principally because it is a larger tract of ground and a greater buffering distance can be created between the facility and the adjoining properties so the application was made.

The applicants are a little surprised with the recommendation from staff. Mr. Holland stated he wished to challenge some of the statements that were made in the staff report and what the applicants believe to be what is required in terms of how you would evaluate these applications under the Boone County code. This application is a little bit different than the others at least on one respect and that is there is a companion request being made which is for the cell on wheels facility or COW. It is a temporary tower that the applicants would like to place on the property during the term of construction of the permanent tower site. A COW in most jurisdictions, the regulations for these types of wireless facilities, they don't distinguish between a permanent tower and a temporary tower so it is sort of determined at a jurisdiction by jurisdiction basis. Some jurisdictions, although it is not considered part of their regulations or addressed by their regulations look at them and simply say it is a short term, temporary use of a tower and as long as it is located nearby the permanent tower they would allow it. They don't require you to go through the process. Boone County's interpretation is different in that regard and they have required that it be considered by a conditional use permit. Therefore the applicants made a companion request for the temporary tower structure. On that specific item, think of it as if there were some breaking news item

and a television crew needs to rush to a site. Outside courtrooms a lot of times when there is an interesting trial going on there and there is a television crew there and there is a crank up radio antenna. This temporary tower is sort of like that. If you go to a football game at Arrowhead Stadium in Kansas City you may see that because there are capacity issues with the carrier services where you have a large concentration of people and everyone is trying to use their phone at once so they will bring a COW out and it is there for a day or two in those instances. It is not uncommon for the wireless industry to use these cell on wheel facilities in the manner the applicants are trying to use it as which is temporary until the permanent site is on air and constructed. Relative to that portion of this application it is an 80-foot tall crank up tower that sits on a trailer that is on wheels, that is why it is called cell on wheels. It doesn't take a lot to get it up and running and when the permanent site is turned on it would be taken down, it would take a couple of days.

Chairperson Smith stated she didn't believe there was much in the staff report about that. That wasn't really the issue.

Mr. Mach stated not really; that was only mentioned because it was combined with the permanent tower.

Mr. Holland stated he was simply explaining the application in case there were any questions.

Mr. Holland stated with respect to the permanent tower as mentioned it is a substitute for the Millersburg site. As explained then and as provided in the application to the County the applicants have a significant coverage gap in this part of the county; the far eastern part of the county. The applicants are trying to correct with putting a new facility on air. The applicants are covering I-70 across Boone County and again where the applicants can they collocate on existing structures. There are collocations occurring going from west to east towards the county line. In respect to this particular area of the county the applicants have a communication tower facility that the applicants are collocating on that is approximately 4 miles west of the county line that is called Harg. It is a collocation on an existing communication tower. What the applicants are trying to accomplish with this specific site is to get us from Harg which is about 4 miles to the west all the way over to the county line. This is a PCS system 1900 mhz, those signals don't travel that far; there is a lot of terrain difference the further east you go toward the county down to the creek that is there on county line road so that the applicants can't transmit their signals 4 miles over the county line. The applicants have a coverage gap.

Chairperson Smith asked about the Spectrasite tower staff mentioned.

Mr. Holland stated he will get to that.

Mr. Holland stated staff's position, and again the applicants respectfully disagree with it, is that there is a way to cover this gap without constructing this new tower. It says essentially there is an existing tower to the west, the Spectrasite tower and while there may not be room at the base of the tower for the ground equipment staff suggests working something out with that property owner and put their equipment and antennas there and then they could couple that facility with another new facility to be built in Callaway county then the problem is solved. At least there is recognition by staff that there is a coverage gap there. But staff's proposed solution doesn't work. As mentioned last time that Spectrasite tower was there, it has been there and there was a reason the applicants didn't go on it last time when we were talking about the Millersburg site and the reason the applicants aren't going on it this time and that reason is when Verizon is attempting to build out their system, as mentioned, they are lining up facilities west to east in Boone County and the facilities need to be spaced adequately apart to provide sufficient coverage for these particular areas and you don't want them too far because you will end up with a gap in the middle and you don't want them too close because they interfere with each other and it makes your system very

inefficient. The Harg site is approximately 1 mile from the Spectrasite tower. If you put Verizon's facilities on the Spectrasite tower, being only 1 mile from the Harg site it will cause interference.

Commissioner Duker asked the location of the Harg site.

Mr. Holland stated you have the Harg site, go one mile, then the Spectrasite and the county line is 3 ½ miles from the Spectrasite tower. The applicants are not going to put their facilities on the Spectrasite with it being only 1 mile from the Harg site because our signals are going to interfere with each other it causes interference; it is causing inefficiencies within our system and it doesn't get our signals all the way over the county line because it is so far away and there is the terrain issue to deal with. The idea that Verizon can put a tower in Callaway County is a mistake; a mistake in understanding by the staff. Mr. Holland stated he has mentioned and it is noted in the application Verizon does not have a license to operate an F license in Callaway County. Verizon can't go and put a facility in Callaway County because the applicants don't have a license for Callaway County; that license is held by T-Mobile. The applicants don't have the legal authority to build a facility in Callaway County. Staff had made an inquiry concerning the propagation maps because it shows that our signals from this site, the Boone County Baseball League complex. The applicants can't put a site in Callaway County but our signals from that site do encroach in to Callaway County a little bit and that is the question staff raised. It is interesting how you solve that, if you can't build a facility or propagate your signals in to Callaway County then how can you do it because it shows up on the map. Mr. Holland admits he didn't give a thorough and complete answer to the Commission on that question the first time around and maybe not even the second time around. Radio frequency signals will travel so where there is a border and your license area is in Boone County, not Callaway County but you have radio signals that you are propagating the radio signals don't travel up to the county line and stop. The radio signals travel over there, they do encroach over there a little and they do that every time you've got a situation where your license area borders an area where you are not licensed and you are trying to cover all of that area. Because you try to put a facility as close to the county line or your license area border as you can but you also have to be concerned about how much signal you can propagate in to the adjoining county where you don't have a license to operate. How do you handle this? Because radio signals don't know to stop the FCC has some rules about this; the FCC's rules state that you can encroach, or bleed over in to the other carriers license area a little bit but if you exceed certain levels you need to have the consent of that adjoining carrier; the carrier that holds the license for that area. In Callaway County that is T-Mobile.

Mr. Holland stated he provided information to staff that Verizon made contact with T-Mobile and they are well aware of Verizon's facility and they are well aware that their signals are going to encroach in to their license area. Like we do with T-Mobile, or any other carrier, the applicants are seeking a consent agreement with T-Mobile and the applicants have had a response back that they have been conditionally approved by T-Mobile for this encroachment. Even if the applicants could build a tower in Callaway County, T-Mobile is not going to let them. They will let the applicants encroach a little but they aren't going to let Verizon build a new tower in their license area. It is like they will let you stick your big toe in their bathtub but they won't let you put your whole body in the bathtub. They will let you encroach a little bit but don't just come all the way over and put a tower up in our license area. They won't allow it. The idea that the applicants can cover this area by building a tower in Callaway County is not accurate.

Commissioner Duker asked how the applicants provide coverage in Kingdom City.

Mr. Holland stated the applicants have an A license and an E license in Callaway County.

Commissioner Duker asked why the applicants can't build an A or E tower in Callaway County.

Mr. Holland stated that part of Callaway County is covered.

Commissioner Duker again asked why they can't build an A or E license in Callaway County.

Mr. Holland stated the applicants don't need it. The applicants don't need a tower in Callaway County. The applicants A and E license, they have adequate service and coverage in Callaway County up to the border area.

Commissioner Duker asked if the Spectrasite would reach the county line.

Mr. Holland stated it absolutely won't. It is too far away and there are terrain issues. Staff's proposition is that the applicants can solve this by building both of the sites. It would be nice if the applicants could build both of the sites but they can't do it. The applicants can't put a tower in Callaway County. So what the applicants have done is put a tower as close to Callaway County as they can.

Mr. Holland presented an aerial photograph and pointed out the locations of the proposed tower, the previously proposed Millersburg tower. The newly proposed permanent tower is represented by a blue dot on the photograph. The yellow dot represents where the temporary tower will be.

Commissioner Duker asked Mr. Holland to show where the Spectrasite is located.

Mr. Holland stated the Spectrasite is not even on the map; it is further west.

Mr. Holland stated the applicants can't solve the coverage gap problem by doing what staff suggests. Mr. Holland stated it is partly his fault for explaining this to staff that the applicants can't build a tower in Callaway County.

Commissioner Duker stated the applicants have towers in Kingdom City.

Mr. Holland stated that is correct.

Commissioner Duker asked if Kingdom City was in Callaway County.

Mr. Holland stated yes.

Commissioner Duker stated that Mr. Holland had stated that Verizon can not build towers in Callaway County.

Mr. Holland stated the applicants have an F license in Boone County; that is the only license they have in Boone County. In Callaway County the applicants have two licenses; and A license and an E license.

Commissioner Duker asked who has the A and E licenses in Boone County.

Mr. Holland stated he doesn't know; it doesn't matter.

Commissioner Duker stated if the applicants were going to try to ask permission for them to propagate their signal in to Boone County the applicants would need to know that.

Mr. Holland stated yes. The applicants would need to know and they would need a consent agreement from them.

Commissioner Duker asked if Mr. Holland knew who held those licenses.

Mr. Holland stated he didn't know; its not T-Mobile.

Commissioner Duker stated the applicants have built towers in Callaway County but can't build anymore.

Mr. Holland stated no; in fact the applicants are putting an antenna near Kingdom City to help with coverage in Callaway County but it is not an F license.

Commissioner Duker stated somewhere you have to make a transition between the A and E and the F.

Mr. Holland stated yes; right at the border. When you are driving through Callaway County on the phone and when you get in to Boone County you will switch over to this tower and your phone will switch to this tower.

Commissioner Duker asked if it is going to happen right at Cedar Creek.

Mr. Holland stated somewhere in that area.

Commissioner Duker stated if the applicants build what staff is proposing on the Spectrasite and you have another A or E license closer to the border it would happen somewhere in Boone County instead of somewhere in Callaway County. Is that not possible?

Mr. Holland asked if Commissioner Duker were suggesting the applicants put up another tower and propagate these signals further in to Boone County.

Commissioner Duker stated staff's point was that the applicants are throwing the F license in to Callaway County.

Mr. Holland stated a little.

Commissioner Duker asked why they couldn't throw the A and E in to Boone County a little.

Mr. Holland stated the applicants do.

Commissioner Duker asked why the applicants couldn't build another tower and throw the A and E license in to Boone County if they are building an F license and throwing it in to Callaway County.

Mr. Holland stated he is not sure that Commissioner Duker's suggestion can be completely ruled out.

Commissioner Duker stated he is just trying to argue staff's point.

Mr. Holland asked if staff is saying to throw the A and E license in to Boone County.

Chairperson Smith stated yes.

Commissioner Duker stated they are saying build and A and E license in Callaway County, use the existing site that we have in Boone County and propagate your signal across the line. If you can do the F

in to Callaway County you should be able to do the A and E license in to Boone County. It doesn't seem like the applicants looked in to it enough because the applicants don't even know who owns the license for the A and E in Boone County.

Mr. Holland stated he misunderstood staff's position. Verizon's build program apparently is not to do what they are suggesting.

Commissioner Duker stated hopefully it is going to be in the best interests of Boone County.

Mr. Holland stated he agrees but it is likely that to put an A license facility there, those are 850 mhz radio signals and they travel further and stronger than PCS licenses.

Commissioner Duker stated the problem the Commission has is the applicants need to prove that they can't do it.

Mr. Holland stated staff's focus is on the regulations. They say, the applicants haven't proved that they can't collocate on an existing or approved tower because they can do Spectrasite, which the applicants aren't going to do because it is too close to Harg, and the applicants can do this new tower in Callaway County. Staff's rationale says if you look at the standards and they reference section 15.B.4.A.1.3. Mr. Holland stated 15.b.4.a. talks about trying to collocate where you can on an approved or existing tower. Then there are reasons given that essentially would be an exception as to instances where you couldn't collocate on an approved or existing tower and if you meet those exceptions then you are good to go. One of the criteria is structural. If the tower that is approved or existing structurally can't accommodate your equipment then that is a good enough reason and you can't use that tower. Or if you are going to cause radio frequency interference, lets say one other carrier not compatible and if you put your facility on that tower it is going to cause interference problems. Staff focuses on one of the exceptions, there are a number of them, but staff focuses on one that states there is not enough space on a planned telecommunications facility; this is section 1.3. Staff says the Spectrasite tower has room on it, there may not be room at the base for their ground equipment but the applicants haven't proved that they can't put it there so you don't meet the criteria. But they don't address that there are other criteria that the applicants do fall within; 1.1, 1.2, or 1.3, or 1.5 which says other reasons that may be impractical to place the telecommunications on an existing and approved transmission tower. The Callaway County tower is not approved nor does it exist.

Mr. Yonke stated all towers in Callaway County are approved because it doesn't require any form of approval.

Mr. Holland asked if the applicants had to submit building permit plans.

Mr. Yonke stated no. In Callaway County you go out and build it.

Mr. Holland stated notwithstanding that it is still impractical to put a tower in Callaway County and then cover this area by putting another one on the Spectrasite tower.

Commissioner Duker stated the applicants have to prove that by submitting propagation maps.

Mr. Holland stated the applicants have proved it; their application proves that. It is not just propagation maps, it is the entire application, look how thick it is. There is information in there about the reasons why the applicants aren't going to put a site on Spectrasite and build another one in Callaway County.

Commissioner Duker stated if it can't be done can the applicants show the Commission why.

Mr. Holland asked the Commission if they wanted him to go through the application page by page.

Chairperson Smith stated under the table of contents of the application it states site justification, exhibit L.

Commissioner Duker stated Mr. Holland had stated the applicants can't build in Callaway County and he says the reasons for it is in the book; it is not just the propagation maps.

Commissioner Schloot stated the applicants can't build a tower in Callaway County and shoot signals our way. The applicants have the F license for Boone County but they can't put an F facility in Callaway County and shoot it our way.

Commissioner Duker stated they can place an A or E tower.

Mr. Holland stated the applicants can't shoot 3 miles in to Boone County from Callaway County.

Commissioner Duker asked staff if that was correct.

Mr. Yonke stated if the application showed that information then staff wouldn't have a problem with that information. The problem is that most of what is being asserted is not reflected in the application.

Mr. Mach stated in exhibit P, collocation notice existing towers there is a reference to the Spectrasite tower in that section it is identified as being structurally sound will hold Verizon wireless equipment but will need additional ground space. It was rejected by RF because it was too close to the AT & T site. The propagation maps that were submitted as part of the Millersburg application which was re-reviewed as part of the review of the current applications as a replacement did not show any significant signs of major interference in the propagation bloom was considerably larger and reached some of that distance across the eastern part of Boone County. This is why staff considered it a viable alternative when combined with a potential tower on the A or E class license in Callaway County.

Commissioner Duker asked how far the Spectrasite is from Cedar Creek.

Mr. Mach stated approximately 3 miles.

Commissioner Duker asked if the signals could bleed over a mile.

Mr. Holland stated how far do you exceed the allowable strength for that area under the FCC rules; it relates to the carrier for that license area and whether or not they will allow you, in this case to send A signals in to Boone County and operate an A license in Boone County which takes away customers from them because they are using your service and not theirs.

Commissioner Duker stated we are probably talking about 1 mile in to Boone County because the applicant has stated they need to put these towers about 2 miles.

Mr. Holland stated no; from Harg it would be over 4 miles because we have to get to Harg.

Commissioner Duker stated he is talking about the Spectrasite.

Mr. Holland stated the applicants are not putting one at the Spectrasite because it is too close to Harg.

Commissioner Duker stated if the applicants put one at the Spectrasite it would go 2 miles toward the county line and you would have a 1 mile gap so you would have to have a 1 mile bleed over.

Mr. Holland stated Spectrasite is 3.3 miles.

Commissioner Duker stated you would have seven-tenths of a mile.

Chairperson Smith asked what could be done to show this in the report. The applicants have not shown that it is not possible so what are they missing?

Mr. Mach stated staff can show the propagation maps that was in the Millersburg application which was part of the review of this site; it shows a map with Harg and Spectrasite both active. You can see what that propagation looks like that is what the analysis was based on. Then staff can show what it would potentially look like with a location approximately ½ mile on the eastern side of the Callaway County line. You can see how to get coverage over I-70 and there is some bleed over probably a distance of a mile and that would serve the purpose of getting coverage.

Mr. Yonke stated the problem is simply saying it won't work is not a good enough answer. The applicants need to show why it doesn't work because you can manipulate what question you ask to get that answer.

Chairperson Smith stated the application is missing information.

Mr. Holland stated he would like to ask for a favor. The applicants have been working with staff and the Commission for several months. If this was the issue, the single issue that concerns the Commission, couldn't they have simply asked the applicants the question ahead of time.

Mr. Yonke stated at the very first meeting staff had with the applicants staff informed the applicants that they believed it would be very difficult to get the tower approved between the Spectrasite site and the county line because it was so easy to place one across the border. That was stated at the very first meeting which is why staff was so surprised by the first application because it was the one staff told the applicants was probably going to be the most difficult one to get.

Mr. Holland asked why.

Mr. Yonke stated staff had explained this. Because if the applicants have a tower here and you place one there, there is no need for a tower in between. Boone County regulations are structured to minimize the amount of towers in Boone County. If you have to build a tower and you have to build a tower in Boone County or you have to build it across the preference is to build it across.

Mr. Holland stated the applicants could shorten this and maybe get on down the road. If the applicants were to bring the information staff is asking for would it make a difference in terms of approving this site.

Commissioner Duker stated that is what staff is asking for.

Chairperson Smith stated yes.

Mr. Holland stated if the applicants can show that they can't send signals in to Boone County 3 miles.

Commissioner Duker stated the signals would only have to go across 1 mile. From the Spectrasite Mr. Holland had stated before the Spectrasite sends out a signal 2 miles unless that information was incorrect.

Mr. Holland stated the radio signals aren't static and don't just go 2 miles. It depends on terrain, foliage, on people using the system; sometimes it is less than 2 miles, it could be a half mile depend on the way the wind is blowing and the barometric pressure that day.

Chairperson Smith stated if the applicants gave that information in the application, that is what the Commission wants.

Commissioner Harris stated Mr. Holland made the comment earlier about building a tower in Callaway County relevant to the license. Are the applicants saying with no exception that the applicants can not legally, assuming governing by the FCC, build a structure in Callaway County with an F license and set the arrays so that they point west.

Mr. Holland stated yes.

Commissioner Harris stated there is no possible way.

Mr. Holland stated that is correct.

Commissioner Duker stated the applicants could build an A or E licensed tower.

Commissioner Mink stated they would need an A or E and they would possibly need permission from whoever has the A or E license in Boone County to propagate those waves in to Boone County.

Commissioner Harris asked if the applicants went to the A or E license perspective; if the applicants requested approval from the FCC, if they requested and A or E tower then it has to have that signal on that tower.

Mr. Holland stated yes.

Commissioner Harris asked if that was the case even if they collocated an F signal on it.

Mr. Holland stated you can't collocate an F signal on it. You can't put F signal antennas on an A or E licensed tower. It is not the tower you can't build it is the transmitting on an F license in that county.

Commissioner Mink asked if the applicants had the same problems where they can't propagate in to Callaway County with an F you are going to have the same problem trying to propagate A or E in to Boone County 2 miles.

Mr. Holland stated he assumes the applicants already do encroach in to Boone County. Mr. Holland stated they don't, they get close. There needs to be some overlap, you need to get consents from each of the different license holders to go that way. The different license holders work with each other, they don't necessarily like to, but they have the same problems themselves so they know they need to cooperate. The applicants would need to get a willing leaser and get in to a lease and build the tower but can we build a tower somewhere in Callaway County and send their A signals a couple of miles in to Boone County, that is the question. If the answer is no then the applicants will prove it because there has

to be some way to prove it, either a letter from whoever the A carrier is that says no, you are not going to do that Mr. Holland stated he assumes that would suffice. Then the Commission would look favorable on this application; the applicants would satisfy the criteria?

Mr. Holland stated the Commission would need specific information from those A and E license holders in Boone County that they will not consent to the applicants propagation at the level the applicants would like to construct a tower in Callaway County. If they communicate that and it clearly states they can not get coverage from Callaway County then that would therefore justify the construction of an F class license tower in Boone County.

Commissioner Duker stated it seems like there should be a propagation map that would show that.

Mr. Florea stated there should be propagation maps that show what that coverage is and a letter that says yes or no that we agree.

Mr. Yonke stated the reason we are asking for that is we have had other conditional use permit applications that had RF engineers testify that they could manipulate the direction and intensity and ways they can put the array's on the towers that changed how much would bleed and how much could go each way. All staff wants is for the applicants to show that this stuff doesn't work; don't just tell us it doesn't work, we have to be shown it won't work. If the applicants show it doesn't work then they have met the criteria.

Mr. Holland suggested taking a months continuance.

Mr. Yonke stated the applicants can ask for the request to be tabled.

Mr. Holland stated the applicants can use that time to get the information together.

Commissioner Mink stated regard the specific Twin Oaks ball field site; the Public Works Department was working with the previous owners of this land a couple of years ago when the driveway the applicants are proposing to use became their primary driveway for the ball fields. Public Works was in the process of working with the previous owners about improving the site distance for that driveway. After the property changed hands a couple of years ago it didn't get completed. If this specific site is brought back forward Commissioner Mink would like the site distance on the driveway to be addressed. The construction traffic for the tower is just going to exacerbate the problem with the limited site distance and there was agreements made to move that. It is not a deal breaker but it is definitely something the department is interested in seeing resolved.

Velton Viles, Selective Site Consultants, 8500 W. 110<sup>th</sup> St., Overland Park, KS

Mr. Viles stated he is the one who did the site acquisition on this site. Once this question came up Mr. Viles called Steve Reller who is the director of BC Baseball. Mr. Reller spoke with John Watkins with Public Works and the agreement was with the previous owner of the property. Mr. Viles stated his understanding was that there were two things that had to be done, telephone lines have to be moved before the drive is widened. Mr. Reller's understanding was that when he gets back from Arizona that all issues will be worked out and he is going to work with Public Works and do what needs to be done.

Commissioner Mink stated there was a plan prepared by Marshall Engineering for the previous owner that Public Works had approved so the engineering plan is already done and the right of way was bought and that is where it was left.

Mr. Viles stated that Mr. Reller was not aware of any of this stuff.

Commissioner Mink stated he did speak to Mr. Reller and he did indicate that he was going to work on it. Since the applicants are about to table the request Commissioner Mink wanted to make the applicants aware that this was an issue he was concerned about regarding the specific site.

Commissioner Harris stated with regard to the exhibits in the application relative to email communications between Mr. Viles and Cheri Edwards. As you read those these email communications seem to be very leading and directive to obtain the negative response that Verizon needs in order to say they can't collocate. They are very leading. Beyond that one of the staff's objections was to item G of the conditional use permit requirements. Something that through all of these Commissioner Harris has had a little bit of question about. Item G says that the County Commission shall find that there is a public necessity for the conditional use permit. In reading the applications the reason and justification for the request being submitted Verizon has purchased a new license from the FCC for a build out in Boone County; this site is needed to provide coverage. Verizon needs coverage along I-70 during construction to fill in the gap during the launch of their network. The conditional use guideline says a public necessity. Commissioner Harris stated he reads in to this as a financial benefit for Verizon cell phone system. Since April Commissioner Harris has not really understood and had explained to him the definitive public necessity for an additional cell phone license in the county. Commissioner Harris asked the applicants definition and exhibition of the public necessity.

Mr. Holland stated it is a difficult question to answer because the standard itself is a bit odd.

Mr. Holland stated for example, if a conditional use permit was required for a McDonalds. How do you prove that there is a public necessity for McDonalds? The criteria is odd in that one, Mr. Holland has never seen it before in all of the regulations he deals with and two, it is subject to someone's interpretation. It is not really a viable criteria that you can put your hands around. It means different things in different cases. In the prior cases that the applicants have had they have justified it and staff has considered whether the applicants have proven that there is a coverage gap in that area and whether or not there is any other way to fill it. If there is no other way to fill it then there is a public necessity for it. In this particular case the applicants have concluded in their narrative what they believe to be the public necessity which is the propagation maps show a needed site but it also talks about many homes and businesses rely on wireless communications in their everyday lives. They no longer keep land lines as a back up. Currently there are over 194.5 million wireless subscribers in the United States alone. Verizon wireless provides wireless for more than 51.3 million of these subscribers according to the CTIA wireless association as of October 25, 2005. More than 224,000 emergency 911 calls are placed nationwide each day by wireless users. Verizon wireless works closely with federal, state, and local emergency services to ensure the safety of the public by offering 911 services via its wireless network. The facility will be the key component of emergency 911 services offered to the community by Verizon Wireless. That sort of is a public necessity; the ability to make 911 calls on your wireless phone. As stated here over 224,000 emergency calls are placed every single day and undoubtedly people are using Verizon's system on I-70 in Boone County will use these phones for 911 emergency calls. 911 allows for emergency service providers to locate where the emergency call is transmitted from because there is a GPS chip in the phones. If you are unable to identify where you are they can find you. We can have agreements or disagreements as to whether the applicants have met the public necessity. The applicants believe they have. The troubling part is that it is a standard that is vague and subject to arbitrary interpretation.

Chairperson Smith asked if this request is going to be tabled.

Mr. Yonke stated the applicant can ask any time up until the Planning and Zoning Commission votes to have the request tabled.

Mr. Holland stated that the applicants are behind in trying to get their network up. This site is very important to the applicants. Whether the permanent tower is approved or not, the applicants would like the Commission to consider granting the approval of the COW on a temporary basis until the issue of the permanent tower is resolved. It would greatly help Verizon Wireless.

Chairperson Smith stated she didn't believe the Commission has the structure to do that.

Mr. Yonke stated the problem is that the conditional use permit is for a transmission facility. The regulations do not distinguish between a temporary tower and a permanent tower. Either you meet the criteria for both or you don't meet it for either.

Mr. Holland asked the Commission to give a little consideration.

Commissioner Duker stated the Commission has to give the regulations consideration.

Mr. Holland stated there is a request for two facilities. The applicants are asking for one. The applicants ask for a continuance on the permanent tower so the applicants can get the Commission's questions answered but to let them do the temporary tower.

Chairperson Smith stated she doubted one month is going to set the applicants back that much.

Mr. Holland stated it does; it is impacting the applicants today.

Commissioner Mink asked if the applications were so entwined that they can't be handled separately.

Mr. Florea stated they are both transmission facilities for approval at the same location. If the applicants can't prove tonight that they can meet the requirements then it can't be approved.

Mr. Yonke stated about the only thing the applicants can do is table the request for the permanent tower and request to have the COW considered tonight. The COW can be denied and it can be appealed to the County Commission. Then the County Commission could make a decision.

Chairperson Smith stated the Commission could vote no and the applicants can appeal to the County Commission.

Mr. Yonke stated yes; if it is tabled nothing moves forward until it is brought back.

Mr. Holland asked if the Commission was going to pull a procedural on the applicants and say that if they do that and it is denied by the County Commission are the applicants then able to bring the matter back before the Planning and Zoning Commission next month.

Chairperson Smith stated no.

Mr. Yonke stated it would be barred because it would be the same request. If both requests are tabled tonight and provide the information they would come back together. Boone County regulations don't make a distinction between those two.

Mr. Holland stated that maybe the regulations need to be a little more flexible.

Mr. Yonke stated they may need to be but they aren't; the way the regulations are written are the way they need to abide by them.

Commissioner Mink asked when the Commission approved the temporary asphalt plant were there provisions for the difference between a temporary and permanent asphalt plant?

Mr. Yonke stated yes; it is specifically in the ordinance.

Commissioner Schloot stated he comes from a technical background and has been in electronics and understands wavelengths. Commissioner Schloot stated he believes the applicants have done a pretty good job explaining what he needs to do and why he needs to do it. It has to do with the FCC and the licensing. The Commission as a group is not quite getting the whole picture clearly in their minds that they can't be shooting signals across county lines. The applicants have to follow the rules of the FCC and they are trying to do that as best they can. Commissioner Schloot stated the question he would have is on the COW, if it were approved, does it run on a generator and how loud would it be.

Mr. Holland stated it would not run on a generator.

Chairperson Smith stated the applicants have two options. The Commission can either vote on the application or the applicants can choose to table it until next month.

Mr. Holland stated it is a difficult decision.

Chairperson Smith stated the Commission is not trying to be difficult. Every decision made here has repercussions for each next request. If the Commission cuts Verizon a deal then they have to do the same for all the others.

Mr. Yonke stated either way the Commission either needs to table two requests or table one and act on one or act on both. There are two requests that both need some kind of a motion.

Mr. Holland stated he wanted the commission to understand the Spectrasite tower is out. The applicants are not putting anything on the Spectrasite tower; it is too close to Harg. The analysis is whether you can cover this area using a tower site in Callaway County.

Mr. Yonke stated staff did not concede that. In the first hearing the applicants said the tower spacing could be closer together if it would provide you with more ability to cover more users with signal. Meaning that it's better when you place them closer together but it is inefficient because you are not getting as much bang for your buck with your facilities. It has not been shown that it won't work; the implication is from the testimony it is going to cost more money to set it up that way because the applicants don't feel they should set one there whereas if you do set one there it hasn't been shown that it won't work. That is staff's problem. The regulations are not structured as such that if it is going to cost you more money...

Mr. Holland stated he is not talking about money; it is more money but it will cause interference with the signals on the Harg site. It is a business decision. If McDonalds puts a McDonalds on one corner does it make sense to put another McDonalds on the corner on the other side of the street?

Mr. Florea stated sometimes it does actually; ask Starbucks.

Mr. Holland stated he has made up his mind and would like a decision tonight.

Commissioner Mink asked if the applicants were able to answer these questions raised tonight on appeal.

Chairperson Smith stated yes.

Mr. Yonke stated the issue of interference needs to be shown as interference.

Mr. Shawver stated this is a conditional use permit so anything that comes up the applicants can answer to the County Commission.

Open to public hearing.

No one spoke in support of the request.

Present speaking in opposition to the request:

Michael Bodine, 5000 W. Driskel Rd., Columbia.

Mr. Bodine stated he lived adjacent to the property. Commissioner Mink brought up a good point. Nothing has been done on this, the driveway is dangerous and has been for a long time. This just adds insult to injury by putting this tower in. Mr. Bodine stated he didn't really have a problem with the tower but does have a problem with the procedure not going forward and doing something with the driveway.

David Huddlestonsmith, 10901 E. Bozarth Ln., Columbia.

Mr. Huddlestonsmith presented a printout to the Commission.

Mr. Huddlestonsmith stated he has been here and spoken twice before. Mr. Huddlestonsmith stated he had a problem with criteria A and G of the conditional use criteria and would like to present some findings. This is not supposed to be for medical problems however, Mr. Huddlestonsmith stated he feels that someone is trying to get around the regulations. There are some important facts being left out.

Mr. Huddlestonsmith read from the first page under "Fundamentals".

The most basic fact about cell phones and cell towers is that they emit microwave radiation; so do Wi-Fi (wireless internet) antennas, wireless computers, cordless (portable) phones and their base units, and all the other wireless devices. Mr. Huddlestonsmith stated the last time he spoke he was told he didn't know any thing about what he was doing as far as microwaves being emitted. This is noted in several places. Mr. Huddlestonsmith continued reading stating most Wi-Fi systems and some cordless phones operate at the exact same frequency as a microwave oven. The base units of most cordless phones are always radiating, even when no one is using the phone. Cell phones are also always radiating. Why is this a problem, you may ask? Scientists usually divide the electromagnetic spectrum (which is basically all the rays that come from the sun) into ionizing and non-ionizing radiation. Ionizing radiation, which includes x-rays and atomic radiation, causes cancer. Non-ionizing radiation, which includes microwave radiation, is supposed to be safe. The defining exceptions to this and we are finding more of these as each month goes on. Life evolved with negligible levels of microwave radiation. An increasing number of scientists speculate that our own cells, in fact, use the microwave spectrum to communicate with one another, like children whispering in the dark, and that cell phones, like jackhammers, interfere with their signals. In any case, it is a fact that we are all being bombarded, day in and day out, whether we use a cell phone or not, by an amount of microwave radiation that is some ten million times as strong as the average natural background.

As far as cell phones themselves are concerned, if you put one up to your head you are damaging your brain in a number of different ways. First, think of a microwave oven. A cell phone, like a microwave oven and unlike a hot shower, heats you from the inside out, not from the outside in. And there are no sensory nerve endings in the brain to warn you of a rise in temperature because we did not evolve with microwave radiation, and this never happens in nature. Worse, the structure of the head and brain is so complex and non-uniform that "hot spots" are produced, where heating can be tens or hundreds of times what it is nearby. Hot spots can occur both close to the surface of the skull and deep within the brain, and also on a molecular level.

Cell phones are regulated by the Federal Communications Commission, and you can find, in the packaging of most new phones, a number called the Specific Absorption Rate, or SAR, which is supposed to indicate the rate at which energy is absorbed by the brain from that particular model. One problem however, is the arbitrary assumption, upon which the FCC's regulations are based, that the brain can safely dissipate added heat at a rate of up to 1 degree C per hour. The FCC's safety standard, by the way, was developed by electrical engineers, not doctors.

Mr. Huddleston Smith stated they are finding out in the range of microwaves that are being broadcast not only the thermal energy is causing problems which this makes reference to but also the non-thermal energy. One of the worst problems that they are saying that this point in time is bringing up the litigation is the non-thermal radiation causes DNA breakage and it is proven. It causes in plants and animals.

Mr. Huddleston Smith stated he had four facts he would like to give as far as what is going on right now. The first is from a technology called Bio Pro and this is regarding the cellular phone taskforce report. Since 1977 the cellular phone task force acts as a clearing house for information about health defects including injury and death reported worldwide as being caused by the frequency radiation from digital cellular phones, base stations and other wireless facilities. It is argued that current regulations are designed (*unintelligible*) under uniformed conditions from single emitters and did not take in to account near field and complex field interactions with multiple emitters. They do not even come close to protecting the public from even the serious effects. Depending on conditions or grounding residents and reflection exposure to a single source the field can vary as much as 430 times.

The second; a court challenge to the safety in wireless communications against the Federal Communications Commission will be heard in the United States Courts of Appeal for the circuit in New York City. The cellular phone task force representing thousands of individuals who suffer from electrical sensitivity allergies that digital wireless facilities are causing. Causing illness, disability, and death and is soon to have the current safety rules set aside sections of the 1996 Telecommunications Act declared unconstitutional in a nationwide moratorium declaring on resources of radio frequency radiation. That is getting in reference to what had been talked about with the last time we got together as far as one of the reasons that point G was not being counted was because of this wireless and public safety act of 1999. If you look up the actual bill itself it directs the wire and wireless phone companies and emergencies as well as wire and wireless phone users enjoy comparable immunity from emergency service related law suites precise immunity language differs is noted below and that was between the House and the Senate. What this is talking about is the immunity that supposedly covers them like an umbrella for any damages from cell phones is only for 911 calls. It is not from all of the other times the cell phones, the towers, etcetera are used. So it is very specific. The last time that was given is the reason that we couldn't do anything about that for part A and G. The second one on here; cell phone litigation returns to the fast track. Summary, and this is from precursor advisors who do telecom and media research. Summary, precursor advises its investors it is highly likely that at least one cell phone radiation trail will begin before the end of the year now that the Supreme Court has denied the appeal by the

defendants, Nokia, Cingular, Motorola, Qualcomm, and other wireless handset manufacturers and service providers. The Supreme Court's recent ruling confirms precursors believe that the Pandora's box of joint and severe liability for health effects from cell phone radiation could plague cell phone manufacturers especially Nokia, Erickson, Motorola, Samsung, Cingular, Sprint, and Verizon. With repeated cycles protracted tobacco and asbestos style litigation. This is because they have not been able to come down with exactly the biological mechanism by which the damage is being done. It is like 25 or 35 years ago we knew that tobacco was causing some problems but we didn't know that it was directly related to lung cancer, we do know that now.

In denying the defendants requests the Supreme Court implicitly affirmed the holding of the fourth circuit that needed the telecommunications act itself nor the FCC's radiation safety standards preempted that is foreclosed litigation on all the health effects of cell phone radiation. All of the cell phone providers have been universally successful in defending in health effect lawsuits because courts have not yet found sufficient scientific certitude that defensive line is more likely to be crossed now that multiple suits are likely to come before jury's and varying courts. Upon review of likely litigation strategy the ongoing dispute within the scientific community and of the health of non-ionized cell phone radiation only increases the likelihood that conflicting studies will be admissible because of sufficient body of the scientific case studies has been produced to meet a relatively minimum standard.

Mr. Huddleston Smith stated he has personally gone out and looked in the area and there is one piece of land set for auction on November 3. It is across the street and down about 200 to 300 feet. The biggest concern for Mr. Huddleston Smith who called the baseball field and talked to Steve, he doesn't give a darn about any of these ramifications of the kids to play there 3 to 5 hours at a time, the pregnant women that are out there with their sons, the other kids involved and what they are showing with the thermal parts of electromagnetic fields is it is doubling and tripling and quadrupling things like leukemia and brain tumors in kids. The thermal part also causes acoustic neuromas; those are not malignant, they are not cancerous but they are nerves of the inner ear. This piece of property apparently they have not searched very hard for another place to end up putting a tower. This goes all the way to Big Cedar Creek, right to the county line. They could purchase this it is up at auction on November 3 at 10:30 a.m., there are 64 acres. If they put a tower in the middle of that and did it effectively they would be within the circle where the wind is going out from the repeater tower and would not be dangerous to anybody around there.

Mr. Huddleston Smith stated he lived right in the back of this. Mr. Huddleston Smith stated he was here to protect a couple of his neighbors and now this is going to go right in his backyard and he is very upset about it. This property is available it has been available for several weeks it is obvious no one has looked in to this and it would be the perfect solution. It would be even more perfect because they won't have to really find out what the microwaves do to things such as soy beans. The University of Missouri has had two geneticists working there for the last 30 years raising soy beans on this 64 acres showing all the damages of different chemicals so they have a background on this if were to end up putting the repeater tower there they could start to watch and see how much DNA is broken. They could really do a big service to the community.

Closed to public hearing.

Mr. Holland stated one gentleman talked about the driveway being dangerous. Mr. Holland stated he didn't know whether it is or isn't the Commission may know better than the applicants. There is no traffic generated by the site. There is a period of construction but even during the period of construction there is hardly any traffic generated at site; the construction period is probably 4 to 6 weeks. After the site is up and on the most people would visit the site are 1 to 2 times a month. Mr. Holland stated in his

opinion that is no traffic added to this area. Relative to where the driveway is located today potentially it is going to resolve. The driveway location wasn't a subject of the application so the applicants don't know how to address it other than to continue to work with Public Works.

Relative to the Mr. Huddleston's comments Mr. Holland stated the lawsuits he is referencing, Mr. Holland is not aware of any law that prohibits people from cellular companies for alleging that they are suffering health effects. The law Mr. Holland references comes from the 1996 telecom act and it merely states that a government body cannot base their decisions of zoning applications on health effects from communication towers. As long as the applicants are in compliance with the FCC rules which the applicants are. Regarding Mr. Huddleston's hand out, Mr. Holland stated he doesn't know where this came from and he does a lot of research on health. A good majority of the hand out has to do with a cell phone. Mr. Holland stated he has read more about the cell phone than a cell tower; this is an application for a cell tower. This doesn't beam microwaves, these are not microwaves being propagated from this facility. Other than that Mr. Holland stated he is not going to address anything else in here. Mr. Holland doesn't believe Mr. Huddleston is an expert witness in this regard. The Commissioners know the rules. This hand out should not be considered in this application.

Mr. Holland stated he doesn't know how many applications the applicants have had before the Commission but the only one that Mr. Huddleston appears to be concerned about is this particular one. Mr. Holland feels there was a lot of concern about it generally because if he understands correctly there shouldn't have any towers anywhere because they are going to kill everybody. Mr. Holland stated he is asking for a vote tonight.

Commissioner Schloot made and Commissioner Mink seconded a motion to **approve** the request by B C Baseball League on behalf of Verizon Wireless for a transmission facility, including a 124' tower on 32.83 acres, located at 535 N. Purdy Ln., Columbia. Pending construction of this tower, applicant has requested a permit for a temporary "cell on wheels" at the same site:

1. That the COLP-Millersburg appeal be withdrawn from the table of the Boone County Commission.
2. That the COW (Cell on Wheels) be removed within 60 days of the completion of the permanent tower.

|                     |                   |
|---------------------|-------------------|
| John Schloot – Yes  | David Mink – Yes  |
| Russ Duker – NO     | Paul Zullo – Yes  |
| Larry Oetting – Yes | Mike Morgan – Yes |
| Boyd Harris – Yes   | Pat Smith – No    |

Motion to approve request carries.      6 YES    2 NO

Chairperson Smith informed the applicants that this request would go before the County Commission on October 30, 2006 and the applicants need to be present for the hearing.

\* \* \* \* \*

**REZONING REQUESTS**

1. Request by Laura Farnen and Angela Turner to rezone from A-2 (Agriculture) to M-LP (Planned Industrial) on 1.77 acres, more or less, and approve a Review Plan for Kilowatt Insulation, located at 12090 N. Rte B, Hallsville.

Planner, Uriah Mach gave the staff report stating the site is located approximately ¼ mile north along State Route B from the intersection of Parks Lane and Route B. The parent tract is 5.07 acres, currently zoned A-2 (Agriculture). It has A-2 zoning on all sides, with a 1 acre C-G (General Commercial) zoning surrounding the carwash to the north. The A-2 is original 1973 zoning and the C-G was rezoned from A-2 in 1976. Currently, there is a finished single-family dwelling and a storage structure that is under construction. This site is located in the Boone Electric Service area, Public Water District #4's service area, and in the Hallsville R-4 School District. It scored 48 points on the point rating system.

The applicants are requesting a rezoning to M-LP (Planned Light Industrial). This rezoning is being sought to resolve a zoning violation. The violation stems from the operation of an insulation business on the property. If the rezoning is approved, the applicants intend to run the insulation business and store materials on this site. Staff notified 13 property owners about this request.

The Master Plan designates this area as useful for rural residential and agricultural land use. The Master Plan also identifies a "sufficiency of resources" test for determining whether there are sufficient resources available for the needs of the proposal.

The resources necessary to serve the proposed development can be broken down into 3 general categories; utilities, transportation, and public safety services.

Utilities: Public water is provided by Public Water Service District #4. The existing infrastructure is capable of providing domestic water service and fire protection. The Boone County Fire Protection District requires fire hydrants within 300' of existing structures and that the structures are brought into compliance with the commercial building code. Boone Electric can provide sufficient electrical service to the site. Wastewater needs for the property need to be addressed to meet the uses identified on the review plan.

Transportation: The site has direct access onto State Route B. However, it is located in a limited access area and is allowed by deed only a 20' property entrance driveway. No additional entrances are allowed in this area.

Public Safety: The nearest fire station is in Hallsville, approximately two miles north along State Route B. The existing road network provides ready access for emergency service providers. In rezoning from A-2 to M-LP, the presence of properly located fire suppression equipment on the property would be appropriate for this change.

Based on existing zoning, current land use of surrounding property, the sufficiency of resources test, and the suggestion of the master plan that this site is useful for rural residential and agricultural land uses, staff recommends denial of this request.

If approved, staff recommends the following conditions:

1. That the access on to Route B be expanded to a commercial standard width and built to a commercial standard prior to the recording of the final plan.
2. That wastewater needs for the permitted uses for this planned rezoning are determined and new wastewater structures be designed and approved prior to recording the final plan.
3. That appropriate fire protection installations and equipment are constructed to meet the requirements of the Boone County Fire Protection District prior to the recording of the final plan.
4. That the structures indicated on the plan meet the commercial building code and fire code.

Present: Laura Farnen, 12090 N. Route B, Hallsville.  
Angela Turner, 12090 N. Route B, Hallsville.

Chairperson Smith stated according to the map this looks like a spot zoning which the Commission has a tendency not to do. How did this come about; this is not commercial area.

Ms. Farnen stated the applicants put this storage shed up it is 40 by 60 it has 3 taller overhead doors and the only reason for that is in the wintertime the applicants have to keep their insulation trucks warm and heated because water is kept on them. What that shop was for was to pull the trucks in and keep them heated overnight. The applicants use it for personal storage too and they don't keep any insulation material on the property. This is basically a personal storage shed and when they bring their work trucks home they have a place to park them and keep them heated.

Chairperson Smith asked if there were any other employees that come work in this building.

Ms. Farnen stated they don't work in the building. The applicants are down to two who get dropped off there because one of them doesn't have a drivers license. The other one shares a vehicle so they get dropped off and get in the insulation truck and leave. No insulation is loaded there; it is basically just a storage place. The applicants don't have customers in and out of the property. It is usually between 6:15 and 6:30 a.m. that they leave and whenever the job is done they come home so there is not really any traffic.

Chairperson Smith stated the concern is not so much what the applicants are doing right now but once the zoning is changed and change the way the land can be used if the applicants sell the land some one else could come in and there is a whole list of things they could do under this kind of zoning so the Commission has to look at the use of the land, not necessarily the applicants use of the land in general.

Ms. Farnen stated she understood what Chairperson Smith was saying but the applicants aren't the ones who requested the rezoning; the applicants were told they had to.

Chairperson Smith asked when the applicants purchased the property.

Ms. Turner stated 3 years ago. Before the applicants built the shed they had both trucks backed up to the garage with outlets plugged in with heaters in the trucks trying to keep them thawed out. That went on for a year and nothing was said until this building was built. That was when the applicants were told they were in violation. When the applicants originally purchased the land the applicants were told that there should be no restrictions on building a shop. That was the information from the realtor when they bought the property.

Ms. Farnen stated she didn't feel they was really a lot of traffic in and out. Ms. Farnen stated she does all the bidding and most of the business is contracted out on job sites so the applicants don't feel there is a traffic issue. Ms. Farnen stated she doesn't really understand why this has to be because they don't have the office in there or water to the shop. The applicants have a shop and it has heat.

Ms. Turner stated there is no waste water because there is no bathroom.

Ms. Farnen stated it is basically an agricultural shop. You could put a combine or a tractor in it; the doors are wide enough and it is a 16-foot ceiling. It is no different than a farmers storage shed.

Chairperson Smith stated the applicants went to get the building permit and the applicants were told what?

Ms. Farnen stated the building is already done.

Ms. Turner stated the building permit was in the applicants name it was financed through the applicants personal finances; it was not financed through the company.

Chairperson Smith stated it is a personal building that the applicants are parking trucks in.

Ms. Farnen stated yes; it is just a parking place. The applicants were told they are not allowed to have employees on the parking lot but these are young men that would probably be in trouble if the applicants didn't give them a job. The applicants allow them to find a way to work and that is the only way to have employment is to ride with the applicants to the job site, they don't even get paid when they are on the property. They get paid footage so they don't even get paid until they get to the job site.

Chairperson Smith stated she wished she could take that in to consideration; it is a land use situation.

Ms. Farnen stated the applicants don't want to break the rules, they want to do this right but they also feel like there are a lot of people in construction that do exactly what the applicants are doing and they don't have to go through this. The applicants want everyone to be on the same page and have to do what the applicants do. If the applicants have to do it they will do it but they want other people to have to follow the rules too.

Mr. Mach stated M-L, light industrial is the easiest zoning available for a contractors yard storage.

Commissioner Harris asked how this came about.

Mr. Mach stated this comes as a result of the building inspector inspecting the shop and noticing that it appeared to have large doors for a loading bay or for vehicle use. That seemed inconsistent to the inspector and the inspector mentioned it to Mr. Mach. Mr. Mach did a site visit and that is what it appeared to be so a letter was written to the applicants asking for more details to understand what was being done here. Upon receiving that information staff informed the applicants they needed to rezone to a planned light industrial if they were going to operate a contractor's lot or storage yard on the property.

Commissioner Mink stated this building had built on a farm for storage of farm equipment; that does not require rezoning but since it is being used for a commercial enterprise, even though it is a similar building it falls under the regulations requiring different zoning.

Mr. Mach stated he agrees; that was the opinion of the building inspector who looked at it. The inspector thought it was odd to see loading bay style doors on a structure like this. That is why Mr. Mach looked at it and it seemed reasonable to make that assumption since they were operating a contracting business and appeared to be running trucks in and out of it.

Commissioner Mink stated being a planned zoning it should fall in to other property owners later who want to use it for something else they would also be required to bring their plan forward.

Mr. Mach stated that is correct. He doesn't have the plan to specifically site the half dozen uses indicated on the plan. There was office use listed, several storage warehouses, there was a contractors lot listed.

Commissioner Mink stated the point being any modifications would require coming back to the Commission.

Mr. Florea stated no. Any future plan is bound by whatever plan is approved. Other than what that plan allows they would have to come back for approval.

Mr. Mach stated there are seven uses identified; a contractors building and storage yard, wholesale establishment or warehousing in a completely enclosed building, moving, transfer, or storage plants, office or office building in existing building, shop for custom work (total mechanical power not exceeding 5 horsepower for one shop) and such manufacturing not to be noxious or offensive, wholesale establishment or warehouse in completely enclosed building including self storage mini-warehouses and bulk storage inside building.

Chairperson Smith stated if the applicants sold the property who wanted to do bulk storage they could do it without coming back.

Mr. Mach stated that is correct.

Commissioner Mink stated if someone wanted to build a Casey's there they can't.

Mr. Mach stated they would have to come back with a new review plan to indicate that as a potential use.

Commissioner Mink stated regarding the first condition, there is a deed restriction on the width of the driveway access. Can the applicants actually do condition 1?

Mr. Mach stated according to MoDot they have to apply for a permit and then file a deed to indicate that new limitation on it; it may be possible there has not been a permit application submitted to MoDot.

Commissioner Mink stated if this condition was adopted and they couldn't meet it because MoDot wouldn't allow it then is that a deal killer?

Mr. Mach stated he would believe so. The commercial uses that are implied require commercial level street access to this. If it is going to be doing bulk storage there will be larger vehicles brought in.

Commissioner Mink stated there hasn't been a request made to MoDot.

Mr. Mach stated MoDot has not received this as of 2 weeks ago.

Commissioner Mink stated he is a little confused. There was an indication that the width of the driveway being deed restricted; that seems different from being MoDot restricted.

Mr. Mach stated MoDot won't let the driveway be extended beyond what is identified what is on the deed. The driveway can be expanded by permitting through that process.

Ms. Turner stated the proposed entrance of the driveway that we are talking about there is a good 50-foot that is not the applicants land it is easement for a future highway. How does that fall on the applicants? It is not the applicants land.

Commissioner Mink stated pretty much all driveways cross over right of way to reach the pavement; it is a permit process with MoDot.

Mr. Mach stated part of that would be issuing a corrected deed.

Ms. Farnen asked when the applicants are supposed to do that; when they expand?

Mr. Mach stated at the very least that process needs to be green flagged from MoDot before the final plan and finalizing the zoning on this property. If this gets approved tonight and by the County Commission the applicants would need to talk to MoDot and tell them the applicants need to expand this driveway and begin that permitting process. The applicants would need to confirm that with MoDot and that a corrected deed had been issued and recorded.

Ms. Farnen asked who pays for that.

Mr. Mach stated the applicants do.

Commissioner Harris stated in fairness to one of the applicants last comments as to fairness of application of the decision. 60 days ago this Commission saw exactly the same application for exactly the same type of zoning change for the same type of use, being a contractor's bullpen and storage yard in an area that had very similar surrounding zoning and the Commission denied that application. The problem becomes the question before is if it is an appropriate use of the land in that place. The problem becomes on 1 ½ acre tract to change the zoning to one thing it sets the precedent that the next guy comes in and expects the same thing. It is with overwhelming sympathy that the Commission understands the applicant's predicament but the task before the Commission is to look at the bigger picture as to whether it is appropriate in this spot. Spot zoning is very rarely appropriate because it opens up a pandoras box of problems down the road. The applicants probably have the best of intentions. Regardless of the Commission's decision the applicants should know that this same question has been asked before and has been looked at in a fair manner.

Ms. Farnen asked about the property next door with the greenhouse that is getting rezoned or is partially commercial.

Commissioner Harris stated the greenhouse is in an A-1 or A-2 zoning and the greenhouse by nature is viewed as an agricultural operation so it is compliant within its existing zoning. It doesn't require a change in zoning.

Chairperson Smith asked what the C-G zoning is on the map.

Commissioner Harris stated it is the car wash.

Ms. Farnen stated her understanding is the owners of the greenhouse are waiting to see what the applicants do because they need to get zoned commercial due to the fact they can't sell dirt, seed, and all that stuff. The applicants were waiting on the greenhouse owners and they were waiting on the applicants.

Commissioner Harris stated the applicants just made his point that if the spot zoning starts it leap-frogs and the next one is waiting around the corner.

Ms. Farnen asked if the problem is with the building or that the applicants park their trucks in the building.

Mr. Florea stated it is the use of the building.

Commissioner Harris stated it boils down to the use of the property is the task before the Commission. It is not so much the use of the building as is the use of the property.

Commissioner Schloot stated he went by the property and it is spotless.

Commissioner Harris stated he agrees with that.

Commissioner Schloot stated the problem is if the applicants ever sell the lot what is going to end up there.

Ms. Turner stated we can not live on what if.

Ms. Farnen stated if construction shuts down much more the applicants may be looking for a job but at this point the applicants have done all they can and worked hard to get what they can and are not very happy about this at all.

Ms. Turner stated the applicants have no intention of moving.

Commissioner Oetting asked if on the building permit the applicants have to put down what the building is used for?

Mr. Mach stated they indicated on the permit that it was a shop.

Ms. Farnen stated it is used for personal purposes too; it is not just for their trucks. Personal items are in there as well, a lawnmower and motorcycles. It was for everything. The applicants knew they could pull their trucks in there and if they had a Winnebago they would park it in there too. It is to keep the trucks heated in the winter time that is what is for along with everything else that they use it for. The doors were made big enough just so they could pull the trucks in.

Mr. Yonke stated the use of this property in conjunction with a contracting business is a violation of the ordinance. The only way to make that go away is for the property to come in to compliance with the ordinance by being rezoned to a compliant category. There is no way to keep the scale and intensity that it is at now from becoming a greater one if the rezoning is granted. If it is going to become a contractors lot and it is approved for that it is approved for a contractors lot at whatever scale and intensity it can grow to; it is not limited to a few employees being dropped off. That may be the current situation but it is not what it would be limited to.

Commissioner Mink asked if the applicants were referring to the Cramer property.

Ms. Farnen stated yes.

Commissioner Mink stated there is a house shown on the applicant's lot. Is that a residence?

Ms. Farnen stated yes.

Commissioner Mink stated there is another house to the north.

Ms. Farnen stated that is not the applicant's.

Open to public hearing.

Present speaking in support of the request:

Rose Akins, 12150 Route B, Hallsville.

Ms. Akins stated she questions why the applicants need to rezone the property. The applicants live there and they bring their trucks home that they use in work. The other thing is the fact that it was okay for them to bring their trucks home like anyone else that works for someone they bring their company truck home. Being they've built a building to park that company truck in and it is not okay. It seems weird that when you build a building to park your vehicle in you have to have it rezoned. Ms. Akins stated she doesn't understand why there is a problem with that. It is the same thing as taking your vehicle home.

Chairperson Smith asked if Ms. Akins would have a problem with it if it wasn't these nice people and it was someone else that brought their truck home and every morning there would be people being dropped off.

Ms. Akins stated that wouldn't make any difference; there is not that much traffic.

Chairperson Smith stated not with the applicants; the use of the land would be changed if it were rezoned.

Ms. Akins stated if it is rezoned if the applicants sell someone else can come in and run another business out of that place. As it is now there is no one there so if it is not rezoned then they can't come back in but these people can park their personal vehicles there.

Mr. Yonke stated these vehicles are more than personal vehicles.

Ms. Akins stated they are not considered the same thing.

Commissioner Mink stated he understands that there are more trucks than just the people that live on the property. It sounds like more trucks where other employees come in and get the trucks.

Ms. Akins stated she didn't know; she has just seen the trucks leave and thought it was always the applicants who brought them home and left with them. Someone does come in and drops a couple of people off to work and then leave.

Glynda Durk, 101 Oak Lane, Hallsville.

Ms. Durk stated Hallsville is no longer considered an agriculture area. Ms. Durk has known the applicants for a long time, they work hard, and they bought those trucks so they can do a business. They do not do the business out of their machine shop. Ms. Durk doesn't see any difference in them having a truck to do that or for the farmers to have a truck to drive in to their barns and park their trucks there overnight or bring them home, it is still the same. Hallsville people are okay with them having it. No one in Hallsville has even complained.

Closed to public hearing.

Mr. Yonke stated whether the building got built or not, the commercial activity on the property was taking place. The fact that staff didn't become aware of it as operating on this property until the building permit was issued does not make it an acceptable use. Having other employees come and report to this

property and then leave from this property to go to others is in and of itself enough of a violation because it is running a business in an area that is not commercial. As far as agricultural versus the other; agriculture has an exemption that is specifically stated in the ordinance as different than all other types of businesses. Additionally the mixture of personal and business doesn't negate the business; the business is a higher category use so as soon as you use a vehicle for business it is irrelevant that it is used for personal use as well. The business category being the higher and more restrictive is what has to govern it.

Commissioner Mink stated if it was just the trucks that the applicants are bringing home that was just their personal transportation then this isn't the same issue as having all the other people report to work there and basically use this as where they start out in the morning and park the vehicles overnight. Is it different?

Mr. Yonke stated potentially; staff would have to see if there is any other application of the thing that would constitute such as materials being loaded or brought to the property or being delivered and taken from the property. There are other features staff would have to look at. It might be possible that it would not be looked at.

Commissioner Mink asked if it was his understanding that it was just the two trucks there.

Ms. Turner stated the applicants have 3 box trucks. One of them is a back up truck in case one of the other ones break down.

Commissioner Mink asked if there were other employees who come to the property and pick up a truck and go out.

Ms. Turner stated there is one employee that drives but it is not every day.

Commissioner Schloot asked if there was a complaint.

Chairperson Smith asked if this is here because someone said the property needed to be rezoned because this isn't complying. The applicants argue that the only reason that they are not in compliance is because two employees are dropped off for work, then the applicants could pick them up somewhere else. Before it got to this point, is there any way for appeal?

Mr. Yonke stated in speaking with the applicants staff makes the determination as to whether something is not in compliance. The challenge to that is for the applicants to go before the Board of Adjustment and the Board of Adjustment is the one who would hear the appeal of staff's decision.

Chairperson Smith stated the applicants could have gone to the Board of Adjustment.

Ms. Turner stated the applicants were not aware of that because the applicants mentioned they just wouldn't have the employees dropped off. Staff then stated that there was another problem.

Mr. Yonke explained that it is difficult to get approval from the Board of Adjustment. The Board of Adjustment requires 3 out of 5 votes to approve something. Historically, the Board of Adjustment has rarely disagreed with staff's interpretation of the regulations.

Commissioner Morgan asked if the applicants put a tractor in the shop would this change the use to agriculture?

Mr. Yonke stated if the building is exclusively used for agricultural and not used for any form of business then it might be compliant under the original building permit. However, that doesn't alter the use of the property.

Commissioner Morgan stated if this were approved it would cost a lot of money to comply.

Ms. Farnen stated the applicants realize that. The building is already up, the main things they will have to deal with now is widening the driveway, add a fire hydrant and dust free driveway.

Commissioner Morgan stated they would also need a lagoon.

Ms. Farnen stated there is already a lagoon for the house; they don't need a lagoon for the shop, there is no water to it.

Mr. Mach stated one of the potential uses indicated was an office; if there were an office it would need a lagoon. That was noted on the plan as being evaluated at the time of the final development plan.

Commissioner Harris asked where the insulation is stored.

Ms. Farnen stated it gets brought in on a semi trailer and is dropped off at some friends who have land and the applicants go pick it up whenever they need to. Because it is a semi trailer the applicants didn't want to have to widen the driveway to get it in; the applicants can't get a semi trailer in the driveway.

Commissioner Harris stated once that driveway was widened then the applicants could conceivably store insulation at the site.

Ms. Farnen stated that is correct.

Commissioner Harris stated the problem still comes back to the appropriate land use.

Commissioner Mink stated that this seems like an unusual site because it is caught between a highway and the railroad tracks and maybe it is not such an inappropriate use for this strip to be commercial and there is already the commercial greenhouse next door and then the carwash. The Commission has seen other requests where it wasn't a good fit, but maybe a narrow strip of land between a highway and railroad tracks is more appropriate as commercial. There haven't been any objections by the neighbors.

Ms. Farnen asked if the Methodist Church would be considered commercial.

Commissioner Harris stated churches can go in to any zoning.

Ms. Turner stated 15 years down the road Route B will be widened; that is the reason the applicants picked that location.

Commissioner Duker asked if there could be any outside storage on the property.

Mr. Mach stated no; all storage had to be inside the building.

Commissioner Mink asked if the applicants could park a semi trailer there and leave it.

Mr. Mach stated that is the reason for widening the road so you could get a semi on the property.

Commissioner Mink asked if that was an acceptable use.

Mr. Mach stated yes; as long as it wasn't permanent, if it was emptied and then hauled off.

Commissioner Schloot stated the greenhouse is doing quite a bit of expansion on that lot and it looks like it is going to be a pretty major nursery. Originally they built close to the corner of Park and Route B and now they are putting up more structure and more greenhouse area. It will look very commercial. Commissioner Schloot stated he went in and bought flowers a while back and wanted to buy some seed too; he was informed they couldn't sell seed or dirt.

Mr. Mach stated staff is expecting a planned rezoning request for general commercial from the Cramer's who are immediately south of this property. Staff has no idea on the specific dimensions but for the most part it will be the southern third or quarter up to the house that will be rezoned to planned commercial.

Mr. Yonke stated they have already done their required concept review but they haven't submitted an application yet.

Commissioner Duker asked what staff sees this property as in 20 years.

Mr. Florea stated the master plan says agriculture.

Mr. Shawver stated the Cramer's are only thinking of rezoning a portion of their property. They want to maintain the balance of it as agriculture so the greenhouse would continue to be a permitted use without question. What they are looking at doing is rezone a portion where they will be able to conduct commercial sales of the seeds, pots, and soils. The Cramer's aren't asking to rezone the entire property, in fact they have been very careful in their construction plans on where they are building things.

Mr. Yonke stated what it comes down to is if the Commission feels that this is an appropriate use of the property for a contractor's lot regardless of its scale or intensity.

Commissioner Zullo asked what would happen if the applicants tabled this request and came in with the Cramer's in the future.

Mr. Shawver stated every rezoning request under separate ownership has to stand on its own. The Cramer's may not come in -- they could change their mind. The Commission can't hold the current applicants hostage based on what the neighbors may or may not do.

Commissioner Zullo asked what if they came in. The requests have to stand separately but what if the next people were the Cramer's and we all saw what was going there.

Mr. Shawver stated you would still have separate requests because the Cramer's very specifically want to maintain the agriculture nature of the property because it exempts them from building code compliance so they are very careful in what they are laying out. There is still going to be a gap in zoning between there.

Commissioner Mink stated he believes this is an unusual case and the rezoning request at this particular location is appropriate.

Commissioner Mink made and Commissioner Schloot seconded a motion to approve the request by Laura Farnen and Angela Turner to rezone from A-2 (Agriculture) to M-LP (Planned Industrial) on 1.77 acres, more or less, for Kilowatt Insulation, located at 12090 N. Rte B, Hallsville:

|                  |                     |
|------------------|---------------------|
| David Mink – Yes | John Schloot – Yes  |
| Pat Smith – Yes  | Boyd Harris – NO    |
| Mike Morgan – NO | Larry Oetting – Yes |
| Paul Zullo – NO  | Russ Duker - NO     |

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

Mr. Shawver stated that the Commission is required to make a recommendation to the County Commission. The Commission should either make a motion to deny the request, which will allow the applicants to appeal to the County Commission; or they should table the request until more members are present. If the motion is to deny the request, then someone will have to change their vote so there will not be a tie. If they change their vote, they should explain on the record why, so that the County Commission will have the benefit of their thoughts.

Chairperson Smith stated it is very odd for her to vote for this but this is an unusual situation with land that is between the railroad tracks and Highway B. The residents on both sides don't seem to be too upset about this. Chairperson Smith stated she is planning her debate for the next time someone comes through because this is an unusual situation.

Commissioner Zullo stated if the Cramer's come in this is setting precedent.

Chairperson Smith stated it depends on what zoning they ask for.

Commissioner Zullo stated that is the question.

Chairperson Smith stated at least this is planned zoning. If they come in and ask for open zoning we would have different considerations. Chairperson Smith wishes this hadn't gotten to this point and that the applicants had gone to the Board of Adjustment even though that probably would not have been a good thing. This is an unusual situation. Chairperson Smith stated she generally never votes for spot zoning so this is a record.

Commissioner Schloot stated he is in agreement with Chairperson Smith. Commissioner Schloot believes there were communication problems with the original permit. The applicants said it was going to be a shop, somebody could ask what kind of shop. Commissioner Schloot stated he was talking to some people in Hallsville and everyone he spoke with in the business community is for this, they said it wasn't a problem because of what all is going on down there, the carwash, railroad, the greenhouse and it is growing and getting bigger and then the church. It is a strange layout.

Mr. Mach stated that the original building permit for the shop does ask on the back if the building will be used for any sort of commercial purposes. On that permit the applicants indicated no.

Ms. Farnen stated when she filled that out she didn't feel that was where the business was going to be. It was to park the trucks, to cover the trucks and keep them warm, that's it. She didn't think it was commercializing the land by parking the work trucks there.

Mr. Shawver stated that he interprets what he has heard from the Commission that there may be a change in their thinking. If so, there is another option besides denial or tabling the request. “Robert’s Rules of Order” provides that a motion can be re-considered in the event that one of the members that voted in favor of it move make a motion to reconsider the previous motion. If a motion to reconsider passes, the original question can be voted upon a second time.

Commissioner Mink made and Commissioner Schloot seconded a motion to **reconsider the the previous motion**

|                   |                     |
|-------------------|---------------------|
| Pat Smith – Yes   | Russ Duker – Yes    |
| Mike Morgan – Yes | Larry Oetting – Yes |
| Boyd Harris – Yes | Paul Zullo – Yes    |
| David Mink – Yes  | John Schloot – Yes  |

Motion to reconsider the request carries unanimously.

Commissioner Mink made and Commissioner Schloot seconded a motion to **approve** the request by Laura Farnen and Angela Turner to rezone from A-2 (Agriculture) to M-LP (Planned Industrial) on 1.77 acres, more or less, for Kilowatt Insulation, located at 12090 N. Rte B, Hallsville:

|                    |                  |
|--------------------|------------------|
| Pat Smith – Yes    | Boyd Harris – NO |
| John Schloot – Yes | Mike Morgan – NO |
| Larry Oetting – NO | Paul Zullo – NO  |
| Rus Duker – NO     | David Mink – Yes |

The motion to approve the request failed 3 YES to 5 NO.

Commissioner Duker made and Commissioner Harris seconded a motion to **deny** the request by Laura Farnen and Angela Turner to rezone from A-2 (Agriculture) to M-LP (Planned Industrial) on 1.77 acres, more or less, for Kilowatt Insulation, located at 12090 N. Rte B, Hallsville:

|                   |                     |
|-------------------|---------------------|
| Pat Smith – NO    | Russ Duker – Yes    |
| Mike Morgan – Yes | Larry Oetting – Yes |
| Boyd Harris – Yes | Paul Zullo – Yes    |
| David Mink – NO   | John Schloot – NO   |

Motion to deny the request carries.      5 YES      3 NO

Commissioner Duker made and Commissioner Harris seconded a motion to **deny** the request by Laura Farnen and Angela Turner to approve a Review Plan for Kilowatt Insulation, located at 12090 N. Rte B, Hallsville:

|                   |                     |
|-------------------|---------------------|
| Pat Smith – Yes   | Russ Duker – Yes    |
| Mike Morgan – Yes | Larry Oetting – Yes |
| Boyd Harris – Yes | Paul Zullo – Yes    |
| David Mink – Yes  | John Schloot – NO   |

Motion to deny the request carries.        7 YES            1 NO

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

\* \* \* \* \*

2. Request by Beverly K. Hargis on behalf of Keith C. Keller to rezone from A-1 (Agriculture) to C-G (General Commercial) on 1.59 acres, more or less, located at 8501 E. Old Highway 124, Hallsville.

Planner, Uriah Mach gave the staff report stating that this site is located approximately ½ mile north of Hallsville, northwest on Highway 124 on Old Highway 124. The tract is 1.59 acres and is zoned A-1 (Agricultural). This is original 1973 zoning. It has A-1 zoning to the north, south and east, with A-R (Agriculture-Residential) zoning to the west. Currently, there is an old house and shop on the property. This site is located in the Boone Electric service area, and is in the Public Water Supply District #4 service area. It is located in the Hallsville School District.

The applicants are requesting a rezoning to C-G. This rezoning is being sought to resolve a zoning violation elsewhere. If the rezoning is approved, the applicants intend to transfer the illegal automotive repair shop to this site. Staff notified 10 property owners about this request.

The Master Plan designates this property as suitable for residential land use. The Master Plan also identifies a “sufficiency of resources” test for determining whether there are sufficient resources available for the needs of the proposal. As this is an open rezoning, the resources must be evaluated under the assumption that any use of the C-G zoning district could be put on this property and sufficient resources to support any of those potential uses must be present.

The resources necessary to serve the proposed development can be broken down into 3 general categories; utilities, transportation, and public safety services.

Utilities: Public water is provided by Public Water Service District Number 4. The existing infrastructure is capable of providing domestic service. Providing sufficient water to support fire flows would require a 6” line to be extended approximately ¾ to 1 mile from the nearest main. Boone Electric can provide sufficient electric service to the site. The property currently has a lagoon which is draining on a neighboring property and that issue is being by the County Health Department. There is no centralized sewer available to this property.

Transportation: Access to the site is by Old Highway 124, which provides good access to Highway 124.

Public Safety: The nearest fire station is in Hallsville, approximately ½ mile away. The existing road network provides ready access for emergency service providers. However, it should be noted that there is not a fire hydrant located on this property as mentioned in the utility report previously.

Based upon the existing adjacent zoning, current land use of surrounding property, the suggestion of the master plan that this site is suitable for residential land uses, the failure to meet the sufficiency of resources test, and the fact that this rezoning would constitute a spot zoning, staff recommends denial of this request.

Present: Beverly Hargis, 14500 Level Rd., Hallsville  
Keith Keller, 13060 N. Branch St., Hallsville.

Ms. Hargis stated there is a fire hydrant and it should be within distance to the place because her mother paid for it. It is on the other side of the road between the Johnsons and Durks place; they put it on that side of the road because of the waterline so it should be within a good location of that.

Mr. Mach stated he spoke with Ken Wise who stated there was no fire service.

Ms. Hargis stated it is on the other side of the road. There is a fire hydrant there unless someone has torn it down. There are three people who could not attend tonight's meeting and they gave letters saying they do not mind the applicants doing this. Mr. Keller wants to rent this garage because it has been sitting empty and with the building sitting empty it deteriorates. Mr. Keller needs to get out of where he is at and Ms. Hargis has this 42 by 50 foot garage sitting there. It has easy access to it and has its own water and electric meters and gas to heat it with. It does drain in to the existing lagoon which has been there ever since the property was subdivided. The man that built the house put the lagoon in and the applicants have never had any problems with the lagoon and never had any complaints until now about the lagoon not having the right drainage.

Ms. Hargis presented the letters to the Commission.

Chairperson Smith stated if the applicants sat through the last rezoning request they understand the Commissions concern about spot zoning. In looking at the map the applicants are completely surrounded by agriculture.

Ms. Hargis agreed. The applicants hope Hallsville moves out that way someday. The applicants don't want to stay a small town they want to grow as big as Ashland and would like things to go out that way someday.

Chairperson Smith stated the question is if this is the time to start. It is all A-1 which is one home on ten acres.

Commissioner Mink asked what the garage was originally used for.

Ms. Hargis stated Joe Castor owned the place and he bought it from his parents. Mr. Castor ran a garage out of it and he also ran a propane company out of it. It was used once before for a garage just to work on cars. It is a big garage it has 3-bays with a hoier lift in it. Right now it is just sitting empty. Ms. Hargis stated her mother died 7 years ago and she left it to Ms. Hargis. The house is being rented out because if it is not kept rented out the insurance will not be good on it. Ms. Hargis stated she thought she might move out there some day but doesn't believe she ever will now.

Commissioner Mink asked if the letters were from adjacent land owners.

Ms. Hargis stated yes; they were on the list of people that got letters for this hearing. They couldn't be here tonight and Ms. Hargis contacted them today and asked if they had any problems with the request.

Chairperson Smith asked if Ms. Hargis thought about finding someone willing to use this building within its use.

Ms. Hargis stated she never asked anyone. It has been sitting empty and Mr. Keller called and asked if she would rent it to him.

Chairperson Smith stated the applicant mentioned the property was subdivided.

Ms. Hargis stated originally it was all one big farm. It was this little section of land was sold to the son and he built a house there and raised his family. He sold it to another man and that man sold it to Ms. Hargis' mother.

Commissioner Schloot asked how many cars does the applicants see accumulating at the site; is this going to turn out to be a 1 ½ acre junk yard.

Mr. Keller stated no; he has no intention of that. That goes back to the image of how your shop looks; if it looks like a junk yard people are going to relate that to the type of work they are getting. As far as vehicles being left; that has only happened once. Mr. Keller informed the person they had 5 days and after that S & S Towing will come and get it.

Commissioner Schloot asked how many cars would be allowed.

Ms. Hargis stated this garage can hold 10 or 12 cars.

Commissioner Schloot stated the applicants are rezoning 1.6 acres; how many cars can fit on there.

Chairperson Smith stated once the zoning is changed and the Ms. Hargis decides never to move there and Mr. Keller has a better deal somewhere else someone could come in and turn it in to a junk yard.

Mr. Florea stated a junk yard would require M-L zoning so it could not become a junk yard. The question is how many cars does it take to become a junk yard. Mr. Florea stated that Mr. Keller's intention of a shop may not be the intention of the next renter or owner. They can start to accumulate cars then at what point does it become a junk yard. There is no clear answer to that. If they are keeping inoperable hulls on the property then that is probably good criteria to look at. There is no limit on the number of cars he can work on at any point in time if it is C-G zoning. He can fill the entire property with cars that he is actively working on; so there is no limit.

Ms. Hargis stated unless she tells him he can't have them when they sign a lease.

Mr. Florea stated that is not something that the ordinance will cover.

Commissioner Schloot stated if the property was sold the land use the applicants are asking for would be granted right on down the line. The Commission has to look at long term.

Open to public hearing.

No one spoke in support of the request:

Present speaking in opposition to the request:

Rose Akins, 12150 Route B, Hallsville.

Ms. Akins stated she owns approximately 60 acres of agricultural land on the east and north sides of the property in question. Ms. Akins has a reservation about the general commercial zoning for the reason the Commission was talking about. This is a small piece of property Mr. Keller may keep a clean shop but what is going to happen to this in 6 months or a year. It could become some type of business that is not compatible with farming which is what Ms. Akins intends to do with that property and it will eventually go to her children who will probably continue that. Ms. Akins has already had an occasion or two where something has blown over on the property so one of the things the Commission can do if they decide to approve the request is to require some type of fence on those two sides that border's Ms. Akins property or to keep someone bringing a car not necessarily Mr. Keller but someone else that is towing a car in at night and just parks it on her property not knowing where the property line was. These are concerns that Ms. Akins has as well as how many cars and how long they sit on the property.

Chairperson Smith stated this is a rezoning request so the Commission can't put conditions on it like requiring a fence.

Larry Durk, 100 Oak Ln., Hallsville.

Mr. Durk stated he remembered when Joe ran his shop. Joe is a real good friend. Mr. Durk stated he is not necessarily talking in favor or against this request. Mr. Keller is a very good friend and he runs an excellent shop. Ms. Hargis is also a friend and what she tells the Commission she will do. The only reserve Mr. Durk has is what would happen if the applicants gave it up down the line.

Commissioner Schloot stated his understanding is that a new church is going to be built next door to this property.

Mr. Durk stated the Pastor of the future church asked him to represent the ground next to us. Mr. Durk stated he had no problem looking at a neat mechanic shop being run there. The only concern is if the applicants gave up the property.

Commissioner Harris stated in that concern you condense and exemplify the dilemma that the Commission has. It is not the immediate but down the road.

Mr. Durk stated a conditional permit with a one time deal will be more applicable.

Closed to public hearing.

Ms. Hargis stated the one thing that Ms. Akins was talking about with cars parking there; between the garage and the house that is rented out you can park 4 cars in there. It is a wide driveway and you can park 4 or 5 cars, probably 20 cars can be parked in there but neither of the applicants want that. They want to keep it looking as good as they can. The cars shouldn't ever be on her farmland.

Mr. Keller stated you can tell the difference between concrete and the bean field. You aren't going to get a car parked in the bean field.

Commissioner Duker stated that due to this being a straight zoning request and this area is not appropriate for a commercial site Commissioner Duker made a motion to deny the request.

Commissioner Morgan seconded the request.

Commissioner Duker made and Commissioner Morgan seconded a motion to **deny** the request by Beverly K. Hargis on behalf of Keith C. Keller to rezone from A-1 (Agriculture) to C-G (General Commercial) on 1.59 acres, more or less, located at 8501 E. Old Highway 124, Hallsville:

|                   |                     |
|-------------------|---------------------|
| Pat Smith – Yes   | Russ Duker – Yes    |
| Mike Morgan – Yes | Larry Oetting – Yes |
| Boyd Harris – Yes | Paul Zullo – Yes    |
| David Mink – Yes  | John Schloot – Yes  |

Motion to deny the request carries unanimously.

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

\* \* \* \* \*

**PLANNED DEVELOPMENTS**

1. Request by High Point Development LLC, to approve a review plan for Providence Heights Planned Development on 52.79 acres, more or less, located at 7700 S. High Point Ln., Columbia.

Planner, Thad Yonke gave the staff report stating that this property is located approximately 2000 feet south of the municipal limits of Columbia on the east side of High Point Lane approximately 3200 feet south of the intersection of State Route K and High Point Lane. The 52.79 acres are zoned A-2 (Agriculture) as is all the surrounding property and these are all original 1973 zonings. The County Commission has approved the rezoning of the subject property to A-RP (Agriculture-Residential Planned). The A-RP zoning will not go into effect until a Final Development Plan for the property is approved. The property is currently the site of an existing house with septic tank wastewater system and a barn. The existing home is proposed to remain and will be connected into the proposed central wastewater system for the development. This proposal is to create one common lot and 45 residential lots and public roads. The road segment previously proposed as Provincial Ct. has been removed. The gates and private roads of the previous review plan have been eliminated. The County Commission approval has 5 conditions placed upon it.

First : All subdivision roads must be public roads and are to be built to county standards. This provision also applies to the three road stubs; two on the south side of the property and one on the north side of the property. The current submission meets this requirement.

Second : The development will be served by a wastewater collector system that complies with design standards of the Boone County Regional Sewer District and the Missouri Department of Natural Resources. Following installation the facilities and infrastructure will be owned, maintained and operated by the Boone County Regional sewer District. The current proposal indicates that sewer service will be from connection to the BCRSD South Route K facility.

Third : The Final Development Plan will designate building sites that are designed to minimize the removal of trees. The current proposed review plan has a sheet that indicates the limits of clearing for building sites.

Fourth : Upon completion of the development no public parking will be allowed on the public rights-of-way. There is a note to this effect on the proposed review plan.

Fifth : Remove Provincial Ct. from the Plan since it provides no benefit as a public road. This road has been removed.

There were a number of other issues of concern listed in the review of the previous proposal such as road length and number of access points. Staff believes that these issues have been addressed because they were not required to be modified by the conditions placed by the County Commission with the approval of the previous version. While different enough to require a revised review plan the current proposal is similar enough to the one approved for staff to believe the County Commission has resolved these additional issues to their satisfaction. It must also be recognized that the specifics of the plan are binding and must be followed, any deviation or desired alteration will require coming back through the process again with another revised review plan. The proposal scored 65 on the point rating system. Staff notified 26 property owners concerning this request.

Staff recommends approval of this request subject to one condition.

1. Since the off-site temporary turn-around at the end of Lombard St. has not been secured at this point, either the currently shown temporary turn-around is used or the temporary turn-around be pulled back on the property and shown on proposed lots 112 & 117.

Present: Robert Hollis, Attorney with Van Matre and Harrison, 1103 E. Broadway, Columbia.  
Neal Slattery, A Civil Group, 1152 Wilkes Blvd., Columbia.

Commissioner Mink asked for clarification on the no parking requirement.

Mr. Yonke stated the County Commission said no parking on the public roads; that is not something the developer is going to have to deal with, it is going to be the Public Works department and the Sheriff's department.

Commissioner Mink asked the reason for that.

Mr. Yonke stated that was probably due to the fact that they wanted a 36 foot road and Public Works wanted a 32 foot road.

Mr. Hollis stated he would answer any questions.

Commissioner Harris stated this was a big long driveway with little short cul-de-sacs; we've lost the gates, made the road narrower, the grade is still real steep, there's one way in and one way out.

Mr. Yonke stated everything meets the zoning requirements.

Mr. Shawver stated the county doesn't have a 36-foot road standard; that was the request of the fire district. The County Commission stated that they weren't going to require a road to be built that they don't have a standard for but as compensation there is no parking allowed.

Open to public hearing.

No one spoke in favor of or in opposition to the request.

Closed to public hearing.

Commissioner Mink made and Commissioner Harris seconded a motion to **approve** the request by High Point Development LLC, to approve a review plan for Providence Heights Planned Development on 52.79 acres, more or less, located at 7700 S. High Point Ln., Columbia **with staff recommendations:**

1. Since the off-site temporary turn-around at the end of Lombard St. has not been secured at this point, either the currently shown temporary turn-around is used or the temporary turn-around be pulled back on the property and shown on proposed lots 112 & 117.

|                   |                     |
|-------------------|---------------------|
| Pat Smith – Yes   | Russ Duker – Yes    |
| Mike Morgan – Yes | Larry Oetting – Yes |
| Boyd Harris – Yes | Paul Zullo – Yes    |
| David Mink – Yes  | John Schloot – Yes  |

Motion to approve the request carries unanimously.

Chairperson Smith informed the applicants that this request would go before the County Commission on October 30, 2006 and the applicants need to be present for the hearing.

\* \* \* \* \*

2. Request by Bobcat of St. Louis to approve a revised Review Plan, located at 9689 E. I-70 Drive NE, Columbia.

Planner, Thad Yonke gave the staff report stating that this property is located at 6989 I-70 Drive N.E., approximately 4 miles east of Columbia. The 36.94 acre tract was originally zoned A-R. In 1994 17.12 acres was rezoned to Recreation REC, the remaining 19.82 acres retained the original A-R zoning. The golf driving range was allowed by conditional use permit in 1989. In January 2005 the north 29.44 acres of the property was rezoned to RS-P and the south 7.5 acres was rezoned to CG-P. A final development plan and preliminary plat was also approved showing 88-residential lots and 2-commercial lots. In November of last year a revised review plan was approved by the County Commission that is very close to the current proposed revised review plan. Zoning adjacent to the property is as follows: north – A-1 and A-R; east – A-R; south – A-2; west – A-2.

The current application is a request simply to revise the plan to remove an unnecessary sidewalk note and graphic and additionally add the proposal of a lot to accommodate the BCRSD wastewater facility to serve the development. Otherwise it is essentially the same plan as previously approved. The sidewalk is a hold over from the very first iteration of the development proposal for this property where the

commercial property was proposed to support the residential portion of the same development. The residential development was eliminated by the proposal that approved the use for the Bobcat dealership, but the sidewalk was inadvertently left on the plan. All the previous conditions of approval have been met by notes and provisions on the face of the current proposed plan. It must also be recognized that the specifics of the plan are binding and must be followed, any deviation or desired alteration will require coming back through the process again with another revised review plan. The proposal scored 56 on the point rating system. Staff notified 13 property owners concerning this request.

Staff recommends approval of this request.

No one present to represent the request.

Mr. Yonke stated in summary they are taking off the sidewalk and adding a lot for the sewer.

Commissioner Mink stated John Watkins with Public Works is saying the spacing on the driveway didn't comply with the road regulations and it got approved that way and the Commission didn't catch it.

Mr. Yonke stated staff is in the process of working with Public Works.

Commissioner Morgan made and Commissioner Duker seconded a motion to **approve** the request by Bobcat of St. Louis to approve a revised Review Plan, located at 9689 E. I-70 Drive NE, Columbia:

|                   |                     |
|-------------------|---------------------|
| Pat Smith – Yes   | Russ Duker – Yes    |
| Mike Morgan – Yes | Larry Oetting – Yes |
| Boyd Harris – Yes | Paul Zullo – Yes    |
| David Mink – Yes  | John Schloot – Yes  |

Motion to approve the request carries unanimously.

Chairperson Smith informed the applicants that these requests would go before the County Commission on October 30, 2006 and the applicants need to be present for the hearing.

\* \* \* \* \*

## **PLAT REVIEWS**

1. Providence Heights (preliminary plat). S15-T47N-R13W. High Point Development LLC, owner. Jay Gebhardt, surveyor.

See staff report and discussion under High Point Development Planned Development request.

Commissioner Mink made and Commissioner Harris seconded a motion to **approve** Providence Heights (preliminary plat). S15-T47N-R13W. High Point Development LLC, owner. Jay Gebhardt, surveyor:

|                   |                     |
|-------------------|---------------------|
| Pat Smith – Yes   | Russ Duker – Yes    |
| Mike Morgan – Yes | Larry Oetting – Yes |

Boyd Harris – Yes  
David Mink – Yes

Paul Zullo – Yes  
John Schloot – Yes

Motion to approve request carries unanimously.

\* \* \* \* \*

- 2. Inscore. S 17-T50N-R12W. A-2P. GL & D, LLC, owner. Timothy Crockett, surveyor.

The following staff report was entered in to the record.

The property is located on the south side of Highway 124 approximately 2.5 miles west of Hallsville and 600-feet east of the intersection of Robinson Road and Hwy. 124 and is currently occupied by a home and several outbuildings, a wastewater lagoon and a pond. In August 2006 a rezoning to A2-P with a review plan was approved. The final development plan has been submitted. Approval of the plan is pending compliance with the condition of installing a fire hydrant(s) as required by Boone County Fire Protection District.

All three lots will have frontage on and direct access to Hwy 124. The Missouri Department of Transportation has reported that the two additional lots have locations that meet MoDOT standards for a private entrance. Three feet of additional right of way along the Hwy. 124 frontage will be dedicated by this plat.

The property is located in Public Water Supply District Number 4. There is an 8-inch waterline along Hwy 124 that can be tapped for domestic service and fire flow. At least one fire hydrant must be installed before approval of the final development plan.

The existing home uses an on-site wastewater system for sewage disposal. On site wastewater systems are proposed for the two additional lots.

The property scored 41 points on the rating system. 17 property owners were notified of this request.

Staff recommends approval of the plat subject to the following condition:

- 1. Prior to approval of the final plat, the developer shall install fire hydrant or hydrants at spacings not to exceed 500-feet. The actual location of the hydrants shall be determined by the Boone County Fire Protection District and Public Water Supply District Number 4.

Commissioner Duker recused himself from the proceedings of this plat.

Commissioner Morgan made and Commissioner Mink seconded a motion to **approve** Inscore. S 17-T50N-R12W. A-2P. GL & D, LLC, owner. Timothy Crockett, surveyor **with waiver requests**:

- 1. Prior to approval of the final plat, the developer shall install fire hydrant or hydrants at spacings not to exceed 500-feet. The actual location of the hydrants shall be determined by the Boone County Fire Protection District and Public Water Supply District Number 4.

|                   |                      |
|-------------------|----------------------|
| Pat Smith – Yes   | Russ Duker – Abstain |
| Mike Morgan – Yes | Larry Oetting – Yes  |
| Boyd Harris – Yes | Paul Zullo – Yes     |
| David Mink – Yes  | John Schloot – Yes   |

Motion to approve request carries.        7 YES        1 ABSTAIN

\* \* \* \* \*

3. ZZ. S8-T48N-R13W. Russell and Annette Duker, owners. J. Daniel Brush, surveyor.

The following staff report was entered in to the record.

The property is located south of I-70 on Strawn Road. It is surrounded by the city limits of Columbia. The plat creates two lots of 2.34 acres and 0.36 acres respectively. The property is zoned R-S (Single-Family Residential) and is surrounded by city zoning. This is an original 1973 zoning.

Both of the lots have direct access onto Strawn Road to the west. The applicant has submitted a request to waive the requirement to provide a traffic analysis.

Water service to these lots will be provided by Columbia Water & Light. Fire protection will be provided by Boone County Fire Protection District. Electrical service is provided to the existing house by Boone Electric. Any future structures will be served by Columbia Water & Light for electrical service.

The existing house is served by the City of Columbia's centralized sewer system. Any new dwelling must be served by a centralized sewer system. The applicant has submitted a request to waive the requirement to provide a wastewater cost-benefit analysis.

The property scored 63 points on the rating system.

Staff recommends approval of the plat and granting the requested waivers on the following condition:

1. Final approval of the plat is contingent upon receiving city sewer services to both lots.

Commissioner Duker recused himself from the proceedings of this plat.

Commissioner Morgan made and Commissioner Mink seconded a motion to **approve ZZ. S8-T48N-R13W. Russell and Annette Duker, owners. J. Daniel Brush, surveyor with waiver request and the following conditions:**

1. Final approval of the plat is contingent upon receiving city sewer services to both lots.

|                   |                      |
|-------------------|----------------------|
| Pat Smith – Yes   | Russ Duker – Abstain |
| Mike Morgan – Yes | Larry Oetting – Yes  |
| Boyd Harris – Yes | Paul Zullo – Yes     |

David Mink – Yes

John Schloot – Yes

Motion to approve request carries. 7 YES 1 ABSTAIN

\* \* \* \* \*

- 4. Bobcat of St. Louis. S8-T48N-R11W. EKD Properties V, LLC, owner. Bill R. Crockett, surveyor.

See staff report and discussion under Bobcat of St. Louis under Planned Developments.

Commissioner Morgan made and Commissioner Duker seconded a motion to **approve** Bobcat of St. Louis. S8-T48N-R11W. EKD Properties V, LLC, owner. Bill R. Crockett, surveyor:

Pat Smith – Yes

Russ Duker – Yes

Mike Morgan – Yes

Larry Oetting – Yes

Boyd Harris – Yes

Paul Zullo – Yes

David Mink – Yes

John Schloot – 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 as follows:

The conditional use permit for the tower for McDow and Mertensmeyer were approved as recommended.

The rezoning request for the McConnel’s was recommended denial by the Planning and Zoning Commission did not appeal the decision.

The rezoning request for St. John was recommended denial by the Planning and Zoning Commission the applicants did not appeal the decision.

The rezoning request by Bigsky Investments was approved as recommended.

The rezoning request by GL & D LLC. was approved as recommended.

The revised review plan by Golf View Development was approved as recommended.

**NEW BUSINESS**

The subdivision regulations in 2000 the County Commission amended the subdivision regulations to prohibit encumbrances and easement. The water departments were requiring exclusive easements to be provided and were not able to be used by any other utility. The County Commission said you can not do that and it has been proposed to either void it entirely or change it so it says you can not have exclusive easements.

Commissioner Mink made and Commissioner Harris seconded a motion to amend the subdivision regulations to add the word “exclusive” under Section 1.5.10 Prohibited Encumbrances.

Pat Smith – Yes  
Mike Morgan – Yes  
Boyd Harris – Yes  
David Mink – Yes

Russ Duker – Yes  
Larry Oetting – Yes  
Paul Zullo – Yes  
John Schloot – Yes

Motion to recommend the amendment of the subdivision regulations carries unanimously .

## **ADJOURN**

Being no further business, the meeting was adjourned at 10:20 p.m.

Respectfully submitted,

Boyd Harris,  
Secretary

Minutes approved on this 16<sup>th</sup> day of November, 2006.