

**BOONE COUNTY PLANNING & ZONING COMMISSION**  
BOONE COUNTY GOVERNMENT CENTER, COMMISSION CHAMBERS  
801 E. WALNUT, COLUMBIA, MISSOURI  
(573) 886-4330

**Minutes**

**7:00 P.M.**

**Thursday, March 17, 2011**

I. Chairperson Harris called the meeting to order at 7:00 p.m., with a quorum present.

II. Roll Call:

a. Members Present:

Boyd Harris, Chairperson	Centralia Township
Mike Morrison, Secretary	Columbia Township
Gregory Martin	Katy Township
Larry Oetting	Three Creeks Township
Eric Kurzejeski	Missouri Township
Michael Poehlman	Rock Bridge Township
Paul Prevo	Rocky Fork Township
Kevin Murphy	Perche Township
Brian Dollar	Bourbon Township

b. Members Absent:

Carl Freiling, Vice-Chairperson	Cedar Township
Derin Campbell	County Engineer

c. Staff Present:

Stan Shawver, Director	Uriah Mach, Planner
Thad Yonke, Senior Planner	Paula Evans, Staff

III. Approval of Minutes:

Minutes from the February 17, 2011 meeting were approved by acclamation.

IV. Chairperson Statement

Chairperson Harris read the following procedural statement:

The Boone County Planning & 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 2 subdivision plats and a rezoning request that was tabled at the February 17, 2011 meeting.

The following procedure will be followed:

The agenda item will be announced, followed by a report from the planning department staff.

The Planning and Zoning Commission will then make a motion to either approve or deny the agenda item.

All subdivision plats are forwarded to the County Commission. The zoning request that was tabled on February 17 will be forwarded to the County Commission automatically if the Planning and Zoning Commission recommends that it be approved. If the Planning and Zoning Commission recommends that it be denied, it 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. They will consider the matters on tonight's agenda on Tuesday, March 29th. The county commission hearing scheduled for Tuesday, March 29th will begin at 7:00 p.m. and will convene in this same room.

V. Conditional Use Permits

None

VI. Rezoning Requests

None.

VII. Planned Developments

None.

VIII. Plats

1. Sylvia's Way. S24-T50N-R13W. A-2. Sylvia Brown, owner. Steven R. Proctor, surveyor.

The following staff report was entered in to the record:

The subject property is located to the west of the Friendship Church Road and Highway 63 North intersection, with access off of Old Highway 63 North to the west, approximately 5 miles to the west of Hallsville. The property is 17.41 acres in size, and is being divided into three lots, two at 5.78 acres and the third at 5.76 acres. There is currently a house on the property. The property is zoned A-2(Agriculture) and is surrounded by A-2 zoning. This is all original 1973 zoning.

These lots all have direct access onto Old Highway 63. The applicant has submitted a request to waive the traffic study requirement.

Public water will be provided by Consolidated Public Water Service District #1, electrical service by Boone Electric Cooperative, and fire protection will be provided by the Boone County Fire Protection District.

On-site wastewater systems are proposed for these lots, built under permit from the Columbia/Boone County Health Department. The applicant has submitted a request to waive the central sewer cost-benefit analysis.

The applicant did go to the Boone County Board of Adjustment in January of 2011 to request a variance for the location of the house. It is located inside the rear setback of the property. A variance was granted at that meeting for this circumstance, and is indicated on the plat document.

The property scored 30 points on the rating system.

Staff recommends approval of the plat and granting the requested waivers.

No one present to represent the plat.

Commissioner Kurzejeski made and Commissioner Poehlman seconded a motion to **approve** Sylvia's Way **with waivers**.

Boyd Harris – Yes

Eric Kurzejeski – Yes

Gregory Martin – Yes

Michael Morrison – Yes

Brian Dollar – Yes

Larry Oetting – Yes

Paul Prevo – Yes

Michael Poehlman – Yes

Kevin Murphy – Yes

Motion to approve the plat carries unanimously.

2. Hunter's Bend Plat 2. S11-T46N-R12W. A-2. Martin Builders, Inc., owner. Christopher M. Sander, surveyor.

The subject property is at the northwestern corner of the intersection of Robbie Forbis Road and Hunter's Bend Road, directly adjacent to the city limits of Ashland. The subject property is 14.58 acres in size and is proposed to be divided into three tracts, one at 4.29 acres, one at 4.25 acres, and the last at 5.05 acres. The property is zoned A-2(Agriculture), and has A-2 zoning to the north, east, and south, with the City of Ashland to the west. This is all original 1973 zoning.

This property has direct access on to Robbie Forbis Road and Hunter's Bend Road, both of which are publicly maintained and publicly dedicated. The applicant has submitted a request to waive the traffic study requirement.

Consolidated Public Water Service District #1 and City of Ashland will need to come to an agreement on how this property is to be served with public water service. Electrical service will be provided by Boone Electric, and fire protection will be provided by the Southern Boone County Fire Protection District

On-site wastewater is proposed for this property. Any design for such systems will need approval from the Columbia/Boone County Health Department. The applicant has submitted a request to waive the central wastewater treatment cost-benefit analysis.

The property scored 63 points on the rating system.

Staff recommends approval of the plat and granting the requested waivers.

Commissioner Kurzejeski made and Commissioner Poehlman seconded a motion to **approve** Hunter's Bend Plat 2 **with waivers**.

Boyd Harris – Yes

Eric Kurzejeski – Yes

Gregory Martin – Yes

Michael Morrison – Yes

Brian Dollar – Yes

Larry Oetting – Yes

Paul Prevo – Yes

Michael Poehlman – Yes

Kevin Murphy – Yes

Motion to approve the plat carries unanimously.

## IX. Old Business

1. Request by Gary E. and Edith A. Naugle to rezone from A-1 (Agriculture) to A-2 (Agriculture) on 13.67 acres, more or less, located at 1700 N. Dozier Station Rd., Columbia (**Tabled from Feb. 17, 2011 meeting**).

Chairperson Harris stated that the Commission had held the required public hearing during the February 17, 2011 meeting. However, as a courtesy, the Commission would accept new testimony that may not have been presented during the February meeting. Comments should be restricted to new information; should he feel that is being strayed from he will cut it off.

Present: Gary Naugle, 1700 Dozier Station Rd., Columbia.  
Edith Naugle, 1700 Dozier Station Rd., Columbia

Mr. Naugle read the following prepared statement:

“I hope you will indulge me here; I would like to share with this Commission some information concerning this issue.

I have been on the Columbia Building Codes Commission for 15 years. There are some grey areas in the code or a change that we know is coming that allows us to make adjustments of the code. In our decisions we follow the written word of the code except for the aforementioned adjustments. All of our decisions should be logical and never emotional. I fully understand that the process of rezoning has grey areas also.

My wife and I are real estate brokers. We obtained our licenses after building and selling several hundred homes. The real estate test was easy for us to pass, as the majority of it was based on what not to do to buyers and sellers, most of which had been done to us. The Real Estate Law has changed in 32 years; more words, more classes, more tests. Although this negative culture has improved considerably it is still there. Legislation can not completely change negative motive and attitude.

I'm not sure how I voted on P & Z but there is a good chance I was in favor of it. At the time I still had a lot of liberal ideas, I was civic minded and had enrolled the first home, and all my other homes thereafter, in a 10 year buyers warranty program. My homes went through a full Columbia type inspection by an architect, before County P & Z was even passed, and more than a decade and 100's of homes before the County had a viable inspection process.

When P & Z was passed, I was already developing my land to light industrial, general commercial and single family residential. P & Z severely limited, or eliminated, my ability to maximize my ability to prosper on and with my land.

This P & Z action could be considered a taking of rights from many county landowners, however, we all received a token payment for this taking. The payment was a promise; a promise of treating us all fairly under the spirit and intent of P & Z, treated with the cold emotion of written law (regulations and codes) and without the malice of motive and attitude. This promise also did not include a right to bend the laws.

My property is surrounded on 3 ¾ sides by A-2 zoning, this certainly doesn't seem to be any kind of a gray area and there should be no reason to deny me A-2 zoning.

At 6.1.1 of the zoning regulations the "purpose" of planned development is stated. In essence it says; that if one thinks they have an equal or better way to develop and build and it does not fit the strict applications of the laws they can request a planned development process. Boone County's definition as written is generally the accepted definition across these United States.

I am satisfied with the strict laws that exist. I am not seeking, nor do I want, to do a more lenient planned development.

Boone County's zoning and building laws are virtually the same as Columbia's. So called "open zoning" has served Columbia very well. It is quite an organized and homogenous entity. Planned developments are strictly a choice in Columbia. Truth is, there is no such thing as "open zoning", there is only zoning (districts) and planned zoning (planned districts). "Open zoning" is a term coined and adopted, that implies "open range-ride rough shod" by those who want more control over people's lives. Planned would be the "open" as it allows going outside the regular law.

I have attached Exhibits A, B, and C. The home in the pictures is along Dozier Station Rd., 150 feet from Ms. Carl's property and 300 feet from mine. I had restrictions against this when I finished the subdivision and I assume they remain. Everyone that has testified against me passes this on a regular basis. I believe we all have the power to do something about this eyesore, especially Elton Fay. So much for the concern about the neighborhood! My point of this is that I doubt "planned" can control such a situation, however, Home Rule would be able to.

I have not been able to find anything in the P & Z laws that give this Board the power to force one into a planned development against their will, or be mistreated if one does not choose planned. Has the County's promise to me and other landowners been broken and bent?

I would like to make this last point – our building code is the same as Columbia’s under it one can build a 650 sq. ft. home without masonry on the front. I once built such a home in Columbia for a retired woman on Garth Ave. Would this be what this board considers the negative problems of regular zoning (open zoning)? Or a case of the neighbors being bit in the butt!”

Exhibit A – Picture of camping trailer.

Exhibit B – Picture of camping trailer, vehicles, and a house.

Exhibit C – Picture of camping trailer, vehicles, and house.

Chairperson Harris: (to applicant) Is there any other evidence the applicant would like to present?

Gary Naugle: There is nothing written that says you can make me apply for planned zoning. There is nothing written these laws that you follow that says you are allowed to force me in to planned zoning and that is exactly what you do when you threaten not to pass it because it is not planned zoning. You are forcing me and there is nothing in Boone County ordinances for you to be able to do that. It is a damn sin.

Chairperson Harris asked the applicant to tame his tone and choice of language before the Commission or the hearing will be over with very shortly.

Mr. Naugle apologized.

No one else spoke in favor.

Present speaking in opposition:

Patricia Carl, 2975 S. Rangeline Rd., Columbia

Patricia Carl: I am concerned that some people can use the transfer to kin as a way to bypass some regulations. Across the road from the applicants I did a planned development and it wasn’t an extra expense, it wasn’t a big deal. I brought in plans where the houses would be located, it only involves a survey. My concern too is I am not sure with them bypassing certain regulations what would actually be neglected. If someone bought the house later on are they going to be concerned about a water source? Is he able to put three houses almost side by side with long narrow acreage with it? Could he put a house where the drainage isn’t good? I am concerned about the people that may buy the houses in the future. I think we need to protect them also; maybe the easements wouldn’t be in place so anything like that we can get ahead of time will protect the buyers in the future.

Closed to public hearing.

Chairperson Harris asked if there were any comments from staff.

Thad Yonke: The Commission has a legislative act before them; their decision is if what is requested is appropriate or is the existing zoning appropriate. That is really the Commission’s only question.

Commissioner Murphy: As stated in the last meeting I intend to support this rezoning. It meets all of the current regulations, staff has supported it. Many of the concerns will easily work themselves out. What Mr. Naugle is asking is to basically secure financing for his home at this time. I don’t see how he can chop this property up in a way and keep his house, lake, and building all in one lot to maintain his grandfather status. The applicant says his intention for the future is to pass this on to his next of kin. At this time I

don't think any of them know where their houses are going to be. You are not only looking at doing a planned development with a plan that shows what is there now but each and every time one son comes to build a house they have to come and change that plan. It has been shown you can only put an additional three houses on the property. Water was brought up again, the water district may not force them to hook in to the water but if they want to they would have to do upgrades to the water or they could drill a well. When a new house goes up the Health Department is probably going to require them to hook in to the new sewer treatment facility. It is a lot to ask when he doesn't really have a plan. I don't believe everything needs to be planned.

Commissioner Prevo: The applicant referenced 6.1.1 of the zoning regulations. Can someone from staff explain that?

Thad Yonke: 6.1.1 is in the planned development section so it is not relevant to the current request.

Commissioner Prevo: Is there a particular section that defines going from A-1 to A-2 that addresses this specifically and why it should not be passed?

Thad Yonke: land use planning is based upon the presumption that the existing zoning is always correct. It is incumbent on an applicant who asks for a rezoning to convince the Commission that what he is asking to do is more appropriate than the existing zoning. It is a legislative act so meeting all of the regulations is not the correct way of looking at this because it is not a conditional use permit; there are not specific tests that if the applicant meets all the criteria that it shall be approved. This is a discretionary act; the Commission makes a recommendation as to whether the existing zoning is more appropriate than the requested zoning and has the applicant given the Commission enough reason to agree that the zoning should be changed whether he is asking for planned or regular.

Commissioner Kurzejeski: When the applicant comes in to discuss a potential zoning change are they advised about the variety of options they can pursue.

Thad Yonke: Yes; we discussed with Mr. Naugle that he had the option of applying for A-2 and A-2P; the applicant chose to go for the A-2 and staff evaluated the request based on that. Staff's recommendation was that there seems to be enough justification to warrant the rezoning; that is why we recommended approval. Had the applicant requested A-2P we likely would have recommended approval of that too. It is not necessarily either/or.

Commissioner Poehlman: Where can people go to find out what can be done on A-2 zoning?

Thad Yonke: The zoning ordinance, either online or the printed book, tells you everything you can do in each zoning district. In A-1 and A-2 the uses are identical; the only difference is the minimum lot size.

Chairperson Harris: Under the A-2 zoning the A-frame and lagoon on the corner will not be able to be on a parcel by itself.

Thad Yonke: It already is. Staff researched and it is a legal lot of record; it is .172 acres. We would recognize it as a legal lot. There is an additional legal lot of 4.42 acres which, I believe, has the existing home it is also a legal lot of record. They were created before 1973.

Chairperson Harris: There was talk last month about wanting to take 3 acres off with the house for a mortgage.

Gary Naugle: Somewhere between 2 and 2.5 acres.

Thad Yonke: The minimum would have to be 2.5 acres if it were rezoned to A-2.

Chairperson Harris: If it is rezoned; the house is on 4.4 acres that could be made smaller. That wouldn't have to be maintained?

Thad Yonke: It only has to be maintained if he wishes to keep his legal lot status. When the zoning goes through then he can choose to use the 13 acres and divide it up based on the subdivision regulations, as you can. That can be done in a number of different ways; by surveys, plat, or family transfers.

Erik Kurzejeski: Can the commercial building be on a 2.5 acre lot if the rezoning request was approved?

Thad Yonke: Yes; the minimum lot size will be 2.5 acres. Dividing the land is not going to affect the non-conforming status of the building. In fact if he creates a lot that contains the commercial building a house could be built on that lot as well.

Chairperson Harris: Does the applicant have any further comments?

Gary Naugle: Mr. Shawver mentioned that I could get my loan on the 4 acres but when I get this loan I may lose the property. If I don't pay it off I have lost access to my whole property. That four acres is the only place I can bring a street in to the property otherwise I will have to cut the two hillsides down.

Commissioner Prevo made and Commissioner Poehlman seconded a motion to **approve** the request by Gary E. and Edith A. Naugle to rezone from A-1 (Agriculture) to A-2 (Agriculture) on 13.67 acres, more or less, located at 1700 N. Dozier Station Rd., Columbia.

Boyd Harris – NO  
Gregory Martin – NO  
Brian Dollar – Yes  
Paul Prevo – Yes  
Kevin Murphy – Yes

Eric Kurzejeski – NO  
Michael Morrison – NO  
Larry Oetting – Yes  
Michael Poehlman – Yes

Motion to approve request passes      5 YES      4 NO

Chairperson Harris informed the applicant that this request would go before the County Commission on March 29, 2011 and the applicants need to be present.

## 2. Update on County Commission Action.

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

All the plats were forward to the County Commission and approved.

X. New Business

None.

XI. Adjourn

Being no further business the meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Secretary  
Michael Morrison

Minutes approved on this 21<sup>st</sup> day of April 2011