

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, May 16, 2013

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

II. Roll Call:

a. Members Present:

Carl Freiling, Vice-Chairperson	Cedar Township
Mike Morrison, Secretary	Columbia Township
Gregory Martin	Katy Township
Kevin Murphy	Perche Township
Michael Poehlman	Rock Bridge Township
Brian Dollar	Bourbon Township
Paul Prevo	Rocky Fork Township
Derin Campbell	County Engineer

b. Members Absent:

Boyd Harris, Chairperson	Centralia Township
Eric Kurzejeski	Missouri Township
Larry Oetting	Three Creeks Township

c. Staff Present:

Stan Shawver, Director	Uriah Mach, Planner
Thad Yonke, Senior Planner	Bill Florea, Senior Planner
Paula Evans, Staff	CJ Dykhouse, County Counsel

III. Approval of Minutes:

Minutes from the April 18, 2013 meeting were approved by acclamation.

IV. Chairperson Statement

Commissioner Freiling read the following procedural statement:

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 a rezoning request and a subdivision plat.

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 public hearing. After the applicant's presentation, the floor will be opened for a public hearing to allow anyone wishing to speak in support of the request. We ask that any presentation made to the commission be to the point.

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. We ask that you please 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.

There may be individuals that neither support nor oppose a particular request. Those individuals are welcome to address the commission at any time during the public hearing portion of the request.

Please give your name and mailing address when you address the commission. Please sign the sheet on the table after you testify. Also, we ask that you turn off your cell phones.

Any materials that are presented to the commission, such as photographs, written statements or other materials will become a part of the record for these proceedings. If you would like to recover original material, please see the staff during regular business hours after they have had an opportunity to make a copy of your submission.

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 the discussion. Finally, a motion will be made to either recommend the approval or denial of the request to the county commission. Please note that the Boone County Zoning Regulations and Subdivision Regulations are considered to be a part of the record of these proceedings.

All recommendations for approval are forwarded to the county Commission. They will conduct another public hearing on Tuesday, May 28th. 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 Tuesday, May 28th, will begin at 7:00 p.m. and will convene in this same room.

V. Conditional Use Permits

None.

VI. Rezoning

1. Request by Jerome and Charlotte Niemeier to rezone from A-1 (Agriculture) to A-2 (Agriculture) on 32.5 acres, more or less, located at 10175 W Eaton Rd., Harrisburg.

Planner, Uriah Mach gave the following staff report:

The subject property is located along the Howard County line, at the intersection of Rupard and Eaton Roads, approximately 1 mile to the west of Harrisburg. It is approximately 32.5 acres in size and has a house, a barn, and a shop building on the property. The property is zoned A-1 (Agriculture), and has A-1 zoning to the north and east, with A-2(Agriculture) zoning to the south, and the Howard County line to the west. This is all original 1973 zoning. Property to the south across Eaton Road sought a conditional use permit to place single-wide mobile homes on platted lots in 1999, but was denied. There have been no other requests on this property.

The applicant has requested a rezoning from A-1 to A-2 in order to have the option of creating 2.5 to 5 acre tracts. The Boone County Master Plan has indicated that this property is suitable for rural residential and agricultural land uses. The master plan also designates a sufficiency of resources test for the approval of zoning changes where each proposal is evaluated to see if sufficient utility, transportation, and public safety infrastructure is in place to support the change in zoning.

Utilities: The property is served by a Consolidated Public Water Service District #1 4" water line. The Howard County Electrical Cooperative will provide electrical service. On-site systems will provide wastewater treatment.

Transportation: The property is located at the intersection of Eaton and Rupard Roads, both publicly-dedicated and maintained rights-of-way.

Public Safety: The property is located in the Boone County Fire Protection District, who maintains a station in Harrisburg, approximately 1 mile to the east. The nearest fire hydrant off of the water main serving this area is approximately 2 miles away at the Route J/Eaton Road intersection, and is capable of producing 600 gallons per minute of fire flow.

Zoning Analysis: Given the constraints on this property by the existing water infrastructure, the current A-1 zoning is appropriate, as greater density is not achievable. If smaller lots are desired, the planned zoning process would be the appropriate way to get smaller lots while preserving the overall character of the area. With the proposed zoning permitting up to 13 lots, it is clear that this proposal cannot meet the requirements of the sufficiency of resources test.

Staff recommends denial of the request.

Present representing the request:

Jerome Niemeier, 10175 W. Eaton Rd, Harrisburg

Mr. Niemeier: I am not planning on doing anything with this, I just wanted to change it to A-2; I thought it would be easier for the kids. My son wants the land but no one really wants the house at this time. It would be easier to cut off five acres, sell the house and keep the land. I am not planning on building anything.

Commissioner Murphy: Staff's point of view is with the A-2 zoning it could be split into 13 lots.

Uriah Mach: That is correct; staff is compelled to use the worst-case scenario of this particular property.

Commissioner Murphy: Don't you think it would be more appropriate to rezone it when there is sufficient infrastructure?

Mr. Niemeier: The water supply should be there because there were 13 trailers right across the road and they are leaving so there are 13 empty meters. Boone County had put a four inch main ¼ mile down Rupard Road.

Commissioner Murphy: Those four inch water lines probably don't meet today's standards.

Uriah Mach: According to Consolidated Water #1 the four inch main that runs along Rupard is not going to meet current needs for fire flow; it is probably fine for what is there now but the increased density that would be represented by this development would require more than a four inch main.

Mr. Niemeier: There are 13 trailers being served by that water line now; they won't be there anymore.

Uriah Mach: That may be the case but the Fire District is not going to take any kind of fire infrastructure on a four inch line; they typically require a minimum of six inches. To allow a density that would be permitted with this rezoning you will need more than the four inch line to make it work.

Thad Yonke: It is not domestic water usage; it is fire protection that is the issue.

Commissioner Freiling: There are two issues for the Commission; there are certain things people can do just by meeting regulations that they don't have to ask permission for and you can't stop that. A large tract of land ends up with more residential use that's within its present zoning. For the Commission when we are asked to approve a rezoning you are supposed to look after the public interest and if you approve a rezoning where you know there is not adequate infrastructure, and water is pretty critical, that runs against your sense of responsibility. If your intention is to set this property up in a way that is more suitable for your children there are other ways to do that besides open rezoning. Open rezonings are the hardest for the Commission to say yes to because there could be 13 houses there. You can do a planned rezoning that breaks that into a defined number of lots that break out better and have nice home sites and not the same density and not the same potential impact in the neighborhood. You can break that piece of ground up in a way that is both more marketable in the event that your kids don't want it but also better lots if someone does want to be there. It is easier for the Commission who represents the county to approve something when you know that the worst-case is okay. The easy path is not always the best path.

Commissioner Murphy: I would suggest that the applicant talk to staff again about rezoning a small portion.

Mr. Niemeier: What bothers me is land to the south is A-2. They can build all the houses they want with a four inch water line.

Commissioner Freiling: Not currently.

Commissioner Murphy: They would still have to subdivide.

Bill Florea: They would have the same issue with the water line.

Commissioner Murphy: If it got any more dense than what it is they would have to address the water line issue.

Mr. Niemeier: They are removing the trailers.

Thad Yonke: The previous owner of the property to the south has exhausted every avenue to try to figure out how to get another lot or two in there and it wasn't possible without extending the water line.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Commissioner Prevo: Is there a number of houses that could be there or is it at its maximum?

Uriah Mach: It is a 32 acre piece of property, at its current zoning you could have three 10 acre tracts with no penalties. This property had an administrative survey filed two months ago that created a 10 acre lot out of it, there is one additional dwelling possible now.

Commissioner Martin: This comes about a lot; the applicant is not the only person that encounters this hurdle. The Commission tries to be fair but we also have to protect the interest of everyone around there. I know across the street is A-2 but the problem we encounter as a group if we zone that A-2 then the neighbor may want his A-2 so he can put in 50 houses. When it comes to the sufficiency of resources test, it is there to protect everybody it is not to apply pressure to one individual. I have been a fireman for a long time in the county and it is true that it is dangerous to let something like this occur then we have to fight it later on. That is one of the reasons we put so much emphasis on the water districts because if we can't host the fire flow you shouldn't put the houses there or allow the opportunity to put houses there.

Mr. Niemeier: Why does the Planning and Zoning not have guidelines if they see that the water lines are too small when someone gets an application and spends \$500 to rezone when they could have told us the water line was too small?

Commissioner Murphy: There is a process with the water districts and they have to check; it is not solely on the size of the water line.

Commissioner Freiling: There are flow tests done because different water lines and different circumstances carry different flow.

Commissioner Murphy: I think there are other options available.

Uriah Mach: We did hold a concept review for the administrative survey that was done on the property; at that time the applicant's surveyor was informed that the water district only has a four inch line to serve this property. That is one of the reasons we have a concept review so we can try to get as much

information before serious expenses occur. We can offer a lot of information when we are asked we didn't think it an unfair assumption to think that the property owner had been properly informed by his surveyor.

Thad Yonke: Administrative surveys don't trigger the water requirement. There were discussions at that concept review about what if it were at a higher density and any rezoning would require the water.

Commissioner Freiling: It is a complicated process and staff tries their best to help the public when they come in.

Commissioner Poehlman made and Commissioner Prevo seconded a motion to **deny** a request by Jerome and Charlotte Niemeier to rezone from A-1 (Agriculture) to A-2 (Agriculture) on 32.5 acres, more or less, located at 10175 W Eaton Rd., Harrisburg.

Carl Freiling – Yes

Michael Morrison – Yes

Gregory Martin – Yes

Brian Dollar – Yes

Paul Prevo – Yes

Michael Poehlman – Yes

Kevin Murphy – Yes

Derin Campbell – Yes

Motion to deny the request passes unanimously

Commissioner Freiling informed the applicant that if he wished to appeal to the County Commission an appeal form would need to be submitted to Resource Management within three working days.

VII. Planned Developments

None

VIII. Plats

1. Buckman Plat 3. S11-T50N-R12W. A-R. Buckman Properties LLC, owner. J. Daniel Brush, surveyor.

Uriah Mach gave the following staff report:

The subject tract is located on the north side of Schooler Road, east of State Route U, north of Hallsville. This proposal splits a 27.2 acre lot into five lots at approximately 5 acres each. The property is zoned A-R (Agriculture-Residential), and has A-R zoning to the east, west and south, with A-2 (Agriculture) zoning to the north. This is all original 1973 zoning. There is a mobile home on lot 1 that is to be removed; otherwise there are no structures on this property. There is a three acre lot created by deed in 1983 that is in the center of this proposal but is under separate ownership.

Two lots have direct access onto Schooler Road. The remaining three lots will access Schooler by a private driveway easement across lots 2, 3, 4, and 5. The applicant has submitted a request to waive the traffic study requirement.

Public Water Service District #4 will be providing water service to these lots from a main on the south side of Schooler Road. Electrical service will be provided by Boone Electric Cooperative. Fire protection will be provided by the Boone County Fire Protection District and fire hydrants will be required.

The applicant has proposed on-site wastewater systems for the new lots. The applicant has requested a waiver to the wastewater cost-benefit analysis. Staff recommends denying the waiver due to the number of lots proposed by this property owner (13 including the prior Buckman plats) and the neighbor to the west (4).

The three acre lot in the center of this proposal was created by deed in 1983, absorbed into a larger parcel in 2000, and then separated from the larger parcel in 2008 by foreclosure. The 3 acre tract is classified as a non-compliant tract by virtue of its illegal creation and is still considered part of its parent parcel. In order for that lot to be made legal, it must be platted. When it is platted at its current size (three acres), it will create a lot less than five acres from a parent parcel where the remainder is proposed to be divided using private drives. Under section 1.6.3 of the subdivision regulations, all lots from the same parent parcel must be five acres or larger in size in order to use a common private drive. If that is not the case, then the design cannot be done under the current subdivision regulations. Therefore, the subject tract cannot be platted as proposed.

The property scored 55 points on the rating system.

Staff recommends denial of the waiver for the wastewater cost-benefit analysis.

Staff recommends denial of the plat for failure to comply with Section 1.6.3 of the Subdivision Regulations and failure to provide a wastewater cost-benefit analysis.

The following supplemental fact sheet was added to the record:

1. Leo and Leora Teacutter owned 80-acres in the north half of Section 11 Township 50 North Range 12 West and bounded on the south by Schooler Road and on the west by State Route U.
2. On August 23, 1983 Teacutter transferred the parcel identified as 6591 E Schooler Road, Tax Parcel number 07-303-11-00-002.01 01, to Wayne Gooding and Shelly Gooding by warranty deed recorded in Book 503 Page 487. The subject parcel was 3 acres in size.
3. Page 3 of the Boone County Subdivision Regulations, dated as Revised March 9, 1976, the definition of Subdivision would apply to the division of land created by deed 503/487. Specifically, “The division of a lot, tract, or parcel of land, for development into two or more lots, plots, sites or other division of less than 5 acres.”
4. Under the Boone County Subdivision Regulations that were in effect in that time (1983), this three acre lot could only be created by filing a subdivision plat.
5. On January 25, 1999 Teacutter transferred an additional 57 acres to Gooding by warranty deed recorded in Book 1600 Page 616. This 57-acre tract surrounded the 3-acre tract that Gooding had acquired in 1983.
6. Since the 3-acre tract (503-487) had not been legally subdivided it was dissolved by ownership when Gooding acquired the surrounding 57 acres from Teacutter.
7. On August 14, 2008, the 3-acre tract was transferred to Federal Home Loan Mortgage Corporation through foreclosure by Successor Trustee’s Deed recorded in book 3362 page 160.
8. Section 1.4.38 of the Boone County Subdivision Regulations effective June 17, 1995 as amended November 30, 1995 defines a subdivision as “the division of land which creates a lot, tract or parcel of land less than twenty (20) acres.”

9. The August 14, 2008 foreclosure action illegally divided the 3-acre tract from the Gooding property since a subdivision plat was not filed.
10. Parent parcel has been defined as any legally created lot that has been in existence prior to June 17, 1995 or any lot or parcel created by unregulated land division where all resulting lots are 20-acres or greater.
11. Boone County Subdivision Regulations Section 1.6.3, “Minor Plat – Any subdivision consisting of five or fewer lots, any one of which is less than ten(10) acres, where each lot has direct access to and frontage upon an existing public road, or, a subdivision plat consisting of any number of lots, each being five(5) acres or more, where each lot has direct access to and frontage upon a public road, or has a common private driveway situated on and created for the exclusive use of no more than four (4) lots providing ingress and egress to a public road.”
12. Boone County Resource Management has administered Section 1.6.3 in such a manner that a minor subdivision utilizing a common private drive for access to lots greater than 5 acres cannot derive from the same parent parcel as any lot less than 5-acres. This practice is based on the language of Section 1.6.3 that requires each lot in a subdivision to be 5-acres or more in order to qualify to use a common private drive for access.
13. On January 24, 2006 Gooding sold 30-acres of property that they had acquired from Teacutter (B1600/P616) by warrantee deed in Book 2881 Page 052. That transfer resulted in the creation of two parent parcels: the 30-acre tract sold to Buckman and the 30-acre tract retained by Gooding.
14. On February 27, 2013 Gooding sold the 30-acre tract they had retained in 2006 (less the 3-acre tract created by foreclosure) to Buckman.
15. The proposal named Buckman Subdivision Plat 3, a minor plat, submitted April 22, 2013, is designed to make use of a common private driveway to provide access to lots greater than five acres that do not have frontage on and direct access to a public road. Buckman Subdivision Plat 3 is proposed to be on the parent parcel from which the previously identified 3 acre parcel was divided in on August 14, 2008.
16. The use of common private driveways to serve platted lots is addressed in the Boone County, Missouri Land Use Regulations Chapter 1 Subdivision Regulations (Subdivision Regulations), dated Amended December 5 2000, Section 1.6.3 Minor Plat.
17. The 3 acre parcel must be platted to be brought into compliance with the Boone County Subdivision Regulations, which require platting of all lots that are less than 10-acres. The three acre tract and Buckman Subdivision Plat 3 derive from the same parent parcel
18. Under Section 1.6.3, Buckman Subdivision Plat 3 is disqualified from utilizing a common private drive to access lots that do not have frontage on and direct access to a public road because a lot of less than 5-acres must be platted from the same parent parcel to correct a previous illegal land division.
19. On January 14, 2013 a concept review meeting was held regarding proposed Buckman Subdivision Plat 3 on property then owned by Shelly Gooding. The developer’s representative was informed that the subdivision could not utilize a common private drive for access to lots greater than 5-acres that do not have frontage on and direct access to a public road for reasons outlined previously in this document.
20. On February 27, 2013 Buckman Properties, LLC purchased the property from Shelly Gooding by Missouri General Warranty Deed recorded in Book 4113 Page 31 of the Boone County Records.

Present representing the plat:

Dan Brush, Brush & Associates, 506 Nichols St, Columbia
Jason Shackelford, Attorney for Buckman Properties, P.O. Box 142, Centralia

Dan Brush: When were we notified of the recommended denial of the cost benefit analysis?

Uriah Mach: It was in the staff report.

Dan Brush: So we were just now notified.

Bill Florea: No; you have not been notified yet the plat hasn't been denied.

Jason Shackelford: We are here to ask that the plat submitted by Buckman Properties be approved. The plat proposes the division of 27.2 acres owned by Buckman Properties into five lots within a single subdivision. In 1983 the Teacutters sold to Gooding the three acre tract of land.

Jason Shackelford submitted an aerial photograph of the property with the three acre tract of land highlighted in yellow.

Jason Shackelford: We will refer to that three acre tract as the Gooding tract. It is my understanding that the staff's perception is that the Gooding three acre tract of land was not created in conformance with the subdivision regulations and that it doesn't meet the definition of a lot. We can split those two understandings; one that it doesn't meet the definitions of a lot and the other, that it wasn't created in conformance with the subdivision regulations at that time. In regard to whether it is a lot; isn't it a lot? It is a "plot of land separated from other parcels or portions by descriptions as on a subdivision record or by meets and bounds description for the transfer to or use of another". That terminology comes from Section 1.4.15 "Lot" that is in chapter one of the subdivision regulations so we contend that it is a lot. The second question is whether it was legally created. It is important to know that the Gooding three acre tract of land is not owned by Mr. Buckman or Buckman Properties. At the present time it is owned by Mr. Borland. It is not the subject of the application of this plat. It is my understanding that the staff previously defined a "parent parcel" as a "tract shown as a separate parcel" and that is on the 1995 assessor's map. In 1995 Leo Teacutters acreage would have been a parcel which is also not defined by chapter 1. Not only is parent parcel not defined in chapter 1 of the subdivision regulations but also a parcel is not defined. In 2000 Teacutter sold the remainder of the farm to Gooding, in 2002 a permit was issued to Gooding to place a mobile home on what is identified as lot 1 in the Buckman subdivision plat 3. In 2004 Gooding sold to her son the western 20 acres of the old Teacutter farm, in 2008 a foreclosure was made by Federal Home Loan Mortgage on the Gooding three acre tract. In 2009, regardless whether the lot was legally created, Boone County Resource Management issued an onsite sewer permit to the Federal Home Loan Management Company for that three acre tract, that is the lot that staff contends was illegally created but yet an onsite sewer permit was issued for that particular lot. In 2009 the Federal Home Loan Mortgage Company sold the three acre tract to Mr. Borland, the current owner, and in 2013 Goodman sold the remainder of the farm to Buckman Properties LLC.

The subject of this plat application is a horse shoe shaped parcel of land around the rectangular Gooding three acre tract of land. It is unaffected by the transfer of the neighboring three acre tract of land. Meaning we have a separate tract of land that we are seeking to plat, it is not that three acre tract of land. I believe that the plat is acceptable under chapter 1 of the regulations. I have a draft letter emailed to me by Mr. Brush that was not official, not signed, it was a draft letter which I presume came from staff indicating what I understood to be their reasons in total for the recommendation that the plat be denied. It is our argument that this three acre tract of land was legitimized by the issuance of a sewer permit by the Resource Management Department and I bring this up only to note that until just recently this evening we received this supplemental fact sheet which I have not had a chance to read. Our firm belief is that there was a waiver that the three tract of land was legitimized by the issuance of a sewer permit for that three acre tract of land. Irrespective of that three acre tract what you have before you is a plat application that is perfectly legitimate and acceptable; the staff has recommended in its draft letter that the plat based on

Boone County Land Use Regulations Chapter 1 subdivision regulations section 1.6, actually 1.6.3 be denied. We do not agree. The points that I am asking the Commission to remember is that this is a horse shoe shaped parcel of land that is unaffected by the transfer of the three acre tract of land which is obviously owned by someone else and also which was legitimized by the issuance of the sewer permit. Even if the Commission agrees that the three acre tract was illegally created and is not a lot we still fall back to the argument that it was legitimized. If you disagree with the staff and believe that it was legally created and it is a lot then I believe the problem goes away. Using the staff's definition of a parent parcel, examining the 1995 assessor's map we find that the parent parcel, which is not defined by chapter 1 regulations, the parent parcel is the 54 acre parcel of land that Leo Teacutter owned and sold to Shelley Gooding in 2000. In 2009 Boone County Resource Management had the opportunity to rectify the perceived problem of the tract not being a legal lot by requiring the bank to subdivide the property prior to granting a permit on the tract but they didn't because the tract was likely deemed an acceptable transfer of land described by meets and bounds and not an illegal transfer. We ask that the Commission approve the plat.

Dan Brush: The reason we requested a waiver for the cost benefit analysis is that even with the five lots we are creating now an onsite sewer is more economical than spending and improving Hallsville's system which is still $\frac{3}{4}$ mile away.

Jason Shackelford: The sewer permit is not referenced in the staff's supplemental fact sheet.

Commissioner Freiling: Sewer permits are issued by the County Health Department; not by Resource Management.

Stan Shawver: Applicants come to Resource Management to apply but they are issued by the Health Department.

Jason Shackelford: Does Resource Management collect the fee?

Stan Shawver: We do collect the fee on behalf of the Health Department.

Dan Brush: When I spoke with the Health Department I was told that they don't issue the permits but Resource Management does.

Jason Shackelford: Is there a permit number that is given?

Thad Yonke: Regardless it is not our review. The only reason they come to our office is so they don't have to go two places for two separate permits.

Stan Shawver: We accept the application and collect the fee on behalf of the Health Department then we send the application to the Health Department and deposit the money which is credited to the Health Department's account.

Commissioner Murphy: I don't think sewer permits are necessarily tied to any type of legal parcel of land in that sense. For Resource Management to issue a building permit you would have to have a legal lot; I don't think that is the case for the sewer permit.

Jason Shackelford: Is there a requirement for acreage of land owned for a sewer permit?

CJ Dykhouse: This is not the appropriate forum to have this sort of a dialogue.

Rebuttal:

CJ Dykhouse, County Counselor, 801 E Walnut, Columbia

CJ Dykhouse: I was asked to review this situation and give analysis. There are complicated facts here, you only have to understand two definitions but you have to go two different places to find them. We have two bodies of law to administer as a routine basis, the zoning regulations and the subdivision regulations. With the subdivision regulations you have a definition of a minor plat, this doesn't meet the definition. The other concept is the definition in the zoning regulations of what is a lot of record. We use terms like lots, parcels, and parent parcels and sometimes you use those colloquially but when they are defined in the regulations they are terms of art and the term of art of the lot of record is what we colloquially refer to as a legal lot, even amongst ourselves we will say "it is not a legal lot" or "that is an illegal lot" but what we are really saying is it doesn't meet the definition of a lot of record in the zoning regulations which is a lot that is created in compliance with all the applicable regulations at the time of its creation; that is a bell that can't be unrung. The three acre lot is not a lot of record and that is an important concept to understand because the staff's analysis then follows from that concept. The issuance of a sewer permit by the Health Department in no way affects the land use regulations. The county has statutory authority with respect to sewer for health and safety reasons. When the Planning and Zoning Commission does what they do, they are using a totally different source of authority given to us by the General Assembly for land use. Health and Safety (making people not be sick), and land use (regulating density subdivisions and roads) are two totally different missions. Sometimes in these things you have to be able to have two contradictory thoughts exist in your head at the same time in order to get to the right result. I ask that you deny the plat as presented as it does not meet the regulations; that is my legal analysis.

Commissioner Freiling: My understanding is that it is not optional for the Planning and Zoning Commission to approve a plat that does not meet the platting requirements.

CJ Dykhouse: That is true.

Commissioner Freiling: Because it is not a matter of discretion, it is a matter of law.

CJ Dykhouse: It is the whole ministerial/discretionary distinction. If a plat comes before you that meets the regulations it is our obligation to approve it. Counter to that, if it doesn't meet the regulations it shouldn't be approved. What the Commission has before them is a pretty good analysis of a couple of different ways that you could get to the right result on why it doesn't meet the regulations.

Commissioner Freiling: The issue of parent parcel.

CJ Dykhouse: We don't want to get too tripped up on definitions that are not defined in the regulations.

Commissioner Freiling: In this case is it safe for us sitting here as representatives of the public to assume that the argument to assign this entire tract including three acre parcel that was sectioned out without meeting the proper platting requirements; the reason for considering it all together is because no properly platted lot was ever taken out.

CJ Dykhouse: The three acres was never a lot of record.

Commissioner Freiling: It was never properly taken out. This tract was conveyed off by legal description and never properly platted or approved and didn't meet Boone County regulations for creating a lot and therefore is by our regulations still part of the consideration for this plat.

Commissioner Dollar: When we get a foreclosure that creates a legal lot does it encumber the entire acreage?

Thad Yonke: It would encumber the entire parcel it came out of until some other legal action was taken to divide it.

CJ Dykhouse: It is a fact specific inquiry and depends on what the attempted conveyance.

Commissioner Dollar: Any action that would cause this three acre parcel to meet the subdivision and zoning regulations; a minor plat or family transfer would release that? Would any action that would create a legal tract release that encumbrance?

Bill Florea: There would still be an issue and that is the design of the subdivision. They are proposing five acre lots that do not have frontage on a public road, their access to that is what we call a common private drive, in order to design a subdivision like that all lots have to be five acres or greater, that three acre lot in the center disqualifies the rest of the parcel which is part of that parent parcel. You can not divide it in this manner, it can be divided but there are other ways they would have to do it without using a minor plat utilizing a common private drive.

Thad Yonke: You have to look at it this way because otherwise the regulations are meaningless.

Dan Brush: My only thought on this is that it was done thirty years ago, at no point in time would they have thought by creating a three acre parcel they would be violating a future subdivision regulation.

Jason Shackelford: In regard to the reference to 1.6.3 that is the minor plat, I believe it does follow the definition of a minor plat which is any subdivision consisting of five or fewer lots, any of which is less than ten acres where each lot has direct access to and frontage upon an existing public road or a subdivision plat consisting of any number of lots each being five acres or more where each lot has direct access to and frontage upon a public road or has a common private driveway situated on and created for the exclusive use of no more than four lots providing ingress and egress to a public road.

Thad Yonke: That is exactly why you can't.

Jason Shackelford: We have two.

Commissioner Freiling: It is the three acre lot that was illegally created that is not five acres that makes the entire plat an issue.

Commissioner Prevo: Theoretically, if the owner felt generous and gifted two acres to the three acre plat and made it a five acre does that take care of the situation and open up the rest of the lots?

CJ Dykhouse: It opens up possibilities. To address the concern of illegality, I don't think this is something that happened maliciously. Parent parcel isn't defined by the regulations but it is used throughout the regulations. This is a large issue that could very simply be taken care of by the Commission.

Commissioner Murphy: Because a variance hasn't been granted we can't grant a variance? The issue is that there is an illegal parcel; whether it has been bought and sold it is still an illegal lot.

Thad Yonke: It was created ten years after the subdivision regulations went in to affect.

Commissioner Murphy: Did the applicants speak with the owner of the three acre tract?

Dan Brush: He has discussed it with him a little bit but he hasn't been very receptive.

Commissioner Murphy: Does Mr. Borland understand that he can't get building permits?

Commissioner Dollar: Is it possible that you could do a minor plat of the illegal three acre piece and lot one and then a 20 acre survey then come back later and do a minor plat of the 20 acres?

Thad Yonke: If in 1995 that was not a separate legal lot of record it is going to forever count against it, otherwise you could take a big piece of ground and divide it by minor plat into three lots and never trigger the infrastructure requirements.

Commissioner Murphy: What would staff's recommendation be?

Stan Shawver: I don't know that venturing in to the design is appropriate at this point in time; the Commission has a plat before them, staffs recommendation is for denial because it does not meet the regulations, the applicant has made their presentation.

Commissioner Murphy made and Commissioner Martin seconded a motion to deny the waiver request for Buckman Plat 3.

Carl Freiling – Yes	Michael Morrison – Yes
Gregory Martin – Yes	Brian Dollar – Yes
Paul Prevo – Yes	Michael Poehlman – Yes
Kevin Murphy – Yes	Derin Campbell – Yes

Motion to deny passes unanimously

Commissioner Murphy made and Commissioner Martin seconded a motion to deny Buckman Plat 3.

Carl Freiling – Yes	Michael Morrison – Yes
Gregory Martin – Yes	Brian Dollar – Yes
Paul Prevo – Yes	Michael Poehlman – Yes
Kevin Murphy – Yes	Derin Campbell – Yes

Motion to deny the plat passes unanimously

Commissioner Freiling informed the applicant that if he wished to appeal to the County Commission an appeal form would need to be submitted to Resource Management within three working days.

IX. Old Business

1. Update on County Commission Action.

Stan Shawver updated the Commission as follows:

The rezoning and review plan for Big Sky Investments were approved as recommended.

X. New Business

None

XI. Adjourn

Being no further business the meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Secretary
Michael Morrison

Minutes approved on this 20th day of June, 2013