

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, October 19, 2017

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
Eric Kurzejeski, Secretary	Missouri Township
Gregory Martin	Katy Township
Loyd Wilson	Columbia Township
Bill Lloyd	Three Creeks Township
Jeff McCann	County Engineer

b. Members Absent:

Paul Prevo, Vice-Chairperson	Rocky Fork Township
Carl Freiling	Cedar Township
Michael Poehlman	Rock Bridge Township
Rhonda Proctor	Perche Township
Vacant Seat	Bourbon Township

c. Staff Present:

Stan Shawver, Director	Uriah Mach, Planner
Bill Florea, Senior Planner	Paula Evans, Staff

III. Approval of Minutes:

Minutes from the September 21, 2017 meeting were approved by acclamation.

IV. Chairperson Statement

Chairperson Harris 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 two conditional use permits, one rezoning request and one 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, October 31st. 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, October 31st will begin at 7:00 p.m. and will convene in this same room.

V. Conditional Use Permits

1. Request by Mary Coats for an animal boarding facility on 36.82 acres located at 10500 S Rte N, Columbia.

Planner, Uriah Mach gave the following staff report:

The subject property is located on State Highway N, approximately 5 miles south of Columbia, near Sapp. The subject property is approximately 36 acres in size and split zoned A-2(Agriculture) & R-S(Residential Single-Family). The R-S portion is approximately 11 acres in size. The property has A-2 zoning to the north, south, and east, with R-S to the west. The R-S portion was rezoned to A-2 on the August 29, 2017 County Commission agenda. The surrounding property is all original 1973 zoning. There is a vacant house on this property, along with several accessory structures.

The applicant is seeking a conditional use permit to operate a small animal boarding/day care facility for small pets (dogs and cats). The applicant seeks to provide care for 5-10 animals on a regular basis, with a maximum of 20 pets for peak vacation/travel periods. The applicant will be constructing a new building to support this use.

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.

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

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

Animal boarding facilities tend to generate additional traffic and noise due to the nature of the use. The applicant has indicated that staff will be doing pick-up/drop-off travel, rather than having the customers bring their animals to the facility, limiting the additional traffic impact. Noise may be mitigated by the large size of the property on which the facility is located, smaller number of animals, proximity to State Route N road noise, and the intention to make use of substantial sound insulation on the proposed building for this use.

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

The proposal makes an effort to minimize its impact on the surrounding property. While there may be some increase in traffic and noise, this area is rural residential in nature, and will likely not notice any substantial impacts to property values.

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

The subject property has access to utilities via Consolidated Public Water Service District #1 for water, Boone Electric for electrical service, and access to State Route N, a publicly-dedicated/publicly-maintained right of way.

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

The adjacent properties have R-S and A-2 zoning. This is original 1973 zoning. Development has occurred at a level consistent with the A-2 zoning, due to the availability of utility and roadway infrastructure. The establishment of this conditional use permit will not impede the normal and orderly development of surrounding property for uses permitted in the zoning district.

(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.

Access will be available to State Route N, a public right-of-way. The Missouri Department of Transportation will be the permitting agency for points of access.

(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.

Zoning Analysis: The proposed conditional use is not an unreasonable one. With the identified intention of building a structure to support this use and the more ‘concierge’-style of this animal boarding facility, some of the typical problems with such uses can be avoided. Namely, the increased traffic for client drop-off/pick-up and the problems of adapting an existing structure to meet commercial standards are avoided. At the identified scale of 5-10 animals, surging to 20 during peak seasons, this conditional use is a reasonable request.

Staff recommends approval of the conditional use permit with the following conditions:

1. That development of this site be done in compliance with the requirements of the Boone County Resource Management & the Boone County Fire Protection District.
2. That the on-site wastewater system proposal be found satisfactory to the director of Boone County Resource Management and the Columbia/Boone County Health Department.

Present representing the request:

Mary Coats, 1412 Kinloch Ct, Columbia
Joseph Coats, 4500 Shoram Ct, Columbia

Mary Coats: The farm has been in the family for almost 100 years, we’ve had many family gatherings there. Our goal is to bring the farm back to life. We bought the farm about nine years ago and one of the ways we think we can do that is to build a small boarding and daycare facility for dogs and cats, we won’t be doing any exotic animals at all. Last year we launched Lucky Dog Paws which is an in-home pet care service where we go to the clients home and take care of their pets in the home. We also offer a small list of concierge services such as bringing in the mail and watering plants. That was phase 1 of the plan directed to people who prefer not to board their pets or their pets don’t do well in a boarding facility. Due to the success of this service we are now ready to move in to phase 2 which is to continue to offer the in home care and in addition build the small boarding and daycare facility. The facility will be meant to accommodate customers who plan to be gone for an extended period of time and want to board their pet or prefer to have their pet socialized on a daily basis. This will be a small facility to accommodate 5 to 10 pets on a daily basis and 20 at any peak period. We plan to offer this service to a very small, select group of customers which will allow us to provide a premier boarding and daycare service personalized for each customer and assuring our customers that each pet can receive individualized attention on a daily basis. Part of the service to be offered will be delivery and pick up of the pets, our purpose in keeping the facility

small is to focus more on quality rather than quantity. The facility will have minimal view of the road frontage and will be a small, quaint barn style that will blend in with the surrounding community. Loading and unloading will take place indoors and animals will be leashed while being transported. Although some noise is to be expected the facility will be fully insulated with sound dampening materials throughout the play and exercise area which should minimize the level of noise at any given time plus a supervisor will be on-site at all times. We don't envision any substantial increase in traffic, there may be an occasional drop off but our primary goal is to offer an exclusive service to pickup and deliver. Waste will be contained and disposal will be provided by a professional waste management company where waste will be taken off-site. The zoning commission requires that all property owners within 1000 feet of my property line be informed of this request. I have notified all property owners with a personal letter to each of them and also informed them that they would be receiving a formal letter from Resource Management. We have had no response back from the neighbors. I would like to thank Uriah Mach who has been very helpful in helping us work through this whole process, he has been wonderful in helping guide us through all the steps.

Chairperson Harris: How big is the proposed structure?

Joe Coats: 30 by 40.

Chairperson Harris: Where will it be placed?

Joe Coats: To the north of the existing driveway.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Commissioner Wilson made and Commissioner Martin seconded a motion to approve the request by Mary Coats for an animal boarding facility on 36.82 acres located at 10500 S Rte N, Columbia with the following conditions:

1. That development of this site be done in compliance with the requirements of the Boone County Resource Management & the Boone County Fire Protection District.
2. That the on-site wastewater system proposal be found satisfactory to the director of Boone County Resource Management and the Columbia/Boone County Health Department.

Boyd Harris – Yes

Eric Kurzejeski – Yes

Greg Martin – Yes

Loyd Wilson – Yes

Bill Lloyd - Yes

Jeff McCann – Yes

Motion to approve the request passes unanimously.

Chairperson Harris informed the applicant that this request would go before the County Commission on October 31, 2017 and the applicant needs to be present at the hearing.

2. Request by Ri-Mor Topsoil LLC for a permit for topsoil management, harvesting, conditioning and stockpiling on 52.5 acres, more or less, located at 5353 W Cunningham Dr., Columbia.

Planner, Uriah Mach gave the following staff report:

This site is located west of Columbia off of the east end of Cunningham Drive, west of Perche Creek. The property is zoned A-2, which is the original zoning. This property received a conditional use permit for Topsoil Excavation and Export on November 1, 2016 under Commission order 500-2016, with a condition requiring re-application in one year. Adjacent land to the east, under the same ownership, has an approved Review Plan for and tentative rezoning to ML-P and a Conditional Use Permit for Topsoil Management, Conditioning, Harvesting and Stockpiling. A Final Plan has not been approved for the ML-P. The adjacent land not owned by the developer is zoned as follows:

- North A-2
- East A-1
- South A-2
- West A-2

The 52.5-acre site is within the 100-year floodplain of Perche Creek. The site is mostly level and bordered by agricultural/floodplain land and bluffs to the west and Perche Creek to the east. The character of the area is described as agricultural with low density residential on the bluffs to the west and east. A rezoning of 106.54 acres to A-1 and 20.75 acres to ML-P with a Review Plan was approved in March 2016 on land across Perche Creek to the east. The master plan designates this site as being suitable for residential land uses.

The request is to extend a previously-approved conditional use permit allowing removal, conditioning and export of topsoil. This use has been ongoing at this location for several years. Topsoil will be removed from a portion of the site each year and stockpiled for sale. The operator may utilize equipment such as agricultural tractors, scrapers, bull dozers, loaders, dump trucks and a topsoil screener. Agricultural operations will continue on the site, and will not be subject to the limitations of a conditional use permit (if granted). Truck traffic leaving the site will enter Cunningham Drive at the southern end of the property, then proceed west to the intersection with US 40 across from the Midway Truck Stop. Both roads used to access the site are maintained by Missouri Department of Transportation (MoDoT). Trucks owned and operated by Ri-Mor and 4 or 5 other companies currently haul from the site.

Potential externalities that could result from the use include noise from equipment and traffic and mud/debris on the road caused by trucks hauling soil from the site. With proper conditioning and operations those impacts can be minimized.

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

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

Externalities such as noise, dust and exhaust fumes should not impact the public due to the isolated nature of the project site. Conditions of approval requiring dust control on the access road should adequately address the possibility of dust related impacts. Noise will be mitigated by the elevation difference between the project site and nearby residential areas and limited hours of operation.

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

Activities in the area that are already permitted include agricultural and residential uses. Much of the project activity will be similar in nature to the agricultural uses that have been occurring on the property for several decades. For example, topsoil removal utilizes mechanical scrapers which will sound like a farm tractor from a distance. The noise will occur over a longer period of time however, because the topsoil removal occurs between harvest and planting.

The limited hours of operation will confine the likely impacts to hours when most homeowners are at work or school. However, topography and conditions of approval will provide additional mitigation of impacts. Previous conditional use permits of this type have been approved with limited hours of operation on the weekend beyond what is proposed on this request. Due to the pre-existing activity and lack of complaints about that activity, broader conditions have been proposed.

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

Due to the limited nature of the potential offsite impacts and the proposed conditions of approval it is unlikely that the use will result in diminished or impaired property values in the area.

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

The proposed use does not require any public utilities. The proposed use will utilize W Cunningham Drive and US 40 for access. Both roads are maintained by the State and should be able to sustain the truck traffic generated from this use.

(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.

Property to the east has an approved Conditional Use Permit for the same use that was granted in June 2016 after being rezoned to A-1 in January 2016. A portion of the same property has an approved ML-P Review Plan.

Property that is adjacent to the north and west is in the Perche Creek Floodplain and in agricultural use.

The closest residential areas are located approximately equidistant to the east and west. Both areas are separated from the site by distance and elevation.

This should provide adequate screening of the topsoil operation from nearby residential uses and any undeveloped properties.

(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 applicant anticipates approximately 20 to 30 truck trips per day. Averaging 30 trips over the 12 hour per day operating window yields an hourly traffic count of 2.5 trucks per hour. This will not result in traffic congestion on area roads.

(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.

Conditions of approval address the need to obtain a Land Disturbance permit and comply with the Stream Buffer Regulations. All other applicable regulations are likewise enforceable.

Staff notified 23 property owners about this request.

Zoning Analysis: There have been no complaints made to Boone County Resource Management regarding the activities on this property since the initial approval of this conditional use permit.

Staff recommends approval subject to the following conditions:

1. Hours of operation shall be limited to
 - Monday through Saturday 7 AM to 7 PM
 - No operation Sunday
 - No operation on New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day
2. A land disturbance permit shall be acquired prior to any earth moving on the site. The permit shall specifically identify the portion of the site where topsoil is to be removed on an annual basis.
3. When the topsoil removal site is adjacent to Perche Creek the stream buffer shall be staked so as to prevent removal of soil from within the stream buffer.
4. The operator shall employ the use of management practices to prevent mud, dirt or debris from being deposited on public roads to the satisfaction of the Director of Resource Management.
5. The operator shall maintain the access road in a dust free condition to the satisfaction of the Director of Resource Management.

Present representing the request:

Jay Gebhardt, A Civil Group, 3401 W Broadway Business Park, Ste 105, Columbia
Mel Smarr, 4949 I-70 Drive NW, Columbia

Jay Gebhardt read the following statement:

The Smarr's purchased this property in 2007 and started removing top soil in 2007. They began business as RiMor topsoil in 1997.

Description of Activity:

The County Commission granted this Conditional Use Permit last year and put a one-year expiration on the permit as a test to see what type of problems occur during this one-year period. As your staff has stated, there have been no complaints during the last year. I have also spoken with Mike Schupp, the area engineer for MO Dot and he has not had any complaints filed with him during the last year.

A brief reminder of what activity would allow:

- Topsoil Harvesting consists of harvesting a small layer of soil from the surface of approximately 20 acres of the ground and stockpiling the material. This is typically performed in the spring and fall of the year, before the planting and after the harvest of the crops from the land. The time period for the

harvesting of top soil is approximately 2 weeks during the spring and 2 weeks during the fall. There is typically no harvesting of topsoil except during this time.

- Once enough material to service the demand for the next 6 months is stockpiled, it remains in the stockpile until a customer requests topsoil to be delivered. At that time the employees for RiMor Topsoil load a Truck by placing the material in a screening machine that loosens the material before it is placed in the truck. Then the material is delivered.

In order for a conditional Use permit to be granted it is our job to provide information to you to show that the following 7 items are addressed.

These are:

- (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.
 - This is a broad category but it is our opinion that the harvesting of topsoil and ancillary uses will not be detrimental or endanger the public.
 - Public health is not affected due to the operations primarily occur on private property away from public spaces. Dust, noise and other objections will primarily be contained on the property and will be similar to the noise, dust and other objections that would occur with the agricultural uses permitted on the property. The activity has been occurring since 2007 and no complaints for the Noise, Dust have been logged with Resource management.
 - Public Safety is not affected due to the trucking of the material is on MoDot designed and maintained roadways. The widths of these roadways were designed with adequate width for large trucks to use the roadway with passenger vehicles. The trucking is primarily performed by employees of RiMor Topsoil who are professional drivers with the appropriate licensing and training. Although their vehicles are large they are not detrimental to the public's health, safety or welfare.
 - The amount of loads of material will vary during the year with the spring and fall months being the busiest time. Typically there are two trucks used to make deliveries. In an 8 hour day each truck can make approximately 8 to 10 deliveries depending on the travel distance to the customer. This request will not create the volume of truck traffic that will reduce the safety of the traveling public on the public roadways.
 - RiMor has two permitted sites and with this site would have three sites to harvest top soil. All three sites will be used and this will reduce the traffic to this site considerably as the trips will be spread over all three sites.
 - If the site is not granted a conditional use permit then a viable use for the property besides normal agriculture uses would be for a sod farm with Semi Trucks of Sod being delivered from the site. The semi - trucks used for sod are heavier, longer and larger than the dump trucks used for the top soil deliveries. A sod farm would not require a conditional use permit.
- (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 Harvesting Operation started on this property in 2007 and since that time the business has grown resulting in additional trips from the site each year. Resource Management has not received a complaint prior to our request for a conditional use permit, when the neighbors were notified by mail about the hearing.
 - We accept the staff's condition on the limited hours of operation. We will operate mainly during the working hours which will limit our impact to the neighbors.

- Distance and topography also mitigate any impact this activity would have on the surrounding property.
 - Property in the immediate proximity will not be injured by the addition of the top soiling operation.
- (c) The conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood.
- Nothing about the Top Soil operation will affect the property values of the neighboring properties. Affect to the existing property value of the neighboring properties has already been established by the existing operations that have been performed since 2007 on the property. Nothing about the top soil harvesting will create a situation that would diminish the value of surrounding property.
- (d) All necessary facilities will be available, including, but not limited to, utilities, roads, road access and drainage.
- All of the facilities are currently present on the property for the safe operation for the Topsoil Harvesting
 - Cunningham Road is a 24 foot wide MoDot maintained outer roadway on the north side of I-70.
 - As stated above, the width of Cunningham is wide enough to accommodate dump trucks and passenger vehicles.
 - The truck traffic from the top soil harvesting is a major concern for the neighbor's comments from the past hearings. However, the number of truck current trips on average is very low and even without using an average the worst-case number of trip is spread over the working day is very low.
 - The amount of traffic on Cunningham road is also very low at this time so the number of trucks may seem to be large in comparison with the total trips for the Roadway. This will change with time as the large commercially zoned area to the west will have sewer in the next few years. When this property develops there will be a large increase in traffic.
 - Development of this existing commercial area will apply pressure to build the bridge connecting the outer road north of I-70 across Perche Creek. The point being that the allowed uses zoned to the west of this property will have a much greater effect to the traffic on Cunningham Road than this conditional use permit.
 - As stated above, the business plan is to use all three top soil locations to reduce traffic out of any single one.
- (e) The establishment of a conditional use permit will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the zoning district.
- The topsoil harvesting will not impede the development of the surrounding property. Nothing about the operation will affect the permitted uses in the adjoining zoning districts from being utilized.
 - The properties immediately surrounding the site are all agricultural uses and top soil harvesting does not impact the development of this use.
 - The residential property is separated from our site by 1300 feet in distance and 80 feet in elevation; this should mitigate any effect the top soil harvesting will have on the residential property to the west.
 - The properties further to the West are zoned general commercial and Agriculture. The top soil harvesting will not affect the development of these properties.
- (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 point of access to the property is existing MoDot permitted entrance.
 - As stated above, the traffic generated from this operation will be small and will not create traffic congestion on I-70 Dr NW.
- (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.
- RiMor Topsoil is the only provider of top soil in large quantities and provides a needed service for all Boone County residents. There is a public necessity for this conditional use permit. All permitting requirements of the County and State will be followed. Mel and Charlotte are committed to providing these services to residents of Boone County in a responsible and safe manner with as little impact to the surrounding environment and neighbors as possible.

Commissioner Kurzejeski: The applicants mentioned 8-10 loads per day on a busy day. How many trips are made on a busy day?

Jay Gebhardt: Two trucks.

Commissioner Kurzejeski: What is the capacity of the trucks?

Mel Smarr: 5-15 yards.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Commissioner Wilson made and Commissioner Martin seconded a motion to **approve** the request by Ri-Mor Topsoil LLC for a permit for topsoil management, harvesting, conditioning and stockpiling on 52.5 acres, more or less, located at 5353 W Cunningham Dr., Columbia **with the following conditions:**

1. Hours of operation shall be limited to
 - Monday through Saturday 7 AM to 7 PM
 - No operation Sunday
 - No operation on New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day
2. A land disturbance permit shall be acquired prior to any earth moving on the site. The permit shall specifically identify the portion of the site where topsoil is to be removed on an annual basis.
3. When the topsoil removal site is adjacent to Perche Creek the stream buffer shall be staked so as to prevent removal of soil from within the stream buffer.
4. The operator shall employ the use of management practices to prevent mud, dirt or debris from being deposited on public roads to the satisfaction of the Director of Resource
5. The operator shall maintain the access road in a dust free condition to the satisfaction of the Director of Resource Management.

Boyd Harris – Yes
Greg Martin – Yes
Bill Lloyd - Yes

Eric Kurzejeski – Yes
Loyd Wilson – Yes
Jeff McCann – Yes

Motion to approve the request passes unanimously.

Chairperson Harris informed the applicant that this request would go before the County Commission on October 31, 2017 and the applicant needs to be present at the hearing.

VI. Rezoning

1. Request by Michael Kent Gilbane to revise a previously approved Review Plan for Gilbane Rebuilders on 2.5 acres located at 10371 E I-70 Dr NE, Columbia.

Planner, Uriah Mach gave the following staff report:

The subject property is located on I-70 Drive Northeast, approximately 1 ½ miles to the east of the intersection of State Route Z and Interstate 70. The property is located inside the Columbia school district and the Boone County Fire Protection District. The Master Plan describes this area as being suitable for residential land use. The property is 2.7 acres in size and zoned M-LP (Planned Light Industrial). On the property, there is an existing commercial building and a large fenced area. The property has R-M (Residential Moderate Density) to the north, east, and west, with A-2(Agriculture) zoning to the south across Interstate 70.

The Planning and Zoning Commission recommended denial of the original request in February 2000. The applicant appealed the request to the County Commission who approved the rezoning. The Commission approval included several conditions imposed to aid in making the use compatible with the surrounding neighborhood and as such, limiting the intensity of the use. The rezoning, approved by the County Commission on Commission Order 64-2000, dated February 29, 2000, has the following conditions:

1. That all stormwater is retained on the property.
2. That an 8' privacy fence where appropriate to protect the residential area.
3. That there will be no guard dog on the premises.
4. That there will be no more than 15 cars that are not completed outside the building at any time.
5. That the Planning & Zoning Staff would work with the applicant for appropriate landscaping on the property.

The review plan, approved by the County Commission on Commission Order 178-2000, dated May 1, 2000, with the following conditions:

1. That all stormwater is retained on the property.
2. That an 8' privacy fence where appropriate to protect the residential area.
3. That there will be no guard dog on the premises.
4. That there will be no more than 15 cars that are completed outside the building at any time.
5. That the Planning & Zoning Staff would work with the applicant for appropriate landscaping on the property.

The applicant is requesting a revision to the approved M-LP (Planned Light Industrial) Final Plan on this property. The revisions contained in the proposal include:

- Number and Type of Display Vehicles: The applicant wishes to expand the number of display cars from 15 to 30 and to include four recreational vehicles (RVs) as a type of display vehicle bringing the total number to 34.

- **Display Surface:** The original plan required a chip seal surface. The applicant proposes to relax that standard to gravel.
- **Wastewater:** The original approval was based on oversight of the wastewater system by the Department of Natural Resources. A note on the proposed plan indicates that the DNR permit was not renewed based on no reportable discharge. Oversight of the wastewater system by a governmental entity is mandatory. The applicant has not addressed this issue.
- **Based on language in the proposed Landscaping Plan** it is difficult to determine whether the applicant intends to comply with the original condition regarding vegetative screening.

The Boone County Master Plan identifies this area as being suitable for residential land uses. The Boone County Master Plan designates a sufficiency of resources test for the evaluation 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. The sufficiency of resources test provides a “gatekeeping” function. Failure to pass the test should result in denial of a request. Success in passing the test should result in further analysis.

Utilities: The subject property is located in Public Water Service District #9, the Boone Electric Cooperative service area, and the Boone County Fire Protection District.

Transportation: The property has direct access on to I-70 Drive Northeast, a publicly-dedicated, publicly-maintained right of way.

Public Safety: The property is located in the Boone County Fire Protection District, with the station at Lake of the Woods being closest for service.

Zoning Analysis: The full build-out of this proposal more than doubles the number of display vehicles previously approved on this property. Since its approval in 2000, this property has been a steady source of zoning violation complaints and requests for compliance by the neighboring property owners. The most recent complaint was received in April of 2014. Code enforcement officers contacted the owner in response to this complaint about the violations and failure to abide by the conditions. The property owner took limited corrective action but failed to work out a compliance schedule to bring the property into full compliance. The primary concern was the number of cars and the presence of RV’s, which were not permitted under the commission orders and were the basis for the complaints. County staff was compelled to enlist the services of the County Counselor’s office to enforce compliance with the conditions set by Commission Orders 64-2000 & 178-2000 in regard to status of the fence, and numbers and types of vehicles on the property. The case was submitted to the County Counsel’s office in July of 2014, with compliance not reached until July 18, 2017.

Lack of Compliance with the approved Final Plan:

- The owner has yet to meet the prior condition requiring vegetative screening to the east. Seventeen years of growth of vegetative screening would have mitigated the impact of the use on neighboring property owners and may have limited or eliminated the complaints and requests for compliance by neighbors.
- The owner has yet to meet the prior requirement for a dust-free parking and display surface as shown on the May 2000 Final Plan. Since the applicant is seeking a more intense use of the property relaxation of this standard would be inappropriate. The owner has not submitted any information justifying the relaxation of this standard.
- The existing display spaces and proposed display and parking spaces do not comply with the current 25’ perimeter setback requirement. All display and parking spaces must be on a chip seal surface. Compliance with this standard is straightforward as existing spaces will need to meet this standard if this plan is approved.

- The existing wastewater system has yet to receive approval from the Columbia/Boone County Health Department. While the applicant believes that the level of service is insufficient to cross any thresholds, the health department does not have sufficient information to confirm that the required level of service for on-site wastewater is present.

Failure to Comply with Review Plan Standards: The review plan fails to comply with several standards as prescribed by the Boone County Zoning Regulations listed as follows:

- Uses are shown encroaching into the required 25-foot perimeter setback as required by Section 6.9.1
- A list of Allowed Uses was not provided as required by Section 6.1.2 and 6.4.1
- Required parking spaces are not delineated on the plan as required by Section 6.4.6
- The required landscaping plan is inaccurate and does not address the need to screen adjacent properties to the east and west as required by Section 6.4.3
- Does not show existing zoning districts within 200-feet of the property (Section 6.4.6)
- Does not show the location size and use of existing structures within 200-feet of the property (Section 6.4.6)

Approval of the request should be denied for the following reasons:

Approval of this request would result in an inappropriate increase in intensity of the use and relaxation of the conditions under which the business is required to operate. The purpose of conditions placed on a planned rezoning request is to make uses that are not necessarily in character with the existing surrounding zoning more compatible. When those conditions are not met, the property owner demonstrates a lack of interest in establishing compatibility with surrounding properties. The applicant has developed a track record of consistent non-compliance with the current conditions. Non-compliance with the conditions has consistently generated complaints from neighboring property owners and has required intervention by the County Counselor to compel compliance. The current final plan and conditions are the absolute minimum necessary to maintain the business at this location. Expansion of the use is unwarranted at this site.

Boone County Zoning Regulations Section 6.2.9 states that the Commission shall review the proposed development for conformity with the county Master Plan, Major Thoroughfare Plan, subdivision and zoning regulations, the point rating system and other land planning principles. As detailed previously in this report, the proposed review plan does not conform with Sections 6.1.2, 6.4.1, 6.4.3, three elements of 6.4.6 and Section 6.9.1.

Based on this information, staff recommends denial of the rezoning and review plan.

Staff notified 26 property owners about this request.

Present representing the request:

Michael Kent Gilbane, 10371 I-70 Drive NE, Columbia

Kent Gilbane: We originally got a conditional use permit in 2000 as staff commented. In 17 years we have grown substantially in the location we are at. As far as certain issues and setbacks, the original setback on the original plan was 10 feet. My setback is no different than any other business that is in the area including Camping World which is 10 feet, Missouri Auto Auction on Rangeline is also 10 feet, in some areas it is less than 10 feet. We approached County staff in 2014 to try to resolve this issue and they refused to hold a hearing or have us do anything to move this process forward. Part of the issue is the wording in the 2000 permit, it was rather ambiguous in respects to vehicles that could be put out front and how many, the language in regard to vehicles or cars. We did start putting several RV's out there and staff brought up the issue that the original wording was "cars" not "RV's" and that RV's were licensed different

than cars therefore we couldn't have them on the property. We had several trucks out there too and they are licensed differently than autos so I don't know where staff was coming from. Staff came to the site and did a final inspection when we got the permit in 2001 and made no comment about being out of compliance or not having proper shrubbery on the east side and that is the only side that the original plan showed. This is actually a denser shrubbery than the original plan showed in 2000. The property on the east side of us cut their grass for the first time this year, trash and debris is out there, I don't know if the shrubbery is to shield them or us. There are no structures on the east side of us and I don't believe there are structures within 200 feet of us on the west side. Staff has complained about us not complying however we have tried to make an effort to come forth and try to rectify this situation and I feel like staff has sandbagged us on this; they have not worked with us. We've had issues in the past and tried to work some of them out unquestionably. There are some issues we don't agree with staff on. The lagoon system was originally permitted by DNR in 2000 and we had to send in discharge every quarter. After five years no discharge was sent in and DNR dropped us because it was a no-flow system. We use anywhere from 300-400 gallons of water per month, the system doesn't ever need to run from one cell to the other; this is like cookie-cutter where one thing fits everyone and it really doesn't; I have one employee and myself. We are here to try to get something worked out so we can expand. We are no different than anyone else; the business has grown. We have been more successful in that location than we anticipated and have outgrown our original use permit. This is what staff wanted us to do, to come in and reapply. Originally they just wanted us to amend the conditional use permit, we sent in the paperwork for that and a week or so later they said we had to go through a full-blown review of the site. All we wanted was a conditional use permit; we have no objections to going in and chip-sealing the areas that are marked. We wanted to leave the parking area where the cars are as gravel, there is no traffic there and some cars sit for days or weeks and they aren't moved or generating any dust. By leaving that surface in gravel it allows the water to penetrate rather than run off. We've given the staff figures on the retention pond, we've never had any complaints from neighbors where water is running on their property. These are just a few areas of technicality that staff is bringing up. This is the path that staff wanted us to take and go through this procedure again so that is why we are here.

Commissioner Martin: How long did it take the applicants to put up the 8 foot privacy fence? I had someone tell me that it was completed not long ago.

Kent Gilbane: It was expanded from the original size.

Commissioner Martin: I was informed that the north side wasn't done until just recently.

Kent Gilbane: No, it has always been up we just expanded it to get more cars back there. Part of the condition that the staff wanted was us to get in to compliance, in other words reducing the number of cars we had in front. The fence has always been up, there were a few times where storms have knocked it down but it was put up shortly after that, but it was expanded. We had 26 or 27 cars sitting out there and the original permit was only for 15. We had to put them somewhere, they are finished cars that were out in front. Staff gave us a deadline to get in compliance and that was part of the condition of coming before the Commission was to get into compliance prior to filing this request. There are about 8 or 9 completed cars sitting in the back we can't display. There is nothing else we can really do. I have an employee, he keeps turning cars out and it is hard to find help and I can't just go in and fire him and tell him to come back when I have sold enough cars off the front so he keeps turning them out. We are a Missouri and Illinois salvage dealer, it is not just going to an auction and buying a car and sticking it on the lot. You purchase the car from the insurance company, tear it down and order parts then you do the frame and body work and paint them. The cars are then inspected by the state highway patrol and that is sometimes 2 or 3 weeks of lag time. After the cars are inspected it takes anywhere from 7 to 10 days to get a title back. Meanwhile those cars are just sitting there. That is part of the problem; we are not just buying a car and sitting it out

there it is a 4 to 6 week process just to produce one car. Sometimes sales slow down and we have no where to put them.

Commissioner Lloyd: It always causes concern when the staff report doesn't support the request.

Kent Gilbane: I am not going to make light of it, our attempt is to try to correct what has gone on in the past. We tried to go to staff in 2014 to rectify this but they basically turned away my architect and engineer at the time. We have made an attempt to try to resolve this issue some years ago, this is not something we just brought to the table now.

Commissioner Lloyd: Do you feel that staff is dealing in bad faith with you?

Kent Gilbane: The staff came back and said you have to be in compliance for five years before we will hear your request for any changes.

Chairperson Harris cautioned Mr. Gilbane to be careful.

Kent Gilbane: That is fine, I have a letter to that affect and the engineer was in the meeting with staff when staff made the statement that you must be in compliance for five years.

Chairperson Harris again cautioned Mr. Gilbane to be careful about anything that sounds like a personal attack against anyone in the audience, staff, or Commission members.

Kent Gilbane: It was a statement that was made.

Chairperson Harris: I don't want to hear anything that sounds like a personal attack.

Kent Gilbane: It is not a personal attack, it was a statement that was made.

Commissioner McCann: Staff has pointed out several items on the current plan that are not complete.

Kent Gilbane: The only two items that I am aware of is the chip seal on the driveway. They also want some trees or shrubs on the east side of the property. Those are the only two things.

Commissioner McCann: It seems like there were other things as well.

Kent Gilbane: Wanting to see some oversight on the lagoon system since DNR has relinquished any control over it.

Commissioner McCann: Do you know why those items weren't completed before?

Kent Gilbane: Staff came out and did the inspection in 2001 and they approved it.

Commissioner McCann: The revised proposal has several items that need to be addressed.

Kent Gilbane: The revised proposal would have those items reincorporated into it.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Commissioner Lloyd: In the interpretation of the satisfaction of the conditions if there is a debate between the Resource Management office and an individual is there an appeal process?

Bill Florea: It could be appealed to the Board of Adjustment.

Commissioner Lloyd: It seems that the beef that the applicant has with staff thinking they are not being fair with you it sounds like there is a remedy and the applicant could pursue it before coming back before the Planning and Zoning Commission. The Commission relies on staff for information and just hearing the staff report a number of violations to the permit that was issued leaves Commissioner's wondering how they can approve the current request with those outstanding issues. If the applicant feels wronged about this he should pursue the appeal process.

Thad Yonke: That would be one avenue. Another issue is that the old plan was done under previous regulations, when you come in with a new plan you have to meet current regulations, it doesn't matter what was on the old plan, the current specifications are required in order to be approved. The areas that are in the setback cannot be in the setback under the new regulations; they can be under the setback if the applicant wants to live under the old conditions, assuming the old conditions are going to be followed which has been part of the issue, or under new conditions you have to comply with new areas which means those 25 foot perimeter setbacks must be enforced. It doesn't matter that the setback was 10 feet, under the new regulations it has to be 25 feet to be in compliance with the current regulations.

Bill Florea: In addition the applicants proposal shows further encroachment into the setback area than what was approved before.

Thad Yonke: When an applicant has conditions on there the expectation is that the applicant is going to comply with those and not ignore the conditions and wait for staff to enforce them. Enforcing compliance with the conditions is done by a compliance schedule or some kind of application or ability to work with staff to try to get the conditions met. That is not what happened in this case.

Commissioner McCann: There are several items that are not being met, correct?

Thad Yonke: Yes.

Commissioner McCann: Why is this plan allowed to come forward if it does not meet the minimum criteria?

Bill Florea: The applicants submitted a plan. The process is that the applicant submits a plan, staff reviews it and sends comments to the surveyor that drew the plan and they resubmit and they are supposed to address those concerns; they failed to do that. It was scheduled for public hearing. Staff doesn't necessarily have the ability to not bring it forward, Mr. Gilbane has asked to have a public hearing but what they submitted is insufficient to be approved that is why staff is recommending denial.

Commissioner McCann: These encroachments into the proposed setbacks requires a variance from the Board of Adjustment before the plan can be approved?

Bill Florea: The only case that I know of in a planned district where that encroachment has been allowed the applicant had obtained a variance from the Board of Adjustment before bringing the plan forward. In that case there was an existing building that was built inadvertently in the setback and the applicants asked for a variance to make it compliant.

Thad Yonke: In this instance, it is the display and parking area which is not a substantial improvement, especially since it is not even the chip seal that is required under the existing plan; it is gravel.

Commissioner McCann: So no structures are in the setback it is just the parking area.

Bill Florea: I think the fence is but we would consider that to be part of the screening requirement that can be in the setback area.

Chairperson Harris: The chip seal surface is part of the conditions of the approval in 2000.

Bill Florea: Yes, and the applicants actually proposed that.

Thad Yonke: When someone makes a planned development they propose things that are on the plan; those become part of the plan that the applicants are expected to follow that as well as the conditions. The applicants had a chip seal surface on their plan. That is a failure to comply with the proposal that the applicants made.

Commissioner Kurzejeski: Was there any feedback from the neighboring property owners?

Uriah Mach: There was an email and two phone calls.

Commissioner Kurzejeski: There have been consistent complaints about this property?

Uriah Mach: Yes.

Kent Gilbane: This is why we wanted to amend the plan. Under the original terms we were allowed a 10 foot setback. If the county comes in and insists a 25 foot setback you can only have one row of cars. We can't move the building, we are hemmed in by where the building is placed. That is probably the biggest issue; that is why we wanted to go in with the existing conditional use permit and amend it and leave the original 10 foot setback as some of the other businesses around us enjoy. If the new setbacks are enacted the additional 15 feet is basically a car length and we wouldn't be able to do anything. Either way it would stay a 10 foot setback under the old condition or we would have to move back 15 feet and only have one row of cars. We are too close to the front and we would have to have room for Boone County Fire to come in. To the east we do have 15 additional parking spaces; staff said during the meeting that those could be utilized.

Thad Yonke: Those are the parking spaces that are required for the future building.

Kent Gilbane: So, we have 15 more spaces for the building that we have and that is at a 10 foot setback too if we use the present conditional use permit.

Chairperson Harris: The applicant has a conditional use permit?

Thad Yonke: No, the applicant never had a conditional use permit.

Chairperson Harris: The plan has to be complied with as it was at the time it was approved, correct?

Thad Yonke: Yes, and if you come in with a new plan it has to meet the current standards.

Chairperson Harris: Then what was on the old plan doesn't matter anymore.

Commissioner Wilson made and Commissioner Loyd seconded a motion to **deny** the request by Michael Kent Gilbane to revise a previously approved Review Plan for Gilbane Rebuilders on 2.5 acres located at 10371 E I-70 Dr NE, Columbia:

Boyd Harris – Yes
Greg Martin – Yes
Bill Lloyd - Yes

Eric Kurzejeski – Yes
Loyd Wilson – Yes
Jeff McCann – Yes

Motion to deny the request passes unanimously.

Chairperson Harris informed the applicant that if he wished to appeal to the County Commission an appeal form would need to be filed with Resource Management within 3 working days.

VII. Planned Developments

None

VIII. Plats

The following items were placed on consent agenda:

1. Abell Acres. S23T50N-R12W. A-R. Traxler Family Farms LLC, owner. Steven R. Proctor, surveyor.

The subject property is located on State Route B, approximately 2/3rd of a mile to the southwest of Hallsville. The property is 14.36 acres in size and currently vacant. This plat divides the subject property into a 3.12 acre lot, a 3.38 acre lot, a 2.94 acre lot, and a 4.92 acre lot. The property is zoned A-R (Agriculture-Residential) has A-R zoning to the west, R-S (Residential Single-Family) zoning to the north, and A-2(Agriculture) zoning to the south and east. This is all original 1973 zoning.

All lots will have direct frontage on to State Route B, a publicly-dedicated, publicly-maintained right of way. Access will be granted at two points, each serving two lots. The applicant has submitted a request to waive the traffic study requirement.

The subject property is located in Public Water Service District #4, Boone Electric Cooperative, and the Boone County Fire Protection District. Fire hydrants will be required.

This proposal was initially designed to be served by either on-site wastewater or central sewer services. The applicant has submitted a cost-benefit analysis. The Health Department and Sewer District have reviewed this analysis. Cedar Gate Subdivision, an R-S (Residential Single-Family) subdivision immediately to the north of this property is served by a Boone County Regional Sewer District facility. That facility is directly adjacent to Lot 1 of this development. At this time, available capacity for this facility is uncertain. All parties involved are currently awaiting further information to make a concrete assessment on how central sewer service shall be provided to this property.

The property scored 76 points on the rating system.

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

The plat will not be submitted for approval until the outstanding issues with sewer service to these lots is resolved.

Present representing the plat:

Don Abell, 5070 E Flamingo Dr., Columbia

Don Abell: I have a contract to purchase the property and the intent is to split the lot in to four lots. There is an existing waste water treatment facility to the north that touches this property; it is run by Boone County Regional Sewer District. If there is capacity we will hook up to the treatment facility but I spoke with Tom Ratermann this afternoon and he couldn't really say whether there is capacity. If we are unable to hook up to the central sewer we will have onsite systems.

Commissioner Harris made and Commissioner Wilson seconded a motion to approve Abell Acres with the requested waivers and the following condition:

- The plat will not be submitted for approval until the outstanding issues with sewer service to these lots is resolved.

Boyd Harris – Yes

Eric Kurzejeski – Yes

Greg Martin – Yes

Loyd Wilson – Yes

Bill Lloyd - Yes

Jeff McCann – Yes

Motion to approve the plat passes unanimously.

IX. Old Business

1. Update on Commission action.

Director, Stan Shawver updated the Commission on the actions taken by the County Commission as follows:

The conditional use permit for Helmka was approved as recommended.

The rezoning request for the Grone property was approved as recommended.

Nursery Heights plats 3 and 4 were approved; all the infrastructure is hooked up and sewer lines are hooked up; Resource Management has issued about 40 building permits for houses

2. Update on Subdivision Regulation comments.

Bill Florea stated that staff is still discussing and editing the comments and hope to be done by the next meeting.

Thad Yonke stated once they are done it will come back to the Commission and stakeholders to discuss.

X. New Business

None.

XI. Adjourn

Being no further business the meeting was adjourned at 8:19 p.m.

Respectfully submitted,

Secretary
Eric Kurzejeski

Minutes approved on this 16th day of November, 2017