

Comments on the Proposed Changes to the Boone County Land Use Regulations,
from Carl Freiling, Boone County Planning and Zoning Commission, 10/8/2012

My comments are directed to the issue of Private Roads. It is not the only issue which warrants discussion, but it is the most major, and the one that my personal experiences lend a considerable perspective to.

CURRENT SITUATION

Private roads have been a problem for both individual citizens and County Government officials on a number of levels.

1. Many citizens apparently purchase properties served by Privately Maintained Roads without having a full understanding of that fact and its ramifications.
2. Many private roads have been poorly designed, constructed and maintained. There is often no provision for snow removal. This affects the owners who use them, but also impedes accessibility by public safety vehicles, service vehicles like trash and propane, mail delivery, etc.
3. There are often no adequate, functional, enforceable road maintenance agreements in place. This has led to the deterioration of the roads and to neighborhood disputes.
4. Private Road Developments can occur in locations where public road construction is needed to allow for the reasonable outward expansion of the Cities in Boone County. Such Private Road Developments can then block public roads, sewers and other services from being properly extended to meet the needs of future growth.
5. There are no regulatory standards or oversight in place to address any of these problems.

CURRENT PROPOSED CHANGES IN THE LAND USE REGULATIONS

The changes presented in the Draft of the Land Use Regulations have the intended, practical effect of essentially eliminating Private Roads. This change includes a limit of 2 lots served and an increase of maximum regulated lot size from 20 acres to 40 acres. This approach will have unintended and unacceptable consequences.

There are hundreds of property owners in Boone County, citizens we are charged to represent and whose interests we are charged to protect, whose properties would, under this regulatory change, become virtually impossible to use for residential development in any practical way. Given that most of the value of Boone County real estate is directly tied to the growth in residential use demand, this would have dramatic and negative impact on the investment value of these properties. As I have said

probably too often before, I just do not believe this is keeping good faith with these citizens. Planning and Zoning was required by State Law to be adopted in conjunction with a Zoning Map, that explicitly held out the promise of development rights in the future. I believe an agreement is in place between County Government and property owners that allows for the Government to exercise certain controls to protect and promote the general public interest while allowing the individual property owners to utilize their holdings in reasonable and profitable ways in accordance with that Zoning Map. Clearly, past practices with respect to Private Road Developments have failed to meet the general public interest. Equally clearly, to de facto remove the option of Private Road Development fails to protect the landowners' interests.

In summary, I see a problem that needs to be addressed, but believe a different solution is needed.

ALTERNATIVE PROPOSALS

1. Private roads need to be regulated. Minimum design and construction standards, based on the normal considerations of terrain, soils, use loads, etc, need to be created and enforced. These standards cannot be so strict as to make their use impractical, but should meet public safety needs.
2. Inspections should be required to assure compliance. Fees for inspections should be in line with those charged for the public inspections of other private construction projects like sewer, building construction, public road construction, etc.
3. Maintenance agreements must be required. Specific language that assures practical and legal means of enforcing the agreements and collecting maintenance fees must be included. I would suggest that consideration be given to requiring the Developer to create a Road Maintenance Reserve Fund, based on a percentage of the road construction costs. This would have funds immediately available, and also set a minimum level of funds to be maintained to meet road maintenance and snow removal requirements. A Road Committee must be established, with the authority to set quarterly maintenance dues to maintain the fund, and the right to file liens to collect those dues. Provision should be made for the percentage of property owners who must agree to make changes in the Maintenance Agreement and which provisions can be changed and which must remain in place. The same is true for any decisions relating to improving the road to a different standard. There are doubtless other matters which could be addressed to insure proper road maintenance.
4. Every practical means of identifying these roads as PRIVATELY MAINTAINED should be required. Signs, identification on plats, even additional disclosure language on surveys and plats, a requirement that a prescribed disclosure be included in every sales contract from the Developer to the first buyer of each lot served by private road, etc. All means should be used to try to make purchasers aware of the circumstance they are agreeing to.

5. There need to be objective standards stated for where these Private Road Developments can be created, or not. Clearly a large lot development adjacent to and/or in the path of urban expansion, where the future extension of necessary public services would be adversely impacted, is not an appropriate Development. But Private Road Development could automatically be allowed if no such public interest was adversely affected. Considerations of existing access to the proposed Development, terrain, surrounding usage, etc. might be used to establish maximum numbers of lots on a case by case basis, using objective criteria, instead of a one size fits all approach.
6. Consideration should be given to the possibility of having more than one Public Road Construction Standard. The present standard is only practical for dense, small lot Developments. Perhaps a standard for these areas where that is just not a possible choice would provide a means of minimizing the use of Private Roads.

SUMMARY

Boone County has remarkable diversity and beauty in topography and landscape. No one Development Standard can begin to meet the variety of circumstances encountered here. Yet we are charged with the task of establishing these development standards, while: 1. Protecting the interests of private property owners who have surrendered some private property rights in return for a promise of protection from the negative impacts of the unregulated development of other properties; and 2. Protecting the interests of the general public against that same haphazard and unregulated development and land use. And to accomplish these tasks we need to address this issue of a lack of standards and oversight for Private Road Developments, without inflicting unintended and unacceptable negative impacts on select property owners, or limiting the right of residents to be able to locate in these Developments, if that is their informed wish.

Thank you for considering my thoughts on the matter.

Carl Freiling