

TERM OF COMMISSION: November Session of the November Adjourned Term

PLACE OF MEETING: Boone County Government Center Commission Chambers

PRESENT WERE: Presiding Commissioner Don Stamper
District I Commissioner Karen M. Miller
District II Commissioner Skip Elkin
Deputy County Clerk Shawna Victor
Planning and Zoning Director Stan Shawver
County Counsel John Patton

The meeting was called to order at 7:03 p.m.

Subject: Purchasing Department

Melinda Bobbitt, Purchasing Department Director, present on behalf of these items.

A. First Reading of Bid 61-13NOV01 (Johnson Building Drain Plan)

Melinda Bobbitt stated the Purchasing and Public Works Departments have reviewed the bids received and recommend awarding the base bid to Aplex, Inc. for having the lowest and best bid meeting the minimum specifications. Total price is \$7,600 to be paid out of organization 6100 account 60400. This is for the Johnson Building parking lot. There has been a problem for the employees that park in this lot because of water build up.

Commissioner Miller stated there is a large spread in the bids.

Commissioner Stamper stated this is a first reading and requested the Deputy County Clerk to schedule this item for a second reading at the next available meeting with an appropriate order for approval.

B. First Reading of Bid 60-19NOV01 (Snow Removal and Ice Removal)

Melinda Bobbitt stated Purchasing and Public Works Departments have reviewed the bids received. The evaluation process took into account the following factors: lowest and best bid, quantity of complete equipment (which includes vehicle, plow, and spreader combination), and acceptable service. With that in mind, the Departments recommend the following award:

- Groups 2, 9, and 10 – Highpoint Enterprises
- Groups 3 and 5 – Greenup Portable Buildings LLC
- Groups 1, 4, 6, 7, Add Alt 7 and 8 – J.D. Kelly Excavating.

This service is to be paid out of organization 2040 account 71100. This is a term and supply contract, hence no need for purchase orders.

Commissioner Miller asked what the groups are. Mrs. Bobbitt stated the groups are divided up by subdivision. Commissioner Miller asked what subdivisions are in each group. Mrs. Bobbitt stated they should be on the bid tabulation.

Commissioner Stamper stated the subdivisions that are not on the bid tabulation. Commissioner Stamper requested the information on the groups be provided at the second reading.

Commissioner Stamper stated this is a first reading and requested the Deputy County Clerk to schedule this for a second reading at the next available meeting with an appropriate order for approval.

Subject: Planning and Zoning

Commissioner Stamper stated that in Planning and Zoning items, the Commission receives a report from the staff of the recommendations of the Planning and Zoning Commission or of the appeal. Mr. Shawver will give a report on each item. Then the Commission will have a discussion. The applicant or an agent of the applicant will be invited forward to offer any additional testimony or support they have concerning their request. A public hearing will be convened after testimony is given. During the public hearing, the Commission will invite persons wishing to testify in favor of or opposition to the given request. Commissioner Stamper requested all comments or questions be directed toward the Commission. If questions do arise, the Commission will see that those issues are discussed under rebuttal or discussion.

Stan Shawver, Director of the Planning and Building Inspection Department, stated that the Boone County Zoning Regulations and the Subdivision Regulations are entered into the record. (note - the file copy is retained in the Planning and Building Inspection Department).

A. Request by Rollie and Patsie Pierceall on behalf of Louie and Judy Yow for a permit for a two-lot mobile home park on 7.35 acres located at 6315 N. Wagon Trail Rd., Columbia

Mr. Shawver stated the 7.35 acres involved in this request are situated at the southwest corner of Wagon Train Road and Highway 63. The property does not have access to Highway 63. The zoning for this tract and the surrounding area is R-M (Moderate Density - Residential). The property is currently vacant, except for a large pond and two boat sheds. This request is for a conditional use permit for a two-lot mobile home park. In addition, the applicants may locate their own home to the property at a future date. County zoning regulations define a mobile home park as a parcel of land, which is

developed for the placement of two or more mobile homes. Each mobile home will have an individual lagoon to serve it. This site is located within the area previously receiving water service from Public Water District No. 1, which has now merged with the City of Columbia. Electric service is provided by Boone Electric Cooperative. It is also located within the Columbia Public School District. The master plan designates this area as being suitable for residential land uses. Staff notified 41 property owners about this request. The proposed use is consistent with the master plan. Staff notes that the applicant has proposed to place 3 dwellings on this tract, which is substantially below the density available under R-M zoning. Staff recommended approval of the request to the Planning and Zoning Commission with the condition that no more than 3 dwellings be permitted on the property, one of which is to be occupied by the property owner.

The Planning and Zoning Commission conducted a hearing on this matter on November 15. There was one person who spoke in favor of the request. Planning and Zoning Commission upheld the staff recommendation and comes forward to the County Commission with a recommendation for approval. This was a unanimous recommendation.

Commissioner Stamper invited the applicant forward to offer any testimony in support of the request.

Louie Yow, 1775 E. Prathersville Rd., stated this was a straightforward request and would be happy to take any questions from the Commission.

Commissioner Stamper opened a public hearing on this issue.

There was no one present wishing to make any statements.

Commissioner Stamper closed the public hearing.

Commissioner Miller moved to approve the request by Rollie and Patsie Pierceall on behalf of Louie and Judy Yow for a permit for a two-lot mobile home park on 7.35 acres located at 6315 N. Wagon Trail Rd., Columbia with the following condition:

- No more than three dwellings be permitted on the property, one of which is to be occupied by the property owner.

Commissioner Elkin seconded the motion.

There was no discussion or public comment.

The motion passed 3-0. **Order 533-2001**

B. Request by Kim and Jonathon Kriekhaus for animal training facility on 26.2

acres, located at 2202 W. Williams Rd., Sturgeon

Mr. Shawver stated this property is located on the south side of Williams Road across from Mertens Quarry in the area of Riggs. The site is approximately 1 mile west of the intersection of Creed Road and Williams Road. The site is about 4 miles south and 4 miles west of the municipal limits of Sturgeon. The site is zoned A-2 (Agriculture) as is all the surrounding property. These are all original 1973 zonings. There is a single-family house, garage, and several sheds currently on this property. The property is served by Public Water District Number 10 and Boone Electric Cooperative. It is located in the Sturgeon School District. The applicant is seeking a permit for a horse boarding and training facility. Incidental to this, the applicant hopes to establish a training facility for riders. The proposal includes providing riding lessons and seasonal riding camp activities as an incidental aspect of the facility. There have been no previous requests submitted on behalf of this property. Staff notified 15 property owners about this request. The master plan designates this area as being suitable for agriculture and rural residential land uses. As a Conditional Use Permit, the proposal must meet the following criteria from the zoning ordinance to be eligible for approval.

1. The establishment, maintenance or operation of a conditional use permit will not be detrimental to or endanger the public health, safety, comfort, or welfare.
2. 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.
3. The conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood.
4. All necessary facilities will be available, including, but not limited to, utilities, roads, road access and drainage.
5. 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.
6. 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.
7. 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.

Staff recommends approval with the recognition that the facility will have to have adequate fire protection and approval from the Fire District before operating and that all

drive and parking areas must be dust free with a minimum of chip seal surface.

The applicants appeared before the Planning and Zoning Commission on November 15. Following a public hearing, the Planning and Zoning Commission made a motion to recommend approval, recognizing the staff conditions. The motion received unanimous support and comes forward with a recommendation for approval.

Commissioner Stamper invited the applicants forward to offer any testimony in support of the request.

Kim and Jonathon Kreickhaus, 2202 W. Williams Rd., Sturgeon, were present on behalf of this item.

Commissioner Elkin asked how many horses were expected to be on the property. He is trying to get an idea about the traffic volume. Mrs. Kreickhaus stated she currently has three horses and anticipates having between 12 to 15 horses. On a weekly basis, she is hoping to have around 30 to 40 students. In the summer there would be a day camp that will have up to eight students and an overnight camp that will have up to eight students.

Commissioner Stamper opened a public hearing on this issue.

There was no one present wishing to make any statements.

Commissioner Stamper closed the public hearing.

Commissioner Elkin moved to approve the request by Kim and Jonathon Kriekhaus for an animal training facility on 26.2 acres, located at 2202 W. Williams Rd., Sturgeon, with the following conditions:

- The facility have adequate fire protection and approval from the Fire District before operating, and
- All drive and parking areas must be dust fee with a minimum of a chip seal surface.

Commissioner Miller seconded the motion.

There was no discussion or public comment.

The motion passed 3-0. **Order 534-2001**

C. Request by Loren Gene Nichols on behalf of Hinton Sewer Company for a permit for a mechanical wastewater treatment plant located at 331 E. Hinton Rd., Columbia (appeal)

Mr. Shawver stated this property is located 5 miles north of Columbia at the intersection

of Hinton Road and Highway 63. The tract is part of a 38-acre parent parcel. The south 270 feet of the parcel indicated on the plot map submitted with the application is zoned C-G. The north 130 feet is zoned A-R. Property to the north and west is A-R. Land to the south is zoned C-G, as is land located on the east side of Highway 63. This request is to install and operate a mechanical wastewater treatment plant that will serve apartments and the convenience store in the area. A wastewater lagoon currently provides wastewater treatment for these facilities. The Missouri office of the Attorney General has signed a settlement agreement with the applicant and others requiring that the existing lagoon be retired from service due to violations of the Missouri Clean water Law. That agreement required that the existing facility be brought into compliance with Missouri Law. The proposed treatment plant will do so.

The original zoning for the south part of this property is C-G. The original zoning for the north 130 feet was REC (Recreation). That zoning was changed at the owner's request in 1978. Staff generally supports the installation of wastewater systems that are designed to reduce or eliminate substandard wastewater discharge points, however, staff has concerns with this proposal. The applicant appears to indicate intent to privately maintain and operate this facility. Staff has concerns in this regard, as the applicant has not demonstrated the ability to properly maintain wastewater facilities, as evidenced by the settlement agreement issued by the Attorney General's Office. Further, the subdivision regulations require that wastewater facilities be operated by a governmental entity authorized to maintain such facilities. The Boone County Regional Sewer District has the ability to operate the proposed facility and insure that it complies with all facets of the Clean Water Law. The Board of Trustees of the Boone County Regional Sewer District has passed a resolution opposing this request, unless the permit can be issued with very strict controls. As a Conditional Use Permit (CUP), the proposal must meet the following criteria from the zoning ordinance to be eligible for approval.

1. The establishment, maintenance or operation of a conditional use permit will not be detrimental to or endanger the public health, safety, comfort, or welfare.
2. 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.
3. The conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood.
4. All necessary facilities will be available, including, but not limited to, utilities, roads, road access and drainage.
5. 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.

6. 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.

7. 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 staff concerns are related to criteria 1, 2, and 5. If the proposed system is not properly constructed, maintained, and operated, the facility would be a detriment to the public health, safety, comfort, or general welfare, which is criteria number 1. Without proper operation the facility proposed will likely be injurious to the use and enjoyment of other property in the immediate vicinity and can be expected to impede the normal and orderly development of the area, which are criteria 2 and 5. It is incumbent upon the applicant to show to the satisfaction of the Commission that the proposed CUP will meet all seven criteria. As indicated above the applicant has not demonstrated the ability to properly maintain wastewater facilities, as evidenced by the settlement agreement issued by the Attorney General's Office in 1998. Furthermore, it is our understanding that provisions of the settlement agreement have not been honored by the applicant. There needs to be a solution to the sewage problems of the area. However, if the proposed CUP is to be that solution, the CUP must have the conditions of the staff recommendations to give assurance that the issuance of the CUP will meet CUP criteria. Obviously, the sewage problem existed prior to the settlement in 1998, it is now 2001 and the problems have to be remedied so a timely solution of assured quality is needed. The addition of the Hinton Sewer Company to the application does not in and of itself give any assurance that the public health safety and welfare will be maintained. Some of the principals in the Hinton Sewer Company are the same individuals who are responsible for the failing system that endangers the public health safety and welfare currently. The accountability of a private sewer company is no more reliable than the accountability of the individuals operating a private system that is not functioning properly. The enforcement action against a private sewer company with a failing or deficient system would effectively be similar to the exact situation and time frame that has led to a failing system not being brought into compliance for at least 4 years. It would appear that the inclusion of the Hinton Sewer Company is more an effort to limit liability for the operation of the system than it is to assure greater accountability and proper operation of the facility. The State's provisions for private sewer companies function adequately in areas that have no recognized local public authority to operate and maintain collector sewage systems, this is not the case in Boone County. Additionally, a CUP in general without specific conditions otherwise, is not specific to the applicant but rather runs with the land or can be transferred to other parties once issued. So in order to assure the highest possible level of protection of the public health, safety, and welfare and to minimize adverse potential impact to the area and it's continued development, the proposed system needs to be constructed to the specifications of, and operated and maintained by the Boone County Regional Sewer District. Staff notified 38 property owners about this request.

Staff recommends that the permit be approved, with the following 3 conditions as suggested by the Regional Sewer District resolution:

- All gravity sewer collection lines in the Hinton area shall be replaced to the satisfaction of the Missouri Department of Natural Resources and Boone County Regional Sewer District in compliance with applicable regulations and in accordance with the terms and conditions of the settlement agreement between the applicant and Missouri Department of Natural Resources and Attorney General within 120 days of the issuance of a conditional use permit.
- Any mechanical treatment plant installed shall be unused and newly manufactured, constructed with sufficient treatment capacity for the area to be served and meeting or exceeding DNR requirements and standards of the Boone County Regional Sewer District; the plant shall be installed and made operational in accordance with there requirements within 180 days of the issuance of a conditional use permit.
- The applicant shall successfully negotiate and enter into a contract with the Boone County Regional Sewer District to act as continuing authority for the treatment plant and the ongoing operation and maintenance of the plant and collection lines to the plant; such contract shall be entered within 30 days and before any work to replace the collection lines or install the plant commences.

Mr. Shawver stated after a lengthy public hearing on November 15, the Planning and Zoning Commission did not follow staff recommendation. They made a motion to recommend denial of this request. The motion received unanimous support for denial. The applicant did file an appeal. The appeal was filed in a timely fashion.

Commissioner Stamper asked where the location of this proposed plant would be and its relationship to the C-G zoning. Mr. Shawver stated the parcel that is identified is partially in A-R and in C-G. It is located on the north side of Hinton Road.

Commissioner Stamper invited the applicant and other parties involved with this issue forward to offer testimony.

Diana Farr, legal council for Hinton Sewer Company, 1201 W. Broadway, Columbia, Chris Sander, Crockett Engineering, 2608 N. Stadium Blvd., Columbia, and Lloyd Dale Nichols, present on behalf of Gene Nichols, 9000 S. Carey Ln., Columbia, were all present on behalf of this issue.

Ms. Farr stated a conditional use permit is required so that the Hinton Sewer Company may operate a mechanical treatment plant on land where two sewage lagoons are currently located. The replacement of the sewage lagoons would be in compliance with the recommendation from the Missouri Attorney General's Office and the Department of

Natural Resources. The granting of the conditional use permit would not be detrimental to or endanger the public health, safety, comfort, or general welfare. The Hinton Sewer Company is a statutory, non-profit sewer company and is subject to numerous laws and regulations. All safety concerns with regard to operation of the plant by the Hinton Sewer Company will be addressed by the Department of Natural Resources, and if a problem were to arise, by the Missouri Attorney General's Office. The Hinton Sewer Company will not be allowed to operate the plant, unless and until, all applicable permits are received from the State. Even with a Conditional Use Permit, the Hinton Sewer Company will be subject to periodic reviews by the State of Missouri.

The proposed plant is currently in good working order and exceeds the necessary capacity to serve the Company's members. Hinton Sewer Company will utilize a business trained in this field for initial installment and a individual who is trained in this field will be hired to assist with the operation and maintenance of the plant on an on-going basis.

The granting of the permit will not be detrimental to the use and enjoyment of other properties in the area. In fact, it should aid in the use and enjoyment of the neighboring properties, as existing sewage lagoons will be eliminated. Elimination of these existing sewage lagoons and installation of a modern sewage treatment plant should also increase property values in the area and stimulate development and improvement of surrounding properties, who, if they chose, could become members of the Hinton Sewer Company and utilize the services of the company.

At the initial Commission Hearing, Ms. Farr stated she was told the permit could be issued with the conditions that staff recommended. However, this permit would be issued if and only if the Boone County Regional Sewer District was to serve as the continuing authority for the operation of the plant. There is no reasonable basis for this requirement. The Hinton Sewer Company is subject to the same rules and regulations as the Boone County Regional Sewer District. Both entities are overseen by the Department of Natural Resources. There is no law or regulation that provides the Boone County Regional Sewer District with the right to exert authority over the Hinton Sewer Company. A non-profit sewer company does not require a governmental or quasi-governmental continuing authority, but the Boone County Regional Sewer District seems to be having trouble accepting this. They have attempted many times to assert their authority over the Hinton Sewer Company. There is no legitimate health, safety, or general welfare concerns involved with this matter. Hinton Sewer Company will be fully regulated by the state; there will be periodic reviews by the state and the Department of Natural Resources. A permit must be maintained at all times for the plant to be in operation.

Mrs. Farr stated concerns were expressed regarding with past dealings with three of the present Board members of the Hinton Sewer Company, Lloyd Dale Nichols, Loren Gene Nichols, and Fred Nichols. In 1998, the Missouri Attorney General's Office entered into a settlement agreement with these individuals. There was no formal proceeding taken against the Nichols, they voluntarily entered into a settlement agreement to resolve

problems. The Attorney General's Office has taken no formal position on this matter. They have repeatedly stated it is none of their business, this is a matter of local concern and the Attorney General's Office will not take a formal position on the issue. However, they have made it clear that the settlement, as of this time, has been complied with and the Attorney General's Office is recommending to the Department of Natural Resources that a permit be issued as long as all zoning requirements can be taken care of.

Ms. Farr stated if past performance is reviewed in this area, there is one settlement agreement. That is all the staff has presented as evidence by the settlement agreement, which points to one leak in one cell of one lagoon.

Commissioner Stamper cautioned Ms. Farr to limit her testimony only to the support of the applicant's appeal not to belittle another existing body.

Ms. Farr stated the only evidence that she has received to this point as to why the request was denied was that there was one past violation.

Commissioner Stamper stated she was there for a conditional use permit on land. The reason a conditional use permit is needed is that the applicant wants to use the land in a non-conforming way. The testimony needs to be focused on the support of a conditional use permit.

Ms. Farr stated in this case the reason for a conditional use permit for a free standing independent sewer system is the policy of Boone County to replace out-dated sewage lagoons with mechanical treatment plants. This is also the policy and recommendation of the Missouri Attorney General Office and the Department of Natural Resources. To her understanding, the only reason a conditional use permit has not been issued is because of the Boone County Regional Sewer District's position on the matter.

Commissioner Stamper stated that Ms. Farr has yet to convince him that the Commission should authorize the request.

Ms. Farr stated the only concerns expressed were the settlement agreement. The settlement agreement only points to one violation, which was one perceived leak in one cell of one sewage lagoon. The Attorney General's Office believes this issue was adequately addressed in the settlement agreement and believes that is currently in compliance and will be completely resolved if a mechanical treatment plant can be used in replacement of the sewage lagoons. The proposal to close the sewage lagoons has already been approved by the Department of Natural Resources and could be immediately implemented if the conditional use permit were granted. A mechanical treatment plant has many benefits in terms of appearance, safety and health over a sewage lagoon and should help the property in the area develop. As far as health and safety concerns, the only issue that has been brought up is the one incident that was pointed out in the settlement agreement. She would encourage the Commission to look to the best interest of the

community and people in area and those interest would be best served by a mechanical treatment plant.

Ms. Farr believes that it should be addressed why the Boone County Regional Sewer District should be imposed as a continuing authority in this case. A non-profit sewer company is a particular creature of statute. It is relatively new in the state of Missouri. It was designed so that if one complies with the strict requirements to be a statutory non-profit sewer company then you no longer need a continuing authority. In this case, the Hinton Sewer Company, who would be the operator of the plant, would be subject to the same regulations as, for example, the Boone County Regional Sewer District or any other governmental or quasi-governmental entity operating a sewage plant.

Chris Sander of Crockett Engineering stated this site was used as a mobile home park in the past. When it was redeveloped with the current rental property, the sewer was reconstructed at that time. The sewer has manholes and eight-inch PVC pipe. They have received notice from the Attorney General's Office, that a television camera will be used to inspect the inside of the lines. If anything is found that is deficient, they are willing to do repairs beyond the current standards.

Mr. Sander stated the treatment plant is currently being used by a Department of Natural Resources approved facility. It is supposed to be taken off line as soon as some work is completed in the Kingdom City area and be ready to be installed. The plant may cause some added maintenance costs because it is a used plant but is an adequate plant in size. The plant is rated as a 60,000 gallon per day plant. The loading would be 25,000 per day. There is considerably more capacity than what is needed. This will allow for more than minimum treatment of the sewer.

Commissioner Stamper asked what is the age of the plant.

Mr. Sander stated he did not know that information at this time.

Dale Nichols stated this is a used plant that is currently in Kingdom City.

Commissioner Stamper asked how long this plant has been in Kingdom City.

Mr. Nichols stated this is the second plant they have had over there but does not know how long they have had it. The Department of Natural Resources worked with the Hinton Sewer Company to find this plant and this is how it was obtained.

Commissioner Stamper stated it was unlike Mr. Nichols to buy something he did not know the age of or the dependability of.

Mr. Nichols stated it is a concrete and steel plant.

Ms. Farr stated the plant does have to be inspected and reviewed by the Missouri Department of Natural Resources before a permit would be issued for operation of the plant, so any safety concerns in that regard should be adequately addressed.

Commissioner Stamper asked Mr. Shawver if the only reason that the applicants are here this evening is because they need a conditional use permit on which to operate this plant. Mr. Shawver stated that was correct.

Commissioner Stamper asked if the applicants had made a decision to locate this plant on already zoned C-G property, what would have happened. Mr. Shawver stated it still would have required a conditional use permit. A sewage treatment plant or lagoon or a water treatment facility or water tower, anything that is not part of a planned subdivision needs a conditional use permit.

Commissioner Stamper stated while the basis of authority over the plant and its permitting rests with the Department of Natural Resources. They cannot possibly have a plant if they cannot find land in which they cannot place it. Mr. Shawver stated this was correct.

Commissioner Stamper stated the Commission's engagement in this and their standing in this is based upon whether this is an appropriate land use. The Commission has a great deal of latitude in conditional uses under the law. It gives the Commission a lot of authority and standing in this issue. This authority will always be based on what the Commission believes to be best for the entire community. There are a variety of issues Commissioner Stamper has and would like the applicant to respond to.

First, for a county, this sets an interesting and peculiar precedence. The Commission is being asked to accept equipment that is used in nature where typically, the Commission is accepting equipment that is new and can be guaranteed. Commissioner Stamper stated he has been with the Regional Sewer District and voted to take on distressed sewer facilities, that were used in nature, the Sewer District was almost always able to insure and protect the people of Boone County and their Sewer District. It is not completely uncommon that the Sewer District would take used equipment. He asked Mr. Shawver if the Sewer District, in the past, has acquired facilities that were privately operated, came into a state of failure and were signed over to the Sewer District. Mr. Shawver stated this was correct.

Commissioner Stamper stated he needed the applicants to think about the precedent of the Commission authorizing a conditional use permit for a sewer treatment plant that allows the developer to operate used, private equipment. Secondly, he would like the applicant to think about what kind of example is set by authorizing a private sewer district. While there is statutory standing for private sewer district, the Commission is not known for the proliferation of such districts and entities in Boone County. One of the questions that Commissioner Stamper has would be why would the County want to create a private sewer district that the County would have to negotiate with to hook on to other facilities when they can require it to be a public facility.

Commissioner Stamper stated this is a peculiar position for the Commission because he does not believe in eleven years the Commission he has faced this specific layout. Another reason is that it looks like the applicants did not even have to go through all of this. They had an opportunity to do the plans and when construction is completed, sign the facility over to the Sewer District. The Boone County Regional Sewer District would not have to go through the conditional use permitting process.

Commissioner Miller stated this testimony is very different from the conversation that she and Mr. Nichols had yesterday. Commissioner Miller stated that Mr. Nichols had approached her with the fact that they did not want to run a sewer district. They wanted to turn it over to the Boone County Regional Sewer District but they had concerns for the fact that the properties were built out. It was a significant increase in what they would be required to do to fix the third cell that was leaking. Mr. Nichols was interested in approaching the Boone County Regional Sewer District and splitting the revenues to pay off the plant and once it was paid off, it would be dedicated to the Sewer District. Commissioner Miller stated she was confused because the testimony from Ms. Farr is that the Hinton Sewer District wants to run a sewer district for a period.

Ms. Farr stated they are seeking a conditional use permit. Mr. Nichols was trying to work out the terms with the Boone County Regional Sewer District. It was offered through the Missouri Attorney General's Office for Hinton Sewer Company to operate the plant until initial set up costs were recovered.

Commissioner Stamper asked where he would find documentation of this. Ms. Farr stated she did not think there was any documentation. Commissioner Stamper asked how this could be offered as testimony if there was no documentation that the Attorney General authorized the Hinton Sewer Company to operate this plant.

Ms. Farr stated it was offered through the Missouri Attorney General's Office from the Hinton Sewer Company to the Boone County Regional Sewer District. They have had numerous conversations with Deborah Neff of the Attorney General's Office and Tom Ratermann of the Boone County Regional Sewer District. They have had conversations trying to resolve this situation before they applied for the conditional use permit. At this stage, it was a recommendation of the Missouri Attorney General's Office that the position of the applicant of wanting to recover initial costs and the Boone County Regional Sewer District's position were too far apart to continue trying to work out an agreement. The recommendation was, at this point, to move forward to get the zoning. They then put their permit to public notice. One of the items highlighted was that the settlement agreement is still pending with one of the reasons being the applicant has been trying to replace it with a treatment plant. She does not mean to present a different position than what Mr. Nichols did privately with Commissioner Miller. She spoke with Mr. Shawver today offering to work out an agreement. Mr. Shawver indicated there was not time to get that done by this meeting. Something needs to be done and they needed to move forward this evening to try

to obtain the conditional use permit.

Ms. Farr stated having a conditional use permit should not foreclose the possibility of this treatment plant being turned over to the Boone County Regional Sewer District in the future. A non-profit sewer company is different from a few individuals; it is run by a board of directors and it is a perpetual entity where members, directors, residents within the sewer company have the right to vote. They are not opposed to entering into an agreement in the future. However, none of the applicants can afford to give a plant to the Boone County Regional Sewer District.

Commissioner Stamper asked if there was anyone who wished to speak on this matter.

Tom Ratermann, General Manager of the Boone County Regional Sewer District, present on behalf of this item.

Mr. Ratermann stated the Board of Trustees of the Boone County Regional Sewer District opposes the issuance of a conditional use permit to Loren Gene Nichols and Hinton Sewer Company for the construction and operation of a mechanical wastewater treatment plant and has adopted a position statement in resolution to that fact. This position statement and resolution are based upon a history of the Hinton area dated October 17, 2001. Mr. Ratermann stated he believed these documents were already in the public record.

Mr. Ratermann stated the Sewer District recommends denial of this conditional use permit because the applicants are not qualified to construct and operate a wastewater treatment plant. The applicants do not have the staff and equipment to operate and maintain a wastewater treatment collection system. In their application, Mr. Nichols and the Hinton Sewer Company acknowledged that they would have to hire a trained professional to assist with the operation and maintenance of the plant. In their presentation to the Planning and Zoning Commission, the applicant stated they were going to hire Boone Water Services LLC to operate the plant. Mr. Ratermann stated he has a letter from Boone Water Services to Mr. Dale Nichols dated November 25, 2001, stating that Boone Water Services will not be submitting a proposal to the applicants. Boone Water Services is a company that is run by two Sewer District employees outside of their normal working hours. Mr. Ratermann submitted the letter from Boone Water Services LLC to Mr. Nichols into the public record.

Commissioner Stamper asked Mr. Ratermann to focus his testimony on land use and the request for a conditional use permit.

Mr. Ratermann stated he would focus on the fact that the applicant does not have a good track record of operating a wastewater treatment facility in compliance with the Missouri Clean Water Law and because of that, it poses a threat to the health and safety of the general public. The Sewer District is qualified to operate such a facility. Unless the applicants produce new evidence to the contrary, they have not proved that they have hired

a qualified operator with a good track record. Thus, the applicants cannot assure the County Commission that they will fulfill the promise that the plant will be operated in compliance with the rules and regulations established by the law. Furthermore, the applicants have a history of not operating a wastewater treatment lagoon in compliance with the Missouri Clean Water Law. The settlement agreement the Nichols' signed with Attorney General of Missouri is proof of their inability to operate a wastewater treatment plant in compliance with the law. In the settlement agreement, the Nichols' acknowledged violation of Clean Water rules. They seem to want to dispute this fact and ignore the terms of the agreement. They signed an agreement acknowledging this violation. Additionally, the Nichols' have not satisfied the terms of the settlement agreement. The letters from Deborah Neff prove this point.

In contrast, the Sewer District is qualified to construct and operate mechanical wastewater treatment plants. The Sewer District has managed the design and construction of several mechanical wastewater treatment plants. In terms of operation and maintenance, the Sewer District currently has on its staff four operators who have "A" licenses from the Missouri Department of Natural Resources. The district always has two of its staff on call to respond to emergencies and its telephones are answered after hours by an answering service that forwards emergency calls to the on-call staff.

Mr. Ratermann clarified the discussions that took place in the Planning and Zoning meeting on November 15, 2001. The motive of the Sewer District is not the revenue but the concern that neither the Nichols or the newly formed Hinton Sewer Company has a track record of complying with the Clean Water Law. If a conditional use permit is not granted, the applicants are in no worse condition than they were three years ago when they were expected to comply with the settlement agreement. While a mechanical plant may meet more stringent discharge limits than a lagoon, a plant that is not properly operated and maintained is more likely to experience an upset and discharge sludge to a receiving stream. There have been no meaningful discussions between the Sewer District and the applicants for an operation and maintenance agreement. The applicants have never proposed any terms and conditions, in writing, to the Sewer District or the Board of Trustees to consider. Any feedback from the District has been drown in current policy and that real estate developers install infrastructure and recover their costs from the sale of their lots or rent of the lots. It would set a dangerous precedent for the district to start compensating developers for the cost of infrastructure. In the past, the district did purchase infrastructure in order to acquire a critical mass of customers to make a sewer utility with long-range planning possible. Since that time, the district has explicitly not compensated developers for the cost of wastewater infrastructure. At the Planning and Zoning Commission meeting, the applicants stated the rates set by the Hinton Sewer Company are regulated. To Mr. Ratermann's knowledge, the rates set by the Hinton Sewer Company are not regulated. Typically, the Public Service Commission regulates the rates of sewer companies and issues certificates of public convenience and necessity to sewer companies. For some reason, the statutes exempt non-profit sewer companies from this requirement. The current rate of the Sewer District is based on 5,000 gallons of water

used per month for a gravity sewer system or \$17.75 per month. The District's proposed rate for 2001space is \$18.45 per month. Like rural cooperatives and municipal utilities, its board regulates the sewer district's rate structure. Due to these facts and the information that was provided to the Commission earlier, the Board of Trustees of the Boone County Regional Sewer District supports the denial of the conditional use permit.

Mr. Shawver entered into the public record a letter from Lowell Patterson, City of Columbia Public Works Department Director, in opposition to the request, a position statement of the Boone County Regional Sewer District, a copy of the settlement agreement, a letter from Deborah Neff dated October 18, 2001, to Mr. Ratermann, and another letter dated October 18, 2001 to Diana Farr.

Ms. Farr submitted into the public record three violation reports for the Boone County Regional Sewer District from the Department of Natural Resources, a follow-up letter from the Missouri Attorney General's Office dated October 19, 2001 to Mr. Ratermann, and e-mail letter from Deborah Neff to Ms. Farr dated November 19, 2001.

Ms. Farr stated in regards to this being a used plant, the guidelines are for safety, health, general welfare at a used plant can satisfy the requirements in the same way a new plant can. A condition of the conditional use permit could be that there is an inspection by the Department of Natural Resources with regard to the safety of the plant. As far as authorizing a private sewer district, a non-profit sewer company is authorized by statute. In this case, it is a matter of land use to obtain a conditional use permit. It is better for the community to have the treatment plant instead of the sewage lagoons. If a conditional use permit is not granted, the Hinton Sewer Company will keep the two sewage lagoons and the third cell would be repaired. It would be better to close these lagoons for the community, in compliance with the Department of Natural Resources.

Commissioner Stamper asked Ms. Farr if the applicant would not honor the settlement with the Attorney General. Ms. Farr stated the only thing that is required by the settlement is to repair the third cell. They are not requiring the lagoons be closed but would prefer they be closed. The settlement agreement with the Attorney General is a voluntary settlement agreement. The settlement agreement has been changed many times over the years.

The Attorney General's Office would prefer these lagoons be closed but Ms. Farr stated the sewage lagoons were grandfathered in and this is why they are on that land without a conditional use permit. The applicants have tried to avoid this situation. This is an improvement situation for landowners in the area not a development situation in which money is the object. Ms. Farr believes all steps that could be taken have been to avoid this. There have been many negotiations with the Boone County Regional Sewer District before and after the State's involvement. As far as the seven requirements for the conditional use permit, Ms. Farr believes these have been satisfied except the settlement agreement for the leak. Ms. Farr stated Mr. Ratermann stated at the Planning and Zoning

Commission meeting that there was another entity operating aside from the Boone County Regional Sewer District in Boone County.

Commissioner Stamper asked Ms. Farr what this entity was. Ms. Farr stated she did not know.

Mr. Ratermann stated what Ms. Farr is referring to is a question by Commissioner Morgan of the Planning and Zoning Commission about the other entity. Mr. Ratermann said it was Alliance Water Resources that had, in the past, operated wastewater treatment facilities in Boone County. At one time, Alliance Water Resources operated the Village of Harrisburg and the City of Rocheport's wastewater facilities. Since that time, Alliance has pulled out of Boone County because, Mr. Ratermann believes, because they could not profit operating those facilities. The Sewer District now operates those two systems.

Commissioner Stamper asked if these were always municipally held facilities. Mr. Ratermann stated yes and he believes they were grant funded. The Harrisburg system was built by federal grants and possibly Rocheport also.

Ms. Farr stated she believes the Hinton Sewer Company was the first company to be formed in the State of Missouri pursuant to Chapter 393.

Commissioner Stamper asked what is the approximate cost of this solution. Mr. Nichols stated three bids were taken from three different companies. \$125,000 to \$150,000 is the approximate cost, which includes running lines under the road from the road district. The reason for the cost spread is that they are unsure of what it will cost to bring the plant to DNR standards after it is in place.

Commissioner Stamper asked Mr. Nichols of the given estimated cost, how much of that would be to purchase the plant. Mr. Nichols stated the plant is approximately \$10,000 for the plant that is in the ground.

Commissioner Stamper asked what the estimated cost would be to fix the existing lagoons. Mr. Nichols stated \$10,000 was a projected estimate. Commissioner Stamper assumed that this, fixing the existing lagoons, would not be a good long-term solution and this one of the reasons for buying the plant. Mr. Nichols stated a lagoon is not a long-term solution.

Commissioner Elkin asked what the capacity is of the existing facility. Mr. Sanders stated the existing facility is basically at capacity. There is no room to add additional capacity. This is for the lagoons.

Commissioner Stamper asked Mr. Ratermann, from a Sewer District perspective, approximately what a new 25,000-gallon per day facility cost. Mr. Ratermann stated he would budget \$75,000 installed for a plant similar to this. He did not know what the cost

would be for the private sector. He would budget \$3.00 per gallon per day, which would be 25,000 gallons times three.

Commissioner Stamper asked if anyone were familiar with the lagoons in question, what the flow is, and if they were at 25,000 gallons. Mr. Sanders stated 10,000 gallons would be a better estimate for this. Mr. Nichols stated the treatment facility that they are buying is a 60,000-gallon capacity.

Commissioner Stamper asked Mr. Ratermann what a 60,000-gallon per day facility would cost. Mr. Ratermann stated it would be \$180,000 but it would also depend on the discharge limits.

Mr. Ratermann stated he had an engineering report from Private Engineering Consultants that discusses the existing load at the existing facility at Hinton being 14,300 gallons per day. It is proposed by the company a total capacity needed for the existing facility; in addition, the proposed would be 26,590 gallons per day.

Commissioner Miller asked what is the proposed. Mr. Ratermann stated the proposed is converting a five-plex to commercial development and 20 single-family lots and 20 apartment units and the commercial being a 5,000 square foot building. Ms. Farr stated this would be existing users.

Commissioner Miller asked if they were adding new construction, so it would be like new development. Ms. Farr stated there is a possibility of there being new construction if people chose to become members in the Hinton Sewer Company.

Commissioner Miller asked if the Nichols' owned the land right now. Ms. Farr stated Gene Nichols owns the land that the plant is proposed to be sitting on.

Commissioner Miller stated where new construction may go in the future, is it owned by the Nichols' or by someone else. Ms. Farr stated there are different landowners. Mr. Nichols discussed what land Gene Nichols owned in the area.

Commissioner Stamper stated there is a \$10,000 solution available to Mr. Nichols but it does not create any opportunity for the use or re-use of any additional property in the area and have enough capacity to bring additional properties in. This is why Mr. Nichols is not interested in the \$10,000 solution because he could not do anything more than what is being done now. Ms. Farr stated it is not good for the land at the current time.

Commissioner Stamper stated with the \$125,000 to \$150,000 solution, which is about \$30,000 less than a new plant. Mr. Nichols stated of the \$150,000, there will be a lot of sewer line run but from the figures Mr. Ratermann gives that includes the plant installed.

Commissioner Stamper stated the \$150,000 solution would position Mr. Nichols to

redevelop a significant amount of land in the area and to sign on other customers willing to pay. He asked if this was a fairly accurate depiction.

Mr. Nichols stated he wanted to go back to the beginning of this situation because he believes this is where they get off base. Mr. Nichols stated when they first came up with the idea they spoke with Mr. Ratermann. Mr. Ratermann showed excitement in the idea because he could see a sewer district begin developing in the Hinton area. There are many people in that area that could use a sewer system. They had two or three conversations and the discussions kept returning to the Hinton Sewer Company installing and paying for the plant and the Boone County Sewer District getting a free ride. Mr. Nichols stated they have tried a number of times to have the Sewer District become partners in this. Even a few months ago, Mr. Nichols was visiting with Mr. Ratermann trying to work out some way to have the Sewer District run the sewer system and all the Hinton Sewer Company wanted was to be reimbursed for the money they put into the system. Mr. Nichols stated that Mr. Ratermann was correct in saying there is nothing in writing about the discussions. From Mr. Nichols' understanding, the Boone County Regional Sewer District voted to turn down this issue.

Commissioner Elkin stated the Sewer District authorized the submission of a letter in opposition to privately owned and operated sewer facilities. A board statement was generated in April in opposition to privately owned facilities.

Mr. Nichols stated there have been discussion about this issue for a long time and that is why they signed the agreement with the Attorney General, hoping they could get something worked out. All paper work was submitted to the Department of Natural Resources on time.

Ms. Farr stated in regards to future development, it is difficult to predict the development.

Commissioner Stamper asked Mr. Shawver or Mr. Patton of the standing the Sewer District has in the Department of Natural Resources' permitting process. Mr. Patton stated the DNR has a hierarchy of entities. In order to get an operating permit there has to be a designated continuance authority.

At the top of the hierarchy is municipalities with a, he believes, a regional federal plan, second would be municipalities and sewer districts that serve watershed or have a regional service area, third would be cities or sewer districts that do not have watersheds or regional service areas, fourth would be any kind of entity that has complete control and responsibility of a system that can pollute, and finally are homeowner associations that operate sewer systems. To Mr. Patton's understanding, any lawyer can read this in different ways. Deborah Neff, who acts as a DNR representative, feels that the regulation is written because non-profit sewer companies are a new item and are not covered in regulations. Mr. Patton stated Ms. Neff is reluctant to say they cannot be a continuing authority on their own. In other words, as Ms. Neff interprets the law, the sewer district

does not have to be a continuing authority for this proposed plant. He believes they are also going to change the regulations in the future to assign non-profit sewer companies some sort of priority in the hierarchy.

Commissioner Stamper asked Mr. Ratermann to tell the commission if the sewer district has ever accepted an operating sewer plant that had been used prior to our accepting it, if so, how many times and where. Mr. Ratermann stated the first instance is Oberlan Valley, where the developer installed a used plant. It is a policy of the Boone County Regional Sewer District, that if a system can be brought up to sewer district standards, the sewer district will take it for ownership, operation, and maintenance. The other instance is Powell Subdivision, on the corner of Highway VV and Mueller Road, where a three-cell lagoon is located. He does not know all the details because some of this happened before Mr. Ratermann was with the sewer district. An excavating contractor was required by the developer to fix a leak in the lagoon and the sewer lines were televised. The homeowners associations paid, at their expense, to fix the lines, and the sewer district accepted it for ownership, operation, and maintenance. These are the only two that Mr. Ratermann can think of when the sewer district has taken used plants or equipment. A lot of the equipment that the sewer district has, they acquire through purchase or the County Commission. In 1987, approximately 20 facilities were conveyed from the County Commission to the sewer district and to his understanding, the Commission came to own these facilities because they had acquired them from homeowners associations who did not want them.

Commissioner Stamper stated it is to his understanding when the developers for Lake of the Wood South came to the sewer district with the idea that they would build a facility that would have additional capacity to accommodate their land and that the sewer district would pay for additional capacity to control it in the rest of the area, they tried to reach terms with them. The distinction that Commissioner Stamper has drawn and the way the sewer district tried to reach terms with them is to have the sewer district would make a contribution toward the construction of the facility and ultimately own the facility as a regional facility. This landowner in this case has chosen to retain full ownership of this facility and not accommodate the public investment or involvement. Commissioner Stamper wanted to know if he has drawn an uncharacteristic distinction about this issue on the table.

Mr. Ratermann stated he did not believe so. What the sewer district had contemplated at that time was a departure from their postage stamp rate. The customer would still pay the rate any other customer would pay and the surcharge, above and beyond the postage stamp rate, to reimburse the developer for the construction of the infrastructure.

Commissioner Stamper stated this might be characterized as one of the reasons why the sewer district is having problems with this is because this is an opportunity for the District to establish a regional treatment facility in an area where it currently exist and have greater capacity and be able to further the base of public sewer. He asked if this was the basis of

the problem the sewer district is having. Mr. Ratermann stated this was correct.

Ms. Farr stated no one wants to keep this plant forever unless the applicants have to and all they want is to have their costs recouped.

Mr. Nichols discussed the development of Crestwood Subdivision and the used lagoon line that the Commission accepted. In this situation, money was recovered because lots were sold.

Commissioner Stamper stated that Mr. Nichols has the opportunity to develop and sell more land in this area as well. Mr. Nichols stated this would not be to the capacity that Commissioner Stamper is thinking about. There would be 60,000-gallon capacity available and they would only be using 25,000.

Commissioner Miller stated they only needed 14,000 gallons currently. Mr. Nichols stated 14,000 gallons are needed currently but if more land is developed in this area, the projection is 25,000 gallons. This still gives the capacity to do the Hinton area for the sewer district.

Mr. Ratermann stated in Crestwood Hills plat 2, there are still private common collectors that the sewer district did not accept. Mr. Nichols stated there are four houses in the subdivision that are still being discussed.

Mr. Nichols wanted to point out that the sewer district accepts used lines.

Ms. Farr stated this would be different if the Boone County Regional Sewer District wanted to serve this area. They do not want to serve this area.

Mr. Nichols stated if the Boone County Regional Sewer District wanted to use the excess capacity at this facility, they would have no problem. They are not trying to make a profit and as long as their funds are recovered, the Boone County Regional Sewer District can have the facility.

Commissioner Miller wanted to know about buying excess capacity. If there were long-range plans for the sewer district in the Hinton area, would it make sense to work towards a collective agreement that would allow for buying capacity. Commissioner Stamper stated what Commissioner Miller is trying to reference is the Wastewater Treatment plant at the South Route K region. The County bought excess capacity at that location.

Mr. Ratermann stated about two to three years ago, the Nichols' approached the sewer district and Mr. Ratermann evaluated the area. The Hinton area is an existing settlement and after review of tax maps, he identified twenty lots that are probably on on-site systems and on lots that are small enough that could use public sewer. Twenty lots would use about 8,000 gallons per day. The sewer district might have a need for about 8,000 gallons

per day. The sewer district has never been approached by any of the property owners in the Hinton area to form a Neighborhood Improvement District (NID) on the existing lots. It is a risk the sewer district takes, the same risk the sewer district is taking on for the South Route K neighborhood, to fund the treatment capacity before they know they have a NID that will succeed. There has not been a NID succeed for sanitary sewers since the Pin Oak NID. Even when they are on small lots, the costs to bring in the collection system are usually more than people want to pay.

Commissioner Miller asked the applicant if they were currently charging the fees for lagoon system to any of the people that are on the system. Mr. Nichols stated no one is being charged.

Commissioner Stamper asked if Mr. Nichols if he owned all the properties that are on the system. Mr. Nichols stated all except the one house. Commissioner Miller asked about the convenience store. Mr. Nichols stated they own the property and Phillips 66 owns the business.

Commissioner Elkin asked the applicant if they currently have an operating permit. Ms. Farr stated she believes that it is currently pending. Commissioner Elkin asked how long have the applicants been operating without a permit. Mr. Sander stated there is no operating permit. The permit is going to be reissued.

Commissioner Elkin asked when the permit was rescinded. Mr. Sander stated the underlying basis for the settlement agreement and the problem that brought this issue about was not having an operating permit because of the leak in the lagoon. It has been a number of years since there was an operating permit for that lagoon.

Commissioner Stamper asked what this meant. Mr. Nichols stated he did not understand what this means either. He sends DNR \$200 every year for the lagoon. Commissioner Stamper stated when they were originally sited, the permit was withdrawn. Ms. Farr stated the facility has been operating with the consent and oversight of the Missouri Attorney General's Office and the Department of Natural Resources without a permit.

Commissioner Stamper asked Mr. Patton if he could help in this situation. Mr. Patton stated either one has a permit or they don't. If someone does not have a permit, then they are violating one of the regulations and it is up to the Attorney General to enforce it.

Commissioner Elkin asked if any of the provisions in the settlement have been addressed because the leak is still there right now. Ms. Farr stated they are still waiting to see what happens. Mr. Sander stated the proposed solution to the leak is the sewer treatment plant.

Commissioner Elkin asked if this is approved and the sewer is installed, would they be charging a fee to the renters and the convenience store to recuperate the costs. Mr. Nichols stated this was correct.

Commissioner Elkin asked if the lines have been televised at all. Mr. Sander stated they have not done that at this point. Mr. Nichols stated they installed all new lines approximately three years ago. Ms. Farr stated there is a difference of opinion on the lines; the State does not think that the lines need to be replaced, but that was a suggestion from one of the staff.

Commissioner Elkin asked the applicant if a new plant could be installed for two-thirds of what they would be paying now for the used plant and still have capacity for the current and possible future use, he does not understand why the applicant would want to spend the extra money on the used equipment. Mr. Nichols stated the used equipment is 60,000 gallons. If they bought new equipment, it would only be 25,000 gallons. The main reason why they want the 60,000-gallon facility is that there is potential for the area to come into a sewer district and to clean up the area.

Mr. Nichols stated what they are doing is not a perfect solution but to solve the problem, clean up the environment and to take care of the area, they feel like what they are asking to do is the best under the situation right now. New treatment facilities were priced by the applicant. Mr. Sander stated he had a quote from a treatment plant supplier out of the St. Louis area. The quote is dated July 7, 2000. At that time, the sewer report was calling for a capacity of 36,000 gallons per day. This was from the first report to DNR on what they were wanting to buy, which included extra capacity. They were looking at an 18,000gallon plant, which would cover what they have currently, would be \$70,000. This type of plant is set up to add on units so the other 18,000 gallons would be another \$70,000. This is for the delivery and hook-up of the plant but all the side work and any collections lines away from the plant would be an additional cost. This is \$140,000 for the new plant.

Ms. Farr stated all seven requirements have been met for the issuance of a conditional use permit. Health and safety concerns, if there are any, will be adequately addressed by DNR. As far as land use, she does not believe that this leaves any doubt that the treatment plant is a better use of the land and better for the community than the existing sewage lagoons. As far as Boone County Regional Sewer District's proposed involvement, there is no doubt, by law, they do not have the right to be a continuing authority. As far as the seven requirements, they will be met by Hinton Sewer Company and the landowner. The only petition that should be necessary are that permits that are adequately obtained and maintained through DNR and the plant be in good working order pursuant to the Clean Water Act and DNR regulations.

Mr. Nichols stated they would like to solve the problem of the two lagoons with a sewer treatment facility. If you grant the applicants the conditional use permit, they will build it according to DNR supervision. They will give the receipts to the sewer district on everything they do out there and once they recover their money they will turn it over to the sewer district.

Mr. Shawver stated he does not want Mr. Nichols or Ms. Farr to think they are being characterized as bad people. The staff report is based on the information they have available to them. Ms. Farr said they were only cited once, but the settlement agreement stated there were two discharges and have been operating since 1995 without a permit. There have been amendments to the settlement agreement and those are not part of the record. He has not seen Ms. Farr bring any other supporting documentation. He does not believe Mr. Nichols or the Hinton Sewer Company has any intention of harming the environment, public safety, or anything of that sort. However, he has been a part of this hearing two times now and Ms. Farr says they have met all the conditions of the conditional use permit requirements and there has not been a single item of testimony to support that.

Staffs' concern is not convinced that the Hinton Sewer Company has capacity, they have no expertise and were formed under a section of the law that allows for private non-profit sewer companies to be formed. He does not believe the intent of the law is to supersede continuing authorities, he believes it is to fill a gap where there is no authority. Boone County does have continuing authority by statute to serve a regional capacity. In fact, all of Boone County is the Boone County Regional Sewer District's area. Mr. Shawver does not believe the staff recommendation for approval precludes an operation that cannot be a joint effort. There is some dispute about whether the sewer lines are acceptable and that is based on the settlement agreement, which stated the sewer lines were to be replaced. He thinks there is room for a joint operation; whether it be a purchase of capacity, as an agreement similar to the one between Boone County and the City of Columbia.

Commissioner Stamper stated Mr. Shawver has been invited to speak because he is also Executive Director of the Boone County Regional Sewer District.

Mr. Shawver stated having been involved with the sewer district from the beginning, from when sewer systems were turned over from operators and homeowners that were not maintaining the system, it has taken the sewer district all this time to reach the caliber of service they have. He is sure that Hinton Sewer Company would operate within the letter of the law. He does not feel that every avenue has been explored to provide service to this area. He understands the sewer district's position of not being in position to put in facilities when there is not a resource and understands the nature of the NID, which he does not believe would be suitable for this area because the only people that would benefit are the ones who own the most property.

Commissioner Stamper stated there are three options that the Commissioner can take; one option is to decline the request, the second option is to approve the request with conditions, or the third option would be to table the request.

Commissioner Stamper stated he had respect and admiration for the Nichols brothers. The issue is, for him, what the applicants are asking the Commission to do is poor public

policy. It is poor public policy because it creates an independent sewer system when there is a countywide system available to manage their affairs. He understands what the applicants are trying to do and understands why but he does not know if he would look at or approach it the same way. There are many things that can come with this; if there is 60,000 gallon per day capacity and there is additional land to be developed, you can bet that land will be developed and then questions would be raised of urban sprawl, timing, and other issues. Yet, one has to applaud the applicants for being willing to come forward with a more expensive solution than the minimal solution and be willing to take the risk. The 60,000-gallon capacity will be used because it will allow the land to be developed at a greater density and sewer will no longer be an issue. The idea that the County would create a free standing independent private sewer entity in Boone County is something that runs contrary to his beliefs.

Commissioner Stamper stated the dilemma for the Commission is, he feels compelled to try to help adopt a good public policy, but, at the same time, he wants to protect the citizens of Boone County in the future. The Commission has the ability to manage and control the infrastructure assets of Boone County. His thought is to table this issue and to require the two parties to come back to the table to look for additional solutions.

Commissioner Miller stated she has a different view from Commissioner Stamper. She stated the only reason the Commission needs to approve this request is to allow for private sewer company and she, in good conscience, will not do that. If the request is denied, the applicants still have the ability to work with the sewer district and do not need a conditional use permit. In her perspective, there is no need to drag this issue out on the Commission's table. There are private utilities in some of the mobile home parks, for example, and there is a continuous problem because there is no authority to act on behalf of the people that are having the problem. From this perspective, she cannot put another private utility out there when there are other solutions. Even if this results in just fixing the lagoon and waiting until future development happens in the area. The increase in capacity will then be there to justify the elimination of the lagoon.

Commissioner Elkin stated he agrees that the mechanical plant would be an improvement to what is there currently. However, he has great concerns with private utilities. From his experiences with the Hallsville City Council and private utilities in trailer home parks, they just do not work very well. The leak in the one cell of the one lagoon has been an issue for five years. The Commission has to make decisions in the best interest of the citizens of the area; not just the Hinton area but the areas downstream on Rocky Fork Creek. He believes something can be worked out, but, if he had to vote to accept the request tonight, his vote would be no.

Commissioner Stamper stated the Nichols are entitled to a fair and balanced hearing and he believes that the Commission has given them that. Now he would like to turn the discussion to what the Commission should do with this request.

Ms. Farr stated Commissioner Miller said earlier that a conditional use permit would not be needed in any case if an agreement could be worked out with the Boone County Regional Sewer District. Commissioner Stamper stated this would assume that it would be a sewer district facility.

Commissioner Stamper asked Mr. Nichols or Ms. Farr if they had a preference on what the Commission should do with this request. Ms. Farr stated she has not spoken with Mr. Nichols about this but she would prefer that the Commission table this issue.

Mr. Nichols stated if the Commission tabled this issue and gave Mr. Shawver and him a chance to work on this issue, he believes something could be worked out.

Commissioner Stamper asked Mr. Shawver if he had any concerns. Mr. Shawver stated no.

Commissioner Miller stated she too would like to see something replace the lagoons and would like to see Mr. Nichols find a solution but she did not see any need to table this request if the Commission was not going to support a private sewer system.

Mr. Nichols stated he would like to negotiate with Mr. Shawver.

Commissioner Stamper moved to table for not more than 60 days the request by Loren Gene Nichols on behalf of the Hinton Sewer Company for a Conditional Use Permit during which time staff will work with the applicant on alternative proposals.

Commissioner Elkin seconded the motion.

There was no discussion or public comment.

The motion passed 2-1. **Order 535-2001**

Commissioner Miller opposed the motion.

D. Petition of Vacate and Re-plat Lot 1 Scottish Rite Subdivision

Tim Reed and Sam Bornhauser present on behalf of this item.

Mr. Shawver stated they have received a petition to vacate and request to replat Scottish Rite Subdivision, which was platted in 1991. The plat is actually zoned recreational. Subdivision regulations require a petition, vacate and replat hearing unless there is specific language on the plat or covenant providing for a replat and this plat did not have such. Regulations stipulate notification of property owners within 500 feet of the proposed replat and provide the public opportunity to come testify whether the revision would effect

the public roads, utilities, the nature of the neighborhood or surrounding area in any fashion. The required notices have been provided.

Tim Reed stated they were wanting to replat this property into two lots. The lodge association is going to build a 10,000 square foot building on the north and west side of the Scottish Rite Subdivision.

Commissioner Stamper asked Mr. Shawver if he needed to exempt himself from this vote because he is a member of the lodge. Mr. Shawver stated if he, as a member, have any participation in any decision involved with this request. Commissioner Stamper stated he had not attended any meetings recently.

Sam Bornhauser stated this is a temple association, which is separate from the lodge.

Commissioner Elkin moved to approve a request by the Columbia Scottish Rite Temple Association Inc., to vacate and re-plat Lot 1 of the Scottish Rite Subdivision. It is further ordered that the vacation is not to take place until the re-plat is approved.

Commissioner Miller seconded the motion.

There was no discussion or public comment.

The motion passed 3-0. **Order 536-2001**

E. Receive and Accept the following plats:

i. Hodges Hill. A-2. S13-T49N-R12W. Thomas and Melania Rogers, owners. C. Stephens Heying, surveyor.

Mr. Shawver stated this is a one-lot subdivision zone A-2 located on Kircher Road, which is between Columbia and Hallsville. Planning and Zoning Commission approved this and is ready to be received and accepted by the County Commission.

Commissioner Elkin moved to receive and accept Hodges Hill plat.

Commissioner Miller seconded the motion.

There was no discussion or public comment.

The motion passed 3-0. **Order 537-2001**

ii. Country Farms Lot 20. R-S. S33-T48N-R13W. Gary and Mary Lee Mayfield, owners. Ron Lueck, surveyor.

Mr. Shawver stated this is a three-lot re-plat that was authorized during the vacation hearing last month. Country Farm Subdivision is located on Old Mill Creek Road south of Vawter School Road, which is an extension of Nifong Boulevard. This was platted around 1973 or 1974. Planning and Zoning Commission approve the plat and is ready to be received and accepted by the County Commission.

Commissioner Miller moved to approve to receive and accept Country Farms Lot 20 plat.

Commissioner Elkin seconded the motion.

There was no discussion or public comment.

The motion passed 3-0. **Order 538-2001**

iii. Brookfield Estates Plat 1. A-2. S24-T47N-R13W. Keith and Chastity Samuel, owners. J. Daniel Brush, surveyor.

Mr. Shawver stated this is plat 1, which is located on Route N. The Planning and Zoning Commission approved this plat in April 2001. The developer has been in the process of installing infrastructure. The time delay was due to securing a permit from the Department of Natural Resources for a wastewater treatment plant and a permit has been issued for the sand filter treatment facility and also requiring ultraviolet disinfection. Also, they have a copy of a guaranty and collateral pledge in the amount of \$70,940.00. The Certificate of Deposit is on deposit with the County Treasurer in that amount.

Commissioner Miller moved to receive and accept Brookfield Estates Plat 1. It is further ordered that the Presiding Commissioner be hereby authorized to sign said plat and to accept and sign the bonding documents for Brookfield Estates Plat 1. The bond is a Certificate of Deposit (#000514618), which will be retained in the Boone County Treasurer's Office.

Commissioner Elkin seconded the motion.

There was no discussion or public comment.

The motion passed 3-0. **Order 539-2001**

There was no public comment.

The meeting was adjourned at 9:12 p.m.

Attest:

Don Stamper
Presiding Commissioner

Wendy S. Noren
Clerk of the County Commission

Karen M. Miller
District I Commissioner

Skip Elkin
District II Commissioner