

TERM OF COMMISSION: April Session of the February Adjourned Term

PLACE OF MEETING: Boone County Courthouse Ceremonial Courtroom

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

The meeting was called to order at 7:01 p.m.

**Subject: Planning and Zoning**

Commissioner Stamper stated the reason for the meeting being held in the Courthouse is because it is Election Day and the Clerk's Office has all the rooms reserved in the Government Center. He noted the recording system being used is for recording purposes only, it is not a sound system.

Commissioner Stamper noted that during Planning and Zoning issues, the Commission will receive a report from staff and then the Commission will have the opportunity to ask staff any questions. The Commission will then move to a presentation from the applicant or agent of the applicant on behalf of their request. After that, the Commission will convene a public hearing where any testimony in favor of or in opposition to will be welcome. Following the public hearing, the Commission will discuss the issue and then vote on the issue.

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 John and Linda Coats for an Animal Boarding and Training Facility on 20.09 acres at 5901 S. River Hills Rd., Columbia**

Mr. Shawver stated this property is located in River Hills Subdivision, just south of the Columbia municipal limits off of State Highway KK. The property is zoned A-1, as is all of the surrounding property, except an area on the west side, which is zoned R-S. Spring Park subdivision is located in this R-S district. There is a house, two barns, and various outbuildings on the property. This request is for a permit for a horse boarding facility. The property is located within Consolidated Public Water District No. 1. Electric service is provided by Boone Electric Cooperative. The site is within the Columbia Public School District. Access to the site is from River Hills Rd. The applicant's property is comprised

of two lots, lots 10 and 11 of River Hills Estates subdivision, which was platted in 1978. The master plan designates this area as being suitable for residential land uses. In forming a recommendation to the Planning and Zoning Commission, the staff notes the close proximity of residential land uses to the site, but also takes notice of the large tract of land involved in the request. Staff recommends approval with the condition that the driveway and required parking area be dust free with a minimum of a chip seal surface. The required parking area will be determined by the area of the stables.

As a CUP, the proposal must meet the following criteria from the zoning ordinance to be eligible for approval.

- 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.
- 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.
- C. The conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood.
- D. All necessary facilities will be available, including, but not limited to, utilities, roads, road access and drainage.
- 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.
- 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.
- 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 Planning and Zoning Commission conducted a public hearing on March 21, 2002. All eight members of the Planning and Zoning Commission were present. Following a public hearing, it was determined that the Conditional Use Permit complied with all CUP requirements. A motion was made to recommend approval of the request subject to the conditions to the driveway and parking area be dust free with a minimum chip and seal surface. This motion received eight "yes" votes and comes forward with a recommendation for approval.

John and Linda Coats, 5901 W, River Hills Rd., Columbia, were present on behalf of this item.

John Coats stated he has lived at this address since 1962. They are changing their horse operation a little bit; they will still have a breeding operation.

Linda Coats stated they are trying to preserve green space in the area.

Commissioner Stamper opened the floor for a public hearing.

“Tiger” John and Ann Cleek, 5010 Brazos Dr., Columbia, were present to testify in support of this request.

John Cleek stated he and his wife support the request of John and Linda Coats for a conditional use permit allowing them to have an animal boarding facility and training center on their property at 5901 S. River Hills Road. He and his wife live in Southfork Lake Subdivision and share a common boundary with the Coats. He has known John and Linda since grade school. They are the best neighbors anyone could ever hope to have and close personal friends. Mr. Cleek believes their request would be an excellent use for their land and would provide a buffer that would be appreciated by all against the rapid development in the area. And, as a small business owner, Mr. Cleek admires, encourages and supports the Coats in their efforts to develop their own business on land that has been in their family for forty years.

In addition to allowing the Coats’ to construct and operate their boarding facility, the Cleek’s believe the Commission should grant them a variance from having them make their driveway and parking area dust free. They live on a gravel road so having a black top driveway and parking area would not serve much purpose. The Cleek’s have had horses boarded at five other similar facilities around Boone County and none of these facilities had dust free surfaces. Requiring the Coats’ to spend the extra money could put them at a competitive disadvantage to other similar businesses. Boone County Fairgrounds parking lots are not paved. Mrs. Cleek added that this type of surface is not safe for the horses.

There were no additional comments. Commissioner Stamper closed the public hearing.

Commissioner Elkin asked Mr. Shawver as far as the dust free parking the Coats’ would only be required to provide a dust free surface for the required parking area. Mr. Shawver stated this is correct and this would not be a paved parking area, it would be chip and seal. This would be based on the number of stalls the Coats’ would be leasing and in the driveway. This would not be required for all the parking area.

Commissioner Miller asked Mr. Shawver about Mr. Cleek’s comments on the other stables that do not have dust free parking. Mr. Shawver stated it is a combination of change in regulations and places being grandfathered in. Any place that was in existence

before 1990, when the paving requirement was specified as being a minimum of chip and seal and dust free, would have been grandfathered in. Mr. Coats has provided a list of other facilities the staff is investigating. Commission knows that within the past six months, there have been two other boarding facilities approved and this requirement has been placed on those facilities.

Commissioner Stamper asked Mr. Coats if he understood that the chip and seal did not have to be on the entire parking lot, just the area where people park cars that will be using the facility. Mr. Shawver stated this is correct.

Mr. Coats noted the list he provided Mr. Shawver of boarding facilities are the ones he knows about.

Commissioner Miller stated with the regulations, the County does not have the right to waive those conditions that are in regulations. John Patton, County Counsel stated he did not believe so.

Commissioner Stamper clarified Commissioner Miller's comment on changing the regulations and Mr. Patton noted that the regulations could not be waived without changing the regulations. He noted that this is not asphalt it is chip and seal which is traditionally much less expensive.

Commissioner Miller moved to approve the request by John and Linda Coats for an Animal Boarding and Training Facility on 20.09 acres, located at 5901 S. River Hills Rd., Columbia, with the following condition:

- That the driveway and required parking area be dust free with a minimum of chip and seal surface. The required parking area will be determined by the area of the stables.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 149-2002**

**B. Request by Judith and William Heffernan for a permit for an Outdoor Recreational Facility on 20 acres, more or less, located at 6267 N Rte J, Rocheport**

Mr. Shawver stated this property is located on State Highway J, approximately 4 miles north of Interstate 70. The property is zoned A-1 (Agriculture), as is all of the surrounding property. The land has been used for agricultural purposes. This request is for a privately operated outdoor recreational facility. Approximately 20 acres of corn would be cut in a way so as to form a path through the crops. The applicants do not plan any permanent

structures, but may use several portable buildings during the time the maze would be open to the public, which is August to October. They are proposing the use of “port-a-potties” for on-site wastewater disposal. This site is located within the Columbia Public School District. Water service is provided by Consolidated Public Water District No. 1. Electric service is provided by Boone Electric Cooperative. The master plan designates this area as being suitable for agricultural purposes. The proposed use would not change that designation, as crops would still be harvested from the site. There have been no previous requests submitted on behalf of this site. Staff notified 10 property owners concerning this site. Staff sees the proposed use as being consistent with the surrounding area, and recommends approval with the following conditions provided that the Commission finds that the use complies with the approval tests for a conditional use permit:

- Daylight hours only.
- Chip and seal the parking area and driveway.

Concerning the second item, the Commission may want to consider not requiring this condition be implemented until the facility has been in operation for at least two seasons.

As a conditional use permit the proposal must meet the following seven criteria from the zoning ordinance to be eligible for approval.

- 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.
- 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.
- C. The conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood.
- D. All necessary facilities will be available, including, but not limited to, utilities, roads, road access and drainage.
- 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.
- 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.
- 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.

This request originally was presented to the Planning and Zoning Commission on February 21, 2002. The applicants requested this issue be tabled until this meeting. Following a public hearing, the Planning and Zoning Commission noted all conditional use permit requirements were met and made a recommendation for approval to the County Commission with the conditions of daylight operation hours only and chip and seal parking and driveway area after the second season.

William Heffernan, 6267 N Rte J, Rocheport, was present on behalf of this issue.

William Heffernan stated he is on the Boonslick Trail Project Commission. There has been increased interest in this area and on the Boonslick Trail. They would like to open this area up to the public. The corn maze is the first step in this process. He discussed other options of locations for this corn maze but this site seemed to be the best.

Mr. Heffernan requested that the operations hours be extended. The daylight hours condition would be fine during the summer but would like to extend the hours in September and October. The days of operation would be Wednesday through Friday in the evenings and all day on the weekends. As Halloween approaches, they would like to operate at night.

Commissioner Elkin asked what the portable buildings would be. Mr. Heffernan stated the portable buildings would be "port-a-potties", ticket booth, and a petting zoo.

Commissioner Miller stated this is an interesting idea.

Commissioner Stamper opened the floor for a public hearing.

There was no one wishing to speak.

Commissioner Stamper closed the public hearing.

Commissioner Miller asked about the daylight hours and if it could be substituted with 8:30 p.m. or an hour after sunset. Mr. Shawver stated there are concerns over portable lighting or permanent light. If the patrons were using flashlights, there that would not be an issue of concern.

Commissioner Stamper agreed with allowing the facility to operate up to an hour or an hour and a half after sunset. Mr. Heffernan stated this should be adequate.

Commissioner Elkin asked if this would be for just the Halloween season. Commissioner Stamper stated this is an agricultural area and does not believe the operation after sunset would bother too many people. Mr. Heffernan stated there are no neighbors around the

proposed facility.

Commissioner Elkin asked if the hours would be extended until 8:30 p.m., which would not effect the operation in the summer. Commissioner Stamper suggested the operation hours to be a period of time after sunset.

Commissioner Miller stated that an hour and a half after sunset would be better because in the summer it does not get dark until later and 8:30 p.m. would be limiting the operation. Mr. Heffernan stated there would be no permanent lighting put up at the facility.

Commissioner Miller moved to approve the request by Judith and William Heffernan for a permit for an Outdoor Recreational Facility on 20 acres, more or less, located at 6267 N Rte J, Rocheport, with the following conditions:

- The Facility may operate up to 1 ½ hours after sunset, and
- Chip and Seal the parking area and driveway following second season, if still active.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 150-2002**

**C. Request by Steven and Christina Nelson to rezone from C-G (General Commercial) to M-L (Light Industrial) of 1.29 acres, more or less, located at 8601 E. Trade Center Dr., Columbia**

Mr. Shawver stated this tract of land is located 2 ½ miles east of Columbia at the I-70 / Route Z interchange. Access to the site is from Trade Center Drive. The applicant's own lot 3 of I-70 Trade Center subdivision. The south .71 acres of this lot is zoned M-L (Light Industrial). The north 1.29 acres is zoned C-G (General Commercial). Land to the east of the area included in this request is zoned C-G, as is land to the north and west. Land to the south is zoned M-L. The property is located within Public Water District No. 9. Electric service is provided by Boone Electric Cooperative. All required infrastructure for the requested use is in place. The site is within the Columbia Public School District. Staff notified 11 property owners about this request.

I-70 Trade Center subdivision was approved by the Planning Commission in February 1999. The County Commission accepted the plat in September 2000. The master plan designates this area as being suitable for industrial land uses. The requested zoning classification conforms to the master plan. This tract has 71 points on the Point Rating Scale. Staff recommends approval of this request.

Following a public hearing at the March 21, 2002 Planning and Zoning Meeting, the Planning and Zoning Commission made a motion to recommend approval of the request to the County Commission. The motion received unanimous support.

Steve Nelson, 1704 Brookfield, Columbia, stated there is a 4,000 square foot building he would like to build on the sight. They have worked with Mr. Shawver and staff and Mr. Shawver thought due to the nature of their business, with certain amounts of outside storage, that M-L zoning would be appropriate.

Commissioner Stamper opened the floor for a public hearing.

There was no one wishing to speak.

Commissioner Stamper closed the public hearing.

Commissioner Elkin moved to approve the request by Steven and Christina Nelson to rezone from C-G (General Commercial) to M-L (Light Industrial) of 1.29 acres, more or less, located at 8601 E. Trade Center Dr., Columbia.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 151-2002**

**D. Request by John and Pamela Massey to rezone from REC (Recreational) to M-L (Light Industrial) of 6.81 acres, more or less, located at 8451 E. Trade Center Dr., Columbia**

Mr. Shawver stated this tract of land is located 2 ½ miles east of Columbia at the I-70 / Route Z interchange. Access to the site is from Trade Center Drive. This tract is zoned REC (Recreation). All of the surrounding land is zoned M-L (Light Industrial). The property is located within Public Water District No. 9. Electric service is provided by Boone Electric Cooperative. All required infrastructure for the requested use is in place. The original zoning for this tract was M-L. In 1981, it was included in a request to rezone 30 acres to REC, which was used for a softball complex. A conditional use permit was also issued for incidental sales (concession stand). In 1986, a conditional use permit was issued for a trap and skeet range. In 1991, a permit was issued for a go-cart track. This tract was included in I-70 Trade center Plat 2, which was approved in November 2001. The site is within the Columbia Public School District. Staff notified 19 property owners about this request. The master plan designates this area as being suitable for industrial land uses. The requested zoning classification conforms to the master plan. This tract has 71 points on the Point Rating Scale. Staff recommends approval of this request.

Following a public hearing at the March 21, 2002 Planning and Zoning Meeting, the Planning and Zoning Commission made a motion to recommend approval of the request to the County Commission. The motion received unanimous support.

John Massey, 4829 N. Cedar Lake Ct., Columbia, was present on behalf of this request.

Commissioner Stamper opened the floor for a public hearing.

There was no one wishing to speak.

Commissioner Stamper closed the public hearing.

Commissioner Elkin moved to approve the request by John and Pamela Massey to rezone from REC (Recreational) to M-L (Light Industrial) of 6.81 acres, more or less, located at 8451 E. Trade Center Dr., Columbia.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 152-2002**

**E. Request by Richard and Carol Samuels on behalf of U.S. Cellular for a transmission facility including a 190' tower on 16.64 acres, located at 15365 W. Hwy BB, Rocheport (appeal)**

Mr. Shawver stated this 16.64-acre tract is located on State Highway BB, just outside of the Rocheport City Limits. The property is currently vacant. United States Cellular proposes to build a 190' monopole tower with antennae. The height of the entire structure, including antennae is not to exceed 199-feet. A prefabricated concrete structure, approximately 240 square feet will be used to enclose ground-based equipment.

In order for an application for a transmission facility to be approved, the applicant must demonstrate that the proposal meets the criteria of The Boone County Zoning Ordinance Section 15 B Conditional Use Permits for Transmission Facilities and Section 15 A Conditional Use Permits.

The application demonstrates compliance with most of the technical requirements of Section 15 B. The deficiencies are outlined as follows:

*Section 15B(4)(a) states that applications for new transmission facilities may only be considered when an existing transmission facility cannot accommodate the planned new equipment. In essence, this section requires the new facility to co-locate on an existing tower unless there are technical reasons preventing co-location.*

*There are several transmission facilities near the proposed tower with base and top elevations greater than that of the proposed site and which have adequate capacity for the proposed facilities. They are as follows:*

- *Voice Stream Tower at Route O and I-70, approximately 3-miles from the proposed site, base elevation 767' top elevation 967'*
- *SBA (formerly Nextel) at 12121 Old Rocheport Road, approximately 2-miles from the proposed site, base elevation 785' top elevation 1,105'*

The base and top elevations of the proposed Rocheport tower are 687' and 886' respectively.

In order to be found in compliance with Section 15B(4)(a)1, the applicant must prove to the commission that there are sufficient reasons to make co-location on either the Voice Stream or Nextel tower impractical. There is not sufficient documentation in the submitted application materials to support a finding of compliance with this section.

All Conditional Use Permit proposals must meet the following criteria from the zoning ordinance to be eligible for approval.

*(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.*

*(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.*

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

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

*(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.*

*(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.*

*(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.*

Special consideration should be given to compliance criteria *(b)*, which states 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. A significant number of written comments have been received indicating that construction of the tower at the proposed location will have an adverse impact on the use and enjoyment of property, these letters were submitted to the Public Record. The Board of Aldermen of the City of Rocheport has passed a resolution that has been submitted for the Public Record opposing issuance of the Conditional Use Permit. The resolution is based on a finding that erection of the tower will detract from the historic and aesthetic interests of the City of Rocheport.

Many of the comments in opposition claim that the tower will have a negative impact on property values in the area, which, if true, would support a finding of inconsistency with criteria *(c)*.

During the public hearing on March 21, testimony was given that at least 2 cellular service providers, Suncom and Cingular, provide cellular service to Rocheport. This in addition to regular phone service would seem to indicate that there is no public necessity for this request, which would support a finding of inconsistency with criteria *(g)*.

53 property owners were notified concerning this request.

**Staff recommends the application be denied based on non-compliance with Section 15A(2)(b), Section 15A(2)(g), and 15B(4)(a).**

If the Commission recommends approval, staff suggests the following conditions:

- The applicant shall install and maintain a vegetative buffer on the north, south and west sides of the compound. The buffer shall consist of two alternating rows of evergreen trees. The rows shall be no more than 15-feet apart and trees shall be spaced at no more than 15-foot intervals within each row. Trees shall be a minimum of 10-feet tall at the time of planting. Any dead or diseased trees shall be replaced within one growing season.

At the March 21, 2002 Planning and Zoning Commission meeting held a public hearing on this request and noted the number of people in opposition to this request. The Planning and Zoning Commission made a motion to recommend denial of the request and that motion passed unanimously. The applicants did file an appeal in a timely fashion and the appeal is submitted to the Public Record. The Application and Documentation for the Conditional Use Permit was submitted to the Public Record.

Mr. Shawver stated at the Planning and Zoning hearing, the applicant submitted a letter from the Department of Natural Resources State Historic Preservation Office regarding the impact of this tower. The study showed the tower would not have an impact. Staff did obtain a copy of the report and the report has been submitted to the Public Record. This report is titled "Archaeological Survey and Cultural Resources Assessment for U.S. Cellular Site #350328 in Rocheport, Boone County, Missouri", was prepared by Markman and Associates and Groundwater Service and Supply on behalf of United States Cellular.

Mr. Shawver noted the report would seem to not comply or follow what as presented by the applicants. Even though the State may not see a problem with it, the report itself leads that into question.

Commissioner Stamper asked Mr. Shawver in the Planning and Zoning Commission presentation, that the County was short-sheeted. Mr. Shawver stated he would not say that. The County has no requirement for Historic Preservation submission or investigation. However, the applicants submitted a letter stated there would be no impact. Since this was submitted to the Public Record, Staff did further investigation to attain the full information.

Commissioner Stamper asked if it was Mr. Shawver's impression that there is an impact. Mr. Shawver stated he would read from sections of the report. The Commission agreed to have Mr. Shawver read from the report.

- Survey Memorandum from Missouri Department of Natural Resources, "The survey resulted in the identification of no sites and no cultural resource find spots. The survey area does not meet any of the criteria for NHRP eligibility but the proposed construction project will indirectly impact the historic National Register town of Rocheport and one other outlying structure that meets NRHP criteria for eligibility. A stealth design for the proposed cell tower is recommended since NR properties are bound to be visually impacted otherwise."

Commissioner Stamper asked if the stealth design would not conform with what is proposed. Mr. Shawver stated no; the applicants did not propose a stealth. The applicants stated stealth was not necessary.

Mr. Shawver continued to read from the report.

- From the Report Archaeological Survey and Cultural Resources Assessment for U.S. Cellular Site #350328 in Rocheport, Boone County, Missouri, page 7, "The construction of the proposed cell tower will inevitably have an adverse effect on historic Rocheport, but the effect will be limited due to the presence of many large trees in the area,"

- From the Report Archaeological Survey and Cultural Resources Assessment for U.S. Cellular Site #350328 in Rocheport, Boone County, Missouri, page A.20, figure A-19 is a "view from the western border of Rocheport (looking east) across town towards the proposed location of the cell tower (indicated with a sketched overlay). This graphic illustrates the potential visual impact that the cell tower will have on the historic district. There are many 19<sup>th</sup> century homes that line this street but are obstructed by trees."

- From a memo (dated January 7, 2002) from Groundwater Service and Supply, Inc., "Based on the results of the Archaeological Survey, the Cultural Resources Assessment, the mitigating physical criteria and the incorporation of stealth design we are of the opinion that that construction of this proposed tower will have no adverse effect on historic or cultural resources."

Mr. Shawver stated the testimony offered at the Planning and Zoning Commission stated that stealth technology would be of no value.

Commissioner Stamper noted this issue is different from other issues. There is a court reporter present and he has been retained by the applicant to record documentation and evidence of the proceedings. The applicant will come forward and give any testimony, which has not already been presented, on behalf of their request. The goal of the applicant should be to bring forward those issues, which they believe were not adequately represented to the Planning and Zoning Commission. The applicants will be given time to present their case. The responsibility of the County Commission is to host and hold fair and impartial hearings on Zoning requests. In doing so, they will make a presentation that supports their application. Following the applicants presentation the floor will be opened for a public hearing. During a public hearing, the person will be asked to give testimony in favor of, in opposition to, or raise questions about the appeal request and the impact on Boone County. The Commission suggests the testimony not be redundant or repetitive on issues.

Peter McNally, 225 42<sup>nd</sup> Street, Des Moines, Iowa, agent for U.S. Cellular and the property owners, Dave Kipp, 3601 109<sup>th</sup> Street, Urbandale, Iowa, project manager for U.S. Cellular, John Kirby, Professional Real Estate Appraiser, Richard and Carol Samuels, David Fowler and Doug Mesh, U.S. Cellular Engineers, were present on behalf of this appeal request.

Peter McNally stated he has not seen the staff report but would like to make some comments on some of the issues in the report. It was proposed and the applicants have worked with the staff from the beginning. They have followed County Codes, criteria, made sure the applicants understood this with the staff and utilized this in designing the site. It is a 190' monopole and code requires it to be under 200'. They did chose a

monopole instead of a lattice tower as required by code. The tower would be unlighted and galvanized, also as required by code. The property selected is zone A-2.

Mr. McNally submitted to the Public Record a simulated photograph of the proposed tower from the town of Rocheport.

In the staff report, there was mention of approval from the State Historic Preservation Office. They did determine there would be no adverse impact. The staff report mentioned that the report submitted by the applicant was part of the application to the report from the State does not speak 100% favorably of this request. The purpose of the report is to provide the State Historic Preservation Office all points of view and provide as much information as possible and not to take a stance from it. It is the State Historic Preservation Office to evaluate the information and determine what it means and what impact it may have.

In the staff report, alternative sites are mentioned. This issue was discussed in the Planning and Zoning Commission meeting. Mr. McNally submitted Exhibits 1-4, showing the coverage area from the Midway site (Exhibit 1), SBA site (Exhibit 2), Voice Stream site (Exhibit 3) and Rocheport site (Exhibit 4) to the Public Record. The areas shaded in blue are in building coverage, areas shaded in green are in car coverage, and areas in white are no coverage.

Midway is the closest site serving Boone County. There is currently no coverage to a large portion of Western Boone County. This is the site with the second highest rate of dropped calls. A dropped call is when a call is in progress but is dropped because the signal is too weak to complete the call.

Mr. McNally stated a meeting was held in Rocheport. There were approximately thirty people present and at least a half of a dozen people told Mr. McNally that they have U.S. Cellular and they do not have coverage in Rocheport. Having coverage was important to these people and were now thinking about, if they have not already done it, dropping U.S. Cellular service due to the lack of a signal. In addition, many people travel on I-70 who use U.S. Cellular, if they were able to come to the meeting, would also give anecdotal statements about the number of dropped calls they experience.

Knowing there is a need for a site at this location, U.S. Cellular did as required by code, look at numerous sites.

Commissioner Stamper asked Mr. McNally where the closest tower site is in Cooper County. Mr. McNally stated U.S. Cellular is not licensed to operate in Cooper County. Commissioner Stamper asked if, with the proposed tower, they would be accomplishing a coverage area of only three to four miles in Boone County. Mr. McNally stated the three to four miles is correct.

Mr. McNally reviewed Exhibits 1 through 4 and the coverage areas of each tower site. The Voicestream and SBA sites do not work for the coverage area that U.S. Cellular wants to accomplish. The proposed site for the tower will cover I-70, Highway 40, and the town of Rocheport.

In Mr. McNally's opinion, at the conclusion of the Planning and Zoning Commission meeting, there were questions by the Commissioners and the U.S. Cellular agents answered the questions about the existing sites, and believes the Commissioners did not feel there was any existing site that U.S. Cellular was missing or an existing sites would work. He believes the evidence presented by the U.S. Cellular agents was found compelling by the Planning and Zoning Commissioners.

Commissioner Stamper questioned Mr. McNally's statement of the Commissioners finding the evidence compelling but they voted unanimously to reject the appeal. Mr. McNally stated he believes the Planning and Zoning Commissioners found it compelling there is a need for the site and that there was no existing site that could accommodate their proposal.

Mr. McNally stated Staff received letters from residence regarding their concerns about possible impact on property values. Mr. McNally has invited John Kirby of Kirby Appraisal to speak about the property values. Mr. McNally submitted Mr. Kirby's resume to the Public Record.

John Kirby, 2201 Hillshire Ct., Columbia, is a licensed real estate appraiser. Mr. Kirby stated he has been doing appraisals on various types of properties since 1976. He inspected the property on March 29, 2002. He was engaged to look at the property by Peter McNally on March 27, 2002. This testimony is not intended to establish any kind of values for the property but to present his opinion and any data that would indicate any type of effect that a tower or structure of this type would have on properties in the area. Due to the time frame, he has not made any formal studies of sales of homes or any other properties in areas of cellular towers. He has made several observations, based on his experiences in dealing with condemnation and detrimental conditions of various types of real estate.

Mr. Kirby stated generally for a property to exhibit any kind of reduction in value due to an influence from a near by or adjoining property or activities on the property there has to be a reaction from the market place, meaning potential buyers, and it has to be a negative factor. In the general case of a tower, this is a list of possible negative factors that would effect property values.

- Bright Lights
- Proof of Microwave radiation as a health hazard
- Structural Instability
- Noise from transformers or equipment on the property

- Increase in traffic flow
- Loss of surrounding property in utility (i.e. use of sites parking availability, use of area)

Mr. Kirby has concluded to these possible negative factors effects on property values, based on what the applicants have told him, is there will be no lights on the tower. The tower will meet all federal regulations regarding safety factors, including structural integrity, radiation, for example. The tower will not emit any noise. There will be no guide wires associated with the tower, even though the tower will be 190' tall, it is 7.5' wide at the base and 2.5' wide at the top, which will have little effect on the view of the countryside. There is an existing tower, which he believes is used for cable television, that is 140' tall, just south of the proposed site for the cellular tower. There is a new home, according to County Records that has been constructed next to this cable television tower in 1999. This cable television tower has been in place for approximately 15-20 years, apparently the individual who build the house was not concerned with the tower.

Commissioner Stamper noted for the record that the tower is only nine years old. This was a Commission agenda item in 1993, which was also controversial.

Mr. Kirby stated never the less, there was a home built there in 1999. He believes that towers of this type are becoming common around the countryside. In his opinion, it would have no more effect on the minds of potential buyers of real estate in the area than various things that would be found in cities such as electric, water, phone, cable, sewage easements, light poles along streets, or electric transmission lines crossings in subdivisions. He does not perceive this issue, based on his observations, that this would have any kind of effect on property values within a radius of the tower itself.

Mr. McNally stated he believes the Planning and Zoning Commission did recognize and only reason they were able to see from the meeting and the minutes from the meeting that the Planning and Zoning Commission recommended denial of the request was because of potential concerns over property values. He believes this has been addressed with Mr. Kirby's testimony.

Mr. McNally submitted Exhibit D to their application to the Public Record. This is a point-by-point narrative of criteria the Zoning Code has set forth and how they meet the criteria. The code defines what the least practical adverse effect on the environment and property values in the surrounding area is; the code sets this standard. Those are the criteria, which Mr. McNally mentioned earlier about the height limit of 200', the structure be a monopole and not a lattice tower, it not be lighted and have a galvanized finish. The code has set these criteria and they have met the criteria. Beyond this, they have also shown that, in the expert's opinion, there will be no adverse effect on property values. If there are any other issues the Commission has concerns over, Mr. McNally stated he would be happy to address the concerns.

Dave Kipp, 3601 109<sup>th</sup> Street, Urbandale, Iowa, project manager for U.S. Cellular, stated that they were never given a reason as to why the Planning and Zoning Commission denied their request nor given anything in writing after the decision was made as far as minutes to the meeting or other additional staff comments. Commissioner Stamper stated those items are public record and are available upon his request. Commissioner Stamper asked Mr. Shawver to characterize why this request was denied by the Planning and Zoning Commission.

Mr. Shawver stated he disagrees with Mr. McNally. He did not notice in record that the Planning and Zoning found compelling satisfaction that the applicants had met the technical criteria, there was no comment on this issue. From his reading of the minutes and presence at the Planning and Zoning Commission meeting, Mr. Shawver stated the attention seemed to be around the use and enjoyment of surrounding property and property values. He noted Mr. McNally's point that they have met all the conditions as presented in their Exhibit D. Mr. McNally fails to understand that this is their opinion. The applicant is required to satisfy to the County Commission and Planning and Zoning Commission that all criteria are met. Mr. McNally, like all other applicants, is convinced that they are meeting all criteria. Minutes were made available and were sent to Mr. McNally. A staff report was faxed to Mr. McNally before the Planning and Zoning Commission meeting and the staff report was also made part of the minutes of the meeting. The only issue that was not part of the staff report that Mr. McNally received was the finding of public necessity, which was part of the hearing on March 21, 2002 and the information from the State Historic Preservation Office.

Commissioner Stamper gave the applicants a copy of the minutes from the March 21, 2002 Planning and Zoning Commission meeting. He noted that beginning on page 18, there are many questions and concerns on behalf of the Planning and Zoning Commissioners.

Mr. McNally stated they did receive a copy of the minutes from the Planning and Zoning Commission meeting. They requested a copy of the staff report if there were any revision made after the Planning and Zoning Commission meeting. They did not receive a copy of the revised staff report.

Commissioner Stamper opened the floor for a public hearing.

Susan McClintic, 15201 W. Highway BB, Rocheport, stated there is approximately twenty people present at the meeting who are in opposition to this request. Her home is located close to the proposed site for the tower. There are three towers that can be seen located to the east in Boone County, two towers that can be seen located to the north in Howard County, one tower that can be seen located to the south in Boone County, three visible towers located across the river in Cooper County, and if one travels up the road to the Bourgeois property, there are two more visible towers. This is total of eleven towers that surround Rocheport and she is hoping that the tower count will not be raised to twelve.

She believes aesthetic pollution has been continually discussed and is a large concern. Mr. McNally has stated repeatedly that he feels he has followed the directions completely that has been asked by the Commission. She believes many are happy to see that the Conditional Use Permit process is not just forms and applications but allows for public comment.

Ms. McClintic stated there are four criteria that stand out as concerns. There is a concern over public health. Many realize the FCC has released reports about microwaves not being a concern yet many do believe there are enough reports that counter the FCC reports. Another concern is there are already eleven existing towers that many believe that this is not a safe area. She cannot find anyway to believe that another cellular tower, which can be seen from almost every aspect of her property, that will bring her more enjoyment. The existing towers do not bring her more enjoyment. One of her favorite things to do living in a rural community is to look out her window at the night sky and there is a tower located at Midway that is blinking in her bedroom window. She believes enough is enough and there has to be a way to make the companies share towers so they can provide their services but will limit the number of towers that are built.

Ms. McClintic stated regarding Conditional Use Permit Criteria C, property values, she believes that she would not be interested in purchasing property or building a new home next to an existing tower. She brought a recent appraisal on her home and one benefit that has been added on to her appraisal is the closeness to a historical town and the closeness to I-70 and Columbia. There are comments about the neighborhood being comprised of mostly single family dwellings situated on large lots or acreage. On this appraisal, there is also a place for comment about adverse environmental conditions present on the site or in the immediate vicinity. Currently, there are no adverse environmental conditions and she hopes this will not change.

Ms. McClintic also noted during the Planning and Zoning meeting, she had questioned the road access. To her understanding from the Missouri Department of Transportation, that there is limited access. Mr. McNally's response to this comment during the meeting was the existing entrance would be graveled. She is unsure of the requirements from MoDOT about changing from a private to a commercial drive and would be interested in having more information on this.

Ms. McClintic stated she would like to review the report from the Department of Natural Resources on the historical aspect. In speaking with the FCC and her understanding of this issue, the federal guidelines are certainly met because the historical aspect does not effect the site of this proposed tower location. From the report from the State Historical Preservation Office, there is an inevitable effect on the historical facts. Also, she cannot imagine the cellular tower reflecting over the historical Rocheport cemetery, with graves dating back to the 1700's, which is a plus for this area. The residences of Rocheport were lucky in the 1970's to have a group with great vision that made the opportunity to place the city limits of Rocheport on the National Historic Register. There is also a historical

district in the center of Rocheport that this proposed tower would reflect on. Mr. McNally's photograph that was submitted to the Public Record is a reflection of the tower from the Katy Trail. There are people who support Boone County and Rocheport economically and this proposed tower is not something they want in their town.

One item that was discussed by the Planning and Zoning Commission at their meeting, Ms. McClintic, and her neighbors, is that Mr. McNally has stated several times that there needed to be a three mile radius to be able to have a cellular tower. One of the items that was repeated was is this where we are heading having look at a cellular tower every three to four miles. She believes, in speaking with the FCC, that Mr. McNally's group is available and could possibly apply from a waiver. This suggestion has also been brought up by the Planning and Zoning Commission but Mr. McNally's group is unwilling to do this because they are unwilling to compromise in their ability to tap into the commercial aspect and financial abilities because they would like to have coverage on I-70, Highway 40, and the town of Rocheport. She would encourage the applicants to continue to look into those endeavors.

She believes that living at the edge of Boone County, there is a great deal of concern because they need to find a way to support this. The FCC will not protect them. A geographical license is issued by the FCC and is turned around in less than fifteen minutes because it is done electronically. The residents count on the Commissioners and concerned citizens to speak up and protect their communities.

Danny Hunt, 14193 Highway BB, Rocheport, stated he is the owner of the property and just built a home where the cable tower is standing. He is also a real estate broker in Columbia but also services Boone County, Cooper County, Callaway County, and other surrounding counties and he is aware of the property values in the area. He has been trying to contact the owners of the cable television tower because he has been having problems. Some of the problems have been guidelines breaking, workers driving through his yard and tearing up the yard, and the workers do not clean up after themselves. This tower has been an eye sore since it was built. The photography submitted by Mr. McNally of the proposed tower is taken from a bottom view of Rocheport and it is not taken from the top of a bluff. Mr. Hunt lives within one-mile of the city limits of Rocheport and one-mile from I-70. The tower located on his property can be seen from I-70 and if this request is approved, there will be a set of towers that can be seen from I-70. In addition, the proposed tower will be taller than the tower located on Mr. Hunt's property.

Many of the opinions of Rocheport that Mr. Hunt hears is that Rocheport is beautiful, historic, well preserved property, people are nice and the town of Rocheport would like to keep it this way. He believes this tower will hinder the property values in Rocheport. One of the reasons he bought his property there is because the property is nice, property values are good and it is a beautiful town to live in.

Mr. Hunt noted he was not informed of the first meeting in Rocheport. He did not receive

a letter that was supposedly sent to all homeowners in Rocheport and if he had received a letter he would have attended the meeting.

Frank Killy, Ward Street, Rocheport, stated he did receive a letter about the first meeting but did not receive a letter about this meeting. He noted he has property in Texas on a beach. A tower was placed near his property six years ago and the values of his lots were \$4,000 each. He cannot sell those lots for \$100 each now. These lots have been on the market since the tower was built. Properties that are located 1,500 to 2,000 feet away are selling. His lots in Texas are located three blocks from the Gulf of Mexico. He bought his property in November 2001 because of the historical significance of Rocheport and the quietness of the town. If this tower is approved, then every time he comes into town he will see the tower. Mr. Killy believes that the applicants can find some place else or tie into an existing tower.

Curtis Bourgeois, 12800 Highway BB, Rocheport, stated his family has lived there for 27 years and they are small business owners for 16 years. As a retail business owner, they rely on the tourist trade, which relies on the aesthetic beauty of Rocheport. They own property, which will be in clear view of the tower and believes this will effect their business and property values. He believes this tower will be aesthetically degrading to Rocheport, which will effect business, and as a property owner believes this will have a negative impact on property values.

Joe Wolfe, 205 Columbia Street, Rocheport, stated he has only lived at this address for five years. He moved to the community for many of the reasons stated previously. Mr. Wolfe submitted eight photographs taken from around Rocheport from the simulation that U.S. Cellular did of the proposed tower.

Mr. Wolfe stated when Mr. McNally appeared before the Rocheport City Council for the first time to discuss the tower, one of the first questions asked of Mr. McNally was if they could possibly share the tower with Capital Cable. Mr. McNally's response to this question, paraphrased by Mr. Wolfe, was that they had discussed this issue with them and nothing could be worked out. Mr. Wolfe proposed a hypothetical situation; if this Commission were to say there will be only one tower or no towers on Route BB, Mr. Wolfe wonders if the companies could work something out between them.

Mr. Wolfe noted he realizes there is a problem with coverage on I-70 for U.S. Cellular users, even though he is not a cellular phone user, he does not believe this is Rocheport's problem. Another point Mr. McNally made to the Planning and Zoning Commission was about research where he sighted the primary reason that people buy cellular phones is for safety. Mr. Wolfe does not question this but would like to point out the use of these phones are after the purchase. This seems to be a separate question to Mr. Wolfe, as he would argue the purchases are done for convenience. It is difficult for Mr. Wolfe to comprehend seeing a small person in a large SUV trying to negotiate a curve with one hand on the wheel and the other on their cell phone; it seems to him that safety is not

paramount in that case.

Mr. Wolfe stated he has referred to this tower as a “pig in a parlor”. This proposed tower is like the quote, it is the wrong thing in the wrong place for the wrong reason. He personally urges the Commissioners to reaffirm the unanimous denial of this permit by Planning and Zoning. There are times when a governmental body must do the right thing and he believes this is one of those times.

Commissioner Stamper noted that he has allowed the applicants to view the photographs that Mr. Wolfe submitted to the Public Record.

Mary Louise O’Brien, 406 Second Street, Rocheport, stated she did not receive an invitation to the meeting in Rocheport but did attend. At that meeting, she asked Mr. McNally why they could not put the tower outside of the historic district on Highway 40. He informed her that it would put them in another county and he would have to apply for a franchise which was not cost effective and too time consuming for his business to be able to maximize on profits. It was better for them financially to push this issue in this fashion and put the tower in Rocheport. She does not believe this is an adequate reason to disturb the Rocheport community. She believes that the message has been given to Mr. McNally that Rocheport does not want the tower. A small community should have the right to determine its own integrity and character and not to be intimidated by their attorneys, engineers, and well presented marketing people. She is opposed to the tower for the reason that there are other options.

John Brady, Rocheport, stated his property is close enough to the proposed tower site that if it were to fall it would fall in part onto his property. He has lived at this residence for 23 years and been a Boone County resident for his whole life. He believes that the tower would effect property values. No one has stated that they would prefer to buy property next to a cellular tower site. If anyone had a choice, they would not want to look at a cellular tower every morning. Another reason he is in opposition to the tower is because he has come to really care for Rocheport and does not believe that the proposed tower fits with the town. The applicants have stated there are other sites but this proposed site is the ideal one. They are trying to maximize their coverage next to his property and next to his town. Mr. Brady hope that the Commission will tell the applicants that the interest of the citizens of Boone County and Rocheport take precedence over the applicants maximizing the amount of money they make from their towers. He does not believe that putting a screen of trees in front of a 190’ tower will keep people from noticing the tower.

Helen Easley, 208 Columbia Street, Rocheport, stated she is in opposition to this request. The tower will be on the way into Rocheport and that will not give people the impression of Rocheport being a historical town. For all the reasons that others have stated previously, she would like to add her opposition.

Alex Killy, lives with his father, Frank Killy, stated his parents gave him the option to

move in with them. He decided he would because Rocheport is a nice, cozy town and it is a way of getting away from the city and the problems, it is a place to go relax. Many of the reasons people have cellular phones is for business and a lot of times people will leave them at home to visit the bed and breakfast. There is a possibility that he will inherit the house when his parents die and the tower, if approved, will still be there. The gentleman that are present representing U.S. Cellular do not live in Rocheport and they would never know what it is like to have the tower overshadowing their home.

Randy Blackburn, 15030 Highway BB, Rocheport, stated he does not understand why there has to be a 190' tower on this property. This property is located on the way into Rocheport and there is no way to hide the tower or the building. He does not believe the tower is needed.

There was no further public comment.

Commissioner Stamper closed the public hearing and opened the floor for rebuttal or clarification by the applicants.

Mr. Kirby stated this proposed tower would be on a 16-acre lot not a lot in town. He noted the testimony of others where it pointed out that there are currently eleven towers that can be seen from the countryside around the area. He does not know the total number of towers in Boone County or Central Missouri, but if he did have this information, it would probably be dotted all over a map. He has not read anything about property values in Boone County and surrounding counties declining over the past five to fifteen years. By checking real estate record, there has been a significant increase in the property values. He realizes that there is opposition to the tower but in his opinion, as far as the property value issue, he does not believe the addition of one more cellular tower to the area will have any adverse impact on properties.

Commissioner Stamper stated most of the tower applications that the County receives are close to the interstate highway. This tower resides several thousand feet off the interstate and is not located at, what he would describe as, the highest point in the area. He asked Mr. Kirby if this tower would have less of an impact on the community if it were on land adjacent to I-70 but in the same area. Mr. Kirby stated he did not believe it would make any difference. If this was a superimposing structure, like a high-rise building, then probably yes but he does not believe a tower would have an impact on property values.

Commissioner Stamper stated it does seem to make a difference to a number of people. Mr. Kirby noted this is human nature but in his opinion, he believes the properties could be sold for reasonable prices.

Mr. McNally stated there were some questions about potential concerns for health. There is an FCC standard for that and they do comply with the standard. This is an issue that he believes has been preempted and this is not part of the issue at hand.

Another issue that was brought up during the testimony was the number of towers that are in the area, eleven towers. When one can look 20 miles from their home and see things, there probably are that many towers but a tower that distance from where their coverage problem is does not do them any good. The tower needs to be located where the problem is. In the vicinity of this facility, there is only one tower that could possibly work and that is the cable television tower. The reason they did not chose the cable television tower is that the height is not adequate. It is a 150' tower, the highest location they could place anything on that tower is 140', and the proposed tower is 190'. There are also concerns about the length of the lease on that tower, structural capacity of the tower and the lease does not allow for co-locators, does not allow for buildings, and this is not a viable option. The main reason for not locating on the cable television tower is that they are not able to get coverage from that site.

Road access was another issue that was mentioned during the testimony. They are planning to utilize the existing road access. These are unmanned facilities. Once they are operational after construction, they will not need to visit the site more than once a month to do routine maintenance.

There was a suggestion of getting waivers and locate at a different location. This is also related to another suggestion of locating in Howard or Cooper Counties. They are not licensed to operate in those counties. This is by order of the FCC. The radiospectrum is a finite resource, there is a limited amount of it, and this is why there are only so many broadcast television stations. There is a limit on the number of cellular companies as well. They cannot just begin operating in another county; they cannot just buy this. They have made an effort to do this; it is just not feasible. U.S. Cellular has been working with Mid-Missouri Cellular because they are on the border of their area to make sure there are no problems between the companies. U.S. Cellular has requested a waiver, which would allow them to have some signal level in the Mid-Missouri Cellular market area, which is on the west side of the Missouri River. This waiver has been approved for the proposed site. U.S. Cellular has requested a waiver be approved for the SBA site but it caused problems. The reason it causes problems at the SBA site, even though it is further east, is that in order to cover the River they have to point their tower that direction. At the proposed site, they would not have to point in that direction. The FCC has signed off on the waiver and they are working with the other companies. This is not an issue they are willing to make the effort on or they do not want to spend the money even if it maximizes their profits.

Mr. McNally stated the photographs that were submitted by Mr. Wolfe were taken on the day U.S. Cellular raised a balloon on the property. The width of the balloon is accurate in the picture. This would be the width at the top of the tower, 2.5'. The height of the tower is probably greater in the pictures because they raised the balloon 250'. The reason for this was they wanted to make sure they could see the balloon and the proposed tower. When the simulations were done, they did look at the topography and cross-sections of

some United States Geological Survey (USGS) maps. This coupled with the balloon; they were able to come up with accurate photographic simulations.

Regarding the comment on tower failure and falling on the property, the proposed tower is at a greater distance than the height of the tower from any property line, as required by code. Towers do not fall like trees; towers meet the same engineering standards that are required for buildings.

Commissioner Stamper asked Mr. McNally if this is not the highest point in the area then why did they chose this site. Mr. McNally stated the topography of the land will allow for coverage into Rocheport is the reason this site was chosen. The tower needs to be on a ridgeline and backed up to the river and the ridge moves in an easterly direction the further south one goes. This would preclude them from using the small back lobe of the antenna to cover that area. They would end up, essentially, still not being able to cover the part between the tower and the river. The area can be covered from the proposed site do to its proximity to the river.

Commissioner Stamper stated it has been suggested this evening that the real interest of U.S. Cellular does not have to do with the town of Rocheport but has to do with the coverage on I-70 and the eastern portion of Cooper County. Mr. McNally stated their interests do not lie in Cooper County but the coverage of I-70, Highway 40, and all rural areas, including residences and businesses, in this portion of Boone County.

Commissioner Stamper stated the location of proposed tower has nothing to do with their interest of having a percentage of their business in Cooper County thereby justifying an application for a license in Cooper County. Mr. McNally stated U.S. Cellular does not want to locate in Cooper County, they cannot pick up any business in Cooper County, and they have no interest in doing this.

Commissioner Stamper stated Mr. McNally had previously mentioned there are significant problems with the SBA site and asked him to elaborate on this issue. Mr. McNally referred to Exhibit 2, the plot map of the area that would be covered from the SBA site. The SBA site does not provide adequate coverage to I-70 and Rocheport. Mr. McNally explained the map and how the SBA site does not provide adequate coverage on I-70 or to the town of Rocheport.

Commissioner Miller asked what is the area of a white square. (White squares on Exhibits 1-4 show areas of no coverage.) Mr. McNally stated the area of a white square is approximately less than one-half of a mile. Commissioner Miller stated only one-half of a mile on I-70 would not be covered if they were to share the SBA site. Mr. McNally stated because I-70 cuts through a white square diagonally then the area is probably a little over one-half of a mile.

Doug Mesh, Senior RF Engineer for U.S. Cellular for this region, 3601 109<sup>th</sup> Street,

Urbandale, Iowa, stated these map plots are computer predictions. These maps are not 100% accurate; there is a margin of error in these predictions of 8DB. At 3DB, which is half the power, so if one is at 50 watts and they are down to 3DB, they are down to 25 watts. 8DB is a significant margin of error and that has to be taken into account when one looks at the maps. If an area is not covered than that area could be a lot larger. It is possible that the prediction is off and the coverage will be better than the computer prediction is showing. They have to take into consideration the worse case situation. They cannot spend \$500,000 on a tower and miss their objective. They are not concerned with making money with the tower because the tower will probably not make that much money. They are trying to solve problems that customers are facing and abide by the FCC rules about dropped call percentages. As previously stated, this is one of U.S. Cellular's worst performing sites, the Midway site. The reason they need the tower at the proposed site is because of the ridge. Trying to serve the backside of the ridgeline could be a futile effort. The best way Mr. Mesh can explain this is to think of the tower as a lighthouse and anywhere there is shadowing from the lighthouse there would be no service. They did not chose the highest point in the area because they wanted to keep the tower hidden as much as possible since there is no way to hide a 190' tower. The proposed site is on a lower ridge so the tower would not be as high as possible.

Commissioner Elkin stated there are other areas and other locations in the general area that would also work. Mr. McNally stated this issue gets complicated because of the fact they are in a market order. Commissioner Elkin asked Mr. McNally to answer his question if there were other locations in the area. Mr. McNally stated if they were to locate a tower any further east or south then they would lose coverage to the town of Rocheport because of the way the terrain is laid out. If they are able to move farther north and still cover Rocheport and Highway 40 but they would lose coverage to I-70. This proposed location was chosen and takes into account all the factors, I-70, Highway 40, Rocheport, and their market order.

Commissioner Elkin asked if Mr. McNally if his answer was yes. Mr. McNally stated his answer is U.S. Cellular cannot accomplish all of its goals of this site by moving the site anywhere else.

Commissioner Stamper stated they could use an existing tower in Rocheport with a smaller antenna or use a water tower for a satellite location. Mr. McNally stated yes, they could do that and be able to cover the town of Rocheport but they would probably be back a year later wanting another tower to cover I-70 because they could not cover I-70 with a tower in Rocheport.

Mr. McNally stated these towers are expensive and they are not built because they like to and the towers are only built because there is a need for them.

Commissioner Stamper closed the discussion and moved forward to discussion of the Commission.

Commissioner Stamper stated years ago the Commission ran across a proliferation of towers in Boone County. An ordinance was drafted that was designed to address towers in a special way because of FCC requirements. The Commission believed the ordinance served the County very well because it gave disclosure and commonality between tower type of applications. The Commission believed that this ordinance would force co-location and after there was saturation, that there would be smaller antennas located on billboards, for example, and the major structures would begin to decline. This appears to be a place where he believes there is a saturation point. There is nothing that prompts Commissioner Stamper to believe this tower has to be at this location. He believes there are many locations to place a tower that would achieve all their goals and he is not convinced that the applicants have exhausted all the possibilities of co-locating on an existing structure. He is unwilling to support the approval of this Conditional Use Permit based on the fact that that portion of the County's criteria has been met. (Boone County Zoning Regulations Section 15 B (4) (a) – other towers can work.) Secondly, he believes it would negatively impact a historically designated community. (Boone County Zoning Regulations Section 15 A (2) (b) – use and enjoyment of existing property.)

Commissioner Miller stated there were so few areas that were not covered from the SBA site. Doug Mesh spoke about the map projections being the worse case situation. There is a chance if U.S. Cellular co-located on the SBA site that there would be more coverage than what was projected. (Boone County Zoning Regulations Section 15 B (4) (a) – other towers can work.) She believes this is a better result than what is being proposed. Rocheport is one of the greatest jewels of Boone County and we have all learned to appreciate it. The historic significance of Rocheport is something that cannot be taken for granted and they have to do everything they can to preserve and protect Rocheport. She believes the whole economy of Rocheport is based on the historic perspective. She does believe the State Historical Preservation Office report that identified there would be an adverse effect on the historic town of Rocheport. (Boone County Zoning Regulations Section 15 A (2) (b) – use and enjoyment of existing property.) She cannot support this request tonight for those reasons and believes the tower would be an injustice to the community and to Boone County.

Commissioner Elkin stated there is a difference between need and necessity. The applicants have admitted there is a need for coverage in this area but he questions the proposed location as being necessary. He does not believe this exact location is a public necessity. (Boone County Zoning Regulations Section 15 A (2) (g) – no public necessity.) He believes there are other options available and are other structures in the area that the applicants could make work for their needs. (Boone County Zoning Regulations Section 15 B (4) (a) – other towers can work.) He believes there will be an impact on the use and enjoyment of the surrounding properties. (Boone County Zoning Regulations Section 15 A (2) (b) – use and enjoyment of existing property.) He is unwilling to support this request.

Commissioner Miller moved to deny the request by Richard and Carol Samuels on behalf

of U.S. Cellular for a transmission facility including a 190' tower on 16.64 acres, pending submission of findings of facts and conclusions of law, located at 15365 W. Hwy BB, Rocheport.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 153-2002**

**F. Receive and Accept the following plats**

**i. The Hamlet Park. S17-T48N-R13W. Opal E. Smith Trust, owner. Jay Gebhardt, surveyor.**

Mr. Shawver stated this property is located at the end of Manhasset Drive, which is in the Hamlet Subdivision and just outside the Columbia City Limits. After platting, the Columbia Parks and Recreation Department intends to purchase the property for use as a neighborhood park. This property is zoned R-S (Single Family Residential).

Access to the property is via Manhasset Drive, which was initially designed as a through street to connect to the future section of Louisville Drive. Manhasset is paved to the property line, but since it was designed as a through street does not have a cul-de-sac at its terminus. The Parks Department does not intend to connect Manhasset through to future Louisville Drive since a through street is not a desirable feature for a neighborhood park. Therefore, a permanent cul-de-sac will be required at the end of Manhasset. The cul-de-sac must be built or its construction guaranteed by suitable surety prior to recording the plat. Right of way for the Manhasset cul-de-sac and for the section of Louisville Drive abutting this property is dedicated by this plat. The applicant will not be required to build any portion of Louisville Drive. The applicant has submitted a request to waive the requirement to provide a traffic analysis.

The property is within the City of Columbia water service area. The property will be eligible for City sewer service upon annexation.

The property scored 76 points on the rating system.

Staff recommends approval of the plat and waiver request.

Steve Saitta, 4450 N. Cindy Lane, Columbia, is the Superintendent of the Park Development for the City of Columbia Parks and Recreation Department, was present on behalf of this item.

Commissioner Stamper asked Mr. Saitta if he had any objection or concern over this plat.

Mr. Saitta stated he had none. They have worked with A Civil Group. The intention of the City is to develop this into a neighborhood park and upon completion of the purchase, this would be annexed into the City. City Public Works does not require the cul-de-sac to be completed at this time but it would be completed when the park is developed. The development should be done in another four to five years.

Commissioner Miller moved to receive and accept The Hamlet Park Plat.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 154-2002**

**ii. Kaiser. S28-T50N-R13W. A-2. John and Mary Ann Kaiser, owners. Steven Proctor, surveyor**

Mr. Shawver stated this property is located on the west side of Silver Fork Hill Road just north of the intersection with Stone Drive. This is zoned A-2 (Agriculture).

The lot has frontage on and direct access to Silver Fork Hill Road. Right of way, sufficient to provide a 33-foot half-width is dedicated by this plat. The applicant has submitted a request to waive the requirement to provide a traffic analysis.

Consolidated Public Water District Number 1 provides water service to the property.

A suitable location for a lagoon is shown on the plat. The applicant has submitted a request to waive the requirement to provide a wastewater cost-benefit analysis.

The property scored 41 points on the rating system.

Staff recommends approval of the plat and waiver requests.

Commissioner Elkin moved to receive and accept the Kaiser Plat.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 155-2002**

**Subject: First Reading of Agreement for Professional Architectural Services**

Commissioner Stamper stated this has been previously read for the record and to set this

item for a second reading.

John Patton, County Counsel, stated the version of the agreement is the most recent one. There were a few changes made from the original document.

There was no comment from the Commission and no public comment on this document.

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.

**Subject: First Reading of Health Facility Agreement**

Commissioner Stamper stated Mr. Patton has received and reviewed this document, in doing so, certain adjustments were reported back to the City of Columbia and those adjustments have been made.

Mr. Patton stated the only suggestion he had for the City was to change the language where the County was committing to the indefinite financial commitment to all aspects of the project. He revised the language to give the County a firm commitment on the purchase and to make all other parts subject to appropriations, which effects both the City and the County parts of the document. Every phase of the agreement that occurs would have to be separately appropriated by the City and the County. There is also a “good faith” clause in the agreement. As far as he knows, the money is available to all the County’s obligations. What is not available in cash the County will do through lease hold revenue bond financing. They had a conference call with the investment banking firm and bond counsel on this issue today.

Commissioner Stamper noted for the record that the trustees have verbally notified the County of their intent to make a significant contribution towards the remodeling of the Family Health Center square footage. This is a good thing that they were able to find a portion of their receipts of their lease of the hospital to invest \$500,000 for those who cannot seek health care in other places.

There was no comment from the Commission and no public comment on this document.

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.

**Subject: Planning and Zoning**

**A. Second Reading and Approval of Proposed Fee Increases**

Mr. Shawver stated these proposed fees were first read by the Commission on March 19, 2002. This is a recommendation from the County Auditor. This proposal was initially introduced to the record during budget hearings for the 2002 proposed budget. These fee increase would bring in additional revenue for the County. There has been no building permit fee increase since 1991. The second reading of this document was held until this meeting to allow for public comment.

Commissioner Stamper asked if there has been any comments received by the department. Mr. Shawver stated there has been no comments made to the department but did read of one comment in an article in a local newspaper. Annie Pope of the Home Builders Association was interviewed in this article and the only concern expressed was about the funds would be returned back to the department. Mr. Shawver noted all County revenue goes into the general revenue fund and all department expenses come from the general revenue fund.

Commissioner Miller stated she had not received any comments.

Commissioner Elkin stated he received some comments. These comments were concerning the reinspection fee and he explained to the contractor that the reinspection fee would be for a blatant violation.

Mr. Shawver stated there has been a good example of how the reinspection fee would be applied. There was four reinspection trips made to the same site and at each reinspection the inspectors found there had been no changes made and no attempt had been made to make any corrections. This is a case where the reinspection fee would be applied.

Commissioner Stamper stated he received a telephone call regarding the level of increase and the effect it may have on affordable housing. Commissioner Stamper spoke with Mr. Shawver about how these proposed fees compared with the City of Columbia's fees and the County rates are comparable.

Commissioner Stamper opened the floor for public comment.

Harry Rogers, 2901 East Biggs, Ashland, stated he is a framer and has been framing in the Boone County area since 1988. There have been problems recently with County Inspectors and the Inspectors not working together on noting problems. He has suggested having the same Inspector return to the job but this would cause problems due to scheduling. Also, if there is a different Inspector that goes to a job, to have them reinspect what has been noted as a problem before and not reinspect the entire job. There have been conflicts with Inspectors for a number of years. He asked how many times the reinspection fee would be charged. Commissioner Stamper noted that this is a judgement call that Mr. Shawver would be making.

Commissioner Stamper stated the Commission is working with Mr. Shawver and the

community to make improvements to the inspection process.

Mr. Rogers asked if the County would be using the 2000 International Builders Code. Mr. Shawver stated the County has always followed what the City does and the City has not been able to agree.

There were no further comments.

Commissioner Elkin moved to approve the fee increases for the Planning and Building Inspection Department per the fee schedule. The new fee increase will be effective May 1, 2002.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 156-2002**

There was no public comment.

The meeting was adjourned at 9:24 p.m.

Attest:

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Don Stamper  
Presiding Commissioner

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Wendy S. Noren  
Clerk of the County Commission

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Karen M. Miller  
District I Commissioner

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Skip Elkin  
District II Commissioner