

TERM OF COMMISSION: December Session of the October Adjourned Term

PLACE OF MEETING: Roger B. Wilson Boone County Government Center
Commission Chambers

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

The meeting was called to order at 7:00 p.m.

**Subject: Public Hearing – Boone County Roadway Regulations Chapter I:
Vehicular Traffic Regulations**

Allison Anderson, Project Engineer, was present on behalf of this item.

Allison Anderson stated the department was requested to evaluate the speed limit on Mexico Gravel Road between Route PP and Route Z. The current posted speed limit for this road is 35 mph, except 0.34 miles west of Route Z to Route Z where the speed limit is posed at 25 mph. A speed study using VMIs was completed on May 25 and 26, 2004 as part of the yearly traffic count program. From this study the 85th percentile speed was determined and is between 40 and 45 mph. The department recommends the speed limit on Mexico Gravel Road (Route PP to Route Z) be set at 45 mph.

There was no one present to comment on this issue.

Commissioner Schnarre stated this is the first public hearing and there will be two more public hearings regarding this issue during the next two Commission meetings. The proposal will be approved after the third public hearing, which is scheduled for December 30, 2004.

Subject: Planning and Zoning

Commissioner Schnarre noted that during Planning and Zoning sessions, 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 Loren Boger for a permit for a kennel on 23.65 acres located at 3150 N Rte Z, Columbia

Stan Shawver stated this site is located on State Highway Z, 2 ½ miles east of Columbia and 1 ½ miles north of Interstate 70. The property is zoned A-1, as is all of the surrounding property. This request is for a dog breeding kennel. There is a house and shop on the property. This site is located within the Columbia School District and the Boone County Fire Protection District. Electric service is provided by the Boone Electric Cooperative. Water service is provided by Public Water District 9. The master plan designates this area as being suitable for agriculture and rural residential land uses. There have been no previous requests submitted for this tract. Staff notified 14 property owners about this request.

The zoning regulations list the criteria that the Commission is to consider before granting a conditional use permit.

County regulations require that a kennel of this type comply with the minimum standards of the United States Department of Agriculture. The applicants have indicated that their intent is to comply with these standards.

If the Commission decides to approve the permit, staff suggests the following conditions:

- Facility to comply with USDA standards within 90 days.
- Provide proof of USDA license within 90 days.
- Install sight proof fence around facility within 90 days.
- Install wastewater system for the kennel within 90 days.
- Kennel building must be at least 100 feet from property lines.

The Planning and Zoning Commission conducted a public hearing on this request on December 16, 2004. There were 10 Planning and Zoning Commissioners present. There was extensive public testimony in support of this request. The Planning and Zoning Commission made a motion to approve the request with the following conditions:

- Facility to comply with USDA standards within 90 days.
- Provide proof of USDA license within 90 days.
- Install sight proof fence around facility within 90 days.
- Install wastewater system for the kennel within 90 days.
- Permit expires upon transfer of the land

This motion received 8 “yes” votes and 2 “no” votes. This comes forward with a recommendation for approval.

Loren Boger, 3150 N. Rte Z, Columbia, was present on behalf of this request.

Loren Boger stated he wants to set up a dog kennel to raise and show English Bulldogs. He has already purchased a kennel building. This building is 14’ x 48’. He will also have four 6’ x 10’ outside pens and six 6’ x 6’ inside pens. He has considered stacking pens inside and that would be for training purposes.

The area the dogs will be in are 3’ x 6’. This is a climate controlled area where the dogs stay. There will also be an odor control system.

There will be a privacy fence around the 6’ x 10’ pens. This is not for noise control but to deter additional noise from possible barking. This will be on the west side of the building. There will be a fenced in area on the east side of the building that will be an exercise area. He has been reading a lot about English Bulldogs and they do not bark that much anyways.

Mr. Boger noted the wastewater issue is being worked on by Marshall engineering. They have proposed a two-step lagoon off a septic tank. This will be a non-discharge lagoon which will be irrigated to a half acre.

He has discussed this with all of his neighbors and they do not object to this request.

Commissioner Schnarre asked Mr. Boger if he was ok with the conditions that the Planning and Zoning Commission approved. Mr. Boger stated he was concerned about the land transfer being tied to just him and his wife. He would like this tied to his immediate family. He noted that since he will only have nine show dogs he does not have to be licensed with the USDA but does not have a problem if that is a condition.

Mr. Boger also asked if the 90 days compliance is 90 days from the day the kennel opens. Mr. Shawver stated that is correct.

Commissioner Elkin asked about the licensing with the USDA and having nine breeding females. Mr. Boger stated this falls under hobby/show and does not require being licensed.

Commissioner Miller stated the condition about the permit expiring upon transfer of the land could be changed to “permit expires upon transfer of the land except by family transfer”. She asked John Patton, County Counselor, if this would be suitable.

Mr. Patton stated he does not understand the rational for this condition because if the use is appropriate for the conditions now then why won’t it be if the property is sold.

Commissioner Miller stated she believes the neighbors are happy with these people but are not sure about another breeder buying the property. What if that person is not being a good breeder?

Mr. Patton stated he would not be comfortable defending this type of condition in court.

Commissioner Schnarre opened the floor for a public hearing on this request.

John Pasley, 3300 N Rte Z, Columbia, stated the Bogers are good neighbors. He and his wife believe the Bogers will take good care of the kennel and they do not have any objection to this request. They would like the condition about the permit expiring upon property transfer stand.

Allen Ronnebaum, 3125 N Rte Z, Columbia, stated he does not have any opposition to this request at this time.

Alberta Weaver, 3155 N Rte Z, Columbia, stated she has been neighbors with Mr. Boger for 17 years and she believes he will do what is right.

Patti Braman, 3054 N Rte Z, Columbia, stated the Boger family keeps a nice place and they have no concerns about this request.

Commissioner Schnarre closed the public hearing.

Commissioner Schnarre stated the motion that was made at Planning and Zoning was for the facility to comply with USDA standards not be licensed.

Mr. Shawver stated that is correct. The staff's recommendations were based on the original application, which was for 30 dogs. Because of this, staff recommended the facility be USDA licensed. During testimony, Mr. Boger indicated he would only have nine or ten breeding females. The Planning and Zoning Commission restricted him to nine breeding females. The requirement to comply with USDA standards is in the County Regulations.

Commissioner Schnarre stated this does not require a license but the USDA standards must be followed.

Commissioner Miller asked if the conditions were strong enough if the land transfer condition was removed.

Commissioner Elkin stated he believes that condition has been placed on other permits. Mr. Shawver stated he does not believe there has been a great deal of comfort with that condition.

Mr. Patton stated he believes this condition was placed on mobile home parks. He does not understand how this permit could not be compatible with another land owner.

Commissioner Elkin asked if a condition could be placed on the permit for an annual review in case the land is sold in 25 years from now and the Commission has the option to go in to see if the conditions are being followed. Mr. Patton stated a condition could be placed on the permit that it would be reviewed for compliance in the future.

Commissioner Elkin asked if the County has the authority to check to see if the facility is in compliance anyway. Mr. Patton stated that is correct.

Mr. Patton stated a condition could be placed on the permit to give notification of inspections.

Commissioner Schnarre stated the Commission understands the concerns of the neighbors. The problem is conditional use permits are tied to the land not the owner. As Counsel has noted, he is not sure the condition of the permit expiring upon transfer of the land can be enforced.

Commissioner Elkin asked about the reasonable notice for inspections. Commissioner Miller stated 24 hours is reasonable notice.

Mr. Patton stated the condition could be "Premises to be available during normal business hours for inspections within 24 hours notice." There was no objection to this suggestion and the Commission agreed to have this as a condition. Mr. Boger had no objection to this suggestion.

Mr. Boger asked if there is a way for him to revoke the permit himself if he sold the land. Mr. Shawver stated the operation could be stopped and a covenant be placed on the land that it is not usable for a kennel.

Commissioner Miller asked if this covenant would be permanent. Mr. Patton stated unless the owner places a time limit on the covenant.

There was no further discussion on this request.

Commissioner Elkin moved to approve the request by Loren Boger for a permit for a kennel on 23.65 acres located at 3150 N Rte Z, Columbia, with the following conditions:

- Facility to comply with USDA standards within 90 days.
- Facility limited to nine (9) breeding females.
- Install sight proof fence around facility within 90 days.
- Install wastewater system for the kennel within 90 days.
- Kennel building must be at least 100 feet from property lines
- Premises to be available during normal business hours for inspection within 24 hours notice

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 523-2004**

B. Request by Teresa Shaw for a permit for a seasonal deer/game processing facility on 17.38 acres, located at 6400 W Hwy 124

Mr. Shawver stated this site is located approximately 1 mile east of Harrisburg on State Highway 124. The property is zoned A-2, as is all of the surrounding property. There is a house, pole barn, lean-to, skinning shed and meat shop on the property. This request is for a permit to allow a “seasonal deer / game processing” business. This site is located within the Harrisburg, R-8 School District. Water is provided by Consolidated Public Water District No. 1. The master plan designates this area as being suitable for agriculture and rural residential land uses. The Planning Commission has not considered any previous requests for this tract. The Zoning Board of Adjustment granted a temporary permit to allow a mobile home to be placed on the property in 2000. The mobile home was removed upon completion of the single family dwelling which was completed in 2003. Staff notified 7 property owners about this request.

Previous requests of this nature have been approved that have included restrictions on the number of domestic animals processed, and restrictions that the permit cannot be transferred. Staff recommends approval of this request.

The Planning and Zoning Commission conducted a public hearing on this on December 16, 2004. There were 10 Planning and Zoning Commissioners present. The Planning and Zoning Commission made a motion to approve the request with the following conditions:

- Permit expires upon transfer of the land
- Domestic livestock processed on site limited to five (5) per month
- Slaughter of animals not permitted on premises

This motion received 10 “yes” votes and comes forward with a motion for approval

Teresa Shaw and Sarah Froese, 6400 W Highway 124, Harrisburg, were present on behalf of this request.

Teresa Shaw stated each year they receive a permit from the Department of Conservation. Seasonal deer is processed between September and January. They average between 230 to 240 deer per year. Occasionally a hog or sheep will be processed.

Commissioner Miller asked if this is a conditional use permit. Mr. Shawver stated that is correct.

Commissioner Miller asked what is the difference between this permit not transferring and the previous request. Mr. Shawver stated this condition was placed on this due to research of past deer processing facility requests. Under the old regulations, these facilities were treated as agriculture related businesses. In revising the regulations, deer processing facility was not an agriculture related business.

Sarah Froese stated they run a clean shop and basically do seasonal work.

Commissioner Schnarre opened the floor for a public hearing on this request.

There was no one wishing to speak on this request.

Commissioner Schnarre closed the public hearing.

Commissioner Schnarre asked if the applicants agreed with the conditions. The applicants stated they did agree.

Commissioner Miller stated she believes this has to be treated the same as the previous request. The condition about the permit expiring upon transfer of the land will be removed. There was no objection to this request.

There was no further discussion on this request.

Commissioner Miller moved to approve the request by Teresa Shaw for a permit for a seasonal deer/game processing facility on 17.38 acres, located at 6400 W Hwy 124, Harrisburg, with the following conditions:

- Domestic livestock processed on site limited to five (5) per month
- Slaughter of animals not permitted on the premises

Commissioner Elkin seconded the motion.

Commissioner Schnarre asked Mr. Shawver if the applicants have to have a Department of Conservation permit. Mr. Shawver stated he believes that is State Law.

Ms. Shaw stated that is correct, they have to send an application in each year for a permit.

Commissioner Miller asked if the Department of Conservation inspects the facility. Ms. Shaw stated they do inspections. Ms. Froese stated two years ago the Department of Conservation came for a surprise inspection and the facility passed with flying colors.

There was no discussion and no public comment.

The motion passed 3-0. **Order 524-2004**

C. Request by Gilmore Investments LLC to rezone from A-2 (Agriculture) to C-G (General Commercial) of 5.0 acres, more or less, located at 6051 Gilmore Ln., Ashland (*appeal*)

The applicants were not present at this time and this would be held until later in the meeting.

D. Request by GM Columbia Property LLC to rezone from R-S (Single Family Residential) to C-GP (Planned Commercial) and approve a Review Plan on 3.68 acres, more or less, for property located at 4750 E. Hwy WW, Columbia

Mr. Shawver stated this proposal is for a revised review plan for a Planned Commercial Development (PCD) and it is treated as a rezoning. The proposed revisions are for a part of a larger planned commercial development that received review plan approval with conditions in March of 2004. The current proposal is exclusive to the proposed lot for the Elks, proposed future Lot 1, and no other part of the development is proposed for change from that which is already approved. A plat to create the actual lot has not been proposed at this time but will need to be submitted at some point in the future prior to the land changing hands.

This property is located approximately 1/2 mile east of the Columbia municipal limits on the south side of State Highway WW. The current proposal comprises 3.68-acres of the previously approved 11.78-acres that currently have pending C-GP approval. The proposal is in the northeast corner of the overall development.

The PCD Plan proposed use of Lot 1 is for an Elk's Lodge building. The revised review plan indicates that the Elks Lodge will be a maximum of 15,000 square feet initially with the potential to expand up to an additional 10,000 square feet with at most 5000 square feet north and 5000 square feet south of the original building. The only use proposed for Lot 1 is private club or lodge.

This property is located within the Boone Electric service area, the Columbia School District, and the Boone County Fire Protection District. Water service is provided by Public Water District No.9. Sewer is proposed to be from a central system to be operated by the Boone County Regional Sewer District (BCRSD). The details of sewer service have yet to be finalized, however there are current on-going negotiations regarding the sewer.

Staff recommends approval of the Revised Review Plan subject to the following 8 conditions:

- For the PCD plan, sewer capacity must be secured by a means acceptable to the BCRSD and documentation of the acceptable agreement must be provided to the Director of Planning prior to final plan approval.
- That the signs shown on the plan be removed and that new signage in compliance with the zoning ordinance be approved by staff prior to final plan approval with the new locations and information shown on the final plan.
- That the plan be modified to move all structures such as signs and dumpster enclosures out of the required 20' perimeter setback as well as the 50' setback that will be required along Highway WW when it is platted. This 50' setback is behind the additional ROW that will be required by plat.
- The developer shall submit a stormwater plan with each final plat and/or final plan that shows that the post development runoff does not exceed the pre-development runoff.
- Fire hydrants and fire protection for the building must be worked out in a plan acceptable to the BCFPD prior to occupancy of any building.
- Traffic improvements that might be caused by this phase of the development are deferred to either the final plat stage that contains Lot 1 or with any additional development of the original property as determined by the Director of Planning.
- That no additional structures are allowed on the site without going back through the process and receiving approval of a revised review and revised final plan. This includes freestanding signs.
- The 30 ft buffering of existing vegetation shown on the plan must be maintained in good and healthy condition, plantings that die or are failing to thrive will be replaced with a healthy specimen of equal size or greater than the original plant would have been if it was healthy in the next growing season. Additional plantings are required to shore-up the thin spots or gaps in the existing plantings.

The Planning and Zoning Commission conducted a public hearing on this request on December 16, 2004. There were 10 Planning and Zoning Commissioner present but one member excused themselves from participation, they physically left the room during discussions and did not participate in the voting. After public hearing, Planning and Zoning recommended approval of the rezoning and revised review plan. Condition #1 was revised to be, "For the PCD plan, sewer capacity must be secured by a means acceptable to the BCRSD and documentation of the acceptable agreement must be provided to the Director of Planning prior to temporary or final occupancy." The motions

received nine “yes” votes.

Commissioner Miller stated there was a letter received from Billy Sapp regarding Condition #1. Mr. Shawver stated the BCRSD board decided last Tuesday night that the sewer capacity is available on a first come, first serve basis. If the owner of this development pays for a connection agreement and tap fee then they will have sewer capacity.

Commissioner Schnarre asked if this would stop a house from being built in Concorde Estates because capacity may be full. Mr. Shawver stated this will stop five houses from being built.

Commissioner Miller stated she does not understand how this can be done without having the people that have the capacity now as part of their land. Mr. Shawver stated this is what the BCRSD board decided.

Commissioner Elkin stated this is no different than any other development. The sewers are only so big.

Commissioner Miller stated the sewer was developed with Concorde Estates with those lots having the capacity.

Commissioner Schnarre asked who paid for the sewer for Concorde Estates. Commissioner Elkin stated the original developer is the one who paid for it.

Mr. Shawver stated this is a good solution for this situation. All information the staff has seen indicates the balance of what is out there will be redesigned.

Commissioner Miller asked why a developer would want to give money to develop a system if they were not going to be guaranteed capacity for their lots. Mr. Shawver stated no one out there has paid for any of the capacity out there. This capacity was done when Concorde Estates was platted in 1976 or 1977. It was deeded to the BCRSD system since 1982 or 1983.

Commissioner Miller stated every other developer deeds capacity to the BCRSD and this is where she is having the problem. She wants to make sure there are no problems down the road.

Commissioner Elkin asked if this is so, even though the BCRSD did not recognize the capacity that the owner of those lots agreed to sign over to the district.

Mr. Shawver stated this situation is similar to the treatment facility on South Route K. The owner paid for a lot of the capacity but did not utilize it within the written time constraints. The excess capacity became available on a first come, first serve basis. No

one else requested capacity and now the original owner has a new development and is trying to obtain capacity again.

Commissioner Miller asked if the owner is paying for capacity twice. Mr. Shawver stated he is not paying twice but receiving credit for what he originally did.

Chad Sayre, Engineer with Allstate Consultants, and Rob Smith, representative of GM Properties LLC, were present on behalf of these requests.

Chad Sayre stated this is a more detailed review plan, separated from the rest of the development. The reason for the Commission's discussion about the sewer capacity is the reason he asked for clarification of the condition about the sewer. The ultimate solution has been made clear but the process to get there has been cloudy. This will allow for the construction of the shell for the Elks' Lodge to keep them on schedule for opening in 2005.

Mr. Sayre stated the purpose of condition #1 was to allow more flexibility for staff to allow them to move forward with sewer agreement. In October 2004, Mr. Smith signed an agreement for the overall development to BCRSD, which included improving the existing El Chaparral facility. That is not the solution of choice as the solution of choice is to centralize.

An engineering study was done in 2003 and the number of lots to be set aside was determined at that time. He believes the BCRSD will review this and it will be reviewed by staff to get the ultimate resolution for sewer for the Elks.

Mr. Sayre apologized to the Commission for not reviewing the plan concerning the sign issue. This plan was being worked on while the sign regulations were being discussed. They have no problems in complying with the current sign regulations.

They are ok with the set backs.

They had originally planned to use the existing lake for stormwater. That was a more regional detention. In staff's opinion, and Mr. Sayre agrees with it, is that stormwater needs to be handled on-site. This will be handled with an existing non-jurisdictional ditch. This will be used to handle the detention, which will be minimal, for the Elks' Lodge and the future Lots 2 and 3.

Commissioner Miller asked who is building Elk Park Drive. Mr. Sayre stated Mr. Smith will be building it but that is not part of this request. This lot currently has legal right of way access. Elk Park Drive will be part of Final Plat 1 but this has been placed on hold until the sewer issue has been resolved.

Mr. Sayre stated the traffic studies have been submitted and reviewed.

The Water District has good service in the area for the fire hydrants. It has yet to be determined if a road bore will be necessary with this first lot. This will be left to the Water District engineers. Their process has evolved to include the Boone County Fire Protection District and City of Columbia Fire Department to review fringe developments for water flow and fire protection.

They are ok with the no additional structure condition.

There was a concerned neighbor to the east and they have set aside a buffer. This buffer was existing and natural. Staff agreed to this buffer. The Elks had originally set aside 50' for a buffer.

Mr. Sayre stated the plan concept has not changed. They plan on coming back, when the sewer details are worked out, with the final plat for these three lots to finalize Elk Park Drive. Public Works has reviewed those plans but they will need to go through the process again.

Commissioner Miller asked if the Elks' Lodge is on Lot 1. Mr. Sayre stated that is correct. There was discussion of the use of the land for Lot 1.

Mr. Sayre stated there is a 24" pipe that comes beneath the MoDOT roadway, Highway WW. According to their calculations and Boone County Regulations, the pipe should be 48".

Commissioner Schnarre asked if they can guarantee road improvements. Mr. Shawver stated a bond can be required but with this one structure, it is difficult to know what the traffic impact will be. Staff did not feel it was appropriate at this time to require road improvements.

Commissioner Schnarre asked what if nothing else goes forward from this point. Mr. Shawver stated this one use will have minimal impact on the traffic.

Commissioner Schnarre asked what happens if they do not come back with a final plat. Mr. Shawver stated they have to in order to transfer the land. There is a contract with the Elks for 3.8 acres of land so this has to be platted.

Mr. Sayre stated there is a condition that references the final plat.

Commissioner Schnarre stated the commercial development won't generate that much additional traffic.

Mr. Shawver read the condition, "Traffic improvements that might be caused by this phase of the development are deferred to either the final plat stage that contains Lot 1 or with any

additional development of the original property as determined by the Director of Planning.”

Commissioner Schnarre stated there are plenty of safe guards about the traffic. Mr. Shawver stated that is correct and it will not restrict this project.

Commissioner Miller asked how the number of trips per day are calculated from a commercial facility like this. Mr. Shawver stated the Transportation Standards Manual, which engineers use, includes a list of uses for standard generators of traffic. Whether it is a convenience store, day care facility, or residential development, standard figures are used.

Commissioner Miller stated it is 10 trips per day for a household. She asked what the number of a facility like this is. Mr. Shawver stated he did not know at this time.

Commissioner Schnarre opened the floor for a public hearing on this request.

There was no one wishing to speak on this request.

Commissioner Schnarre closed the public hearing.

Commissioner Schnarre asked if staff recommends the Commission follow the Planning and Zoning Commission conditions. Mr. Shawver stated that is correct.

There was no further discussion on these requests.

Commissioner Elkin moved to approve the request by GM Properties LLC to rezone from R-S (Single Family Residential) to C-GP (Planned Commercial) on 3.68 acres, more or less, on property located at 4750 E. Hwy WW, Columbia.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 525-2004**

Commissioner Elkin moved to approve the request by GM Properties LLC to approve a Review Plan for The Elks at Southfork Revised Review Plan on 3.68 acres, more or less, on property located at 4750 E. Hwy WW, Columbia, with the following conditions:

- For the PCD plan, sewer capacity must be secured by a means acceptable to the BCRSD and documentation of the acceptable agreement must be provided to the Director of Planning prior to temporary or final occupancy.
- That the signs shown on the plan be removed and that new signage in compliance with the zoning ordinance be approved by staff prior to final plan approval with the new locations and information shown on the final plan.
- That the plan be modified to move all structures such as signs and dumpster enclosures out of the required 20' perimeter setback as well as the 50' setback that will be required along Highway WW when it is platted. This 50' setback is behind the additional ROW that will be required by plat.
- The developer shall submit a stormwater plan with each final plat and/or final plan that shows that the post development runoff does not exceed the pre-development runoff.
- Fire hydrants and fire protection for the building must be worked out in a plan acceptable to the BCFPD prior to occupancy of any building.
- Traffic improvements that might be caused by this phase of the development are deferred to either the final plat stage that contains Lot 1 or with any additional development of the original property as determined by the Director of Planning.
- That no additional structures are allowed on the site without going back through the process and receiving approval of a revised review and revised final plan. This includes freestanding signs.
- The 30 ft buffering of existing vegetation shown on the plan must be maintained in good and healthy condition, plantings that die or are failing to thrive will be replaced with a healthy specimen of equal size or greater than the original plant would have been if it was healthy in the next growing season. Additional plantings are required to shore-up the thin spots or gaps in the existing plantings.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 526-2004**

E. Request by Sells Development Group LLC to rezone from 17.12 acres REC (Recreational) and 19.82 acres A-R (Agriculture Residential) to 28.34 acres of R-SP (Planned Single Family Residential), and 8.6 acres of C-GP (Planned Commercial) and to approve a Review Plan for Lenway Estates Planned Development, located at 9689 I-70 Dr. NE, Columbia

Mr. Shawver stated the property is located at 6989 I-70 Drive N.E., approximately 4 miles

east of Columbia. The 36.94 acre tract was originally zoned A-R. In 1994 17.12 acres was rezoned to Recreation REC, the remaining 19.82 acres retained the original A-R zoning. The golf driving range was allowed by conditional use permit in 1989.

Zoning adjacent to the property is as follows: north – A-1 and A-R; east – A-R; south – A-2; west – A-2.

There are currently two dwelling units and the golf driving range on the property. An application to rezone the property to R-S was submitted in May 2004 and subsequently withdrawn. A second application to rezone the property to RS-P was submitted. The Planning and Zoning Commission recommended approval of that request. The County Commission denied that request.

The current application is to request rezoning to RS-P and CG-P. The review plan and preliminary plat for the residential request includes 88 lots, 86 of which are intended for residential use. The other two are reserved for the neighborhood park and the wastewater treatment plant respectively. Lots 89 and 90 are being reserved for future commercial use at such time as a revised review and final plan are approved. Lot 91 will contain the buffer and landscape strip.

Density in a PRD is based on the net acreage after subtracting non-residential uses from the gross acreage. 29.44 acres of the 36.94 acre parcel will be in the residential portion. Future right of way and common open space are included in the net acreage. The proposed residential density is one home per 0.34-acres ($29.44/86=0.34$). For comparison, A-R zoning would allow a total of 58 homes; R-S would allow 183 homes.

The Master Plan designates this property as suitable for agriculture and rural residential land use. The Master Plan identifies the use of planned districts to establish new commercial and industrial areas. However, rezoning land for urban land use in an area designated for agriculture and rural residential development can create conflicts between land uses. Planned zoning can be used to minimize those conflicts in such cases. The Master Plan also identifies a “sufficiency of resources” test for determining whether there are sufficient resources available for the needs of the proposal.

The resources typically used for this analysis can generally be broken down into three categories, Utilities, Transportation and Public Safety Services.

Utilities: Public Water District Number 9 provides water service to the property. The district is not able to confirm whether the existing infrastructure, available at the property, is sufficient to support the level of development that would be allowed if the proposed rezoning is granted. However, there is a sufficient water source located to the west of this property that could be extended to this property at the developer's cost. A central sewer system would be built by the developer. Upon completion, ownership of the system would be transferred to the Boone County Regional Sewer District.

Transportation: A traffic analysis prepared by Crockett Engineering Consultants has been submitted. MoDOT has reviewed the traffic study and agrees with the conclusion that no improvements to I-70 Drive N.E. are warranted because the base traffic flow is low enough that even with the additional traffic generated by the proposed development, the street will continue to function at level of service A. The developer has agreed to construct a left turn lane adjacent to the development. The left turn lane will be built under a permit from MoDOT to MoDOT specifications.

Public Safety Services: There is no indication that public safety services are not readily available to the property.

Conflicting Land Uses: Property west of and adjacent to the subject property was rezoned from A-R to A-2 in 1993. Subsequently, and also in 1993, a conditional use permit was issued to allow a dog kennel. The kennel has been operated in compliance with the terms of the conditional use permit since 1993. This use is compatible with the Master Plan land use designation of agriculture and rural residential land uses. There is a potential for conflict between the kennel and the currently proposed residential use. This potential conflict has been mitigated by a proposal to establish a landscaped buffer around the perimeter of the development. The buffer will consist of a 5-foot tall landscaped berm and two offset rows of evergreen trees spaced on 20-foot centers. As further mitigation, the developer has modified the restrictive covenants so that future homeowner's will have notice of the existing kennel. A hold harmless statement is also included that requires the future lot owners to waive and release all claims for nuisance against the owner of the kennel or the developer in regard to the operation of the kennel.

A note on the plan indicates that there are no uses proposed for the commercial portion of the site, although the developer is requesting C-GP zoning. If the rezoning to C-GP and review plan is approved, there can be no use of the property until such time as a revised review and final plan are submitted and approved.

The property scored 56 points on the rating system. 11 property owners were notified of this request.

All of the conditions of approval that were adopted by the Planning and Zoning Commission have been incorporated into the current proposed plan. Staff recommends approval of the rezoning, review plan and preliminary plat.

The Planning and Zoning Commission conducted a public hearing on these requests on December 16, 2004. A motion was made to recommend approval of the rezoning requests. This motion received six "yes" votes and four "no" votes. A motion was made to approve the review plan for Lenway Estates Planned Development. This motion received seven "yes" votes and three "no" votes.

David Kurtz, legal representative for the applicant, Tim Crockett, engineer with Crockett Engineering and Lenny Gilpin, representative of Sells Development Group LLC, were present on behalf of these requests.

David Kurtz stated the initial rezoning request was made in May 2004. That request was for an open R-S zoning with 117 residential lots. Staff's preference was for a planned zoning designation and that original proposal was withdrawn at the Planning and Zoning hearing. The request was resubmitted later that summer as a request for R-SP zoning with 96 residential lots. Park land, a 70' x 100' buffer zone around the development was added, and the berm was increased from three feet to five feet in this second request. Staff requested the applicant have restrictive covenants on the lots to give notice there is a kennel to the west of the property and require any lot owners to waive any nuisance claims they might have against the kennel. This request was approved by the Planning and Zoning Commission by an 8 to 1 vote.

The County Commission ultimately denied the request 3 to 0 with issues such as ingress/egress to the property, whether the service road was able to maintain and allow the additional traffic. The Commission was concerned 96 was too many lots. A recommendation was also made to have commercial development to buffer the interstate from the residential development.

Mr. Kurtz stated the applicant has responded to the Commission's concerns with this request. The plan before the Commission this evening includes around 29.5 acres of R-SP, seven acres C-GP. The lots have been reduced to 86.

The owner has done everything that has been asked of them. They have met with the neighbors many times. They have had extensive communication with the County, including County staff. The number of lots have been reduced from 117 to 86. A turn lane is being added to the service road at the owner's expense. They have dedicated more area to landscaping and buffers than otherwise required to do. They have bent over backwards to accommodate the requests that have been made and some have been significant requests. As the staff report indicated, all necessary utilities, transportation and other items are in place for this development.

Tim Crockett stated the first change to this request is the addition of the turn lane. In a traffic study they performed, which was approved by MoDOT, indicated that no turn lane was needed. This was done in response to a comment made by Commission during their last request. In this request, they have added a turn lane. This turn lane will include the incoming and outgoing tapers and the improvements will extend the entire length of the property.

At the last Commission meeting, a suggestion was made for a shield or buffer between the residential development and the interstate. They have added two commercial lots to this plan. No uses are proposed for those lots at this time. Anything that is proposed for lots

in the future will have to go through Planning and Zoning Commission and County Commission for approval.

Mr. Crockett stated they felt at the last meeting the Commission was asking for the number of lots be reduced. The lots were reduced in this request from 96 to 86. The original request was for 117 lots. The lots have been reduced 26% since the original request. The buffer strip on the west boundary of the property is still maintained and a neighborhood park and a lot for the sanitary sewer treatment facility. They have approvals and positive recommendations from all departments and utility providers.

Commissioner Elkin stated there are concerns about the kennel. He asked about what the buyers will sign saying they will not make a nuisance claim. Mr. Kurtz stated there will be restrictive covenants that will outline building requirements, use requirements, just to name a few. It will also include a specific acknowledgement that there is an existing kennel adjacent to the property and require the owner to waive any nuisance claim they might have. By signing the restrictions, which will have to be done to purchase the property in the development, they will be waiving any nuisance claims they might have.

Commissioner Elkin stated he did not know how this can be done. Mr. Kurtz stated you can waive a claim the same way a claim would be released in an auto accident. It is the same concept and the restrictions would run with the land so they would apply to any subsequent owners.

Commissioner Schnarre stated the intent is notification that the kennel is there. Mr. Kurtz stated that is correct.

Commissioner Schnarre opened the floor for a public hearing on this request.

Shelly Wooldridge, 9551 I-70 Drive NE, Columbia, stated she is the kennel owner. She does not have any additional new comments from previous comments made in Commission. She has not seen the documents that would waive the right to sue. She is not sure how this would stand up in court. Her experience is that kennels do not come before a development, they usually come after and that is where the problem comes in. The issue of noise, smell and visual for the homes that will be on the west side of the development will be a problem because her land sits higher. Even with the five foot buffer, the dogs will have a good view of the new homes.

Commissioner Elkin asked Ms. Wooldridge how many animals she has. Ms. Wooldridge stated she is licensed for 100 but usually has 40. They show dogs and also have the boarding facility.

Parker Naylor, 9255 I-70 Drive NE, Columbia, stated his property is west of this development. He just wants to make sure the developer will do what they say they will be doing. He also has not seen the restrictive covenants and asked the Commission if they

have seen them.

The Commission has not seen these documents but they will be part of the final plat.

Mr. Naylor stated each time they come back the plan gets better. If he had his choice, he would prefer to have houses instead of trailers there.

He believes as Commissioners, they need to think these things through because there will be another big development in this area and this will set a precedent for development in the future.

He asked if someone can do a planned commercial development but not have a plan. Commissioner Elkin stated the zoning will not change until a plan is presented and approved.

Mr. Naylor stated he does not have a problem with the commercial zoning then. Also, if they keep the buffers the way they are presented then he is ok with this.

Commissioner Miller stated they will have to follow the restrictions.

Commissioner Elkin asked Mr. Shawver when the covenants have to be presented. Mr. Shawver stated they are required at the platting stage.

Commissioner Elkin stated he has not seen the covenants. Mr. Shawver stated he has looked through some drafts but nothing final.

Commissioner Miller stated she believes the restrictive covenants should be a condition of the review plan.

Susan Altomari, 2571 N. Dozier Station Dr., Columbia, stated at the last meeting, the Commission rejected the plan because it was "too soon" for a project of this magnitude in this location. The Commission also said this development was "too far out" for the residents would be living there. With the few changes that were made to this most recent proposal, she does not see a significant difference that should change the Commission's decision.

This project as it has been designed is not good for anyone except the developer who she doubts will live there.

Mrs. Altomari asked what residents want to live next to a dog kennel, next to a busy highway, outside of the city limits without public transportation or services, and threaten the kennel with closing. She asked what current residents wanted to live with the additional traffic from 86 new homes, two commercial businesses and the trailer park that was approved by Commission a few months ago.

Mrs. Altomari asked what if the requests were reversed, having Shelley Wooldridge requesting a permit for a kennel next to an 86 home development, would the Commission approve that request. She doubts the Commission would approve the request because it would be creating a hostile environment for all those concerned. If the opposite situation would not be appropriate, how could the Commission approve this proposal which will result in the same outcome?

Commissioner Schnarre closed the public hearing.

Mr. Kurtz stated the applicant has taken many steps to mitigate any effects this development might have on the neighbors, especially immediately to the west, they negotiated with that neighbor. The understanding was if they did these things then they would have her support for the development. They have done those things but they have not gotten the support but they did try to work with her.

Also, the current zoning, A-2, would allow for 56 homes to be built without Commission approval or a plan. The point being whether there are residences next to this kennel or not is something that has already been decided, there can be with the zoning as it stands now. He does not believe 56 or 86 residences will make a substantial difference in terms of the effects the neighbors might feel from the kennel.

Mr. Kurtz stated traditionally, bodies like the Commission, are asked to look at what are the effects the development will have on surrounding properties, not what effects will surrounding properties have on the development. That is a risk the developer takes in trying to sell the land and choosing a particular property to develop. They are turning things around when they ask what effects other properties will have on this one. They have tried to mitigate the effects this property will have on the neighbors. He believes they have taken steps to do that, including the restrictive covenants which they thought was a creative way to try to address some concerns. He believes he resubmitted an updated version of the restrictive covenants when the application was resubmitted.

The conditions that will be imposed will have to be complied with so there will be no backing out.

Mr. Kurtz stated the comment made about people wanting to live in this part of the County, he presumes the neighbors like living there with whatever services are there and they believe there are a number of other people that will want to also live there. These are business decisions the developer has to make and they are willing to mitigate whatever effects this project will have.

Commissioner Miller asked if the turn lane is on the plan. Mr. Shawver stated it is on the plan.

Commissioner Schnarre stated that makes it binding since it is on the plan.

Commissioner Miller stated the only thing that is not on the plan is the restrictive covenants. Mr. Shawver stated that is correct.

Commissioner Elkin stated he has struggled with this request. It is not a question of if but when this property will be developed. He believes this would be more of a problem if this was an unplanned development. When the Commission receives a planned development and approves it, the Commission and neighbors know exactly what will be on the property.

The developer has done everything to address all concerns of the neighbors and the County.

Commissioner Elkin stated the statement of too far out too soon was made but the way this community is growing who knows what could happen in a few months. The question is whether there should be planned development or unplanned development. He believes the lesser of the two evils is the planned development.

Commissioner Miller stated the comment of too far out is legitimate but when the Sapp development of 1,000 acres is approve it will bring the city limits closer to this property. She believes the restrictive covenants should be a condition of the review plan.

There was no objection to this request.

There was no further discussion on this item.

Commissioner Miller moved to approve the request by Sells Development Group LLC to rezone from 17.12 acres REC (Recreational) and 19.82 acres A-R (Agriculture Residential) to 28.34 acres of R-SP (Planned Single Family Residential), and 8.6 acres of C-GP (Planned Commercial) for Lenway Estates Planned Development, located at 9689 I-70 Drive NE, Columbia.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 527-2004**

Commissioner Miller moved to approve the request by Sells Development Group LLC for a Review Plan for Lenway Estates Planned Development located at 9689 I-70 Drive NE, Columbia, with the following condition:

- The Restrictive Covenants of the development shall state acknowledgement of the kennel to the west of the property

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 528-2004**

C. Request by Gilmore Investments LLC to rezone from A-2 (Agriculture) to C-G (General Commercial) of 5.0 acres, more or less, located at 6051 Gilmore Ln., Ashland (*appeal*)

Mr. Shawver stated according to the Boone County Zoning Regulations Section 15F(2)(d):

In cases where the Planning and Zoning Commission recommends denial of a request, the County Commission shall summarily endorse denial action of the Planning Commission unless: (1) the applicant files in the Department office within 72 hours (three working days) following the Planning Commission hearing a notice of appeal to the County Commission stating grounds why the Planning Commission recommendation for denial is in error, and (2) the applicant appears before the County Commission in person or by representative with written authority of the owner.

An appeal was received by the department in a timely fashion. At the bottom of the appeal form it clearly states "Please note, if you wish to appeal a denial to the County Commission this application must be filed with the Department of Planning within 72 hours after being denied by the Planning Commission. It is also necessary that the applicant or their representative, with written approval, appear before the County Commission in person."

Commissioner Miller moved to deny the request by Gilmore Investments LLC to rezone from A-2 (Agriculture) to C-G (General Commercial) of 5.0 acres, more or less, located at 6051 Gilmore Lane, Ashland, due to failure to appear before the County Commission in accordance with County Regulations.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 529-2004**

F. Receive and Accept the following plats:

- **Worstell Lane Estates.**
- **Secrease.**
- **Fall Creek Plat 1-A.**

Mr. Shawver stated Worstell Lane Estates is located on Worstell Lane and is zoned A-R. Secrease is located on Dripping Springs Road and is a two lot subdivision zoned A-2. Fall Creek Plat 1-A is located off Highway HH and is the re-plat of lots 5 and 6 of Fall Creek Subdivision.

Commissioner Elkin moved to receive and accept the following plats and authorize the Presiding Commissioner to sign said plats:

- Worstell Lane Estates.
- Secrease.
- Fall Creek Plat 1-A

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 530-2004**

Subject: Second Reading and Approval of Unused Vacation Policy

Commissioner Elkin moved to approve the unused vacation policy.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 531-2004**

Subject: Sheriff's Department – First Reading of Request for New Pay Range for Corrections Captain and deletion of Corrections Major position title

Commissioner Schnarre stated the Sheriff's Department has requested the Corrections Major position be deleted and the current incumbent in that position be moved to the Corrections Captain position. The pay range will be the same for this position as it is for the Sheriff's Captain position. This will be effective January 1, 2005.

Commissioner Schnarre 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 a Budget Revision involving County Participation in the Boone County Community Partnership Transportation Needs Assessment

Commissioner Elkin stated Boone County Community Partnership has approached the County for possible participation in the Transportation Needs Assessment. The Partnership needs to come up with \$12,500 in matching funds. The Commission has agreed to invest \$500 for this assessment. The budget revision will be transferred between accounts in the Commission's budget.

Commissioner Schnarre 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.

There was no public comment.

The meeting adjourned at 8:42 p.m.

Attest:

Wendy S. Noren
Clerk of the County Commission

Keith Schnarre
Presiding Commissioner

Karen M. Miller
District I Commissioner

Skip Elkin
District II Commissioner