

TERM OF COMMISSION: March Session of the January 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: 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 Carl and Marjorie Thomas and Ralph and Rosalee Higgins on behalf of Capital Quarries and APAC Missouri, Inc., for a temporary asphalt plant on 100 acres located at 23300 S. Hwy 63, Hartsburg (*appeal*)

Stan Shawver stated the site is located on the east side of U.S. 63, approximately one-mile north of the Callaway County line. The current use of the property is for a rock quarry. The quarry was probably opened prior to 1973. In 1974 a conditional use permit was issued to allow construction of underground warehouses in the underground mine area of the quarry. The property is zoned A-2 as is property to the west and south. Adjacent zoning to the north is A-R and Callaway County adjoins to the east.

The request is to allow temporary placement of a portable asphalt plant. The asphalt will be used to fulfill a contract with Missouri Department of Transportation for repaving U.S. 63 South between Jefferson City and Columbia. The contract terminates December 1, 2005. The contract requires the hours where paving activities will occur to be between

7:00 P.M. and 6:00 A.M.

Operation of a portable asphalt plant used for a specific construction project is allowed in the A-2 district as a conditional use.

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

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

Several possible sets of impacts have been identified including: air emissions, groundwater contamination and noise.

APAC is required to hold an air quality permit issued by the Missouri Department of Natural Resources (DNR) Air Pollution Control Program. APAC has been issued such a permit and has submitted a relocation request to have the permit applied to this site.

APAC has a general stormwater discharge permit issued by the Water Pollution Control Branch of DNR. DNR conducts periodic inspections at the sites in use. An annual report is submitted to DNR which includes the outfall number and a soil sample from the year (March, June, November, December) when rainfall occurred.

The United State Environmental Protection Agency (EPA) requires APAC to develop a Spill Prevention, Control and Countermeasures Plan. The plan must be prepared by a registered civil engineer. The plan establishes procedures for storage of large quantities of fuel or petroleum products and procedures for dealing with spills. APAC's plan is on file with the planning department.

State and federal agencies have regulations in place to ensure that impacts to air quality, groundwater or surface water quality will not endanger the public health, safety or welfare.

Neighboring property owners have raised concerns about noise. The proposed use will generate additional noise. Much of the additional noise will be generated during nighttime hours due to restrictions in the contract. It should be noted however, that the proposed plant will be located in a quarry where there are no restrictions on hours of operation.

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

Noise and odors will be noticeable and will temporarily diminish but not be injurious to the enjoyment of other property in the immediate vicinity. Regulations enforced by state

and federal agencies should be adequate to ensure that there are no long term impacts to ground or surface water.

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

There is no indication that the proposed use will have a negative effect on property values.

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

The site has direct access to U.S. 63, which is also the project site. Other utilities already exist on site.

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

The proposed use will not impede the development of the surrounding area. It may have a long term positive effect on the area due to the resulting upgraded surface of U.S. 63.

(f) The establishment of a conditional use permit will not hinder the flow of traffic or result in traffic congestion on the public streets. This will include the provision of points of access to the subject property.

The contract between MoDOT and APAC requires all heavy activity to be done during off peak traffic hours. In addition, the purpose of locating the asphalt plant at this location is to minimize the distance that asphalt has to be hauled, which reduces impact to the road system.

(g) The conditional use permit shall in all other respects conform to the applicable regulations of the zoning district in which it is located. The County Commission shall find that there is a public necessity for the conditional use permit.

The proposal conforms to other applicable regulations of the A-2 zoning district.

Staff recommends approval subject to the following conditions:

1. All equipment and materials used for the production of asphalt at this location shall be removed within 90-days of the date the paving project is complete.
2. Asphalt produced at this location may only be used on the U.S. 63 repaving project under the contract between MoDOT and APAC that expires December 1, 2005. The Planning and Zoning Commission conducted a public hearing on this request on

March 17, 2005. There were seven Planning and Zoning Commissioners present. After public comment, a motion was made to approve the request with staff conditions, this motion failed with a 3-4 vote. A subsequent motion was made to deny the request due to failure to meet Criteria B, the location of the plant in this area will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted by the regulations. This motion passed with a 4-3 vote. The applicant filed an appeal in a timely fashion and is before the County Commission on appeal.

Bret Geger, APAC-Missouri Environmental Manager, was present on behalf of this request.

Bret Geger stated this is a request for a conditional use permit to locate a temporary portable asphalt plant to Capital Quarries 200 acre quarry site in southern Boone County on Highway 63. It is to their understanding that County staff has done a thorough review of their application and found it to be in compliance with the requirements necessary to issue a conditional use permit.

At the Planning and Zoning meeting, Mr. Geger presented four main points about the application and will briefly review those points. These were also concerns of the neighbors. The concerns were air pollution, ground water contamination, noise and odor control.

As for air pollution, APAC follows all guidelines for federal and state air pollution controls. They use magnesium chloride as a dust control and this is highly recognized form of control the state recognizes. Also, there are other control efficiencies, such as bag houses, that are put on the plants that control the emissions from the plants. These have been tested at 99.9% efficient through federal regulations.

Also, they discussed water pollution issues. This plant will be sitting in Capital Quarries existing quarry site where a water pollution site exists along with spill prevention control and counter measure plans APAC has. APAC had third-parties draft, in accordance with EPA regulations, the spill prevention control and counter measure plans.

Mr. Geger stated concerns were raised about odor and noise of these plants. He hoped the Commission has had the opportunity to visit asphalt plants similar to they one they will be using. APAC has hired third-parties to research the noise and odor of these plants. The research showed the noise at a 500' around the plant was at 47 decibels. This is lower decibels than normal office noises and a lawn mower, for example.

Mr. Geger stated the majority of the odor from these areas would be from the actual lay down of the asphalt. Tests have also been preformed as they would be if an odor complaint was filed with DNR. These tests are done with a syntometer.

Mr. Geger stated at the Planning and Zoning Commission meeting, a motion was initially

made to approve the request. The final vote that was cast against that motion gave a reason about health concerns of surrounding residences and did not believe current EPA regulations protected residential areas.

One reason for the vote against the request was health concerns of surrounding residences. If one was to stand where they are proposing to place the plant and look all around the area, only one house can be seen. This house is 1,000' feet away. He does not believe this one house qualifies as a residential area, given the environmental issues and health issues addressed earlier.

The other reason for the vote against was EPA regulations not protecting residential areas. Mr. Geger presented to the Commission and submitted to the Public Record National Ambient Air Quality Standards – United States Environmental Protection Agency (Technology Transfer Network National Ambient Air Quality Standards and Air and Radiation). The current EPA regulations were developed to protect residential areas.

Mr. Geger contacted the EPA about this issue. The Clean Air Act required the EPA to set national ambient air standards. The reason for the Clean Air Act was to set health based standards to protect the public, specifically “the health of ‘sensitive’ populations such as asthmatics, children, and the elderly” (Environmental Protection Agency Clean Air Act).

Research has been done on asphalt plants. The EPA has done research on asphalt plants and they do not consider asphalt plants a major pollutant source.

Mr. Geger stated by operating out of this quarry site, adjacent to the work zone, APAC is put in a position where this project can be complete in a much quicker time frame than if they were operating from a more distant location. APAC would like to begin set up in April and be completely done in July. This creates a safer environment for the traveling public traveling Highway 63.

APAC has done their research and believed they have covered all health, environmental and safety issues with this plant and hope the Commission will consider granting the conditional use request.

Commissioner Schnarre asked if the aggregate will be hauled in. Mr. Geger stated this is correct. Capital Quarries is not capable of producing the aggregate that is State specified.

Commissioner Schnarre asked when they would begin hauling in the aggregate. Mr. Geger stated it would begin immediately upon approval.

Commissioner Schnarre asked if the aggregate would be brought in during normal business hours. Mr. Geger stated that is correct. They plan to haul in the aggregate as soon as possible as it can be hauled in as needed to create stock piles. These stock piles will also be used for further buffering around the plant.

Commissioner Miller asked what the actual footprint of the plant is. She has a photo and believes it to be around two acres. Mr. Geger stated the request is for 100 acres but that is only because that is the size of the site the plant will be placed on. The plant is 280' x 160', with the stock pile areas included; the whole area could be four to five acres.

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

Mike Anderson, Missouri Department of Transportation Operations Engineer, stated he supports this request. MoDOT supports this request because of the passage of Amendment 3 by the voters. That passage sent a message that the voters want better roads. Highway 63 between Jefferson City and Columbia is one of the many routes MoDOT plans to do under the "Smoother, Safer, Sooner" campaign. It is MoDOT's plan to make 2,200 miles of road smoother and safer for the public. This project is part of that plan and a very visible part to central Missouri. This will benefit the 25,000 cars per day that use this route.

One of the key points of this request is the location of the plant. MoDOT wants to minimize the impact of the work zone to the traveling public. This site does that due to the proximity to the job site and there is no travel on other surface streets.

Mr. Anderson stated for these reasons, MoDOT supports this request.

David Bandre, 6976 N. Shore Drive, Hartsburg, representative of the Lake Champetra Homeowners Association, was present in opposition to this request. The Lake Champetra Homeowners Association is against this request. There are eight homes and the lake within 1,000 feet of the site and because of this they received actual notice of the request. However, the 48 homes and over 100 residents would all be impacted by this decision as well as others living on Westbrook, Claysville Road, and other side streets. This is the highest population density on Highway 63 south of Ashland and one of the few areas of population along Highway 63 south of Ashland. This plant is in the area where over 200 people live that are, to the best of his knowledge, against this.

The Homeowners Association concerned with noise, environmental issues and effects on traffic.

The neighbors are concerned with the noise of the plant. The hours of operation for the plant are 7:00 p.m. to 6:00 a.m. Mr. Bandre noted the quarry has been used very little over the last 10 years. When the quarry is in use, the residents around the lake can hear the activities in the quarry. When Mr. Bandre sits on his back porch, he can hear people on the other side of the lake talking. It is has been compared to an amphitheatre. He believes the asphalt being poured into trucks will be heard at night, long with other noises, such as air brakes. They are concerned with the residents being able to sleep at night and be able to carry on their day to day routine in a rural subdivision.

Mr. Bandre stated APAC has presented materials regarding the pollution, fumes, and pollution. A number of items presented at Planning and Zoning were from the National Asphalt Pavement Association. Mr. Bandre has made a packet of additional reports that have been done on portable asphalt plants from agencies such as the U.S. Department of Health and Human Services, EPA, Blue Ridge Environmental Defense League, Center for Health Environment and Justice, and many others. (This binder is available for review in the Planning and Zoning Office.) All research concludes that temporary asphalt plants produce sulfa dioxide, nitrogen monoxide, carbon monoxide, volatile organic compounds, fenal, volatile HAP, metal HAP, benzene, and many other substances. A plant that produces 100 tons of asphalt will produce three to 10 tons of pollutants. This statistic is also stated by the Asphalt Producers Association. Other research shows that number can be elevated to 50 tons of pollutants. Living on a lake where people eat the fish, swim and enjoy other outdoor activities, they believe this is unacceptable.

There are other known carcinogens that exist in the list. These fumes are increased when asphalt is at high temperatures. The purpose of this plant is for the asphalt to be at high temperatures so it can be poured on roadways. Mr. Bandre noted in 1998, the Department of Health and Human Services recommended to OSHA that asphalt fumes be named as a potential occupational carcinogen. Mr. Bandre listed a number of asphalt fume related symptoms. These are symptoms that effect healthy people. Lake Champetra has residents that have emphazima, allergies, auto immune disorders, and others that just do not want the smell and dust that will come from the plant.

Mr. Bandre stated he has lived by a temporary asphalt plant in Kansas. These plants do smell. This will affect the citizens that live in Lake Champetra.

Another concern is the impact on the lake. Water pollutants have a longer impact. This is a 108 acre lake that is used for swimming, fishing and other outdoor activities. The residents are concerned with the long term impact on the lake.

The final concern is with the traffic. If the trucks need to go south, they will have to exit the quarry going north, travel approximately 150 feet, turn left at Claysville Road then enter southbound Highway 63. This is currently a dangerous turn going north on Highway 63 trying to turn into Lake Champetra. If fully loaded asphalt trucks are turning on the Highway, this will greatly increase the possibility of accidents at the intersection. Also, the trucks that are headed further north will have to climb a hill until Westbrook Drive. These trucks will be loaded and it will be very difficult for them to reach speed until they have reached Westbrook Drive.

Mr. Bandre stated another concern of the Homeowners Association was that other locations were not considered. There are plants in Cedar City that have solid base such as Midwest Block and Brick, the old Renz's Corrections Farm, pallet plant, and many acres of farm land that have no houses around them. This is a \$10.3 million project. The cost

of putting this at another site that would not impact citizens' values greatly in comparison with the overall profit margin related to the project. Also, if you review the MoDOT bid specifications, it does not say this plant has to be in a quarry. The placement of the plant at this location is affecting the cost of APAC's bid compared to what the impact will be on the citizens around the plant. This is not a matter of balancing the potential good to APAC versus the problems with these roads.

The requirements that are set forth for a conditional use permit to be issued are very clear. The Homeowners Association believe there is clear evidence set forth by Department of Health and Human Services, OSHA, and other agencies that this will endanger the public health, welfare, safety and comfort of the citizens.

Mr. Bandre stated there is at least one home at the lake that is for sale. It happens to be a house that is 1,000' of an asphalt plant. He suggests this will impact the ability of the house to be sold. It will also impact the ability of the citizens to use the lake for summer activities. There will be traffic issues on the highway. He does understand that traffic will not run smoothly when the road is being repaved but creating a potentially dangerous situation without looking at other alternatives is simply not the design of a conditional use permit. A conditional use permit should be issued when it is the right situation and this is not it.

Mr. Bandre asked those in opposition to please stand. 13 people stood in opposition.

Leslie Jordan, 7376 N. Shore Drive, Hartsburg, was present in opposition to this request. She and her husband have lived at Lake Champetra for 15 years. Her husband has Muscular Dystrophy and is wheelchair bound. They enjoy being outdoors. The lake has a private road around it and there is a national forest near the lake. This is a place that her husband can be outside and feel safe. Muscular Dystrophy affects the muscles, including the lungs. Even though APAC has said this is a temporary plant, every day to her means a lot. To not be able to go outside for six months or more is a long time. She does not want to fight something after the fact. She would like the original decision made by Planning and Zoning be upheld.

Allen Deutsch, 6940 N. Shore Drive, Hartsburg, was present in opposition to this request. He presented to the Commission and submitted to the Public Record two print outs titled "Asphalt Plant Pollution" and a letter from the Blue Ridge Environmental Defense League. It seems that every place APAC goes, environmental leagues pop up. APAC is known for trying to put these temporary plants in residential areas and near schools. Mr. Deutsch noted there are figures of pollutants and emissions in this handout.

In discussing pollution, Mr. Deutsch noted no one has mentioned the topography of this area. Lake Champetra and the quarry are in a bowl in the Missouri River basin. In the summer, pollutants are heated and rise, and then in turn the pollutants will cool and come down in the area.

The meters APAC says are used to take measurements of emissions and pollutants are used right next to the plant. This is like taking a reading right next to someone's chimney. The meter won't read the ash and fumes but those will travel in the air and end up in someone else's yard. This is what will happen to this neighborhood.

Mr. Deutsch brought up another possible concern on the diesel that will be burned by the trucks. Diesel has its own pollution.

He is also concerned with the location of the plant. He believes another site could have been chosen for this project. He believes APAC just wanted a flat place to work and believes there are other flat places that are not in populated areas.

Mr. Deutsch stated the people that live around the lake are older and many have health problems. The list of pollutants is not in the air at this time but it will be if the Commission approves this request. It will diminish the residents' use of the area, their health and believes the Commission has a responsibility to protect that.

Bill Knox, 7300 S. Shore Drive, Hartsburg, was present in opposition to the request. He submitted a print out of his home that is for sale. He questioned the worth of his home that is for sale if he added "near asphalt plant" to the print out. He believes if an asphalt plant is near homes, it will affect home values that are for sale.

One use of Planning and Zoning is to prevent obnoxious uses adjacent to residential development. There are a large number of areas that could be used for this request. He would be disappointed to see the Commission approve this use without exploring any of the other areas and it is to his understanding no other areas have been explored.

He requested the Commission deny this request, even though it is temporary. It will effect the enjoyment of the neighborhood by everyone who lives there. The Commission at least owes these residents the option of exploring other sites.

Daryll Marian, 7900 E. North Shore Drive, was present in opposition to the request. He stated his home is probably the closest to the quarry. He has a form of emphyzima. He has problems doing activities. He has lived at this residence for 16 years. His grandchildren come for visits, they love the lake and he likes to fish.

Mr. Marian suggested the plant could be located at an old filling station in Jefferson City that has a cement pad that can be used. There are no homes around this location. On the opposite side of Highway 63 from the filling station is an old trucking firm which also has a cement pad and is far from any home. Both locations have good access to Highway 63.

He requested the Commission deny this request for the benefit of his health.

Penny Rosco, 23441 Missouri River Drive, Hartsburg, was present in opposition to this request. She discussed the use of the syntometer and what it actually is. The Joplin Globe did an article about the number of complaints filed with DNR and the number of nuisance orders issued for odor complaints. Since January 2000, 2287 odor complaints have been filed with DNR across the state and only 41 nuisance orders have been issued. DNR investigated 216 odor complaints in a six county area in southwest Missouri between 2000 and 2005 and no notices of violation have been issued to the date. The article also states it can take up to 195 days for a complaint to be investigated.

She stated the APAC representative said earlier this project would take 30 days, she has also heard four months. By the time APAC is gone, it will be too late for an investigation to be done.

The article also states if an odor is detected, the plant the odor came from will not be issued a notice of violation but a notice of excess emissions. There has not been a notice of excess emission issued by DNR in the last three years.

Brent Scott, 6944 N. Shore Drive, Hartsburg, was present in opposition to this request. He stated he lives 1,000' of the plant. His property is for sale. The owner of the quarry property will not allow his property to have access through the quarry property because of this project. Therefore, it impedes the development of his property and reduces the sale value. He has approached Carl Thomas and Helen Quinn for an easement and they have informed him because of the increased activity, they will not deal with him at this time. He requests the Commission deny this request.

Commissioner Elkin asked how Mr. Scott currently accesses his property. Mr. Scott stated the contracted buyer of his home wants a secondary easement across other properties and this is in the contract. He lives immediately north of the quarry and having an easement across those properties, through the quarry, it is essential for the sale of his home.

Commissioner Elkin asked what effect the proposed asphalt plant has on the easement. Mr. Scott stated the property owners of the quarry will not grant the easement because the asphalt plant will increase traffic in the quarry. The asphalt plant is interfering with granting an easement to his property.

Commissioner Schnarre asked Mr. Scott if he has ingress/egress to his property. Mr. Scott stated he does but he does not have a secondary easement. It is a private road. His farm is an agricultural enterprise which has no public easement. His farm is boxed in.

Commissioner Schnarre stated he can grant an easement through the property he owns and that he does have access. Mr. Scott stated he does have access through a private road but the buyers want a second access.

Wayne Hawk, 23460 Missouri River Drive, Hartsburg, was present in opposition to this request. He stated he moved there years ago for peace and quiet and a clean environment. They would like to keep the area that way. All that he has heard and read is this is about high profit and convenience for APAC's request. There are many abandoned farms and other areas that could be used where there are few residences around. If the area will be as clean as APAC says it will be, he believes many farms would be happy to have the extra income from renting the land.

He is against this request because his wife has respiratory problems and they would also like to keep the peace and quiet of the area. If this project was good for everyone then they would support it. If this is pitting health, even if it is not harmful to healthy people, then they oppose this request because life is too precious.

Commissioner Schnarre closed the public hearing.

Commissioner Miller submitted the following letters or verbal concerns to the Public Record:

- Mike Dalton, Ashland, support letter
- Roger Schwartz, MoDOT, support letter
- Biff Barner, Ashland, support letter
- Jane Flink, opposition letter
- Kay Strom, opposition letter
- Jim Clardy and Lori Levine, opposition letter
- Berry Glasscock, verbal support
- Charlie Campbell, verbal opposition
- Odie Dickens, verbal opposition
- Daryll Marian, verbal opposition

Bret Geger stated APAC researched other sites in the area and this site was optimal for this project. They do not want to clear cut five acres or put an asphalt plant in a flood plain or near an airport or next to baseball fields. These are not necessarily the safest places even though they are out of the way. This 200 acre quarry is the optimal place for the asphalt plant.

Also, the homes that are within 1,000' and received notices are all homes that are within 1,000' of the quarry not necessarily 1,000' of the proposed asphalt plant.

Mr. Geger stated many spoke about health concerns during the public hearing. Points were made about the materials, exposure rates and other issues. What was being referred to was the Material Safety Data Sheets (MSDS) on these products and this information relates to direct exposure to asphalt or other materials. This is not referring to the asphalt being produced by the plant and what is in the air.

By saying APAC will only be there for a short time does not improve concerns about health. The EPA and other studies have shown they are in full compliance with all standards set forth.

This job is 70 working days. They hope to be in and out in three months, beginning in April and hopefully out by July.

Commissioner Schnarre asked about how the loaded trucks access Highway 63 and then having to climb a hill. Mr. Geger stated there will be one lane closed while one side of the highway is being paved.

Commissioner Miller asked how the lane closure will work during paving. Chad Girard, APAC Area Manager, stated there will be lane drops. As in the contract, there will be message boards to alert people of the project. There will be full sets of signs. There are times MoDOT does have the company put "Truck Entering" signs to make people aware of that situation. This is a turn around area so truck will be turning around to go up the hill.

Commissioner Elkin asked if there will be signs about a land drop. Mr. Girard stated in the construction area there may or may not be but it depends on the construction. They try to keep the construction area as short as they can to maintain traffic flow. There will be signs on the project but they will depend on where the paving is being done.

Commissioner Elkin asked about the exit at the quarry. Mr. Girard stated there will probably be "Truck Entering" signs at that location.

Mr. Geger stated they can put up any signs the Commission feels may be necessary to warn the public about the trucks.

Mr. Girard noted a message board could be placed in this location.

Commissioner Elkin stated there are usually diesel generators at these temporary plants and noted these are probably the loudest part of the plant. He asked if APAC would check the one possibility of electricity at the site. Mr. Geger stated generators are noisy and they will check on the availability of electricity but are not sure at this time.

Commissioner Elkin stated there have been comments about pollution and meeting EPA standards and tonnage of pollutants discharged. He asked if the tonnage is coming out of the stack. Mr. Geger stated the majority of this is the particulate matter coming off the roads. A lot of that material is the dust generated from roads. A lot of the permits regarding air pollution identify the limiting factor as the dust coming off the roads.

Mr. Geger stated comments about emissions and a lot of their comments came from Missouri Asphalt and Paving Association (MAPA) and National Asphalt and Paving

Association (NAPA). This is true. These bodies are at a national and state level and are interested in working with the EPA to set standards for the industry and dispel myths.

Mr. Geger stated he provided a packet with documents and one was an article titled "Clearing the Air" by the EPA and NAPA. APAC will be running 100,000 tons of asphalt in the 70 days this project will last. Volatile Organic Compounds have been specifically mentioned. Their plant will emit the equivalent of six residential fire places in one year's time. Their plant will emit Toxic Organic Compounds equivalent to what six gas stations emit in one year.

Commissioner Elkin asked how the Commission and the citizens of the area can be insured that these limits are being met and if there is any testing done. Mr. Geger stated there are standards that are preformed by the federal government on their equipment and other tests are run before some pieces of equipment can begin running. A test was run on the equipment that will be used and that test resulted in a 99.9% control efficiency.

Mr. Geger stated the EPA sets these regulations. DNR issues permits and these permits would not be issued unless they were able to conform to these regulations and operate in compliance. They also have the Air Pollution Regulatory Program they have to comply with and this program does do on-site testing and inspections on a regular basis. They come out more than once a year for inspections and this is done with all sites, including APAC.

Commissioner Elkin asked if there are any restrictions on operating hours or operating days at the quarry now. Mr. Shawver stated no.

Commissioner Elkin asked if the quarry could operate 24 hours a day seven days a week. Mr. Shawver stated unless there are State restrictions he is not aware of.

Commissioner Miller stated when one looks at the whole parent tract of 100 acres; the asphalt plant will only be on a few acres, which are near the front of the tract. Mr. Shawver stated this is correct.

Commissioner Miller stated the tract that will be used and the 1,000' for notice, it would have never reached Lake Champetra at all. Mr. Shawver stated that is correct.

Commissioner Miller stated when she and Mr. Shawver were touring the area, the only house that she could see was on Hartman Road and she did not recognize residents from that road at this meeting.

Commissioner Miller asked Mr. Shawver, in his opinion, if stormwater run off would be an issue from this asphalt plant that would affect Lake Champetra. Mr. Shawver stated he does not see that any stormwater run off would go north but any stormwater run off would be retained in a catch basin already at the quarry or it would move toward a southerly

direction.

Commissioner Miller asked if this paving project is from Ashland to Highway 54. Mr. Geger stated that is correct.

Commissioner Schnarre asked how close the residences are to the permanent asphalt plant north of Columbia. Mr. Shawver stated the closest residence to the plant off Highway VV is probably 1,000' or more. When the Commission rezoned this and granted a Conditional Use Permit, it was a substantial distance from homes.

Commissioner Schnarre stated when the County revised the Zoning Regulations; it was designed to have asphalt plants with quarries. Mr. Shawver stated this is correct.

Commissioner Schnarre asked how many citizens toured the temporary asphalt plant at Millersburg. Only one raised their hand.

Commissioner Schnarre stated he has toured that facility. Commissioner Miller noted she also toured this plant.

Commissioner Schnarre stated this is a quiet plant. There was a diesel generator running, which was no different than a pay loader running in the quarry. The only smell was when they passed a truck on their way to the plant. By the time they reached the plant, the smell was gone. A full load of asphalt was dumped while he was there and he did not smell anything. The only noise he heard was the air doors opening to push asphalt into the truck. He believes the odor and air pollution is from the application of the asphalt.

Mr. Geger stated the majority of the odor is going to come from the paving of the highway as the hot mix is being laid. This is where the trucks are dumping the asphalt into the paver and material is being spread out.

Commissioner Schnarre stated he does not believe a better location could be found for this plant. This is what the County regulations outline, for a temporary asphalt plant to go into a quarry. It is to his understanding this is a smaller plant. He is having a difficult time justifying why this plant should not be in this location.

Commissioner Schnarre asked if there was no other suitable site for a temporary asphalt facility for any given road project, would the State allow this to be set up on their property. Mike Anderson stated MoDOT does not have suitable locations for an asphalt plant, space wise, to have the plant and material stock piles.

Commissioner Miller asked if there are places Moot does have the space, if it has been allowed in their right of way. Mr. Anderson stated MoDOT has allowed some contractors to set up portable concrete plants, which are usually smaller in size, or store equipment. He is not aware of an asphalt plant or material stock piles that were on MoDOT property.

Commissioner Schnarre stated the intention of APAC is to run asphalt from the plant to what location. Mr. Geger stated the farthest north is at Ashland south to the Highway 54 bridge. The project will go from south to north.

Commissioner Schnarre asked if this will be the first phase of this project. Mr. Geger stated the first phase of the Highway 63 project is to pave from south to north.

Commissioner Miller asked if the other project will be done from the other quarry. Mr. Geger stated that is correct. As soon as this phase of the project is complete, APAC will pack up and move the plant to the north location.

Commissioner Schnarre asked how much time is needed after the completion to pack up. Mr. Geger stated the plant can be dismantled within days.

Commissioner Schnarre asked if 60 days was a good time frame after project completion. Mr. Geger stated that would be ample time.

Commissioner Miller stated the Commission has a responsibility for all citizens in Boone County and also the people who drive through Boone County. This plant's proposed site is about half way in the project area so it is optimal in that perspective. She has a difficult time not supporting a temporary plant when the County regulations require permanent asphalt plants to go in quarries. County regulations require a permanent asphalt, cement, or concrete plant be located in the property boundary of a quarry producing a minimum average of 1,000 tons of rock per operating day. It would be logical for APAC to look at this quarry when looking for a place to put this plant.

She believes after visiting the site yesterday and the plant in Millersburg that there is more noise on the air handler outside of the Government Center that you cannot talk over than there was at the plant when they were loading the trucks and making asphalt. She believes the quicker the road is done, the safer it is for everyone. She believes the residents of Lake Champetra will not be affected by this. The people on Hartman Road are the closest and they are not here so she does not see that they have a problem with this request.

She supports the request to place the temporary asphalt plant at this location.

Commissioner Elkin stated there will be inconveniences but it will only be for a short period of time. The neighbors will smell asphalt and hear the trucks. He will not push this off to Callaway County or anywhere else. He can assure the residents that if any place is chosen that there will be someone upset with the decision. People will be concerned with all the issues that have been brought up this evening. He is not a scientist and does not know the EPA tonnage or other statistics. Out of all the places that a temporary plant could be placed in a 10 mile radius, a quarry, in his opinion is the most suitable place.

APAC is saying 70 days for this project. Commissioner Elkin believes that this will be finished by mid-July. In the overall interest of the public, this is an appropriate place.

There was no further comments.

Commissioner Miller moved to approve the request by Carl and Marjorie Thomas and Ralph and Rosalee Higgins on behalf of Capital Quarries and APAC Missouri, Inc., for a temporary asphalt plant on 100 acres located at 23300 S. Hwy 63, Hartsburg, with the following conditions:

1. All equipment and materials used for the production of asphalt at this location shall be removed within 60-days of the date the paving project is complete.
2. Asphalt produced at this location may only be used on the U.S. 63 repaving project under the contract between MoDOT and APAC that expires December 1, 2005.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 135-2005**

B. Request by Gary and Alice Weil on behalf of Cingular Wireless for a transmission facility including a 180' tower on 115.05 acres, located at 1111 E. Oakland Church Rd., Columbia (*appeal*)

Mr. Shawver stated this property is located approximately 1.25 miles north of the municipal limits of the City of Columbia. The property is zoned A-2 (agriculture), as is property to the north. Property to the west across Highway 63, east, and south are zoned A-R (agriculture residential). The zoning of the subject tract and all surrounding properties is the original 1973 zoning except for the property to the south which was rezoned from A-2 to A-R in 1980. A legal description for the lease area site has been provided by the applicants. The lease area for the tower describes a 400 feet by 400 feet (3.67-acre) area out of the approximately 115-acre parent parcel. No proposal has been made to divide the property and it is unlikely that the lease area could be divided from the parent parcel in compliance with County regulations. The parent parcel is vacant except for an Ameren UE facility compound. A 180' tower is proposed along with small ground facilities inside a fenced compound. The application is complete enough for the Commission to consider the request. The site is located within the Columbia school district and the Boone County Fire Protection District. Electric service is provided by the Boone Electric Cooperative. The master plan designates this area as being suitable for residential land uses. Staff notified 9 property owners about this request.

The zoning regulations list the criteria that the Commission is to consider before granting a conditional use permit. Staff analysis of the request is based upon the application and public comments received following notification of the surrounding property owners.

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

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

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

The subject site is close to one residence on an adjoining property and while the surrounding zoning will allow for a significant number of residential units there is a lack of an adequate public road network to the surrounding properties to support the densities allowable under the current zoning. Screening or adjustment in the tower location within the parent parcel could help mitigate potential impact to the one residence near the proposed site. Public testimony may be indicative as to whether this criterion can be met.

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

The application meets this criterion as per the zoning ordinance Section 15B subsection (e), which reads as follows:

Transmission towers shall have the least practicable adverse effect on the environment and property values in the surrounding area. A transmission tower complies with this standard if it complies with the following:

- (e) 1. If the tower is 200 feet or less in height, more than 10,000 feet from an airport, and has a galvanized finish or is painted silver.*
- (e) 2. If the tower is over 200 feet in height, it shall comply with FAA painting and lighting standards. Lighting is restricted to red beacon style lights, except where FAA requirements specify a different type of lighting.*
- (e) 3. Towers shall not be artificially lighted unless required by the FAA.*
- (e) 4. Towers shall be the minimum height necessary to comply with the provisions of these regulations.*
- (e) 5. Towers shall be either mono-pole or guyed unless the County Commission approves other reasonable alternatives practicable for visual or technical reasons.*

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

The use has limited needs with respect to utility infrastructure and so the site has adequate facilities to support the proposal.

(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.

This area is zoned A-2, with residential uses limited to 2.5 acre tracts or larger. Future development of the area will be accomplished through the existing zoning, or will require rezoning to achieve a higher density of development. The nature of the site and its location with respect to road infrastructure will likely have a greater negative impact on the area development than the proposal. However, public testimony may be indicative as to whether this criterion is met.

(f) The establishment of a conditional use permit will not hinder the flow of traffic or result in traffic congestion on the public streets. This will include the provision of points of access to the subject property.

The proposed use is a minimal traffic generator and should not hinder traffic or cause congestion on public streets.

(g) The conditional use permit shall in all other respects conform to the applicable regulations of the zoning district in which it is located. The County Commission shall find that there is a public necessity for the conditional use permit.

The proposal conforms to other applicable regulations of the A-2 zoning district, especially since no land division is proposed.

The Planning and Zoning Commission conducted a public hearing on this request on March 17, 2005. After public hearing, a motion was made to recommend denial of the request due to failure to meet 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. This motion received unanimous support and comes before the Commission with a recommendation for denial. The applicants filed an appeal in a timely fashion and is before the Commission this evening on appeal.

John King, legal counsel for Cingular, 168 N. Meramec, Clayton, Missouri, was present on behalf of the applicants. He noted he also represents the property owners. Mr. King submitted a packet of information regarding this request to the Public Record.

20 years ago, Cingular began putting towers up in Missouri, originally in the St. Louis

area, and have moved throughout the state since that time. Originally the towers were for Southwestern Bell Wireless and have changed their name since that time to Cingular Wireless.

The use of cellular phones over the last three to four years has exploded and the number of phones being used today is tremendous. The majority of phones were first used in cars. Today phones are being used in homes and businesses also. Mr. King noted that his son and daughter have both eliminated their land lines and use cellular phones only.

Mr. King stated this is a request for a conditional use permit to construct a 180' monopole at the proposed location. During their presentation to the Planning Commission, the family that lives directly across from the proposed site was in opposition to the request because when he walked out of his front door he would be able to see the tower. The tower was proposed to be placed in an open field. Cingular has provided a map showing the towers proposed location. Cingular has moved the tower to the northwest from the original plan to where it will be located 600' from the home that is located to the south-southeast of this site.

This tower will be 180' in galvanized steel. There will be no guide wires. There will be a 240 square foot equipment building that will be adjacent to the tower. This tower will sit on a tract of land that will be 400' x 400'. If this tower were to fall, which has never happened, it would fall within its own leased property. The premises are screened by trees in the front and along the side so anyone who would be looking at the tower would only see the top instead of the building and lower level of the tower. There will be six-foot high fence chain link fence with barbed wire around the area to keep trespassers out. There will be a double gate at the site which will be locked at all times and opened only by a Cingular Wireless representative who would do repairs on the equipment.

Mr. King stated an equipment repair person will be at the site approximately one time per month unless there are other problems. Many times, a repair person is at the site every two months.

Mr. King stated Cingular has worked on the objection raised during the Planning Commission meeting by moving the location of the tower 600' from the proposed site. This is not in an open field; there are dense areas of trees around the proposed site. There are no other homes in the area other than the one that is shown on the aerial photograph in the packet provided.

They believe this is a good location for a tower. Cingular is having a lot of problems in this location. Cingular has received a number of complaints by people traveling on Highway 63. Cingular will send a Radio Frequency (RF) Engineer, check the area and issue a search area. They try to locate in the search area, someone who would lease them property. In this search area, they located the middle of the search area for a tower location. Mr. King noted if he had been informed of the proposed tower location, he

would have objected to it due to the same reasons the Planning Commission objected to it. Cingular will have basically the same coverage from this new location.

Cingular will landscape the area if the trees already present do not shelter it. They will plant 10-12' evergreens or cedar trees.

Mr. King stated they believe this is a good location. He hopes the neighbor will agree with this new location.

He noted Sarah Perry, RF Engineer, is present. He hopes the Commission understands Cingular would not be spending the money that is spent just to locate anywhere. They only locate towers and antennas where they have serious and severe problems. In earlier testimony, it was stated there are 25,000 cars on Highway 63 each day and he believes a lot of these cars have Cingular service.

Also, Cingular is under a federal mandate to provide E-911 service to communities they serve. E-911 services will allow for a call to be placed to 911 and the police will be able to locate the call immediately under this service. This will provide another safety factor for those with cellular phones.

Commissioner Schnarre asked if this is a non-guided monopole. Mr. King stated that is correct.

Sarah Perry, RF Engineer, 13075 Manchester, St. Louis, Missouri, stated the propagation studies that have been provided to the Commission (in the packet submitted to the Public Record) shows the existing coverage in the area of Highway 63. The green and blue are good coverage areas, which is in car and in building coverage. The yellow and red are outdoor to poor coverage. The gray is no coverage or areas where it is very difficult to place a phone call at all.

A map is provided that shows the improvement in coverage for the area if this request is approved and the tower is placed on the Weil property.

Commissioner Miller asked how much of an area would have improved coverage with this tower. Ms. Perry stated it is approximately a five mile diameter from the north to the south.

Commissioner Miller asked if they would need to have a tower every five miles to have good coverage. Ms. Perry stated it would depend on the topography of the area. There are some towers located in rural areas, in which the tower is 280' tall and covers a wider area. They did not want to place a tower of that height in this area as it would interfere with other towers they do have.

Ms. Perry stated they did review co-location sites in the area. There is a U.S. Cellular

tower, the Pinnacles tower, the FM tower and the Charter tower in the area. They also tried to change heights to be able to provide the coverage that was needed. None of the co-locations were able to do this. Three other candidates were provided to them. Two of those were well east of the area and were not able to provide coverage on Highway 63. Another candidate was approved but they were not able to get a hold of the property owner.

Mr. King stated it is their desire to co-locate and currently do so in many instances because it saves Cingular money as it costs approximately \$1,000 per square foot. If they would have found a tower that would have sufficed, then it would have saved Cingular \$180,000.

Commissioner Miller asked if the blue was good coverage. Ms. Perry stated that is in vehicle coverage.

Commissioner Miller asked about the use of the U.S. Cellular tower. Ms. Perry stated the main purpose of this is to cover the Highway 63/763 interchange area. The U.S. Cellular tower would be good for co-location if they needed coverage further north on Highway 63. In building coverage is needed more in the Highway 63/763 interchange, which is further south. The U.S. Cellular coverage area from that tower only provides in vehicle which means it could be difficult to place a call from inside a building.

Commissioner Schnarre asked Mr. Shawver if he is satisfied with the applicant reviewing all possible co-location sites. Mr. Shawver stated yes. The ones that were not reviewed by the company were brought to their attention. The company did contact those tower owners. There was not space available on the Columbia FM tower, which is on Waco Road. Another tower was on Highway VV, but that was too far north. This is the tower the company was unable to contact the owners.

Commissioner Miller stated if they were looking at co-location, would they contact the tower owner. Mr. Shawver stated that is how the regulations are written. The requirement is that the tower owner is to provide co-location.

Commissioner Miller asked why they could not contact the tower owners. Ms. Perry stated the property owner was APAC; it was not a cell tower owner.

Mr. Shawver stated that is a two-way tower at that location.

Commissioner Schnarre opened the floor for a public hearing.

Alice Weil, 8050 Highway 63 North, Columbia, was present in favor of the request. She stated she is the owner of the land where the tower is proposed to be built and the area where the tower will be located is well buffered by trees. They use to raise cattle on the land. It is a quiet area. Boone Electric and Panhandle-Eastern both have rights to go on

their land. There are private gates that are kept locked and Boone Electric and Panhandle-Eastern both have access to the road. There are no access problems. They picked a different location, which is better. She believes they have met all the requirements needed to please the neighbors.

Commissioner Schnarre closed the public hearing.

Commissioner Schnarre and Commissioner Miller both agreed this is a much better site for the tower.

Commissioner Schnarre asked Mr. Shawver if the location change is ok with the notices that were sent out. Mr. Shawver stated yes it is and the notices were sent out from the parent 115 acre parcel.

Mr. Shawver stated the specific site plan that was originally filed will have to be supplemented.

Commissioner Miller asked if there would need to be a condition that a new site plan would have to be submitted. Mr. Shawver stated that is correct.

Commissioner Schnarre stated he believes the applicant has considered the concerns of the neighbor across the street and moved the location. He has not been to the site but believes there is probably full grown timber on the property.

Commissioner Elkin stated this is a 180' tower. It was approximately 400' from the neighbors' house. Now it is 600' to the northwest. Typically mature trees are 50' tall. This is a 180' tower. The tower will be blaring for these folks to see when they walk out their front door. It will still be seen above the trees.

It is hard for Commissioner Elkin to believe that out of the 115 acres another site cannot be found a little more out of the way from the neighbors. He would not want the tower 400' from his front door or 600' from the side of his house.

There is a lot of commercial and industrial areas not too far from this agricultural and residential area that he would believe to be a more suitable location for a tower. He does not support this new location. He does not believe it is an improvement from the original location.

Commissioner Miller asked Mr. King if they tried to contact the McBees. Mr. King stated they have tried to contact them and have left messages. The McBees did not return any messages.

Commissioner Elkin stated he believes a better site could still be found for the tower.

Commissioner Schnarre asked if there would be a red light on the tower. Mr. King stated there would be no lights at all.

Commissioner Schnarre stated he has a tower with a red light and he does not notice it anymore.

Mr. King stated he has a television tower outside his backdoor.

Commissioner Schnarre stated he questions the objections to the tower. It will be a good distance from the neighbors. It will not be lighted.

Commissioner Elkin stated he does not believe Cingular has put forth enough effort to find a more palatable location. From an engineering stand point it does make sense to place the tower at this location but he believes there is a more suitable location.

He believes this is a precedent the Commission would be setting and these cell phone towers will be popping up all over the place. He believes towers need to be in more industrial areas or co-located on existing sites.

Mr. King stated in a request in St. Charles, one councilmen asked why a tower was needed everywhere. Mr. King responded that if the councilman's wife was on the road late at night with a flat tire and she was unable to get cellular services and asked who he would blame, himself of the cell phone company.

They do not enjoy locating in spots where there are a lot of problems but they are trying to give their customers the service that is required and demanded.

Commissioner Elkin asked if there is another location that would work. Mr. King stated not to his knowledge at this time. The problem is another location would not work for this particular location.

Commissioner Elkin stated that answered his question and believes that they would be better off in and industrial are close to their proposed site which is more suitable.

Eric Schmidt, legal counsel for Cingular Wireless, 168 N. Meramec, Clayton, Missouri, stated there is a concern that cellular towers are popping up everywhere. They want to make sure that they do not place towers just to place them when it is not in the optimal spot. Sure, a tower could be placed somewhere and it could be put on a property that is further away but that does not serve the needs of this area. If towers are located in only industrial areas, rural residents are not being served.

Commissioner Elkin stated he is specifically talking about this area.

Mr. Schmidt stated they are trying to have the Commission understand the efforts they

have gone through. Also, the staff has held their feet to the fire to make sure that they have looked at every possible location. To their credit, they have tried to do this. On this site alone, if it is moved further from Highway 63 then the topography also changes and goes down hill, toward the south. It helps them to move away from the house.

He attended the Planning Commission meeting and took the comments about this being the area that needs to be serviced and if there is another place on this site that can be worked with. This is what they attempted to do and made a good faith effort to address those concerns.

Commissioner Elkin stated moving a 180' tower 200' is not a good faith effort. He believes if the McBees were here, they would share the same opinion.

Commissioner Miller asked why the McBees are not present. Commissioner Elkin stated he did not know.

Commissioner Miller stated there are cell phone towers in rural areas that people do not like. She did not like the tower in Hartsburg but it needed to be there for the coverage.

Commissioner Elkin stated this cell phone tower does not need to be in this exact location.

Commissioner Schnarre stated a tower needs in this area. It will be on someone's property.

Commissioner Schnarre and Commissioner Miller both agreed this new location is much better as it is in a buffered zone and it is not lighted.

Commissioner Elkin asked what as the buffer zone. Commissioner Schnarre stated it would be located in a timber area.

Commissioner Elkin stated 40' trees for a 180' tower is not much of a buffer.

Commissioner Schnarre and Commissioner Miller both stated they do not have any issues with this request.

Commissioner Miller moved to approve the request by Gary and Alice Weil on behalf of Cingular Wireless for a transmission facility including a 180' tower on 115.05 acres, located at 1111 E. Oakland Church Rd., Columbia, with the following condition:

- An amended site plan must be submitted to the Planning Department

Commissioner Schnarre seconded the motion.

Commissioner Elkin asked about the road access to the tower site and if this has been

coordinated with the County Public Works Department. Mr. King stated this would be coordinated after approval of the request and site plan.

There was no further discussion and no public comment.

The motion passed 2-1 as follows: Commissioner Schnarre – Aye, Commissioner Miller – Aye, Commissioner Elkin – Nay. **Order 136-2005**

C. Petition submitted by John and Priscilla Blakemore and the Carl R. Landrun Trust to vacate and re-plat Bearfield Valley subdivision.

Mr. Shawver stated the department received a petition to vacate and re-plat Bearfield Valley Subdivision by John and Priscilla Blakemore and the Carl R. Landrun Trust. This is a three lot subdivision platted in 2002. It is located off Bearfield Road, north of Gans Road. This will be re-platted into two lots.

Section 1.8.1.3 of the subdivision regulations require the County Commission to hold a public hearing in order to consider any petition to vacate and/or re-plat, taking into consideration character of the neighborhood; traffic conditions; circulation; the proper location and improvement of streets and roads within and adjacent to the subdivision; property values in the subdivision; public utilities; facilities and services and the re-plat will not generally adversely affect the health, welfare, or safety of persons owning or possessing real estate within the subdivision to be vacated or surrounding real estate.

Bill Crockett, Crockett Engineering, 2608 N. Stadium Boulevard, was present on behalf of the applicants. Bill Crockett stated a vacation was considered for this tract maybe a year ago. Between the time the vacation was approved by Commission and the time it was to be recorded, a piece of property, which was from a 20 year old survey, was sold. The plat was finalized and recorded which made the plat in violation of the ownership. This vacation should correct the ownership.

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

There was no one wishing to speak.

Commissioner Schnarre closed the public hearing.

Commissioner Elkin moved to approve the petition submitted by John and Priscilla Blakemore and the Carl R. Landrun Trust to vacate and re-plat Bearfield Valley subdivision. Said vacation is not to take place until the re-plat is approved.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 137-2005**

D. Receive and Accept G and J Farms Plat

Mr. Shawver stated this is a one lot subdivision on Hickory Grove School Road. It is zoned A-2.

Commissioner Miller moved to receive and accept G and J Farms plat.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 138-2005**

Subject: First Reading of Request from Road and Bridge Advisory Committee – The Woodlands Subdivision

Don Abell, Public Works Design and Construction Manager, was present on behalf of this item.

Don Abell stated Paulus Lawson Jr. requested through a letter a variance on the 1,000' maximum length for a permanent cul-de-sac. The end goal of this request was for a vacation request. The Road and Bridge Advisory Committee denied the following variance requests at their February 3, 2005 meeting:

- To allow within the Woodlands Subdivision a cul-de-sac of length greater than the 1000' allowed by the regulations terminating at the end of Raccoon Ridge Drive.
- To allow the vacation of 100 feet at the end of Raccoon Ridge Drive for the purpose of establishing a permanent cul-de-sac.

Public Works recommended denial of the request due to the cul-de-sac length being too long and the subsequent request for vacating the stub street be denied.

Mr. Abell noted Planning and Zoning staff recommended denial of the requests also.

Commissioner Schnarre stated this was brought forward to the Road and Bridge Advisory Committee for their recommendation. To his understanding, the ultimate goal this is to vacate the portion of the road and make it a cul-de-sac then vacate and re-plat the plat to show it would no longer be a connector street.

John Patton, County Counselor, stated he did not understand how the Road and Bridge Advisory Committee could grant a variance to vacate a road in a platted subdivision. In

discussions with staff, he believes the residents want to vacate 100' at the end of the road and re-plat it to put a cul-de-sac bulb on it so it could not be extended to adjoining land. The problem with this is the Road and Bridge Advisory Committee has no authority to vacate plats.

Commissioner Miller stated the Road and Bridge Advisory Committee is a recommending body to the Commission and they are recommending the Commission not do this.

Mr. Patton stated no official action could be taken on this tonight due to the fact there are only two ways a road can be vacated. One is by State Statute, 71.270 RSMo., requires notice is published 15 days in advance of a hearing and there has to be consent of all adjoining property owners. Another way is by the County's subdivision regulations.

Commissioner Elkin stated the purpose of the Road and Bridge Advisory Committee was not to vacate the road. The first step to vacation was to see if the Road and Bridge Advisory Committee would allow a variance on a 1,000' cul-de-sac.

Mr. Patton stated he does not believe they have jurisdiction to do this either. The 1,000' cul-de-sac maximum is set forth in the subdivision regulations.

Mr. Abell stated it is also in the County's road regulations.

Mr. Patton stated if they vacated a piece of the subdivision plat, then in would have to be re-platted under the subdivision regulation. The Road and Bridge Advisory Committee has no authority to grant a variance on this.

Commissioner Elkin stated if the Road and Bridge Advisory Committee is not going to allow for a 1,000' cul-de-sac then there is no need for the residents to submit a request to vacate and re-plat a plat. The residents wanted to see if this was a possibility before they did the vacate and re-plat.

Mr. Patton stated there is also an appeal process to the Commission.

Mr. Abell stated this was difficult to separate these two issues. They wanted to have the road vacated so they could put in the cul-de-sac. Road and Bridge knows they do not have the authority to recommend road vacation at that point.

Commissioner Schnarre stated Road and Bridge has recommended denial. Mr. Abell stated that is correct.

Commissioner Elkin asked if this was within the Road and Bridge Advisory Committee's power. Mr. Patton stated they have full power to make recommendations. He noted the 1,000' requirement is in design specs for roads. This was meant for a variance during construction of a road. There is no construction permit at question here.

Mr. Abell stated other than the proposed construction of a permanent cul-de-sac bulb.

Mr. Shawver stated the same is true for the subdivision regulations. The design specifications are for developing land. The specification in the regulation simply states a cul-de-sac has a maximum length of 1,000' unless approved by the Planning Commission. That is during the design and platting phase. The problem is this is a platted area. There is not a development proposed. It is a true gray area of who can authorize what first. Until a plat vacation comes forward, Planning and Zoning nor the County Commission can handle it.

Paulus Lawson, Jr., 4575 E. Raccoon Ridge Drive, was present on behalf of the residents of the Woodlands subdivision, discussed with the Commission the reasons for this request. The residents of the Woodlands neighborhood do not want Raccoon Ridge Drive to become a connector street with a proposed development but to make a permanent cul-de-sac at the end of the road. They want to keep the low traffic that coincides with their low density neighborhood. They do not want to have this as a connector street to a high density neighborhood.

There was discussion about the possible effects if this road is allowed to be connected to the proposed development.

Dana Ball, 3000 Running Deer Ct, Columbia, asked what can the County do for the Woodland subdivision if the Sapp property is annexed into the City of Columbia. Commissioner Elkin stated at this time, nothing.

Commissioner Miller stated she has spoken with Bill Watkins, City Planning about this issue and possibly working with the neighborhood, Mr. Sapp, and the County to redesign the road so it is not a straight road. Mr. Watkins was supportive of this suggestion. She believes in connectivity but agrees that the road should be safer for the residents of the Woodlands.

She suggested this item be tabled and discussions be continued.

Commissioner Schnarre and Commission Miller both do not support a long cul-de-sac.

Commissioner Elkin asked if it would be okay with Mr. Lawson to table this item. Mr. Lawson stated he does not have a problem with that.

Ms. Ball asked if there could be a subdivision representative at any discussion. Commissioner Miller stated yes.

Dr. Mark Cohen, 2881 Running Deer Ct., stated he does not understand the process and asked who would be responsible for upgrading the road if it is connected and the traffic

increases. Commissioner Miller stated the County upgrades roads as they become the highest priority.

Michael Riley, 4625 E. Raccoon Ridge Drive, stated he supports the variance requests because he has a special needs daughter and the bus has to pick up her up in front of their house. He would like to see this cul-de-sac to protect the safety of his daughter.

There was discussion about a temporary cul-de-sac.

The Commission agreed to table this request for further discussion.

There was no public comment.

The meeting adjourned at 10:00 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