

TERM OF COMMISSION: December Session of the November Adjourned Term

PLACE OF MEETING: Boone County Government Center Commission Chambers

PRESENT WERE: Presiding Commissioner Don Stamper
District I Commissioner Karen M. Miller
District II Commissioner Linda Vogt
Deputy County Clerk Michelle Malaby
County Counselor John Patton
Planning and Building Inspection Director Stan Shawver

The regular meeting of the County Commission was called to order at 7:00 p.m.

Commissioner Stamper stated the first item is a **request by Rocky Fork, L.L.C. to rezone from R-S (Single Family Residential) and A-R (Agriculture Residential) to A-2 (Agriculture), 426.74 acres, more or less, located at 6791 N. Highway VV (generally bounded on the west by Creasy Springs Road, by Mauller Road on the north, by Highway VV on the east and by Rocky Fork Creek on the south.)**

Mr. Shawver reported the property is located north of Columbia. The north 189.89 acres are zoned R-S (Single Family Residential.) The southern 237.04 acres are zoned A-R (Agriculture Residential.) The area surrounding the subject tract is zoned A-R, R-S, and R-M. The site is within Public Water Supply District No. 7. There is a five inch line. They have connected a six inch line along Mauller Road, a two inch line along part of South Creasy Springs Road and a two inch line on Highway VV. This area is located within the Boone County Fire Protection District. Fire flows are not known at this time. The area is within the Columbia Public School District service area. Electric service is provided by Boone Electric Cooperative. The 1996 Master Plan designates this area as suitable for residential land uses. No previous requests have been submitted on behalf of the property. The site has 66 points on the point rating scale. Staff notified 146 property owners concerning this request. After hearing this request at their August meeting, the Planning and Zoning Commission voted to recommend denial. Their decision was appealed to the County Commission. The applicants asked for and received a continuance to December 3, 1996.

Commissioner Stamper stated earlier this week legal counsel raised the possibility of an additional continuance.

Craig Van Matre, attorney for the applicant, stated Skip Walther, on behalf of four neighborhood associations, asked that they defer this matter for additional time to see if they can work out a comprehensive settlement which will address the issues involving the rezoning and what would need to be included in the conditional use permit application. They are making progress, but an additional 30 to 45 days will be necessary to determine if a settlement can be reached.

In response to a question from Commissioner Stamper, Mr. Walther replied 30 to 45 days is an appropriate period of postponement. There have been a number of meetings with Mr. Van Matre and his clients and with representatives of the various neighborhood associations. There are a great number of people and issues involved. They have made progress toward an agreement all parties can live with, but that process is not complete.

Commissioner Miller commented she is pleased the groups are communicating. She hopes both sides can be satisfied.

There was no response to a request by Commissioner Stamper for comment concerning postponement of the issue.

Commissioner Stamper moved that the County Commission of the County of Boone authorize a 45 day extension in the County Commission's consideration of a request by Rocky Fork, L.L.C. to rezone from R-S (Single Family Residential) and A-R (Agriculture Residential) to A-2 (Agriculture), 426.74 acres, more or less, located at 6791 N. Highway VV (generally bounded on the west by Creasy Springs Road, by Mauller Road on the north, by Highway VV on the east and by Rocky Fork Creek on the south.) If the County Commission has not been contacted by the

applicant prior to expiration of the 45 day period, the County Commission will schedule a public hearing on the matter within two weeks of that expiration date.

Commissioner Vogt seconded the motion. Motion passed unanimously. **Order 582-96.**

Mr. Shawver reported **Juanita Inez Hickam, on behalf of United States Cellular Corp., requests a permit for a transmission facility with a 185 foot tall tower on 3.97 acres located at 5250 S. Scott Boulevard, Columbia.** The property is located on Scott Boulevard, approximately 1.5 miles southwest of the Columbia city limits. The site is 11.15 miles from Columbia Regional Airport. The property is zoned A-1, as is all property to the east, south and west. Property to the north is zoned A-2. The site is currently vacant. It has most recently been used for agriculture. With the addition of a top mounted antenna and lightning rod, the proposed tower will have a total height of 199 feet. The tower is self supporting and will not be lighted. The facility will include a 12 foot by 20 foot unmanned equipment building. A chain link fence will surround the site in compliance with regulations. The 3.97 acres included in the request is adequate to contain the tower on site should it fail for any reason. The application indicates the site elevation at the base of the proposed tower is 706 feet. The closest recreation area is the MKT Trail approximately 1.3 miles to the north. The applicant contacted the owners of four towers that have a similar elevation as the proposed site to determine if collocation-location is possible. Propagation studies were prepared for each tower which responded that space was available on their tower. The results indicate placing antenna on an existing tower will not provide service to the targeted service area. There have been no previous requests submitted on behalf of this property. In 1993 the County Commission approved the installation of a portable transmission facility roughly across from this property at 5275 S. Scott Boulevard. That facility included a tower measuring 84 feet in height. Electric service is the only utility required for this use. Electric service can be provided without a decrease in the level of service to existing customers. The 1996 Master Plan designates this area as suitable for residential land uses. Staff notified 18 property owners concerning this request. At their meeting on November 19, 1996 the Planning and Zoning Commission voted to recommend approval of this request with the stipulation that the applicant provide proof the tower will be no threat to the overhead electric lines shown on the site plan.

Commissioner Stamper acknowledged the presence of a court reporter. The court reporter has been retained by the applicant. Addressing Mr. Patton, Commissioner Stamper stated a question was raised about a Federal Communication Commission requirement that testimony be submitted in writing.

Mr. Patton replied for conditional use permits, state law requires findings of fact and conclusions of law be provided for the decision rendered. They must have support in a record, typically a written record. The federal statute, which he just reviewed, requires the decision be based on a written record. That requirement can be satisfied, especially with a court reporter taking down testimony. Mr. Patton stated in a more recent court case in another circuit, the court did not find simple verbal opposition by neighbors sufficient to deny a request. If this request meets all requirements, a decision to deny has to be based on something other than simple opposition.

Commissioner Stamper stated he believes the purpose of the presence of the court reporter is to create a record for the applicant, not necessarily for the county.

Mr. Patton stated the court reporter will take the testimony verbatim. Being a notary she will certify the transcript as being a verbatim transcript. It will be usable by anybody. If she were not here, Ms. Malaby would have the job of transcribing the record.

Ken Jacob stated he is an attorney with offices at 1001 E. Walnut, Suite 201, Columbia. He represents the applicant, United States Cellular Corporation and Mrs. Hickam. Mr. Jacob stated he is wondering if witnesses need to be sworn in.

Mr. Patton replied it would not hurt.

Mr. Jacob asked do you view the court reporter they have retained for their testimony as the official court reporter for everyone's testimony?

Mr. Patton asked if Mr. Jacob's intent is to have the court reporter take all testimony or only that of the applicant?

Mr. Jacob replied he is wondering what the County Commission desires in that regard.

Mr. Patton replied if the applicant is paying for the court reporter to be present, she should take all testimony.

Commissioner Stamper stated that would be a very friendly thing to do.

Mr. Jacob replied they are very friendly people.

Mr. Jacob was sworn in by the court reporter.

Mr. Jacob stated the commission has been given copies of their application. They believe they have met all requirements set forth in the zoning ordinance. As stated earlier, the Planning and Zoning Commission approved this proposal with one condition. The survey did not reflect whether the tower would interfere with the overhead electric lines should it fail. They would like to offer a new survey that indicates the tower would not hit the power line. Mr. Jacob described a group of photographs submitted to the commission. Mr. Jacob introduced applicant representatives: Missouri Market General Manager Joe Thompson, US Cellular Network Operations Manager for the Missouri Midwest Region Todd Walden, Project Manager Scott Van Roekel of Davenport, Iowa, and RF Engineer Steven Csizmadia of Cedar Rapids, Iowa.

Mr. Walden was sworn in by the court reporter. Mr. Walden stated US Cellular has provided cellular service in Boone County since 1988. They have experienced rapid growth. When they were before the commission four years ago requesting the tower at Midway, their customer base was in the process of converting from mobile phones to hand held portable phones. Mobile phones provide two to three times the range of usable service area around a tower than a portable phone. Over 80 percent of new service are portable phones. They are in the process of converting their system to meet the needs of portable users. Section U of their application includes propagation study maps. Exhibit A shows a theoretical signal strength map of their current portable service. They are only providing reliable portable service to roughly half the county. Exhibit F in the same section shows drive test data. It denotes the actual signal strength taken by a satellite tracked vehicle which is equipped with signal strength monitor equipment. The maps closely compare. One of main areas where they do not have reliable portable service is in the midwest part of Boone County, southwest of Columbia. It is a densely populated area with fast growth. It is one of the most traveled sections of the county. This is one of the main reasons they want to construct the tower in this area. This area has the largest percentage of customer complaints of static, no service, and dropped calls. Over 50 percent of calls made in Boone County are made by portable phone users. Forty seven percent of all of their dropped hand offs on portable phones occur between Columbia and Ashland. In January and February of this year, 47 customers disconnected service due to coverage problems. The cost of losing these customers, had they continued service until December 31, 1996, is over \$20,000. They need reliable service in this area in order to compete. Not only are they trying to stay competitive with Ameritech Cellular, they are trying to hedge against the new PCS cellular technology. They feel this location will help them meet current and future challenges. The site is on high ground which helps cellular coverage. Cellular signals work on the line of sight theory. For example, if your phone is located behind a bluff or down in a valley you will not have service unless there is a tower. This location is adequate to meet guidelines for tower failure. It is the best, suitable location in the area. Mr. Walden stated the self supporting tower will not have guy wires or anchors. The tower is designed to support many other antennas. The tower will not have lights since it is under 200 feet tall. They will plant trees in front of the eight foot chain link fence. They were unable to locate an existing tower on which to locate their antenna which would meet their needs.

Mr. Van Roekel was sworn in by the court reporter. Mr. Van Roekel stated US Cellular holds one of the two FCC licenses for cellular coverage in Boone County. They have invested a substantial amount of time and effort in the proposed site. Required documents have been provided, including a determination of no hazard from the Federal Aviation Administration and a detailed site plan. Based upon the Telecommunications Act, the federal government is looking at providing wireless service to the public in the United States. Wireless service is part of the current

development of technology in the United States, much as rural electrification of America was some time ago. Mr. Van Roekel stated he hopes the County Commission will find that this site stands on its own merits and approve their request.

Mr. Csizmadia was sworn in by the court reporter. Mr. Csizmadia stated US Cellular proposes to construct a 185 foot cellular transmission facility at the Scott Boulevard site in order to provide cellular service in an area presently unserviceable by portable, hand held phones. Customer requirements have dictated the need for reliable portable, hand held service in the local area surrounding the proposed site. The physical location of an such site is determined by the propagation characteristics of the radio signals required by customers for reliable portable service. Other secondary design considerations are influenced by the local geographic terrain and any man made terrain obstructions such as buildings. In the case of this site, signal strength coverage analysis has indicated there is a basic lack of usable portable grade signal in the area surrounding the site. Customers cannot make or receive telephone calls if there is not a usable signal level. To provide a sufficient signal level within the constraints of good cellular engineering design, one must understand the basic premise of cellular radio telephone, which is frequency reuse. Cellular radio systems are designed so that each cell site only covers a small geographic area--unlike a commercial or public safety two way radio system that relies on high powered transmitters on very tall towers to cover as much geographic area as possible. By dividing the local service area into small geographic parts, or cells, the radio channels used at any one cell site can be reused at another cell site some distance away. To serve the area in question, the cell needs to be located at the proposed site. Transmitting antenna height plays a significant role in determining the coverage area of the radio signal transmitted from a cell site. The proposed tower is the optimum height for portable coverage required by customers. Every effort has been made to minimize the aesthetic profile of the antenna structure while maintaining acceptable radio signal levels for customers. By designing the antenna structure as they have it has been possible to eliminate the requirement for tower guy wires and support fixings and lights. This results in a significantly reduced visual profile for neighbors. Reducing the height will reduce the signal coverage of the cell site and may result in the need for additional facilities to cover this service area.

Mr. Jacob stated this is not the first time they have appeared before the commission requesting a conditional use permit. It is quite common for neighbors to be concerned. Everyone realizes telecommunications is a rapidly changing industry. In the future, we may not see telephone poles and lines. They are not attractive either. They are accepted because they are necessary. There are at least twenty towers in the Columbia which people drive by every day. They do not even recognize their presence. People are building expensive, nice homes in areas where towers are located. Mr. Jacob stated he lives about one fourth mile from a tower. Mr. Jacob stated he retained testimony from their previous request before the commission, which was also recorded by a court reporter. There were two expert witnesses, appraisers Jerry Blaylock and John Westlund. They can find no evidence that a transmission facility has had any impact on property values. Mr. Jacob submitted their testimony for the record. At the Midway site, a very nice home was constructed next to the tower. They do understand the concerns of the people and they have tried to respond by keeping the tower below a certain height and making it as least intrusive as possible. A lot of the controversy surrounding this issue stems from the lighted tower built south of Columbia prior to the adoption of regulations by Boone County.

Commissioner Miller asked is it safe to assume that if there is a need for coverage southeast of Columbia you would use KOMU tower?

Mr. Walden replied they have a tower in Ashland that covers that particular area.

Commissioner Stamper stated the application lists Prentice Hall Corporation Systems, Inc. as the registered agent and asked if they can describe that firm.

Mr. Van Roekel replied he does not know what Prentice Hall is but they do operate under multiple partnerships. The legal entity in Columbia is US Cellular of Columbia.

Mr. Patton commented there are a number of corporations which are in business simply to act as registered agents. Essentially their function is to receive official filings from the Secretary of State and lawsuit papers which they then transmit to the business.

Commissioner Stamper asked how many other systems is US Cellular involved with?

Mr. Walden replied US Cellular is the seventh largest cellular firm in the nation. Mr. Walden described their service area in Missouri.

Mr. Van Roekel added they operate in 205 markets.

Mr. Walden stated each market typically consists of five counties.

Commissioner Stamper asked what is US Cellular's market share in Columbia? How many cellular phones are there in Boone County.

Mr. Jacob replied there are in excess of 6,000 subscribers in Boone County.

Commissioner Stamper asked what is the total number of subscribers?

Mr. Van Roekel stated that information is semi-proprietary. Generally, the market share split is 50/50 or 60/40, depending on who is providing the best service.

In response to a question from Commissioner Stamper, Mr. Walden replied PCS licenses have been auctioned. Two or three companies have licenses to operate in and around Boone County. Sprint plans to install nine antenna sites in Boone County within the next year.

Commissioner Stamper stated documentation submitted to the commission refers to a platform on the tower. Commissioner Stamper requested a description of the platform.

Mr. Van Roekel replied there are multiple ways of mounting antennas on the top of towers. They can be mounted on side arms which are a few pieces of steel which extend from the tower. Antennas need to be ten to twelve feet apart. A platform is not proposed for this tower. They propose an antenna mounting array which is a triangular structure. Platforms are installed on towers. They have a steel grate on which people can stand while they work.

At the request of Commissioner Stamper, Mr. Walden replied they looked at many sites in this area. This site has the best properties in terms of ground elevation. It provides more signal distribution. It has the land mass needed for a fail radius.

Mr. Jacob added conditional use permits are only allowed in certain zoning areas. There are already two communication facilities in the area.

In response to a question from Commissioner Stamper, Mr. Csizmadia repeated his explanation for the selected tower height.

Commissioner Stamper opened the public hearing.

Katherine Allen, 4801 South Vineyard Way, Columbia, was affirmed by the court reporter. Ms. Allen stated there are quite a few people present with her. They are present only to ask questions. Ms. Allen stated she realizes the applicants have followed all the rules, but the first she saw of this request was a Friday, Nov. 22nd Columbia Missourian article, and later that day, an article in the Columbia Daily Tribune. Ms. Allen submitted pictures of the site and surrounding area. Ms. Allen stated it is their understanding from the drawing provided by Mr. Shawver that there will be grid dishes on this tower. She appreciates Commissioner Stamper's questions about the platforms. They have no idea of the number of dishes which will be on this tower. During the course of her testimony, Ms. Allen read Section 15.A.(2)(a)(b)(c)(e)(g) of the Boone County Zoning Ordinance. Ms. Allen stated they understand the telecommunications industry will improve safety, but they wonder who will be comforted by this request or what that means. She and her neighbors are discomfited by this request. They wonder what is the meaning of, "enjoyment of other property in the immediate vicinity." She and her neighbors feel this is a definite case of visual pollution. It impacts not only the county, but also the southwest corner of the City of Columbia. The only other structures which are above the tree line on that ridge are the water tower at Bethel Road, the water tower on the same site and one steeple in the Highlands. The zoning ordinance says the permit shall not diminish or impair property values. The existing properties are homes

and home sites. She and her neighbors wonder if the applicant could find another site to serve cell phone users which would impact fewer homeowners. Why couldn't they find a real rural area, maybe one closer to the river bottoms? The ordinance also says transmission towers shall structurally accommodate the maximum number of foreseeable users technically practicable. Ms. Allen stated she understands the need for that provision in order to avoid a proliferation of towers. However, if towers were 85 feet tall, like the nearby Ameritech tower, there would be a lot less visual impact. According to the press, the tower is needed in order to serve the river bottoms. Could a smaller tower, closer to that area, be used to provide service to the south? There are people there who have held land in this area for decades, planning to develop it. Mr. Jacob spoke of the tower near his own home. He mentioned it to her in a telephone conversation so she drove over and looked at it. The two areas don't compare. The houses are not the same. Ms. Allen stated she understands the need for the tower and she is not opposed to the march of technology, but why this site? Does Ameritech serve the same customers with a shorter tower in the same area? If this tower is abandoned, will US Cellular be required to take it down? Satellites may eliminate the need for communication towers. Has US Cellular considered ways to mitigate the visual impact of the tower. If the applicant fulfills all the requirements concerning towers, does that exempt them from the other requirements in the zoning ordinance? Ms. Allen stated she has a petition, signed by a number of people, which she would like to present to the commission. When it was originally written, they used the word deny. They no longer wish to ask for denial at this time. They would like consideration of the issue to be delayed. They have not had an opportunity to meet, view the application, or study the maps provided. They need time to digest the presentations. Notification requirements are inadequate for a tower of the proposed height. How can that requirement be revised? Ms. Allen stated her initial shock is tempered by fact that no lights are required on towers under 200 feet.

Bill Zschoche, 3501 W. Old Field Road, Columbia was sworn in by the court reporter. Mr. Zschoche stated they have not seen a rendering of the proposed tower. What will it look like with additional antenna structures on it?

Karen Rollings, 3580 W. Southern Hills Drive, Columbia, was sworn in by the court reporter. Ms. Rollings asked is the total height of the tower 185 feet or 199 feet? Ms. Rollings stated she is a US Cellular customer. She drives through the area daily. She has never had a dropped phone call in the area. She understands the river bottom area may need improved service. Is this a question of service to the area or a question of competing to service the area.

The following people identified themselves as belonging to the group of people Ms. Allen referred to: Dave Rollings, 3580 W. Southern Hills Drive, Columbia; Gary and Mary Lee Mayfield, 4501 Old Mill Creek Road, Columbia; Elda and Joseph Kurzejeski, 4651 S. Scott Blvd., Columbia; Virginia Rothwell, 3300 W. Old Field Road, Columbia; Patty Zschoche, 3501 W. Old Field Road, Columbia; and Nan Unklesbay, 3195 W. Southern Hills Road.

Mr. Kurzejeski stated they live about 4,000 feet from the proposed site. He hopes the county changes the notification policy.

Commissioner Stamper closed the public hearing.

Mr. Jacob stated the search for a site began over a year ago. Other sites and alternatives were thoroughly explored. Why was a high elevation selected? That is the proper place for them.

Mr. Walden restated the reasons they need the tower: the lack of coverage in the area for portable telephones and they are losing customers due to the lack of coverage in that area, and portable telephone use is increasing.

Mr. Csizmadia noted there are differences in telephones. Some have better reception than others.

Mr. Van Roekel stated they target a one mile radius. Within that area, there are very few large tracts of ground that will meet requirements. They also have to find a property owner who is willing to have the tower on their property. It is not like there are 5,000 or 10,000 locations to choose from. There is not a suitable rural location on which to place the tower.

Commissioner Stamper stated he will review the list of questions raised. Will dishes be placed on this tower? If so, what will the size and dimension of the dishes.

Mr. Csizmadia replied they have no plans to put a dish type or grid type antenna on the tower.

Mr. Walden added the tower is designed to hold multiple antennas and dishes.

Mr. Van Roekel stated they propose to provide communications to and from the facility via telephone lines. No dish will be required.

Commissioner Stamper asked if a dish were to be placed on this tower, what size would it be?

Mr. Van Roekel replied probably four to six feet in diameter.

Commissioner Stamper asked is there a rendering of how this tower will look?

Mr. Walden stated the tower will be similar to the tower in the photographs in Section J of the application.

Mr. Van Roekel added the base of the tower depicted is about 30 feet wide. This tower will be about 18 feet wide.

Commissioner Stamper stated the commission has been told by several parties that property values cannot be taken into consideration in denying the request. Is that correct?

Mr. Shawver replied Boone County regulations excuse transmission facilities. On page 53 of the zoning ordinance, it states, "Transmission towers shall have the least practicable adverse affect on the environment and property values in the surrounding area. A transmission tower complies with this standard if it complies with the following: the tower is 200 feet or less in height, is more than 10,000 feet from an airport, and has a galvanized finish or is painted silver. If the tower is over 200 feet in height, it shall comply with FAA painting and lighting standards." Mr. Shawver continued reading that section of the zoning ordinance.

Commissioner Stamper asked the applicant to respond to the question of why they did not select a rural site?

Mr. Walden replied he traveled the area extensively looking for a rural location in which to locate a tower. There are not any areas which do not have many people around unless you go to the river bottoms. The elevation in the river bottoms is so low that a 185 foot tower would not reach the bottom of the ground elevation of the proposed site. Such a location would not help improve coverage at all.

Commissioner Stamper asked how would the county respond if the applicant requested an 85 foot tall tower directly across from another firm's 85 foot tall tower?

Mr. Shawver replied the application would not be processed unless they provided information showing they made necessary contacts. In the case of the existing tower in that area, it has limited loading ability.

Commissioner Stamper stated the county ordinance seems to encourage taller towers to avoid the proliferation of towers. Tonight, citizens are saying they want more shorter towers.

Mr. Jacob stated his hunch is there will only be one tower in that area in the future. It would be advantageous for Ameritech to place their antenna on the proposed tower. Their tower is considered a portable tower.

Commissioner Vogt agreed this neighborhood is saying they want more shorter towers. Before the tower regulations were adopted, public hearings were held. It cannot be said that all Boone County citizens would concur that more shorter towers are desirable.

Mr. Jacob commented there is also the economic consideration of building numerous shorter towers.

Commissioner Stamper stated another question raised was, did the Planning and Zoning Commission question whether the public could be served by locating the tower in another area?

Mr. Shawver replied the applicant's presentation to the Planning and Zoning Commission was very similar to that made tonight. The Planning and Zoning Commission concentrated on the site itself. Mr. Shawver stated he does not recall a commissioner asking whether the applicant had researched the entire area. They did question about how the propagation studies were conducted.

Commissioner Stamper stated another question was whether US Cellular considered methods of mitigating the impact of the tower.

Mr. Jacob stated he is not sure he fully understands the question.

Ms. Allen clarified some towers are being built which are disguised to look like trees. Ms. Allen added the drawing of the proposed tower indicates the tower may be loaded with eight and ten foot dishes.

Mr. Van Roekel replied he believes US Cellular met the requirements set forth by the county. They tried to stay below the height of 200 feet. The optimum height, providing a perfect balance between propagation and return on investment, would probably be higher than 200 feet.

Commissioner Stamper asked is US Cellular receptive to a condition limiting the size of dishes allowed on the tower as a form of mitigation?

Mr. Van Roekel stated he would guess they are willing to do that. Mr. Van Roekel stated he "loaded" the tower. Once a towered is designed and built you cannot go back and load it heavier. He built the tower stoutly.

Commissioner Stamper stated the question was raised about whether US Cellular's motive is service or competition.

Mr. Van Roekel replied quality of service is the number one issue for cellular telephone customers. There is a parallel between the quality of service provided and who customers choose to provide service.

Commissioner Vogt asked who will take the tower down at the end of the lease period?

Mr. Van Roekel replied the lease provides that it is up to the landowner to decide whether they want to retain the structure or if they want US Cellular to remove it.

Mr. Jacob commented legally the tower would be a fixture. The fixture goes with the land.

Mr. Walden commented towers have value. The worth of the steel alone is in the tens of thousands of dollars. You would not want to leave a structure standing idle.

Commissioner Stamper asked staff to address the issue raised regarding the apparent conflict in the regulations concerning conditional use permits in general and the tower regulations.

Mr. Patton replied the general conditions cited are applicable to all conditional uses. In 1990, the county litigated a case concerning a tower in south county. The county prevailed on the case, but it spurred a hard look at how the county would regulate communication towers in the future. The regulations adopted were the result of a year long effort. The philosophy was to minimize the number of towers by maximizing use in areas deemed appropriate for towers. Mr. Patton stated in his view, because the county so comprehensively regulated the conditions of communication tower construction, if an applicant complies with the regulations, there is a presumption they are entitled to a permit. That is not to say that if there is significant proof that they do not meet one of the general criteria that the application could not be denied. The section relating to diminishing

property values was publicly discussed. It was decided that if the applicant met the requirements, the issue of property values would not be considered as a condition of denial.

Commissioner Vogt stated regarding the question about notification, page 43 of the zoning ordinance outlines notification requirements.

Mr. Shawver replied though that particular section is not part of the transmission facility regulations, it was added due to the work of the transmission facility committee. There were people who served on the committee who were beyond 1,000 feet from the tower they were aggrieved by. They thought the section referred to by Commissioner Vogt was a realistic way to approach the matter, considering the practicalities of notification. Each time the area of notification is extended, the jeopardy of failing to notify someone increases. Failure to notify someone places a procedure in jeopardy.

In response to a question from Commissioner Miller, Mr. Walden replied the tower structure will be 185 feet tall. They have an FAA determination for 199 feet which means they may have a structure up to 199 feet tall. That would include the tower, a ten foot antenna and a lightning rod.

In response to a question from Commissioner Stamper, Mr. Jacob replied delaying consideration of their request would have a detrimental impact. He is not sure what the purpose would be. There is a limited space in which this tower can be placed. It has been a struggle to find a site. Even if another location were selected, the people would still have the same problem. The tower would still be close to their homes. The requirements have been met. A delay will not change anything. In regard to the comment that they have not had an opportunity to study the request, the commissioners are their representatives. The commissioners have had the opportunity to study the issue. Unless the commission is uncertain about compliance with the requirements, he is not sure what they could find that would make a difference.

Commissioner Stamper asked Mr. Shawver if he believes the terms and conditions of the county application process have been met?

Mr. Shawver replied he reviewed the application extensively. A lot of additional advisory information was provided. The application is complete and, as best as he can determine, complies with all aspects of the Boone County Zoning Ordinance.

Commissioner Stamper asked Mr. Patton the same question.

Mr. Patton replied he did not review the entire application and he would not have an opinion on it. He would say if the commission delays consideration of the request, the purpose would be to allow proof to be shown that the application is deficient.

Commissioner Vogt questioned how Ms. Allen could make a determination about the application if she has not had an opportunity to review the application?

Mr. Patton replied the regulations provide that the commission can delay action up to 45 days. The only purpose in adjourning and reconvening this matter would be to take evidence that there is something in the application which is deficient or untrue.

Commissioner Vogt stated she has complete confidence in the Department of Planning and Building Inspection. She feels certain the regulations have been addressed by the application. She feels certain everything is in order or the request would not be before the commission tonight. The county spent a long time in a hard process to design the communication tower regulations. Commissioner Vogt stated she does not think a delay would be fair to the applicant.

Commissioner Miller stated she believes the applicant has complied with every part of the regulations. She read the application and the regulations. As an Ameritech user with a mobile phone, their 85 foot tower is not serving the river bottoms. The river bottoms would not be an acceptable site for a tower. She would rather there be fewer taller towers than many shorter towers. Land zoned A-1 is rare in this area. Cellular service is vital to many businesses. It is in the best interest of the total population to approve this request. She does not believe delaying the request would change anything.

Commissioner Stamper stated he believed the county had model tower regulations. A tremendous amount of energy went into their formation. He and Mr. Shawver met with some of the neighbors last night to discuss the request. Two issues were discussed: the presence of the tower in the neighborhood and process. The neighbors have raised legitimate concerns about the process. However, those concerns cannot affect this application. The applicant met the criteria set by the county. This is really the first contested tower since the adoption of the regulations. This issue is symptomatic of growth. Commissioner Stamper stated he is concerned with the process as it relates to notification and public awareness. He would like the applicant to submit tower design material before a construction permit is issued and he would like to place a condition on the request restricting the dish size. Commissioner Stamper requested the applicant's input on the size of dish acceptable to them.

Mr. Van Roekel and Mr. Csizmadia replied limiting the size of the dish and the propagation limits the distance the site can communicate with another site.

Mr. Jacob asked if Ameritech meets all requirements for placing a ten foot dish on this tower, how would the size restriction affect them?

Commissioner Stamper stated this would be a condition on use of the tower. Commissioner Stamper stated there will not be any ten foot dishes on the tower. He heard testimony that the tower is basically built like a Sherman tank. He would like to be sensitive to the neighbor's position by limiting the size of dishes allowed on the tower.

Mr. Walden stated the tower loading is specifically for tower renters. It would be up to their studies to determine the size they need. It comes down to whether the commission wants to limit the size.

Commissioner Stamper replied he is very interested in limiting the size of dishes.

In response to comments by Commissioner Vogt and Commissioner Miller, Mr. Shawver replied under the regulations, if Ameritech collocated on the tower, they would not have to appear before the commission. They could use the need for a ten foot dish as a reason to construct another tower across the street.

Mr. Patton commented the commission could tailor the condition to limit the size of the dish unless the limitation would result in construction of another tower.

In response to a question from Commissioner Stamper, Mr. Patton replied presently there is no procedure for amending conditions in the future. That is something they intend to look at during the next revision of the zoning ordinance. This issue has come up with other uses.

Commissioner Stamper asked is he correct in saying that he would be unwise to offer a condition limiting the size of dishes to be placed on the tower?

Mr. Patton replied Commissioner Stamper is the judge of the wisdom.

Mr. Van Roekel commented they can live with limiting the size of dishes to six feet.

Commissioner Vogt commented cellular phones are a benefit to the public.

In response to a question from Commissioner Stamper, Mr. Shawver replied the condition placed on the request by the Planning and Zoning Commission has been satisfied.

Commissioner Stamper moved that the County Commission of the County of Boone approve a request by Juanita Inez Hickam, on behalf of United States Cellular Corp., for a permit for a transmission facility with a 185 foot tall tower on 3.97 acres located at 5250 S. Scott Boulevard, Columbia, with the following conditions:

- findings of fact and conclusions of law are to be submitted prior to issuance of a construction permit
- tower design documents are to be delivered before a construction permit is issued
- the size of communication dishes shall be limited to six feet in diameter.

Commissioner Miller seconded the motion.

Commissioner Vogt questioned whether the first condition needs to be included if it is a standard procedure.

Motion passed unanimously. **Order 583-96.**

Mr. Shawver presented the plat of **Paradise Hills Estates, Block 4, located in S33-T48N-R13W, and zoned A-2. Russell and Laura Devanney are the owners. Timothy D. Capehart is the surveyor.** Paradise Hills Estates is located at Scott Blvd. and Route KK. It consists of ten lots, 2.5 acres in size.

Commissioner Miller moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign Paradise Hills Estates, Block 4, located in S33-T48N-R13W. Zoned A-2. Russell and Laura Devanney, owners. Timothy D. Capehart, surveyor.

Commissioner Vogt seconded the motion. Motion passed unanimously. **Order 584-96.**

Mr. Shawver presented **Finley Bridge Plat 5, located in S28-T51N-R12W, and zoned A-2. Larry and Debra Bolles are the owners. Donald E. Bormann is the surveyor.**

Commissioner Vogt moved that the County Commission of the County of Boone receive, accept, and authorize the Presiding Commissioner to sign Finley Bridge Plat 5, located in S28-T51N-R13W. Zoned A-2. Larry and Debra Bolles, owners. Donald E. Bormann, surveyor.

Commissioner Miller seconded the motion. Motion passed unanimously. **Order 585-96.**

The meeting adjourned at 9:22 p.m.

Attest:

Don Stamper
Presiding Commissioner

Wendy S. Noren
Clerk of the County Commission

Karen M. Miller
District I Commissioner

Linda Vogt
District II Commissioner