

TERM OF COMMISSION: September Session of the August 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
County Counselor John Patton
County Clerk Wendy Noren

The regular meeting of the County Commission was called to order at 1:30p.m. by Commissioner Stamper.

Subject: Bid Award 39-29JUL98

Becky Jackson stated that the Purchasing Department had reviewed the bids that were received and recommended an award.

Commissioner Miller stated that the weapons purchase had been delayed due to funding procedures. She stated that she could understand the Sheriff’s Department anxiousness to receive the weapons.

Commissioner Miller moved to award pursuant to recommendation of the County Purchasing Director Bid Number 39-29JUL98 as follows:

<u>TO</u>	<u>FOR</u>
GULF STATES DISTRIBUTING	H/K MP 5 ENTRY GUN
LAW ENFORCEMENT EQUIPMENT COMPANY	GLOCK 40 CALIBER HAND GUN
LAW ENFORCEMENT EQUIPMENT COMPANY	GLOCK TRAINING HANDGUN

Pursuant to this order the Presiding Commissioner is hereby authorized to sign contract documents for said goods/services with the above.

Commissioner Vogt seconded the motion.

There was no discussion. The motion passed 3-0. **Order 424-98**

Subject: Request to Hire PC Communications Analyst above the base of the range

Commissioner Miller stated that the County had been anxious to fill this position. She stated that the new Director of Information Services, Dan McFarland had taken his position quickly so that he could aid in interviewing the candidates for this position. Commissioner Miller further noted that this candidate was being presented with the recommendation of the both the IS Department and Dan McFarland.

Dan McFarland stated the individual would be an excellent hire for Boone County and should serve the IS Department well.

Commissioner Miller asked Dan McFarland to state the candidate’s background and qualifications for the record.

Dan McFarland stated that the person under consideration was an electrical engineer that has a Bachelor of Science degree. He stated that the individual also had undergraduate study in computer engineering. He further noted that the individual was well versed in the computer world and its technology, and had also been a manager of a large communication network similar to that of Boone County.

Commissioner Miller moved to authorize the Director of Information Services to hire a P C Communications Analyst above the base of the range at an annualized salary not to exceed \$51,000. The position will be filled effective October 5, 1998.

Commissioner Vogt seconded the motion.

There was no discussion. The motion passed 3-0. **Order 425-98**

Subject: Setting of Speed Limits on County Roads

Frank Abart discussed the memorandum he had issued requesting speed limits on Old Plank Rd-Rte K, and Smith Hatchery Rd-Old Plank Rd to W. Dolthage Rd.

Commissioner Stamper moved to adopt a speed limit of 35 miles per hour on Old Plank Rd from the south intersection of Route K to Hickam Drive as provided in Section 1.3.0 of Chapter 1(Vehicle Traffic Regulations) of the Roadway Regulations of Boone County, Missouri.

Commissioner Miller seconded the motion.

There was no discussion. The motion passed 3-0. **Order 426-98**

Commissioner Stamper moved to adopt a speed limit of 35 miles per hour on Smith Hatchery Rd from Old Plank Rd to W Dolthage Rd as provided in Section 1.3.0 of Chapter 1(Vehicle Traffic Regulations) of the Roadway Regulations of Boone County, Missouri.

Commissioner Vogt seconded the motion.

There was no discussion. The motion passed 3-0. **Order 427-98**

Subject: Update on Proposition 1 Paving Projects

Commissioner Stamper reported that the 1995, 1996, 1997, and 1998 projects had been completed. The total mileage completed was 47.70 miles.

Frank Abart stated that Bearfield and Gans Roads would be completed the following week.

Commissioner Stamper reported that Smith Hatchery and Vawter School Roads were still in progress.

Commissioner Stamper stated that the entire project was proceeding nicely.

Frank Abart noted that the intersection at Country Woods would probably be closed beginning the following Monday.

Commissioner Vogt stated that there was another access.

Commissioner Stamper stated that there were currently about five miles in progress and 3.75 miles would be done as 1999 projects. He stated that the projects were Creasy Springs Rd and Mauller Rd, and a portion of Ritchland Rd and St Charles Rd (about 4 miles). There is also a possible project for the remainder of Gans Rd.

Commissioner Stamper also submitted a report on the paving projects in terms of costs and weight.

Subject: El Chaparral Subdivision Improvements

Commissioner Stamper stated that a firm had been retained to look at El Chaparral comprehensively as a subdivision. The engineering report included a study of storm drainage, paving repairs, and an approach on strategy. The firm delivered a project cost of the improvements within El Chaparral. The costs were estimated to be between \$1.4-1.6 million.

Commissioner Stamper stated that if the package were endorsed (the report and estimate), the County would receive full repair of the streets within El Chaparral subdivision. Commissioner further stated that there was a meeting with a number of county officials who agreed that this project was achievable. He stated that the department would like direction to go to bid on this project as soon as possible.

Commissioner stated that the project would be a wintertime bid, and a notice to proceed by next spring. Commissioner Stamper then opened the discussion on the item.

Commissioner Miller stated that this project was a lot more comprehensive than had been previously discussed. She wanted to know if the Public Works department wanted to complete the comprehensive project so that the neighborhood people would not be disturbed every year by the construction.

Frank Abart stated that it would be desirable to complete the work in one season due to the fact that the neighborhood is very congested.

Commissioner Miller asked if Frank Abart believed this project was achievable within the budget.

Commissioner Stamper stated that there had been some financing strategies discussed. He further noted that this was the single, biggest project in a neighborhood. Commissioner Stamper stated that this particular project was being conducted in phases. However that type of approach proposed a number of difficulties.

Commissioner Stamper stated that this (comprehensive) approach would be more cost-effective especially as the construction is winding down.

Commissioner Stamper stated that he had spoke with some people in the industry and they believed this was a perfect project for the County to prioritize and have performed by private contractor. He stated that El Chaparral had been a focus of difficulty for the last five County Commissions. He stated that this would be a solution that would address the stormwater, paving, and transportation coordination.

Commissioner Miller asked Frank Abart if the storm-water was in conjunction with was expected concerning the EPA.

Frank Abart stated that it was to the best of the department's knowledge. He further noted however, that the EPA DNR was promulgating new regulations that would be placed on the department next year. The regulations are expected by March 1999, but no one has a good understanding of what the regulations will be like.

Commissioner Vogt stated that the neighborhood members of the El Chaparral subdivision were anxious to have their street repaired and that they would be happy to know that the County was attempting to complete this project comprehensively.

Commissioner Miller stated that she was also in agreement as long as the financing could be worked out.

Commissioner Stamper and Frank Abart also reported that there were a couple of other projects that were being worked on, however those projects were not of this magnitude. The other projects were Georgetown and Lake of the Woods.

Commissioner Stamper moved to authorize the PREPRA Engineer's Report and request that the Public Works Department proceed with the plans and bid documents for the El Chapparral Subdivision Improvement Project.

Commissioner Vogt seconded the motion.

There was no discussion. The motion passed 3-0. **Order 428-98**

Subject: Appointment to the Library Board

Commissioner Stamper stated the County Commission met and interviewed candidates for appointment to the Library Board for a term starting August 1998 and ending July 31, 2002.

Commissioner Stamper moved to re-appoint Alan Kelly to the Boone County Library Board for a term starting August 1998 and ending July 31, 2002 or until such time as a successor is appointed.

Commissioner Vogt seconded the motion.

There was no discussion. The motion passed 3-0. **Order 429-98**

Subject: John Patton - Road Policy Revisions (based on utility companies' comments)

John stated that the Commission had previously adopted a measure to regulate the use of roadways (Chapter II-Roadway Regulations). John Patton further mentioned that a notice had been sent to all utility companies in Boone County stating the County's intent to make the utility companies' right-of-use permits and franchises subject to regulation. They would also be given the right to make objections.

John Patton that there were comments/objections from GTE, Sprint, and the Water Districts. The two telephone companies raised a number of issues that were not addressed in the regulations. John Patton stated that there was a work session with GTE and Sprint (both companies had similar comments). He also stated that he had received a series of legal objections from the Water Districts. He noted that the Water District objections did not make any proposals for changes. He stated that they took the position that these regulations could not be enforced even though the Water District Law states that use of right-of-ways is conditioned on regulations adopted by the Counties and Cities that control them.

John Patton stated that during a meeting with Paul Birkstaff (and after a meeting with GTE), he formulated some revisions to the regulations that were adopted to address some of the issues that were brought forward (by Water Districts and utility companies).

John Patton highlighted the changes that had been made. He stated that there were some problems with the language. He also stated that the companies did not feel it was practical to have to obtain permits every time a driveway had to be excavated. There was a provision added that allowed the Public Works Department to issue blanket permits for certain kinds of work. For certain kinds of work, the companies will be able to call in their location so that the Public Works Department can do spot checks as necessary.

John Patton also stated that there was some concern about the lead-time when the County needs the companies to relocate facilities as a part of the County's maintenance, repair, or improvement projects. John Patton said that he is working to give the companies as much advance notice as

possible, however the County could not commit to a number because of the different kinds of (County) work.

John Patton stated that the companies also had a good point about wanting to be notified in the event of a County road vacation procedure. If the companies do not have private easements and the County vacates the road; the companies are left with no easement at all. The State does allow private companies to use vacated easements, so therefore the companies just wanted to be notified in the event of a vacation. John Patton stated that this was an oversight in the regulations. There was a provision added (into the regulations) stating that the utilities will be notified of any road (of which the County is aware) that is to be vacated in enough time that the companies are aware of the vacation process and can participate in it.

Commissioner Vogt asked if a notice would be sent to every known utility when the County is going to vacate a road.

John Patton said yes.

John Patton stated that there was also some concern a the short time period for exploration. John Patton said that he changed the regulations to put the burden on the companies to specify the time the companies wanted to do the work (and the application). This period will be what is used, unless the Director of Public Works specifies that it should be shorter or longer. In the event that there is no specified time, the period will be thirty days.

John Patton also was a language concern in that the County requires the companies to make initial repairs for work done in the right-of-way for a period of six months. John Patton that the language was clarified on that issue in the regulations.

John Patton then noted, on the technical side, the telephone requested a lesser depth (than the required 30 inches) for drops and ditches. The depth was changed to 24 inches for the paved surface and 30 inches for the ditches. For the water lines, the depth would be a minimum of 42 inches.

Commissioner Miller asked if there were State standards for some of the depths.

John Patton stated that there were. Frank Abart stated that the State does not have very many unpaved roads and they have a lot more control with their right-of-ways.

Commissioner Miller said that she thought he PSC had some authority over the utility companies as far as a standard. Commissioner Miller stated that she thought it was good to be consistent with other governmental bodies as far as those kinds of things were concerned.

John Patton stated that the depths were consistent with the exception of the ditches. The County's depth requirement for ditches is six inches deeper than the State's. He stated that the problem with the railroads is that the grade is not always the same.

Commissioner Stamper stated that the Water Districts seemed to be concerned with whether the County had the authority establish those regulations.

John Patton stated that there had been a disagreement for some time and it basically comes down to whether the County has to pay the cost for relocating the facilities that the Water Districts put in the right-of-way. There is a dispute about whether the County should pay for service crossovers that the Water Districts put in without an easement. John Patton stated that the County has taken the position that it is not going to pay for it.

John Patton commented that he felt the Water Districts' objections were then following that tone. He stated that they did not offer any practical proposes for change. He stated that they simply said that they felt the County should not regulate them.

Commissioner Stamper stated that he did not think the utility companies' objections had been acknowledged for the public record.

Commissioner Stamper asked if the utilities had received copies of the proposed changes.

John Patton stated that they had not. He stated that this was being brought forth for the acceptance of the Commission.

Commissioner Stamper requested that the document from the Water Districts be submitted for the public record.

John Patton stated that it was on file in the Clerk's Office.

Commissioner Stamper stated that the Commission then acknowledged receipt of that document for the public record and noted that it was on file in the County Clerk's Office.

Commissioner Stamper also suggested that the proposed changes be circulated to the utilities, giving a certain number of days for comment, and then have it brought back to the Commission agenda for discussion and adoption.

Commissioner Vogt then stated that the only other thing to do would be to have a meeting with the companies after they received the document.

Commissioner Stamper then requested that a notice be sent to the utilities that a discussion be held in Commission concerning this issue. He also requested that they send comments back within ten days of receipt. He stated that the subject would be brought back to the first Commission meeting after that period had expired.

Subject: John Patton - Williams Pipeline Update

Commissioner Stamper stated for the record that the Commission was first contacted about this at the end of 1997 and the beginning of 1998. He stated that there was concern as to whether or not a pipeline was going to establish a pumping station on a piece of agriculturally-zoned land in southern Boone County.

Commissioner Stamper stated that the Commission asked John Patton to research the standing of this land. He stated that there was some concern by planning and zoning as to whether the County had authority over an intrastate pipeline. John Patton researched this question and initially reported to the Commission that Boone County did not have the standing with which to stop the plans.

Commissioner Stamper stated that there was then a meeting at the Boone County Historical Society. Williams Bros. (pipeline) and all the adjacent landowners were present. At this meeting, Williams Bros. presented their construction plans and took questions and concerns from the citizens. After this meeting, more questions arose as to whether the County had standing. A communication was received from a Congressional office (FERC) implied that the County did have standing.

Commissioner Stamper stated that this communication was in opposition to the position that Commission had adopted. Clarification was then requested from FERC. Commissioner Stamper stated that John Patton has received communication from FERC.

John Patton stated that a staff member from FERC had stated that since the pipeline project did not fall under the Federal Natural Gas Act, Williams Bros. did have eminent domain authority and that it was subject to local zoning control. John Patton stated that his prior research had shown that FERC did not exercise jurisdiction over this project.

John Patton then stated that the question was then raised if Boone County had any authority over the project. John Patton stated that he did research and found several Federal cases that stated that local governments may not designate the location of any pipeline locations or facilities through land use regulations because they created an unreasonable burden on interstate commerce.

John Patton stated that he was surprised to receive the response that he had from FERC and asked FERC to give him more details about the response they had given.

John Patton stated that FERC does have regulatory authority over all interstate pipelines. However, they may choose not to exercise their authority. However, FERC did state that even if they do not exercise authority, they are not under the authority of the County controls.

John Patton stated that in effect, the letter from FERC only established what kind of power their body had and did not speak to the authority held by the County.

John Patton stated that he also sent a letter to Williams Bros. questioning why the compressor station had to be in a certain place. He stated that their response was that it was not feasible to have the location in another spot.

Commissioner Stamper then attempted to clarify what he had heard. He asked if FERC had stated that it did not have any standing authority over this project, unless an individual or an agency attempted to block or stop the project, then the pipeline (Williams Bros.) could apply to FERC for regulatory authority and (Williams Bros.) would be exempt from local control.

John Patton said that this was correct.

Commissioner Stamper stated that it was his understanding that FERC would not have much authority to decline the application.

John Patton stated that they would not.

Commissioner Stamper stated that he had he spoke to a colleague who had gone to court over a similar issue. The Federal court upheld that the local government could not prohibit the pipeline.

Commissioner Stamper also stated that he had received numerous complaints from landowners that the pipeline was not being handled well. The landowners stated if they had known it would be handled in this way, they would not have been so cooperative about granting an easement.

Commissioner Stamper stated that he would see that these comments made it to those responsible for the pipeline, whether it was Williams Bros. or a subcontractor.

Commissioner Stamper asked if there were any questions concerning the matter.

Commissioner Miller and Commissioner Vogt stated that they had expected to hear the response that the County Commission did not have much authority over these kinds of issues.

Commissioner Vogt stated that she also wanted Williams Bros. to know that people were dissatisfied with the pipeline and she felt that Williams Bros. should be responsible to the landowners that they were affecting.

Commissioner Stamper wanted to know if there had been a request received for the County to file litigation against the pipeline action on behalf of a constituent.

John Patton stated that he had received that.

Commissioner Vogt asked if a constituent could file a civil action.

John Patton stated that a constituent could file a complaint if they had a factual basis to establish that the pipeline was a nuisance. He also stated that there was Common law and tort doctrine that prohibited one property owner from creating nuisances for his neighbors. John Patton did state that he was not sure if the constituent could be the threshold of evidence needed since the pipeline was not constructed yet.

John Patton stated Williams Bros. pipeline was established a long time ago. There was not any place in Boone County that was privately zoned for a compressor station. John Patton stated that

it would be an uphill battle to win a case such as this since there were five cases supporting the pipeline and none supporting the property owner or local government.

John Patton stated that in order to win this case it would have to be established that the pipeline did not have to locate the compressor in this spot as a matter of engineering necessity. John Patton stated that it would require experts in this area of engineering to prove something like that.

Commissioner Vogt asked if the County would have to hire an engineer for that.

John Patton stated that Williams Bros. would have the burden to prove that the County regulation was an unreasonable burden on their company. However, Williams Bros. would probably have the means to provide the evidence. He stated that the burden would then be back on the County to counter that. The County would then need qualified engineers to prove that it was not an unreasonable burden.

John Patton stated if you can find someone who can render that opinion, the County would have a shot at winning the case. Otherwise, probably not.

Commissioner Stamper asked for comments or questions.

Commissioner Miller stated that she felt the County had done what it was asked to do, which was look at a way to engage in litigation. She stated that she felt that this was found to be not very feasible.

Commissioner Miller further stated that she felt it would not be good policy to engage in a lawsuit on something that the County feels like it cannot win. She thought that the County should respond to those who wanted litigation that it was not feasible and to Williams Bros. with the complaints that had been received.

Commissioner Vogt agreed and she stated that she felt that there should be some discussion with those involved to find out if there was something that could be done.

Commissioner Stamper then stated that he had found out from his colleague in Colorado who had entered into litigation against a pipeline. He stated that while the local government had no authority to stop the pipeline, they did have authority to regulate the area that was under the zoning regulations.

Commissioner Stamper stated that he was not sure if Boone County had the authority to do something like that, but it might be of value to investigate that. Commissioner Stamper asked Stan Shawver to comment on that.

Stan Shawver stated that he was a little concerned with writing regulations for unzoned uses and something that Boone County does not have clear authority over. Stan Shawver stated that the County could (very carefully) write screening ordinances into the zoning regulations. He stated that there had been repercussions in doing this with other things such as tree landscaping.

Commissioner Stamper stated that he did not want to give up the idea that there might be an option of regulating the pipelines in Boone County and better representing the concerns of its citizens.

John Patton stated that this was a very narrow area because with the intrastate carrier the statutes say that they fall under the jurisdiction of a Missouri Public Service Commission and when they do (fall under this jurisdiction) land use regulations by first and second-class counties do not apply. He also stated that when dealing with an interstate company, there were only a couple of exceptions when the first and second class county regulations would apply.

Commissioner Stamper stated that he would still like to look into writing the screening ordinances.

John Patton stated that they can be written, but they must state that they only apply to the extent that they are not superceded by a higher authority's rules.

Commissioner Miller stated that maybe the PSC Commission would be interested in working on allowing some of the screening and noise factors to be dealt with by local governments.

Commissioner Stamper requested that John Patton advise the constituent of the County Commission's interpretation of the FERC and its declination to engage in litigation concerning the Williams Bros. pipeline.

Subject: Removal from Mental Health Board

Commissioner Vogt stated that there is one position that by statute must be filled by a physician. She stated that they needed to re-appoint a person to that position and therefore the person already in the position needed to be removed.

Commissioner Vogt stated that the County Commission needed to remove the person that was presently in the position from the Mental Health Board because they were unable to attend the meetings.

Commissioner Vogt moved to vacate the seat on the Boone County Mental Health Board of Trustees currently held by Dr. A. E. Daniel. Said removal is authorized pursuant to the provisions of 67.212 SCS Senate bill 676 as adopted by the Missouri Legislature and signed by the Governor.

Commissioner Miller seconded the motion.

Discussion: Commissioner Vogt stated that this particular Senate bill was requested by some of the people on the Mental Health Board.

The motion passed 3-0. Order 430-98

Commissioner Reports

Commissioner Miller

Commissioner Miller gave a report concerning Boone Retirement Center. She stated that she had received a call from Pat Oening with the Star Team. The team is looking for a project to do with senior citizens and Pat Oening had asked Commissioner Miller if she thought that Boone Retirement Center would be interested in working with them.

Commissioner Miller stated that she put Pat Oening in contact with Cindy Forbis. They are going to meet next week to find a project to work on.

Commissioner Miller also reported that the Interim Committee on Aging that Representative Harlan is chairing requested to meet at Boone Retirement Center. The committee will tour the facility and then meet at 3:00p.m. to have a discussion on the staff's, board member, county perspective, or any member of the public that would like to speak. She also noted that there was to be a 5:00p.m. board meeting in the Commission Chambers following that meeting.

Commissioner Vogt asked if that meeting would be to talk about regulation.

Commissioner Miller said yes.

Commissioner Miller stated that Boone County would be hosting a (satellite) Downlink on September 23rd.

Commissioner Stamper

Commissioner Stamper reported that he was asked a question on road abandonment, which he wanted John Patton to address. He asked when a road is abandoned is there anything in the statutes that after a period of time reverts land that was previously dedicated to public right-of-way to private ownership.

John Patton stated that if a public road ceases to be used as such for a period of five continuous years then by law it is deemed abandoned and vacated. John Patton stated that abandonment is hard to establish because there has to be absolutely no public use. He stated that it was a constant source of conflict, but theoretically the answer to Commissioner Stamper’s question was yes.

Commissioner Vogt

Commissioner Vogt gave no report.

Public Comment

Jerry Carrington of 729 Demaret gave a couple comments. He stated that BearCreek and Bearfield Rd seemed to have some wasted gravel outside of its road surface. He also stated that he had heard that areas which had wash areas coming off the gravel were having to be paved for environmental reasons.

Jerry Carrington also stated that he believed some of the asphalt trucks were exceeding the weight limits of some of our bridges.

He also noted that when El Chapparal Subdivision was built, there was no school in place. He noted that consequently there was no sidewalk prescribed in the ordinances.

He stated that therefore there should be some consideration of a sidewalk for the safety of the school children.

Jerry Carrington also stated he had heard that the right-of-way people were the primary concern in violation of some of the standards.

The meeting was adjourned at 2:40p.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