

TERM OF COMMISSION: July Session of the April Adjourned Term

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

PRESENT WERE: Presiding Commissioner Kenneth M. Pearson  
District I Commissioner Karen M. Miller  
District II Commissioner Skip Elkin  
Director of Planning and Building Stan Shawver  
Interim County Counselor C.J. Dykhouse  
Deputy County Clerk Josh Norberg

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

**Planning and Zoning**

**1. Request by Nancy Bass for a permit for a dog kennel on 10.15 acres, located at 13841 S. Rangeline Rd., Ashland.**

Mr. Shawver stated the subject property is 10.15 acres located approximately 1 ½ miles east of Ashland. The property is zoned A-2 (Agriculture), which is original 1973 zoning. This property has A-2 zoning to the north, south and west, with A-1 (Agriculture) zoning to the east. This is all original 1973 zoning.

The applicants are requesting a conditional use permit to operate a boarding kennel and doggy day-care. They are proposing a 24' x 36' structure for the kennel use. This structure will be approximately 750 feet from the east property line, and 75 feet from the northern property line. There will also be a fenced grassy area with shade trees for the dogs. Those dogs boarded at this kennel have passed an interview process where they prove that they can socialize with other dogs, not constantly bark at other dogs, are non-aggressive, free of parasites, and have been spayed or neutered. This kennel will serve a maximum of ten dogs at one time.

The property is located inside the South Boone County R-1 public school district, Consolidated Public Water Service District #1 service area, and the Southern Boone County Fire Protection District. The Master Plan describes this area as being suitable for agricultural and rural residential land use. Staff notified 15 property owners about this request.

The following criteria are the standards for approval of a conditional use permit, followed by staff analysis of how this application may meet those standards. 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 requested use has the potential to be injurious to the use and enjoyment of other property in the immediate vicinity. However, the proposed structure is approximately 800 feet from the nearest dwelling, and is placed at the rear of the property. That distance may be sufficient to provide some buffering to the adjacent property owners. Public testimony may be more indicative as to whether this criterion is met.

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

The proposed use may have a negative impact on property values in the area. Typically, kennels can generate significant noise and odor impacts on the surrounding properties. Public testimony may be indicative as to whether this criterion is met.

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

The site has access to all necessary facilities.

(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 property is zoned A-2 (Agriculture), with residential uses limited to 2.5 acre lots. Development of this area may be restricted due to the presence of the kennel. Some of the surrounding tracts have the potential to be divided at a higher density than their present status. The location of the kennel structure in relation to the location of utilities and current roads is such that the kennel alone will not impede the development of the surrounding property. While larger tracts would be preferable to provide a buffer between the kennel and new residences, the availability of road frontage and utilities may be a greater limitation to developing this area.

(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 site has direct access to Rangeline Road, a county-maintained public road. The proposed use should not hinder traffic or cause congestion on public streets. While a boarding kennel may increase the amount of traffic to this site, the long drive on this property would allow those who are dropping off or picking up dogs to pull off of Rangeline without blocking the road.

(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.

The level of activity on the property as described by the application and the applicant would appear consistent with the criteria for approval of this conditional use permit.

Staff recommended approval of this conditional use permit.

Mr. Shawver stated the Planning and Zoning Commission conducted a public hearing on this request on June 19, 2008. There were 8 members of the Planning and Zoning Commission present. Following the hearing, there was a motion to approve the request by Ms. Bass with the following conditions:

1. Outside hours of operation limited to 7:00 a.m. to 6:00 p.m.
2. No more than 15 dogs onsite at any time, including the owner's dogs.
3. No more than 10 dogs being boarded at any one time.

That motion received 5 "YES" votes and 3 "NO" votes. The request comes forward with a recommendation for approval.

Commissioner Pearson opened the public hearing and asked for comments for those in favor of the request.

**The following spoke in favor of the request:**

**Nancy Bass, 13841 S. Rangeline**

Ms. Bass stated the dogs will be together and socialized so they won't be barking all the time. If an owner cannot retrieve their dog by 6:00 p.m., they will have to get them the next day.

Commissioner Miller asked if she had been helping someone run their dog daycare.

Ms. Bass stated that is correct.

Commissioner Elkin asked if the dogs will be completely contained at all times.

Ms. Bass stated they would. They will be in a fenced area and there will be a secured building. Her veterinarian will be on call 24 hours.

**Faye Nowell, 5550 Gillespie Bridge Rd.**

Ms. Nowell stated she runs a doggy daycare. In 2001, the Commission approved Ms. Nowell's petition to establish a doggy daycare. She stated her property is about half the size of Ms. Bass' property. The neighbors have not had any complaints. Ms. Nowell stated Ms. Bass has helped her with her business several times and she highly recommends the approval of this request.

**Darin Chandler, 3513 Hialeah Dr.**

Mr. Chandler stated he is the contractor who is building this building. He stated he wanted to answer any questions anyone might have. He stated the building is 24' by 36', completely enclosed, stud frame, metal skin, fully insulated, and concrete floored.

Commissioner Elkin asked if a wastewater treatment system is required.

Mr. Shawver stated the Health Department only regulates domestic use.

Ms. Nowell stated Gerry Worley from the Health Department came out because she is right on the city/county line. He felt for the amount of dogs she had it wasn't an issue.

Mr. Chandler stated he also spoke with Mr. Worley and Marshall Engineering. He stated the lines from the sink and bathtub can hook into her existing lines. If there is a floor drain, that line would be run outside because Ms. Bass will be containing the animal waste herself.

Commissioner Pearson asked for comments in opposition to the request.

**There was no opposition to the request.**

**Commissioner Pearson closed the public hearing.**

Commissioner Miller stated she feels this is well thought out. It is a good location. It is not too close to the neighbors and everything is inside and air conditioned.

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby **approve** the request of Nancy Bass for a permit for a dog kennel on 10.15 acres, located at 13841 S. Rangeline Rd., Ashland, **with the following conditions:**

- Outside hours of operation limited to 7:00 a.m. to 6:00 p.m.
- No more than 15 dogs on-site at any time, including the owner's dogs.
- No more than 10 dogs being boarded at any one time.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 321-2008**

**2. Request by Mark and Kristi Farrell for a permit for a dog kennel on 10.0 acres, more or less, located at 15585 S. Hagans Rd., Ashland. (Appeal)**

Mr. Shawver stated the subject property is 10 acres located approximately ¼ mile to the east of Ashland, on Hagan's Road. The property is zoned A-2 (Agriculture), which is original 1973 zoning. This property is surrounded by original A-2 zoning.

The applicants are requesting a conditional use permit to operate a breeding kennel for Miniature Australian Shepherds. The applicants have recently moved to Boone County and wish to continue breeding these dogs as they had prior to their move. The applicants will be using an existing 30' x 72' accessory building on their property for this purpose. It is located approximately 90 feet from the northern property line and approximately 450 feet from the eastern property line. The structure will be insulated to control temperatures inside the structure and limit sound from escaping. Wastewater from this use will be handled by a new lagoon for the breeding structure. According to the applicants, the dogs will stay inside the breeding structure at all times, except for cleaning purposes and exercise. There will be two 10' x 60' runs that they will be allowed to exercise in. For exercise, three to four dogs will be released into the runs to control the noise level. This is done between 8:00 am and 8:00 pm. Trees surround the breeding structure on three sides, so shade is present for them while they are outside. This may also serve to help limit the noise of the dogs while they are outside.

The applicants have indicated in a letter describing their operation that they sell via the internet and to local individuals, not to pet stores or brokers. This breed has litters ranging from three to eleven pups, however the applicants indicate that five to eight pups is the norm. They state that they would have at most five dogs having pups and breeding at one time. That indicates a worst case of fifty-five pups and an average of forty pups with eighteen adults.

The property is located inside the South Boone County R-1 public school district and the Southern Boone County Fire Protection District. The Master Plan describes this area as being suitable for agricultural and rural residential land use. Staff notified 18 property owners about this request.

The following criteria are the standards for approval of a conditional use permit, followed by staff analysis of how this application may meet those standards. 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 requested use has the potential to be injurious to the use and enjoyment of other property in the immediate vicinity. The structure used in the kennel operation is to be insulated for sound and that may help in limiting impacts on the use and enjoyment of the surrounding properties. Public testimony may be more indicative as to whether this criterion is met.

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

The proposed use may have a negative impact on property values in the area. Typically, kennels can generate significant noise and odor impacts on the surrounding properties. Some of those impacts can be mitigated by actions by the applicant as described previously. Public testimony may be indicative as to whether this criterion is met.

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

The site has access to all necessary facilities.

(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 property is zoned A-2 (Agriculture), with residential uses limited to 2.5 acre lots. This property is served by a private drive easement off of the end of Hagan's Road. That will limit the ability of the surrounding properties to develop at maximum density more than the approval of this conditional use permit.

(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.

This use will not result in traffic congestion on public streets. This use, as described by the applicants, will not result in substantial additional traffic to this site.

(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.

Based on the information presented in the application and the letter describing the breeding operation from the applicant, staff recommended approval of this conditional use permit with the

following conditions:

- 1) That the number of breeding females will not exceed 16.
- 2) That the hours during which the dogs are exercised be restricted to 8:00am to 6:00pm.

Mr. Shawver stated the Planning and Zoning Commission conducted a public hearing on this request on June 19, 2008. A motion was made to deny the request. The motion for denial had 6 “YES” votes, 1 “NO” vote, and 1 abstention. The request comes forward with a recommendation for denial. The applicants filed a timely appeal.

Commissioner Elkin stated the difference between this request and the previous one is that this is a breeding facility, and the other one was a day operation.

Mr. Shawver stated that is how the Planning and Zoning Commission viewed the difference.

Commissioner Pearson stated the number of animals is also a significant difference.

Mr. Shawver stated the boarding facility had a tight limit of the number of dogs and overnight dogs. This current request is a much more intense commercial operation. There will be a much higher population of dogs.

Commissioner Elkin stated there could be up to 16 females, and if the females have anywhere from 3 to 11 pups, there could be a lot of dogs there.

Commissioner Elkin asked if there was a limitation on the number of males.

Mr. Shawver stated there was not. He stated breeders typically do not keep as many males as females.

Commissioner Pearson opened the public hearing and asked for comments in favor of this request.

**The following spoke in favor of this request:**

**Mark and Kristi Farrell, 15585 S. Hagans Rd.**

Mr. Farrell stated when he wrote the letter on the appeal, he stated he would be more than happy to drop the number of dogs down to 8 females and 2 males. He stated at the previous meeting, he thought if he was the nice, humble guy and allowed the neighbors to understand that he was willing to do what he needed to do to make things acceptable, everything would be fine. He stated he would like a chance. He stated he paid a lot for his property and he doesn't want dogs barking all the time either. Mr. Farrell stated these dogs make him a fair amount of money and he has lived with that money for the last few years.

Mr. Farrell stated he is not out to be a bad guy. He stated he understands the noise and property value concerns. As for the noise situation, he stated the dogs will be kept inside an insulated building with heating and air conditioning.

He stated the kennel means a lot to him and his family. His kids own a couple of the dogs, so it is a substantial learning opportunity for them. He stated his kids do the work and sell them.

Mr. Farrell stated people use his business because they are looking for a specific dog, they want to buy them young, and they want to train them. He stated they don't go to a shelter to get a young puppy to train. He stated it is a necessary business.

Mr. Farrell stated as far as property values go, there is a farm right across the street. There are cattle and horses around and some of them have gotten out from time to time. He stated there are also peacocks around and they are very loud. There are also trailer houses nearby.

He stated with 8 females and 2 males, more than likely no more than 2 or 3 are going to have pups at any one time. That brings the number of dogs down substantially. He stated he sells every one of his puppies by 12 weeks.

Ms. Farrell stated the puppies are also kept inside all the time.

Mr. Farrell stated he is also planning on building another lagoon.

Ms. Farrell stated they are respected breeders and they respect their dogs. The dogs are cycled so not all of them are having puppies at the same time. She stated they have done everything they can to be as good as they can to the neighbors.

Commissioner Pearson asked where the building is in relation to the house.

Mr. Farrell stated it is behind the house approximately 200 feet. It is 75 feet from the north property boundary. He stated the closed neighbor is about 300-400 feet.

Commissioner Pearson stated aside from being exercised, the dogs would be behind the building.

Mr. Farrell stated they would be inside the building. He stated they let about 3-4 dogs out at a time while their pens are cleaned, then they go back in.

Ms. Farrell stated there are trees on three sides of the building.

Commissioner Pearson asked what happens if a puppy doesn't survive.

Mr. Farrell stated at his current kennel, he has an agreement with a veterinarian that if a puppy is ill or has passed away, he brings the puppy to the veterinarian and it is treated like any other dog.



**Rex Taggart, 15775 S. Hagans Rd.**

Mr. Taggart stated he owns 42 acres to the south of the Farrells. He stated he doesn't have a problem with the kennel. He stated he believes the Farrells when they say that they will take care of any problems that would come up. He stated the Farrells did not come into the County to start a dog kennel. Mr. Farrell is a full time National Guard member and has been assigned here. The kennel is to supplement his military income.

Mr. Taggart stated he has raised hogs and other livestock out there and he has never had trouble with animals, but he has had trouble with neighbors.

He stated he would much rather have a licensed and regulated kennel than just dogs tied up out there.

Commissioner Pearson asked how far Mr. Taggart's house is from the Farrells.

Mr. Taggart stated about 500 feet.

Commissioner Pearson asked for comments in opposition to this request.

**The following spoke in opposition to this request:**

**Barbara Calvin, 15515 S. Hagans Rd.**

Ms. Calvin stated she held a meeting at her house for the Farrells and the neighbors hoping to resolve some of the problems. She thought she had everything solved, but she realized all the neighbors did not have a chance to attend.

Ms. Calvin stated her problem with this request is there is a lot of wildlife out there. There are deer, peacocks, and guineas. She stated the main problem is the coyotes. She stated she has seen coyotes in her yard and coyotes make dogs bark.

She stated she is close enough to the property that when the previous neighbors were in their shop playing their radio, she would have to call them and ask them to turn it down so she could sleep.

She stated as far as property values, she owns the modular home, but it is just as valuable to her as the Farrells' home is to them. She stated she doesn't want to lose what property values are there.

Commissioner Miller asked if cutting the number of dogs in half and keeping them inside an insulated building at night changed her mind.

Ms. Calvin stated 10 dogs is a lot less than what they originally requested, but it still seems like a lot of puppies at one time.

Ms. Calvin asked if this is approved, will the Commission check it to make sure that they are in compliance.

Mr. Shawver stated it is complaint-driven.

Commissioner Miller stated if they were not meeting the conditions and someone called the staff, they would go out and investigate. Commissioner Miller asked what happens if they do not follow their conditions.

Mr. Shawver stated the regulations provide that the property owners are given an opportunity to comply with the regulations. If they fail to do that, the regulations have a provision that a conditional use permit can be called back before the County Commission for another hearing and the County Commission can revoke the permit.

Ms. Calvin asked if the Farrells leave, can someone else come in and run a kennel there.

Mr. Shawver stated they can.

Commissioner Elkin asked if there is a way to restrict the permit to individuals.

Mr. Shawver stated previous advice is that it cannot be restricted to a specific individual. The permit is granted to the land. The Farrells could sell it to someone else and they could operate the kennel, but it would be bound by the same conditions.

Commissioner Pearson asked if there was a time limit where they have to exercise the permit.

Mr. Shawver stated once a conditional use permit is issued, it has to be utilized within 12 months of the day that it was issued. If it lapses for a period of 12 months, the permit would no longer be valid.

Commissioner Pearson stated if the property is sold and the buyer does not do anything with the kennel for 12 months, the permit is gone.

Mr. Shawver stated that is correct.

Commissioner Elkin stated the Commission has put a review on a conditional use permit before.

Mr. Shawver stated there have been numerous permits with reviews attached to them.

Commissioner Elkin stated the Commission could approve this and in 6 months have a review.

Mr. Shawver stated that is correct.

Commissioner Miller stated to Ms. Calvin, her biggest concern is the coyotes and the noise, and the number of dogs being cut in half significantly cuts down on the noise.

Ms. Calvin stated that is correct. She stated she has called a realtor about selling her property, and they told her it could affect her property value.

**Sheila Friedrich, 15513 S. Hagans Rd.**

Ms. Friedrich stated the Calvins' property is between hers and the Farrells'. She stated she has the smallest property in the neighborhood, so property values are a big concern for her. The Farrells have made a lot of promises on the things they are going to do and she is fine with that as long as they are done. She stated she is concerned that if the Farrells are transferred somewhere else, someone could come in and put a kennel in there that might not be as nice as what the Farrells are wanting to put in.

Commissioner Elkin asked Mr. Shawver if the Farrells do leave, would all the same conditions still apply; they would still have to use the insulated building, etc.

Mr. Shawver stated that is correct. They would be bound by any restrictions placed on the conditional use permit. Restricting them to the building would have to be a specific condition.

Commissioner Elkin stated he understands the condition of the hours that the dogs are exercised as the dogs can be outside from 8:00 a.m. to 6:00 p.m. Otherwise they are in the building.

Mr. Shawver stated that is correct.

Commissioner Pearson asked if they can be outside during that time period, but only while they are being exercised.

Mr. Shawver stated they can be outside during that time period. He stated in theory, another person could buy the property and use the large kennel building to park equipment in. There is nothing to stop them from building separate kennel buildings that may or may not be insulated, because that was not part of the condition. If you want to restrict the kennel to that one building, that would have to be specified on the permit. If you want the building to be insulated for sound, it has to be specified insulated for sound. Otherwise, somebody in theory could do that.

**Randy and Sarah Peterson, 15483 S. Hagans Rd.**

Mr. Peterson stated at the last meeting, his main problem was location. He stated the Calvins spoke to a realtor, and that realtor told them that the kennel would drop the land values down. He stated he also spoke to a realtor and got the same answer. He stated the values would drop about \$1,000 to \$3,000 per acre. He stated for about 180 acres for 18 people, that is \$360,000. He

stated the most of the average family's net worth is their house value.

Mr. Peterson stated at the first meeting the Farrells were asked if they bought their property knowing this request may not be approved. The Farrells answered yes.

He stated if you are trying to sell your house and there are 50 dogs running around at the neighbor's house, it is very hard.

He stated they bought their property knowing they may not be approved. He stated behind the barn on the Farrells' property, the land drops about 200 feet. The Farrells have stated they are going to put in another lagoon. He stated it is not financially feasible to build a lagoon down that slope.

Mr. Peterson stated he cannot see any good for this area by putting in the kennel. He stated the area is a highly dense area.

Ms. Peterson stated they bought their property 15 years ago and invested in the land so it would make money. She stated her land is worth more than the Farrells'. She stated she expects that value to keep going up, and the kennel will hinder that. She is very concerned about the property values for all of the property out there.

Ms. Peterson stated at the last meeting, the Farrells asked for 15 dogs. She stated when the Planning and Zoning Commission asked them if they could go down a little, they said they could go down to 12, but not more. They stated they can't make any money on less than 12. She stated she doesn't know how they can control how many females and how many males they have.

She stated another problem she has is when the Farrells say it is for their kids. She stated it is strictly a money making business. She stated she does not think they bought enough land to do this.

**Catherine Sherrer, Hartsburg**

Ms. Sherrer stated she doesn't live on Hagans Road, but she owns property there. She stated the main concern for her is property and enjoyment of property. She stated she rents out her property and the tenant told her she is going to look for another place to live if this gets approved. She stated the kennel will be noisy and there will be a smell that will injure the enjoyment of the property.

She stated she also disagrees about the public need for the kennel. There are a lot of puppies that cannot find homes right now, including Australian Shepherds.

She is also worried about who will control the regulations. If the dogs are inside the whole time, and nobody comes to the property, how will they know how many dogs there are?

Commissioner Miller entered into the record a letter submitted by Darla Sapp in opposition to the request.

**Commissioner Pearson closed the public hearing.**

Commissioner Elkin asked if when the Department of Agriculture inspects the property, do they specify the number of dogs?

Ms. Farrell stated if the Commission puts that regulation on the permit they will check that.

Mr. Farrell stated it is not standard for them to check because they do not regulate how many dogs there can be.

Mr. Farrell stated he would like to say that they do make money off of these dogs, and he never meant to imply that they did not. He also did not try to imply that it is all going to his children. He stated he would not do it if it weren't profitable. It is a training opportunity for his children.

Commissioner Pearson stated the comment was made earlier that there was not enough room on the property for another lagoon.

Mr. Farrell stated that it is correct that the property drops off behind the barn.

Mr. Taggart stated he spoke with Mr. Farrell and since he owns the property on the south of the property and there is room on his property to the south of the barn, they are talking about letting Mr. Farrell use some of that property for the new lagoon. If the kennel is ever moved or closed, Mr. Farrell would repair the land back to how it was.

Ms. Farrell stated the waste is going to be run through a septic system before it gets to the lagoon, so there will not be any smell. She stated they value their property, so they do not want noise or smell either.

Mr. Farrell stated there was a comment made about him saying he can't make money on less than 12 dogs. He stated that is absolutely right and it is a money making business. He will have to lose a little money for a little while to build the lagoon, renovate the building, and do whatever else he needs to do. If he has fewer dogs, it takes a little longer to make money. He stated with 8 females, he feels like it is still financially feasible to do it.

Commissioner Miller asked if the lagoon is required to be separate from the house lagoon.

Mr. Shawver stated it depends on the load on the lagoon. The Department of Agriculture prefers that they be separated.

Commissioner Miller asked if they can have a lagoon on someone else's property.

Mr. Shawver stated he cannot answer that question. He stated that is a question for the Health Department.

Commissioner Elkin stated there are alternatives to lagoons.

Commissioner Pearson asked Mr. Farrell what his solution to the lagoon issue is.

Mr. Farrell stated he has spoken with Mr. Taggart, so that is an option. He stated there is 75 feet behind the barn, so there is room to build it if necessary.

Commissioner Miller stated she thought the dog runs would be placed behind the barn.

Mr. Farrell stated the barn is 70 feet long and the runs are 10' by 60', so they will only come off the barn 10 feet.

Commissioner Elkin stated a septic system with a lagoon is a completely different system than just a regular lagoon because all of the solids stay in the septic and the effluent runs into the lagoon, so there will not be any solids in the lagoons.

Commissioner Miller asked how long the dogs are exercised for.

Mr. Farrell stated some dogs require a little more running than others. They might be out there 30 minutes, and then in the afternoon let them out for 30 more minutes.

Commissioner Miller stated she doesn't like that there are small tracts all around.

Commissioner Pearson asked if there were any people from the east side of the road present who oppose the request.

Jerry Griffin stated he lives on the east side of the road.

Commissioner Miller stated Darla Sapp also lives on the east side of the road.

Commissioner Elkin stated he is tempted to support a review period, but it is a big investment for the Farrells if it does not work out. He stated if this is approved, there would have to be a condition that any future building would have to be insulated and meet certain sound criteria.

Commissioner Miller stated she thinks dogs inside do not bark at night like they do when they are outside. She stated she cannot support something that does not have a review period with the investment made up front. There are too many neighbors too close to not have that kind of condition on it.

Commissioner Elkin stated the Commission hears a lot about the issue of property values. He stated he does not know if he is convinced by that. It may hurt the ability to sell, but he does not

know about the property value. He stated he does not think the odor will be an issue at all with the enclosed system.

Mr. Farrell asked if there was a 6 month review, could he lose the permit if one person still says they think it hurts their property value.

Commissioner Elkin does not know how they would prove property value being hurt.

Commissioner Miller stated you would have to be in compliance with all of the conditions listed on the permit. If those are violated, then you can lose the permit.

Mr. Farrell stated they are fine with that.

Commissioner Pearson stated he has an appreciation for property values. It will be hard to tell what property values are going to be like. The property at greatest risk is the Farrells'.

Commissioner Pearson asked how loud the dogs are.

Mr. Farrell stated they are not "yappy lap dogs". He stated if it sees a cat, it will yelp. If it is inside the building there won't be anything to bark at. The building will be insulated for sound, so he will be doing everything he can to minimize noise.

Commissioner Miller asked how you determine a building insulated for noise.

Mr. Shawver stated there are standard materials that have an insulating value. The packaging used is checked.

Commissioner Miller asked if it is different than insulating used for heating and air conditioning.

Mr. Shawver stated it is a little bit different. Regular insulation will cut down noise. It depends on what level of noise there is.

Commissioner Elkin asked how many dogs he could have on his property if they are not for breeding.

Mr. Shawver stated Boone County does not regulate dogs unless they are being raised on a commercial scale.

Commissioner Elkin stated Mr. Farrell could have 15 dogs tied to his tree in his backyard without the Commission having any say.

Mr. Shawver stated that is correct.

Charles Calvin, 15515 S. Hagans Rd, stated he lives next to the Farrells. He stated he has a

garden about 300 feet away from where this kennel will be. He stated all the noise and smell from the kennel will come down into his property.

Commissioner Miller stated she wished she had more experience with inside dogs inside a building. Outside dogs bark at night. Dogs that are inside do not. She stated she doesn't know about it from a kennel perspective when there are a bunch of them inside at night. She stated she has sympathy with the neighbors not wanting their country living quietness disturbed thinking there is going to be 50 yapping dogs. She asked if there is anywhere they can go to check out a similar operation to see how it works.

Mr. Shawver stated he cannot think of anything that would be comparable in Boone County.

Commissioner Pearson stated if the conditions are set on this permit and they are not met, then Mr. Farrell is out his investment. He will have a true incentive to follow through appropriately.

Mr. Farrell stated relating to the 6 month review, it will be a while before the dogs are brought up to the new kennel. He stated he would like 6 months from the time the dogs get on the property. He stated he still has to build the lagoon and renovate the building, etc., so it will take a couple months to get it ready.

Commissioner Elkin asked if Mr. Farrell would need a building permit to upgrade the barn.

Mr. Shawver stated he will need a building permit.

Commissioner Miller stated she thinks there are better places for a kennel than small acreages. She stated she thinks Mr. Farrell is trying everything he can to be a good neighbor and keep his business.

Commissioner Elkin stated the Farrels stated there is a certain amount of breeding females they need to make it profitable. If this permit is approved with a review period, can the Commission allow 5 breeding females, see how that does, review all the conditions, and increase the amount of dogs gradually?

Mr. Shawver stated it should not be a concern of the Commission whether it is profitable to the Farrels or not. The Commission places the conditions so the Farrels and the neighbors know that this is what it is going to be. An escalating sliding scale as time goes along creates uncertainty. If they want to apply at a later date for an increase in dogs, they can do that.

Commissioner Miller stated she wants to support the neighbors, but she feels like this is something we haven't seen in Boone County, so she doesn't know what the impact is.

Commissioner Elkin asked if she would like to do some research.

Commissioner Miller stated she would rather table it and give her a chance to go see an operation



that has this and talk to the neighbors who live around the operation.

Commissioner Elkin stated there is probably something similar somewhere in mid-Missouri.

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby **table** the request of Mark and Kristi Farrell for a permit for a dog kennel on 10.0 acres, more or less, located at 15585 S. Hagans Rd., Ashland, until July 29, 2008.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 322-2008**

**3. Request by David L. Sallee to rezone from A-2 (Agriculture) to R-M (Moderate Density Residential) on 5.0 acres, more or less, located at 11251 N. Hecht Rd., Hallsville. (Appeal)**

Mr. Shawver stated this property is located on the west side of Hecht Road approximately 3000 ft north of the intersection of Mount Zion Church Road and Hecht Road. The site is approximately 2 miles south of the nearest municipal limits of the City of Hallsville. The subject property for the rezoning is 5 acres. The current zoning of this property is A-2 (agriculture) as is all the surrounding property and these are all original 1973 zonings. The nearest R-M zoning district is 3.8 miles away. The subject property contains one singlewide mobile home and a wastewater lagoon. Under an R-M zoning, the theoretical maximum number of dwelling units allowable would be 87 units; under the A-2 zoning, the theoretical maximum number of dwelling units is 2 and as a single 5 acre parcel the actual number of allowable dwelling units is 1. The property is located in Public Water District #4. The district currently has a 2½ inch water main serving the site that provides at best 100 gpm. The standards for any fire protection start at a minimum of 500 gpm. The closest large water main is 3 miles away. The water district 5 year plan includes running a large line down Low Crossing Road, but even then, the line will be approximately 1 mile from the site. In order to use the requested zoning, fire hydrants will be required. The large sewage lagoon on the site is now an on-site wastewater system, since the lagoon only serves the dwelling unit located on the property. To utilize the R-M zoning, a collector wastewater system would be required. The current lagoon has a DNR No-Discharge permit, however, this permit is not adequate for the lagoon to serve as a collector system under county regulations. To use the existing lagoon as a collector wastewater system would require a CUP for a collector wastewater system not approved under the county subdivision regulations, or the system would have to be brought up to current standards and be turned over to the BCRSD. The site is in the Boone Electric service area and Boone County Fire Protection District service area. The portion of Hecht Road most likely to serve the site is a chip-seal roadway with no shoulders and several blind turns. The road is not adequate to handle the potential traffic that would be generated by the request. The site is within the Hallsville School District. The proposal rates 36 points on the point rating scale. The master plan designates this area as being suitable for agriculture and rural residential land uses. The request is not consistent with the master plan, is not in keeping with the

existing character of the area, and would constitute a spot zoning. There have not been any significant changes to the area within which this request falls to justify a change of zoning from the existing A-2 zoning set in 1973. Staff notified 12 property owners concerning this request.

The Master Plan calls for the use of a “Sufficiency of Resources Test” when considering the rezoning of land. The purpose of the test is to determine whether there are sufficient resources available to support the proposed zoning, or whether services could be made available in an efficient manner. The resources necessary to serve the proposed development can be broken down into 3 general categories, utilities, transportation and public safety services.

Utilities: This site is served by Boone Electric Cooperative and Public Water District 4. There is not sufficient water or fire flow from the existing waterlines nor will there be sufficient water to support the request in the foreseeable future. The wastewater lagoon is deficient to meet county standards for a collector wastewater system. CenturyTel informed us at the concept review that the property can only support one phone line.

Transportation: Access to the site is from Hecht Road. In its current configuration Hecht Road is not adequate to support the potential volume of traffic generated by the rezoning. The last traffic count showed 203 ADT for the section of road most directly used. The proposed rezoning could increase the ADT by 870 for a total of 1073, a four fold increase.

Public Safety: The nearest fire station is in Hallsville and is over 3 road miles from the station. Lack of ability to provide fire hydrants makes the possible density of the request inappropriate.

The request fails the sufficiency of resources test under all three categories. The degree to which the deficiencies in adequate infrastructure exist make it impossible for staff to recommend anything other than denial of the rezoning request to R-M zoning. Therefore, staff strongly recommends denial of the request.

Mr. Shawver stated the Planning and Zoning Commission conducted a public hearing on this request on June 19. A motion was made to recommend denial of the request. That motion received unanimous support. The applicant filed a timely appeal to bring the request forward to the County Commission.

Commissioner Pearson asked for comments in favor of this request.

**David Sallee**

Mr. Sallee stated the problems listed in Mr. Shawver’s report are real. He stated he has addressed them in his submission for rezoning. He stated he has worked with the Boone County Regional Sewer District (BCRSD) on the lagoon deficiency. BCRSD has provided him with details regarding what is required to meet all of the requirements for a collector system. Mr. Sallee stated everything he needs to do to be up to code with the County regulations are already in the works.

Mr. Sallee stated regarding the traffic situation, at its worst possible scenario, it would be a four-fold increase. He stated he cannot see that happening in the near or far future because of his plan to provide vans from Truman Memorial Veterans Hospital to his property. Most of the veterans that will be staying out at his property will not be able to drive because of various handicaps.

Regarding public safety, Mr. Sallee stated he agrees it is a problem. He stated he is focusing on early warning and evacuation rather than fire extinguishing. He stated he has a contract with Tiger Security for alarm systems in addition to what is already there. These fire alarms systems require a phone line. Mr. Sallee stated, despite testimony, CenturyTel has stated he can have as many lines out there as he wishes.

Mr. Sallee stated public safety is his main concern because many of the veterans will be handicapped.

Mr. Sallee stated many people have asked him why he is doing this. He stated that he can. He stated his contemporaries cannot do it because society intimidates them. He stated they need a society where they can be around each other and get their treatment.

Mr. Sallee stated he has spent three years cleaning up the property to comply with the County's regulations. The infrastructure already exists and he stated there are veterans coming into Truman Hospital with malnutrition, dehydration, and frostbite; there is a need for this service. He stated all he needs is the blessing of the County Commission.

Mr. Sallee stated he is asking for rezoning, not necessarily for R-M, but for R-MP. He stated he has plans drawn up for what he wants to do.

Commissioner Pearson asked Mr. Sallee how many mobile homes were on the property when he first got there.

Mr. Sallee stated there were seven.

Commissioner Pearson asked if the property had the same water line that is there now.

Mr. Sallee stated it is the same line.

Commissioner Pearson asked how close the homes will be to each other.

Mr. Sallee stated originally they were 10-20 feet in some instances. He was planning on having them about 30-40 feet apart.

Commissioner Miller asked Mr. Shawver if the zoning had to be R-M to allow for a mobile home park.

Mr. Shawver stated there are four zoning classifications where a mobile home park can be considered, all of which require a conditional use permit: R-S (single family residential) , R-M (moderate density residential), R-SP (planned single family residential), R-MP (planned moderate density residential).

Commissioner Miller asked if this was approved tonight, could the Commission hold the permits until the conditional use permit was approved.

Mr. Shawver stated if this land is rezoned to R-M without a conditional use permit, he could not put mobile homes out there. However, you could not restrict him from building duplexes or apartments.

Commissioner Miller stated if he came back and got a conditional use permit because he wants to put mobile homes out there...

Mr. Shawver stated you still could not restrict him from building.

Mr. Sallee stated the planned zoning restricts what he can put on his property.

Mr. Shawver stated that is correct.

Mr. Sallee stated that is what he wants to request and what he presented.

Commissioner Miller stated the problem is you have to request it on your initial request that it is R-MP and that was not done.

Mr. Shawver stated that is correct.

Commissioner Miller stated you would have to withdraw your request for the R-M zoning and come back with a request for R-MP.

Mr. Shawver stated that is correct.

Commissioner Elkin asked if Mr. Sallee asked for R-MP or R-SP, would his plan suffice.

Mr. Shawver stated that would be one component of the required plan. He stated the regulations provide a list of required submissions with the application.

Commissioner Elkin asked if it was a burdensome amount of information.

Mr. Shawver stated it is not.

Mr. Sallee stated the plan that he has drawn up now is exactly what he intends to do.

Commissioner Miller stated her recommendation would be to withdraw the application tonight.

Commissioner Pearson stated he admires what Mr. Sallee is trying to do. He stated that we need to do what we can to provide this kind of services.

Mr. Sallee stated everything is out there ready for use by someone who is responsible. He stated all he needs is the blessing of the Commission. Every nickel he has in invested in it. He stated he doesn't have enough money to go and pay an engineer \$5,000.

Commissioner Elkin stated there are some inherent limitations on building out on an R-M lot. The infrastructure would not handle additional building.

Mr. Shawver stated Mr. Sallee's ultimate goal is admirable. But from a land use point, you have to look at it as a rezoning request for R-M zoning. Someone else could buy the land from Mr. Sallee and could develop the property to the extent of the zoning. Without the control of planned zoning, there is no assurance that the property won't change hands and someone else develops it.

Mr. Sallee stated he agrees with that. He stated planned zoning is fine with him.

Commissioner Miller asked Mr. Sallee if he understands that the Commission cannot approve R-MP tonight because that is not what was presented and advertised.

Mr. Sallee stated he understands.

Commissioner Pearson asked if he can withdraw the request tonight.

Mr. Shawver stated the Commission can act on this request and he can resubmit it as a planned zoning. He stated the time to withdraw the appeal was before the appeal actually appeared before the Commission.

Commissioner Pearson asked if he was unable to withdraw it tonight.

Mr. Shawver stated in the past, the Commission has acted on the request when there is an appeal presented to it rather than have it withdrawn. The act on the request does not prejudice any future action on a resubmission.

Commissioner Pearson asked Mr. Dykhouse if it is possible to withdraw an appeal during a hearing.

Mr. Dykhouse stated the effect of that would be to revert back to the Planning and Zoning Commission's denial. He stated he does not see any legal reason why the applicant could not withdraw and the Planning and Zoning denial would be the final decision.

Commissioner Elkin commended Mr. Sallee for cleaning up the property from what it used to be.

He stated he could have taken one mobile home out and put a new one back in one at a time, and we would not have to go through this process. This property was a mobile home park before the regulations were adopted, so it was grandfathered in. He stated he does not see a major problem with what Mr. Sallee is doing. He stated he does have a problem with open R-M zoning. Someone could come in and build up to 87 units without planned zoning.

Mr. Sallee asked what the difference is between R-SP and R-MP.

Mr. Shawver stated the difference is density. R-MP allows for 17 units per acre, and R-SP allows for 7 units per acre.

Commissioner Miller asked Mr. Sallee if he wants to withdraw the request or have the Commission deny it.

Mr. Sallee stated he does not think he needs another denial at this point.

Mr. Sallee withdrew the request in order to make appropriate corrections to the application.

**4. Request by Karen L. Sapp to rezone from A-1 (Agriculture) to A-2 (Agriculture) on 108.82 acres, more or less, located at 9100 E. Highway AB, Columbia. (Appeal)**

Mr. Shawver stated the property is located about 3-miles southeast of Columbia. It is accessed from US-63 via State Route AB. The current zoning is A-1, which is the original zoning. The property is currently used for pasture. The applicant has stated that the purpose of the rezoning is to enable transfer of a 5-acre tract to her son. There have been no previous zoning requests for this tract.

Land uses in the area can be categorized as rural and residential and are in character with the A-1 zoning designation. The County GIS system was used to analyze the size of tracts within a one-mile radius of the property. Map Number 1 indicates tracts greater than ten acres, tracts that are nominal 10-acres and tracts that are less than 10-acres. Map Number 2 shows tracts that are nominally 10-acres or greater and tracts that are less than 10 acres. There are 13 tracts less than 10-acres, two of which are the result of a PRD and are zoned A1-P.

The Master Plan identifies a sufficiency of resources test for determining whether there are sufficient resources available for the needs of the proposal. The sufficiency of resource test provides a “gate-keeping” function. Failure to pass the test should result in denial of a request. Success in passing the test should result in further analysis. The resources used in the test can generally be broken down into three categories: utilities, transportation and public safety services.

Utilities:

- Water: The property is located within Consolidated Public Water District Number 1. The Water District reports that water is available in the area at a flow rate of 300-340 gallons

per minute. The minimum rate necessary for residential development is 500-gallons per minute. Therefore, water service sufficient to supply the needs of the proposal is not currently available.

- Sewer: There is no public sewer available in the area. Development of the property at A-2 density would probably require construction of a central wastewater treatment plant.
- Electricity: There is no indication that there is a lack of electric system capacity for a residential subdivision of the property.

Transportation: The property has frontage on 3 public roads: 1900-feet along Highway AB, 1000-feet along Rangeline Road and 2000-feet along Logan Road. Highway AB is the primary route to US 63. The property is well served by the transportation network, which appears to be adequate to serve development at the existing density. Rezoning to A-2 could result in nearly four times the amount of traffic generation, which may necessitate improvements to the transportation system. A traffic study was not completed for this proposal however, anecdotal information received from neighboring property owners indicates concern about existing traffic on AB and Rangeline.

Public Safety Services: The nearest fire station is located near Columbia Regional Airport, within three miles of the property. Law enforcement is provided by the Boone County Sheriff. The nearest emergency medical services are in Columbia approximately 9-miles away.

Zoning Analysis:

- The proposed rezoning is out of character with the pattern of development in the area. Development in the area that has occurred since zoning was first implemented has been consistent with the A-1 requirements. There have been no changes in available infrastructure, development patterns or zoning in the area that support the rezoning request.
- Granting the rezoning could have a detrimental impact to the area due to lack of services necessary to support the rezoning. There is no apparent gain to the public health safety and welfare compared to hardship to the proponent. There is a sufficient inventory of A-2 zoned land in Boone County.
- The property is well suited for use within the current zoning regulations. Several Administrative Surveys have been approved in the area that have created 10-acre lots. Large lot residential development is viable in this area as evidenced by the current pattern of development.
- There are other options open to the land owner to achieve her stated goal. A rezoning to A1-P with a review plan showing a 5-acre lot is a viable option that would not disrupt the integrity of the area.

The property scored 38 points on the rating system. Staff notified 12 property owners about this request.

Staff recommends that the request be denied due to lack of resources to support the rezoning and other reasons previously cited in this report.

Mr. Shawver stated the Planning and Zoning Commission conducted a public hearing on this request on June 19. A motion was made to recommend denial of this request. That motion carried unanimously. The applicant filed a timely appeal to bring the request forward to the County Commission.

Commissioner Pearson opened the public hearing and asked for comments in favor of this request.

**The following spoke in favor of this request:**

**Karen Sapp 6601 County Rd. 333**

Ms. Sapp stated she applied to rezone her property because she has a son who wants to build on 5 acres. The current zoning requires a minimum of 10 acres. She stated she does not want to do a 10 acre tract, but 5 acres is okay. Her son does not want 10 acres either. She stated when she looks at her options, she is also looking at the fact that she has another son graduating in a year and he will probably be the next one who will want to do something similar. This leaves her a couple of options: 1) Tell him no because she cannot do 5 acres because of the zoning; 2) Tell him to take the 10 acres even though he does not want to.

Ms. Sapp stated if she applied for A-1P, she would still have to do 10 acres tracts.

Mr. Shawver stated with planned A-1, she could designate a house site or 2.5 acres and the remaining 7.5 acres would remain undeveloped.

Ms. Sapp stated she still could not do anything with the 7.5 acres.

Mr. Shawver stated she could use it in the fashion it is being used now.

Ms. Sapp stated that is just like taking 10 acres. That is why she applied for the A-2.

Commissioner Miller asked if a family transfer requires 10 acres.

Mr. Shawver stated 10 acres is the minimum size lot for a family transfer in A-1 zoning.

Commissioner Miller stated she could cut off 5 acres and make it A-2 for a family transfer.

Commissioner Elkin stated she could carve out 10 acres and get only that 10 acres rezoned to A-2.

Mr. Shawver stated that is correct.

Commissioner Miller stated she could rezone 5 acres to A-2.



Mr. Shawver stated that is correct. Rather than rezone 108 acres, she could rezone 10 acres or 5 acres or 2.5 acres and give that to her son.

Commissioner Elkin stated if she rezoned all of her land to A-1P, the purpose of the plan is to allow for flexibility in developing it. In an A-1P zoning, she could theoretically draw 10 houses on a cul-de-sac. The average density does not exceed the A-1 restrictions.

Mr. Shawver stated conceptually you could take a 10 acre area and limit the amount of infrastructure you would have to put in by adding ten 1 acre lots and that would still comply with the density under A-1.

Commissioner Elkin stated she would not have to have all 10 acre tracts; she could have five 2.5 acre tracts in one section and leave the rest of the land undeveloped.

Commissioner Pearson asked what happens 15 years from now when they want to develop the rest.

Mr. Shawver stated there is nothing to stop them from coming back with a different rezoning request or revised review plan.

Ms. Sapp stated her reasoning is she has three kids and she does not know where they are going to want their land.

**Charline Brittain, 9701 E. Hwy AB**

Ms. Brittain stated she is very pleased that her neighborhood has grown the way it has. She hopes this will not cause an extended conflict in the future. She and her husband feel like it is important that Ms. Sapp has the right to come before the Commission and propose what she would like to do with her land. She stated she owns 240 acres on Hwy AB and 160 acres are in row crops. She stated she does not complain about the picnics and water skiing on the lake by those who live on Rangline. She stated it is a great community, but they are not being realistic if they cannot visualize. Some people can see down the road years from now and everything will develop properly. There are a lot of areas where there is a lot of density, and this is not one area.

Ms. Brittain stated just east of this property is 1,775 acres of conservation land that will probably never be developed. She stated you cannot ask a lot of "what ifs" because nobody can tell what is going to happen. Since Ms. Sapp does not know what land her children will want, it is difficult to point out 5 acres to rezone. She stated there is no traffic flow problem in the area.

Commissioner Pearson asked for comments from those opposing this request.

**The following spoke in opposition of this request:**

Commissioner Miller entered into the record letters of opposition submitted by David T. Butcher, 8951 E. Logan Rd.; Bud and Geraldean Holiman, 8400 S. Rangeline Rd.; Lee and Donna Brown, 8661 S. Rangeline; Stuart and Barbara King, 8100 E. Route AB; Laura and Lance Fox, 7931 S. Rangeline

**Kim Ponder, 8800 S. Rangline**

Ms. Ponder read the following letter addressed to the County Commission:

“Dear County Commissioners,

On behalf of the property owners listed below, we come before you today to restate our opposition to the request by Karen L. Sapp to rezone from A-1 (Agriculture) to A-2 (Agriculture) on 108.82 acres, more or less, located at 9100 E. Highway AB, Columbia, MO 65201.

On June 19, 2008, we appeared before the County P & Z Committee to oppose above said request. More specifically, we opposed the rezoning request based on the appropriateness of the request to rezone the entire 108 acre tract of land. We are firm in our opposition as it is our understanding that there are current procedures in place to accomplish the goal of family land transfers or zoning.

In reviewing Boone County Zoning Regulations regarding the purpose and intent of Zoning Ordinances, it strengthened our belief that this request should be denied.

Per Section 1, paragraph B1 and B2, the Purpose and Intent of Zoning Ordinances is as follows: The County Commission of Boone County, Missouri, has determined that these regulations are necessary for the purpose of promoting the health, safety, morals, comfort or general welfare, and conserving the values of property throughout the County, and lessening or avoiding undue congestion in the public streets or highways; in securing safety from fire and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, school, parks and other public requirements; all in accordance with a comprehensive plan.

- (1) These regulations are a part of the Boone County Planning and Zoning program and are to be considered along with the County’s Comprehensive Plan, Point Rating System, and Subdivision regulations. These Zoning Regulations are in accordance with the Comprehensive Plan for Boone County which was in effect at the time of the adoption of these regulations. Said Comprehensive Plan includes planning goals and objectives, estimate of population growth, land use surveys, a land use plan, plans for major thoroughfares, other transportation facilities, community facilities, public services and utilities, and a public works program.
- (2) A planning goal of Boone County is to reduce urban sprawl through the use of the Point Rating System, County Subdivision Regulations and this Zoning Ordinance. Paramount among the County’s objectives are (a) to preserve good agricultural land,

(b) to insure that new, urban developments will not seriously interfere with accepted farming practices on adjacent land, (c) to make maximum use of existing facilities and to reduce the need for new and or expanded facilities, and (d) to discourage development in areas where:

- a. Desired services cannot be provided in a cost effective manner; and
- b. The safety of the citizens could be jeopardized due to the fact that the area is not readily accessible to fire protection, law enforcement and ambulance services.

Other issues addressed in *Exhibit A* pertain to the pattern and development history of the area, the density, appropriateness, traffic flow and infrastructure concerns. The request as presented should be denied as it does not meet the Zoning Ordinance definition of “purpose or intent” as defined on page one of said regulations. Furthermore, the current and best use of land in this area of the county is best served as A-1. To change a tract of this size challenges the integrity of the Planning and Zoning System as well as the use of the land by land-owners in the area.

In closing we ask that you consider our concerns regarding this rezoning request based on our comments from the meeting on June 19<sup>th</sup> as well as our continued opposition stated above. Thank you for your consideration.”

Ms. Ponder submitted to the record a petition signed by several property owners in opposition to this request. A copy of this petition may be obtained at the County Clerk’s Office in the Roger B. Wilson Boone County Government Center, Room 236.

**Jerry Barnes, 9525 E. Logan**

Mr. Barnes stated he met with Bud Holiman. The Holimans own a majority of the land across the road from the subject property. Mr. Barnes stated his father, his brother, and himself have a family-owned and operated farm next to the Sapp property. This farm has been there since 1921. He stated they are very concerned about the zoning changes from A-1 to A-2. He stated since they are a large farming operation, they are on the road all the time with three semi-trucks, three tandem trucks, and other large equipment. It is hard enough now to move up and down the roads. He stated during harvest time, they are running equipment until 1:00 a.m. or 2:00 a.m. Dust from the fields gets bad at times. He stated they enjoy their way of life and the neighbors like the rural setting and the peace and quiet.

Mr. Barnes stated he has no objections to the Sapp children getting 5 acres of land or less.

**Vicki Pauley, 8801 E. Hwy AB**

Ms. Pauley stated she has lived on her property for nearly 30 years. She stated it is a wonderful community. She would love to have 100 acres so she could give her children some land. She stated the problem she has with rezoning the whole property to A-2 is there is a big wide open space that you can fit 40 houses on. Once it is zoned A-2, then it is done.

Ms. Pauley stated she also thinks it is a wonderful thing that Ms. Sapp wants to give her children part of her land.

**Stephanie Smith, 8351 S. Rangeline**

Ms. Smith stated she is not in opposition to a gift or sale of land to any of Ms. Sapp's children. It is the method of open-ended, unplanned change from A-1 to A-2 that is disturbing to them. She stated she feels there is an adequate mechanism Ms. Sapp could use to accomplish her purpose. The concern about the open-ended rezoning is that she could in theory subdivide them into 2.5 acres. Ms. Smith stated she commends the Barnes family for their method of doing their family land transfer.

Ms. Smith stated there could be increased traffic and conflict with the predominant agricultural use of the area with and open-ended rezoning to A-2. She feels it would be more appropriate to come back with a different request specifying smaller tracts of land.

**There were no other comments in opposition.**

Ms. Brittain stated she wanted everyone here tonight to be honest and have integrity. She stated she does not think you can have a cattle and hog operation and still have crops on less than 100 acres. She stated she has been in this business for 51 years and she knows the Barnes are very successful farming, but they do not have a cattle and hog operation on that less than 100 acres that joins Karen Sapp's land.

Mr. Barnes stated he does have hogs and cattle on his land right now.

Commissioner Pearson asked if there is any rebuttal from the applicant.

**Gene Basinger, 19335 S. Rte. A., Hartsburg**

Mr. Basinger stated he would like to talk about the people in opposition. He stated they submitted a petition with names of people in opposition. He stated there are 29 or 30 names on it, but there are only about 14 families represented on it. Of those people who signed this petition, 4 live within a half a mile of the Sapp property and live on less than 2 acres. There is some A-2 zoning in this area. Four more names on the petition live more than half a mile away from the subject property.

Mr. Basinger stated he wants to talk about the feasibility of the A-2 zoning. He spoke to David Butcher, who is a surveyor and lives next door to the property. Mr. Butcher is against the rezoning. Mr. Basinger stated Mr. Butcher did some planning to see what could be done on this property and he came up with 37 lots. Mr. Basinger stated he disagrees with that number and thinks it is closer to a maximum of 30. This area is never going to be a farm, mainly because of the shape of it. It is growing as a residential area. He does not believe residential property hurts farmland and farmland hurts residential property.

Mr. Basinger stated there is not a good way to do this. He thinks planned zoning does not work. It is very onerous and causes a lot of problems. He looked at the A-2 zoning and what is realistic. He stated there is not water to support the amount of tracts that will fit on there. It is not feasible to build a sewer treatment plant to serve this area. Nobody will buy 5 acres next to a sewer treatment plant.

Mr. Basinger stated today, she can create ten 10 acre tracts of land without rezoning. If she were to rezone, the infrastructure would not allow more than 5 smaller tracts of land to develop. Another thing that will prevent this from developing into 30 or 35 lots is the economics of it. If you tried to put 30 lots out here, you would have a net loss of money just putting in the basics. He stated this is not going to cause a density problem in the area. If someone 30 years from now comes in and puts in the infrastructure, there is a possibility of getting up to 30 tracts of land.

Mr. Basinger he thinks zoning should be considered on the basis of whether or not it is reasonable and proper in the area.

Commissioner Elkin asked if 30-37 lots on this land is realistic.

Mr. Shawver stated that anywhere from 25 to about 35 is probably realistic.

Commissioner Elkin stated right now Ms. Sapp can divide up into ten 10 acre tracts.

Mr. Shawver stated that is correct.

Commissioner Elkin asked if the infrastructure was in place to support 10 tracts.

Mr. Shawver stated infrastructure requirements do not come into play in administrative surveys.

Commissioner Elkin asked if the applicant could survey 7.5 acres and divide that by 3 and get that rezoned all at once. Can she pick a corner and rezone 7.5 acres to A-2?

Mr. Shawver stated she could do that and leave the balance of the land as A-1.

Commissioner Pearson stated that assumes they want to live next to each other.

**Commissioner Pearson closed the public hearing.**

Commissioner Miller stated she thinks planned zoning does work and she is not supportive of 108 acres of open A-2 zoning. She thinks there are many ways to transferring land and she thinks Ms. Sapp should come back with planned A-2 if that is what she wants to do with the amount of land she wants to give to her children. She would be supportive of doing that family transfer. She stated she does not think this is the time to make this 108 acres 2.5 acre lots.

Commissioner Elkin stated if she requested an A-2P, she could carve out 2.5 acre tracts anywhere on the 108 acres and that would be the final plan.

Mr. Shawver stated since her children have said they are not sure they want land here or where they want to be, the thing to do would be to do a review plan identifying the one site for the son who wants the land now and have the rest of it undefined and submit a revised review plan at a future date when those interests come about.

Commissioner Elkin asked if she would have to come back through to change the review plan.

Mr. Shawver stated she would.

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby **deny** the request of Karen L. Sapp to rezone from A-1 (Agriculture) to A-2 (Agriculture) on 108.82 acres, more or less, located at 9100 E. Highway AB, Columbia.

Commissioner Elkin seconded the motion.

Commissioner Elkin stated there were just a lot of unknowns and an A-2P might address a lot of those unknowns. He stated he would feel a lot better with an A-2P.

The motion passed 3-0 **Order 323-2008**

**5. Petition submitted by Justin G. Powell to vacate and replat Lot 1 of Tumlin Hills Subdivision.**

Mr. Shawver stated Planning and Zoning received a petition to vacate and authorize a replat of Lot 1 of Tumlin Hills Subdivision. Subdivision regulations have a provision that when a subdivision does not have replat exemption on the face of it, the plat cannot be vacated or replatted without authorization received by the County Commission. It also provides that the County Commission will conduct a public hearing for the vacation request in which the County Commission will take into consideration the following criteria: character of the neighborhood, traffic conditions, circulation, the proper location, alignment and improvement of streets and roads within and adjacent to the subdivision, property values within the subdivision; public utility facilities and services, and 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.

Mr. Shawver stated the regulations provide for a hearing for the vacation. It also provides for a separate hearing for the authorization to replat. Historically, the County Commission has held both hearings at the same time because the reason for vacating comes with the ability to replat.

All property owners within 500 feet were notified.

**Commissioner Pearson opened the public hearing.**

Commissioner Pearson asked for comments from those in favor of this request.

**Justin Powell, 9550 S. Tomlin Hill Rd.**

Mr. Powell stated he owns Tumlin Hills Subdivision, but it is just a part of his property. He stated he is the only individual who is going to live out there.

**Issac Cox, 518 High St.**

Mr. Cox stated he is the general contractor on a residential project they are working toward with all of this. In the 1970s, the property owner previous to Mr. Powell separated 1.8 acres off of this subdivision. The replat will transfer an additional 1.05 acres from an adjoining property. Jim Patchett is the surveyor on this. He stated he came to request a vacation today, and a final replat is not yet ready for submission.

Commissioner Pearson asked for comments from those in opposition to this request.

There was no opposition.

**Commissioner Pearson closed the public hearing.**

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby **approve** the petition by Justin G. Powell to vacate and replat Lot 1 of Tumlin Hills Subdivision.

Said vacation is not to take place until the re-plat is approved.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 324-2008**

**6. Petition submitted by Dan Hagan to vacate and replat Lot 98 of Waters Edge Estates Block 4 Replat of Lot 98.**

Mr. Shawver stated this is a similar request. Lot 98 is in Waters Edge Estates at the very end of the cul-de-sac on S. Waterfront Drive.

Commissioner Miller asked if they are combining the lots.

Mr. Shawver stated there is a little strip of land that Mr. Hagan wants to incorporate into this lot.

The Commission is supposed to take into consideration the following criteria: character of the neighborhood, traffic conditions, circulation, the proper location, alignment and improvement of streets and roads within and adjacent to the subdivision, property values within the subdivision; public utility facilities and services, and 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.

**Commissioner Pearson opened the public hearing.**

Commissioner Pearson asked for comments from those in favor of this request.

**Dan Brush, 506 Nichols St.**

Mr. Brush stated he is present to represent Mr. Hagan and to answer any questions. In addition to the small strip of land, the plat is also to include part of the Waterfront Drive that was vacated in 1991 and has been sitting there as a 50 foot wide strip. 20 feet of that will be included in this plat.

Commissioner Pearson asked for comments from those in opposition to this request.

**Rick McClure, 102 N. Cedar Lake Dr.**

Mr. McClure stated he is not in opposition or in favor of this request. His position is more of curiosity. He stated he owns two duplexes to the south of this lot. He is curious what the intention is for the lot when it is replatted.

Commissioner Elkin asked what the zoning was on the lot.

Mr. Shawver stated it was R-M. There are covenants restricting it to single family.

Mr. Brush stated he does not know that Mr. Hagan has any plans to do anything with it.

Mr. McClure asked if it could be multi-family housing.

Mr. Shawver stated he believes there are covenants in the subdivision restricting it to single family use.

Commissioner Elkin stated combining that little strip with the other 20 feet would not change what can already be done with the lot.

Mr. Shawver stated that is correct.

Mr. McClure stated he was just curious because he has a nice area behind his duplexes that could be affected by a multi-family building.



**Commissioner Pearson closed the public hearing.**

Commissioner Elkin moved on this day the County Commission of the County of Boone does hereby **approve** the petition by Dan Hagan to vacate and replat Lot 98 of Waters Edge Estates Block 4 Replat of Lot 98.

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 325-2008**

**7. Request by Robert M. Lemone Revocable Trust to approve a Final Development Plan for Concorde South Phase 2 on 9.75 acres, more or less, located at 5801 S. Highway 63 South, Columbia.**

Mr. Shawver stated this is the final development plan for Concorde South Phase 2. The review plan was approved; the rezoning request was approved. The rezoning does not take effect until the final development plan is received. The Planning and Zoning Commission has approved it, and it is ready for the County Commission to receive it.

Commissioner Elkin asked why the addresses are Highway 63 South. Are they going to have internal addresses on those streets?

Mr. Shawver stated the plat has not been filed. The street has to be a legal street and then addresses will be assigned accordingly. Until then, we use the same address as the rezoning request.

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby **approve** a request by Robert M. Lemone Revocable Trust for a Final Development Plan for Concorde South Phase 2 on 9.75 acres, more or less, located at 5801 S. Highway 63 South, Columbia.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 326-2008**

**8. Boothe Lane. S27-T49N-R14W. A-1. Charles and Leann Martin, owners. J. Daniel Brush, surveyor.**

Mr. Shawver stated the Planning and Zoning Commission has approved this plat and it is ready to be received and accepted by the County Commission with an authorization for the Presiding Commissioner to sign it.

Commissioner Elkin moved on this day the County Commission of the County of Boone does hereby receive and accept the following subdivision plat and authorize the presiding commissioner to sign it:

Boothe Lane. S 27-T49N-R14W. A-1. Charles and Leann Martin, owners. J. Daniel Brush, surveyor.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 327-2008**

#### **Miscellaneous**

#### **9. Appointment to Mental Health Board of Trustees**

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby appoint J. Scott Perkins to the Mental Health Board of Trustees as a non-provider for a term beginning June 24, 2008, and ending May 31, 2010.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 328-2008**

#### **10. Authorize Closed Meeting 610.021(3)**

Commissioner Elkin moved on this day the County Commission of the County of Boone does hereby authorize a closed meeting to be held on Tuesday, July 1, 2008, immediately following commission. The meeting will be held in the Commission Chambers of the Roger B. Wilson Boone County Government Center at 801 E Walnut, Columbia, Missouri, as authorized by 610.021 (3) RSMo. to discuss the hiring, firing, disciplining or promoting of particular employee by a public governmental body when personal information about the employee is discussed or recorded.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 329-2008**

**11. Commissioner Reports**

There were no commissioner reports.

**12. Public Comment**

There was no public comment.

The meeting adjourned at 11:02 p.m.

Attest:

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Wendy S. Noren  
Clerk of the County Commission

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Ken Pearson  
Presiding Commissioner

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Karen M. Miller  
District I Commissioner

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Skip Elkin  
District II Commissioner