

TERM OF COMMISSION: May Session of the May Adjourned Term

PLACE OF MEETING: Boone County Government Center Commission Chambers

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

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

Mr. Poveromo reported **Godas Development, Inc. requests to rezone from R-M (Moderate Density Residential) to C-GP (Planned Commercial) 4.16 acres, more or less, located at 5641 C Clark Lane.** Rezoning land Planned Commercial is a two step process: approval of the rezoning request and approval of a review and final plan. The property is located just east of the Columbia city limits at the intersection of Clark Lane, St. Charles Road and Lakewood Drive. Property to the north and west is zoned R-M. Property to the south is zoned C-G (General Commercial). Property to the east is zoned C-N (Neighborhood Commercial). The site is vacant. In 1973, the site was zoned C-N. In July 1974, a .152 acre parcel was rezoned R-M. In December 1976, 4.29 acres were rezoned R-M. Both requests were made with the indication the land would be used in conjunction with the Lakewood Estates Condominium development. Staff notified 131 property owners concerning this request. The Planning and Zoning Commission met on April 20 to consider both requests simultaneously. The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning request. The review plan was approved with the following conditions:

1. Uses on the site are limited to the permitted uses included in the neighborhood commercial (C-N) classification; excluding all conditional uses and the following permitted uses: veterinary offices, mortuaries, agricultural activities and private clubs.
2. Applicant will submit a landscape plan showing exact location, species, caliber and size of all plant material.
3. Final Development Plan shall include a lighting plan showing type of fixture, location of fixture, direction of fixture; lighting shall be directed inward on the property.
4. Final Development Plan shall show all signage, type and location.
5. Final Development Plan shall include an erosion control plan.
6. The applicant shall research ownership of Lakewood Drive prior to the submission of a Final Development Plan, and shall provide dedicated right-of-way to the County should research show that he has any ownership of the road--dedication shall extend to the north edge of the property.
7. The 60' x 60' freestanding structure shown on the preliminary plan at the east end be deleted from the Final Development Plan.
8. Elevation views of the building be submitted with the Final Development Plan.

Keith Bail of Jones, Schneider & Bartlett, 11 N 7th Street, stated he is present on behalf of Tom Schneider who is out of town at a trial. Mr. Schneider represents Godas Development, Inc.. Mr. Bail stated the Planning and Zoning Commission unanimously recommended approval of this request. The concerns of two neighborhood associations were addressed in the conditions. The requested use is suitable for the land. It is located across from an existing convenience store. Adjacent land is zoned commercial. Clark Lane is slated as an arterial street.

Commissioner Stamper opened the public hearing.

Glenna Kilfoil, 1010 N. College Avenue, stated she owns property in Lakewood Estates and represents residents as their manager. They agree with the conditions placed on the request. In regard to condition number six, in the event Godas Development, Inc. does not own Lakewood Drive what will happen? Lakewood Estates maintains and removes snow from the private drive. The requested use of the property will increase traffic on the road. They would like a condition placed on the request requiring the owner of Lakeview Mall to maintain that portion of the road.

In regard to condition number eight, they request the type of exterior materials to be used on the building also be shown.

In response to a question from Commissioner Stamper, Ms. Kilfoil replied the original developer granted an easement for public street in 1976, which was accepted by the County Commission. The County did not accept the Lakeview Drive for maintenance or snow removal.

Commissioner Vogt stated she met with the homeowners associations for both condominium developments. They discussed formation of a neighborhood improvement district to improve the streets to be accepted for County maintenance. Lakeview Drive is one of the streets. She does not understand what they expect in regard to condition number seven.

Ms. Kilfoil replied a driveway is shown from Lakeview Mall to Lakewood Drive. They are concerned about who will maintain the road from the north edge of the Godas Development, Inc. property to Clark Lane.

Sally Winters, 5597 Pinehurst, stated she is on the board of the Lakeview Villa Homeowners Association. They agree with the comments made by Ms. Kilfoil.

Jerry Carrington, stated he co-owns 5596 Pinehurst with his son. He is concerned with the road. The County zoning ordinance implies the County wants to avoid creating more traffic on such roads. That was violated last year by allowing development of duplexes to the west. Does the driveway onto Lakewood Drive have to be there? Traffic is being forced onto a street other property owners have to maintain.

Commissioner Stamper stated the Public Works Department agreed with the access shown on the preliminary plan, including the driveway onto Lakewood Drive.

Commissioner Vogt moved that the County Commission of the County of Boone approve a request by Godas Development, Inc. to rezone from R-M (Moderate Density Residential) to C-GP (Planned Commercial) 4.16 acres, more or less, located at 5641 C Clark Lane.

Commissioner Miller seconded the motion. Motion passed unanimously. **Order 251-95.**

Commissioner Stamper indicated the Commission will now consider **Lakeview Mall, Planned Commercial Development review plan, located in S3-T48N-R12W, owned by Godas Development, Inc.** and stated he does not recall requiring applicants to describe exterior finishes.

Mr. Poveromo replied that type of information can, and has been, required on a final plan.

In response to a question from Commissioner Stamper, Mr. Bail replied Godas Development, Inc. is not opposed to bringing the portion of Lakewood Drive which abuts his property up to standards. The question of legal ownership remains.

In response to a question from Commissioner Stamper, Mr. Bail replied he cannot commit his client to participate in a neighborhood improvement district.

Commissioner Vogt stated she understands the concern with Lakewood Drive. Traffic will increase. The street is narrow and would be difficult to widen. It has structural problems.

Commissioner Miller questioned if Godas Development, Inc. owns, is willing to bring that section of Lakewood Drive up to standard for dedication to the County, couldn't the County maintain it? The neighbors could pursue a neighborhood improvement district for the remainder of the road.

Mr. Patton stated he believes the Commission could place a condition on the review plan to require they improve or contribute to the improvement of the section of the road that will be heavily used by the development.

Mr. Poveromo stated the first question is whether the Commission believes the street should be a public street maintained by the County.

Commissioner Vogt replied she believes that should be a final goal.

Commissioner Stamper stated the development will impact the street. Godas Development, Inc. should participate in the maintenance or improvement of the street. Commissioner Stamper opened a public hearing on the review plan.

Mr. Carrington stated if there is a driveway onto Lakewood Drive from the Mall, Godas Development, Inc. needs to be responsible for the entire street abutting the development.

Vera Herder?, 1717 Aspen Circle, asked why not access the Mall from Clark Lane, as they do the convenience store, with one long driveway.

Commissioner Stamper Public Works Department Director Stan Elmore supported the access from Lakewood Drive and suggested there may eventually need to be access from the west.

Mr. Patton stated a condition could be placed on the request that Godas Development, Inc. agree to improve or contribute to the improvement of the section of Lakeview Drive from Clark Lane to the north end of the Mall entrance or the north edge of the property. The street is publicly dedicated; the public has a right to use it.

Commissioner Vogt moved that the County Commission of the County of Boone approve the Lakeview Mall, Planned Commercial Development review plan, located in S3-T48N-R12W, owned by Godas Development, Inc. with the following conditions:

1. Uses on the site are limited to the permitted uses included in the neighborhood commercial (C-N) classification; excluding all conditional uses and the following permitted uses: veterinary offices, mortuaries, agricultural activities and private clubs.
2. Applicant will submit a landscape plan showing exact location, species, caliber and size of all plant material.
3. Final Development Plan shall include a lighting plan showing type of fixture, location of fixture, direction of fixture; lighting shall be directed inward on the property.
4. Final Development Plan shall show all signage, type and location.
5. Final Development Plan shall include an erosion control plan.
6. Godas Development, Inc. shall, along with Lakeview Villa Neighborhood Association and Lakewood Estates Neighborhood Association, agree on a solution for the existing road impacted by the Lakeview Mall development--bringing the road to County standards in order that it be accepted for public maintenance.
7. The 60' x 60' freestanding structure shown on the preliminary plan at the east end be deleted from the Final Development Plan.
8. Elevation views of the building be submitted with the Final Development Plan, including exterior building materials.

Commissioner Miller seconded the motion.

Condition number six was reviewed and discussed.

Commissioner Miller stated if the neighborhood and Godas Development, Inc. cannot agree on a solution, Mr. Godas should be able to improve his section of the road for County maintenance.

Mr. Patton agreed an alternative, as suggested by Commissioner Miller, be included in condition six. He does not know that Mr. Godas can meet the condition stated, or that the County can require him to.

Following further discussion, at the request of Commissioner Stamper, Ms. Malaby read condition number six of Commissioner Vogt's motion.

Commissioner Stamper moved to amend condition number six of the previously stated motion to allow Godas Development, Inc., Lakewood Estates Neighborhood Association and Lakeview Villa Neighborhood Association to strike an arrangement whereby that portion of Lakewood

Drive which borders the Godas Development, Inc. property, to the north side of the Lakeview Mall driveway, could be maintained as it is currently maintained with a contribution from Godas Development, Inc., based upon the impact the development has on the road.

Commissioner Miller seconded the motion to amend.

In response to an unrelated comment from Mr. Carrington, Commissioner Stamper replied if the City of Columbia annexes the property, the City would determine maintenance of the road.

Following further discussion, and an inquiry by Commissioner Stamper as to whether Mr. Bail finds the current motion acceptable, Ms. Malaby read Commissioner Stamper's amendment to Commissioner Vogt's motion.

Mr. Poveromo commented it should be clear that the section of the road being discussed should be improved for acceptance by the County for maintenance. The motion leaves a lot of room for interpretation. If the intention is to have the County maintain the street, that should be stated.

Commissioner Miller withdrew her second to the amendment to the motion. Commissioner Stamper withdrew his amendment to the motion. Commissioner Vogt moved to amend condition number six to read: Lakeview Drive, in its entirety, as it abuts the Lakeview Mall development, shall be improved to County specifications to be accepted and maintained by the County.

Commissioner Miller seconded the amendment. The amended motion passed unanimously. **Order 252-95.**

Mr. Poveromo presented **K & S Estates, minor plat, located in S7-T50-R11W; zoned A-2; and owned by Larry and Mona Shuck.** Mr. Poveromo stated K & S Estates is a four lot subdivision located on the corner of Highway 124 and Schooler Road.

Commissioner Vogt moved that the County Commission of the County of Boone receive, accept, and authorize the Presiding Commissioner to sign the minor plat of K & S Estates, located in S7-T50-R11W; zoned A-2; and owned by Larry and Mona Shuck.

Commissioner Miller seconded the motion. Motion passed unanimously. **Order 253-95.**

Mr. Poveromo presented **Brennen's Ridge, preliminary plat; located in S2-T48N-R13W; zoned R-S; owned by Rost-Wolz; and developed by Rhodes-Payne Properties, Inc.** and reported the proposed 325 lot subdivision is located south of Trails West Subdivision, east of Rolling Hills Subdivision and north of I-70. With the implementation of zoning in 1973, the 95 acre tract was zoned for residential development with a minimum lot size of 7,000 square feet. The owner currently uses the property as a nursery for landscaping stock. The owner also owns lots 61 and 62 of Trails West Subdivision, which are used to access the nursery. Water District No. 1 indicated water lines in the area will have to be upgraded in order to provide appropriate residential service and fire flows. The developer and the district will discuss installation and payment responsibilities. Sewage treatment will be provided by Boone County Regional Sewer District. Improvements to the existing Trails West Subdivision wastewater treatment facility will be required. The developer will pay for the improvements. Any and all such improvements will be approved by the Boone County Regional Sewer District and the State Department of Natural Resources. Eventually, the development and those in the surrounding area could be tied into the City of Columbia treatment plant. Interior streets will be curb and gutter streets to be maintained by Boone County. The plat was reviewed by the Soil Conservation District. The developer is discussing stormwater management with them. Currently, one public street, Shady Oak Lane, provides access to the development. Situated on the south property line, Shady Oak Lane is the old Columbia to Rocheport trail. Beginning at the south end of Booth Lane, approximately one mile south of Highway 40, this 4,000 foot long unimproved drive is not maintained by the Public Works Department. The east end of this drive, approximately 1,400 feet, is adjacent to the proposed development. Under current subdivision regulations, the developer may be required to improve some, approximately 600 feet, or all of this drive. The 19 lots along Shady Oak Lane also front McQuitty Lane. The Commission may wish to restrict their access to McQuitty Lane. A second proposed access point is at the west property line between lot 18 and 102. The developer

owns the adjacent property to the west (approximately 100 acres) which is surveyed into five acre tracts (Brennen's Woods). A proposed easement of approximately 500 feet into Brennen's Woods will provide access onto Booth Lane. Two existing roads within Brennen's Woods are currently being reviewed by the Public Works Department for acceptance for maintenance. Staff would suggest that the proposed easement be constructed and maintained as a public road. Another potential access point is along the north property line between lot 1 and 300 where a street is stubbed. The developer would like to dedicate lot 61 and 62 in Trails West Plat No. 6 for street right-of-way. This dedication constitutes a replat of the lots. Under the subdivision regulations, replatting requires the consent of property owners in Trails West Plat No. 6. Another alternative for these lots is the creation of a fire lane. The Boone County Fire Protection District has expressed concern with limited access into this development. They recommend a fire lane, which could be gated or chained with a lock in place to prevent residential use, but be available for emergency equipment should Booth Lane be blocked. As requested by staff, an access point is reflected along the east property line. A street is stubbed out in line with the existing Rollingwood West Drive. The streets are separated by 200 feet of private property. The developer is not required to provide this connection between the two streets. Such a connection will be the responsibility of the County some time in the future. Similar street extensions have been provided with other subdivisions, such as Arrowhead Lake Estates.

Commissioner Stamper stated the plat was recommended for approval with one condition. That condition has been appealed.

Mr. Patton commented the County Commission does not ordinarily review preliminary plats. He does not believe the Commission's task is to review the merits of, or place additional conditions on, the preliminary plat. The preliminary threshold question the Commission needs to deal with is whether an appeal is appropriate. There is no provision in the regulations for an appeal other than one section, which is article V, 2.E.5. The section reads, "If a plat be amended or rejected by the (Planning and Zoning) Commission or if the council or board of trustees of any municipality files with the Commission a certified copy of a resolution of the council or board protesting against the action of the Commission approving any plat of any land lying within one and one half miles of the city limits or the limits of the incorporated area of the municipality, approval shall be deemed overruled and the plat may be then approved only by unanimous vote of the County Court and the reasons for the approval or failure to approve the plat shall be spread upon the records of the County Court and certified to the County Planning and Zoning Commission." Mr. Patton stated that is the only condition he has found in the existing 1991 regulation which discusses an appeal of a preliminary plat. Article III, 2.B.3 says a preliminary plat can be approved by the Planning and Zoning Commission with or without conditions. As he understands it, the matter brought forward tonight is a contention by the developer that the proposed condition constitutes a rejection of the plat, which by definition under the regulations, would be a denial and would stand unless the County Commission overrules the rejection by unanimous vote. This has not come up before. He discussed this with David Rogers, attorney for the developer, and they have a difference of opinion. The Commission needs to make the regulations, the minutes of the April 20, 1995 Planning and Zoning Commission meeting, and the plat itself, if it is approved, a part of the record tonight.

Commissioner Stamper stated the minutes of the Planning and Zoning Commission meeting on April 20, 1995, the plat as presented, and the subdivision regulations are to be made part of the public record of this meeting.

In response to a question from Commissioner Stamper, Mr. Patton replied he reads the regulations literally and sees nothing in the minutes of the Planning and Zoning Commission meeting that indicates the plat was amended or rejected. If the County Commission believes that is true, the appeal is premature and should not be considered. Mr. Rogers believes the condition imposed on the request constitutes rejection. Mr. Patton recommended after it hears from Mr. Rogers, the Commission first vote on whether the appeal should be dismissed as premature.

David Rogers, attorney with offices at 813 E Walnut Street, stated he represents the developer. Mr. Rogers stated he thinks the County Counselor is dead wrong on this issue. Before the Commission is a plat approved with the condition is that there be a dedicated public road through the two existing lots in Trails West Subdivision, an existing approved plat. Anyone who has been

following this request knows the condition is impossible to meet. Under the zoning ordinance, it would require the unanimous approval of all lot owners of Trails West Plat No. 6 of the replat. These are the same people who appeared before the Planning and Zoning Commission and who have told him they would never approve of the road going through the two lots. A number spoke and stood in opposition at the Planning and Zoning Commission meeting. The approval with the condition that cannot be met represents a disapproval. An appeal to the County Commission is appropriate. Once the Commission considers the threshold question, he would like to speak on the second question of whether to approve the plat.

Commissioner Stamper stated he did not find evidence of any objection made by Mr. Rogers, or the applicant, to the condition when it was placed on the request by the Planning and Zoning Commission.

Mr. Rogers stated he immediately--even before the vote was taken--pointed out he felt the condition was impossible to meet.

Commissioner Stamper replied--but you did not refuse the condition.

Mr. Rogers stated he does not know that there is a process for refusal of the condition. He stood up and told the Planning and Zoning Commission, and is certainly telling the County Commission tonight, it is an impossible condition to meet and its placement is tantamount to refusal.

Commissioner Stamper asked Mr. Rogers if it is his opinion that the intent of the condition was for the developer to provide another point of access to the development.

Mr. Rogers replied the motion was made by the most experienced Planning and Zoning Commissioner. He is not prepared to say what his motive was. He has an opinion, but he does not believe his motive makes a twit of difference.

Commissioner Stamper stated when a developer has an approved plan and later finds a condition to be unacceptable, they go back through the process with the Planning and Zoning Commission. He was perplexed to learn that Mr. Roger's client has been negotiating with property owners to gain another point of access which is more direct. Should the request not go back to the Planning and Zoning Commission?

Mr. Rogers replied no. That is not fair or proper. He does not know what negotiations are occurring, but he has a strong idea that by means of the cockamamie condition placed on the request, which cannot be met, or because of negotiations Commissioner Stamper may have heard of, if a delay in the process can be forced, it places this development under a different set of subdivision regulations than if it was heard, as it is entitled to be, this evening.

Commissioner Stamper asked John Payne if he has negotiated with adjacent property owners to acquire land or apartments for the purpose of establishing another point of access?

Mr. Payne replied yes. They proved fruitless. They looked at other alternatives for access to the property. They have gone out of their way--to the point of it being a bad investment--and do not believe other alternatives are feasible. They negotiated with the Wolff brothers for A-frames. They did not want to sell one and did not want to sell access. They wanted to sell a package, at what they believed to be an unrealistic price.

Commissioner Stamper asked when did the negotiations commence?

Mr. Payne replied they began and ended before the Planning and Zoning Commission meeting.

Commissioner Stamper asked Mr. Payne if he has negotiated with people in the Rollingwood West area?

Mr. Payne replied no. Mr. Payne added this plat rated 69 points on the scale.

Commissioner Stamper stated he does not know the motive or intent of the Planning and Zoning Commissioner who made the motion to approve this request with the condition, but assumes their interest was to provide as direct access as possible to the homes. He does not know that he wants to reconsider the issue after the Planning and Zoning Commission approved it.

Commissioner Vogt stated she believes the Commission should follow the normal process.

Commissioner Miller stated she totally agrees.

Commissioner Stamper asked if a motion should be made to decline the appeal on behalf of the applicant so their fees can be returned?

Mr. Patton stated the Commission needs to make its decision based on a review of the minutes of the Planning and Zoning Commission meeting and the regulations. It should be couched in terms of a motion to dismiss the appeal as premature under the regulations because the plat was not amended or rejected. Mr. Patton stated something which occurred to him as Mr. Rogers was speaking is the plat which was approved included the provision for the access and an access note pertaining to it. It was placed there by developer.

Commissioner Stamper stated he believes the condition placed on the request is appropriate. Commissioner Stamper moved that the County Commission of the County of Boone decline to hear an appeal on Brennen's Ridge, preliminary plat (Located in S2-T48N-R13W. Zoned R-S. Rost-Wolz, owners. Rhodes-Payne Properties, Inc., developers.) as requested by the developer, as being premature. If the developer finds the condition placed on the plat unacceptable, they should request the Planning and Zoning Commission consider an alternate condition.

Commissioner Miller seconded the motion. Motion passed unanimously. **Order 254-95.**

SUBJECT: Budget Revision: Budget Expenditure for "Branch Out Missouri" Grant

Commissioner Stamper moved that the County Commission of the County of Boone authorize the following budget revision:

<u>Organization</u>	<u>Account</u>	<u>Account Title</u>	<u>Transfer From</u>	<u>Transfer To</u>
1255	60400	Grounds Maintenance		\$2,568
1123	86800	Emergency Fund	\$2,568	

Explanation: The grant revenue was budgeted, however, the expenditure associated with the grant was not. This is to correct the expenditure line item.

Commissioner Vogt seconded the motion. Motion passed unanimously. **Order 255-95.**

SUBJECT: Budget Revision: Courthouse Murals, Installation and Dedication

Commissioner Stamper moved that the County Commission of the County of Boone authorize the following budget revision:

<u>Organization</u>	<u>Account</u>	<u>Account Title</u>	<u>Transfer From</u>	<u>Transfer To</u>
1123	86800	Emergency Fund	\$3,000	
1190	83922	GF: OTO: Special Rev.		\$3,000
2000	03913	Courthouse Mural Fund		\$3,000
2000	71101	Professional Services		\$1,644
2000	83100	Awards		\$1,356

Explanation: Transfer \$3,000 to the Courthouse Murals budget for the purpose of covering installation and dedication ceremony expenses. The expenditure was not foreseen during the budget process. Total project cost \$26,000, with \$23,000 of the cost paid with contributions.

Commissioner Miller seconded the motion. Motion passed unanimously. **Order 256-95.**

SUBJECT: Amend Contract with Missouri Highway and Transportation Commission Concerning Oakland Gravel Road Interchange with Highway 63

Ms. Malaby stated the State asked that she return a signed copy of the contract amendment. They advised the County Commission should have signed the amendment in May 1994. Ms. Malaby stated she can find no record of the County Commission approving and signing the document and recommended the Commission do so now. The document was originally prepared by Mr. Patton. Commissioner Stamper moved that the County Commission of the County of Boone approve, and authorize the Presiding Commissioner to sign, the attached Contract Amendment No. 1 to the agreement between the Missouri Highway and Transportation Commission and the County of Boone for the Route 63 and Oakland Gravel Road Interchange Project.

Commissioner Miller seconded the motion. Motion passed unanimously. **Order 257-95.**

SUBJECT: Reports from Commissioners

Commissioner Miller reported the Facilities Maintenance Department would like to have a refrigerator. One could also be placed in the Commission Chambers.

The Commission agreed to ask the County Clerk, Treasurer or Recorder of Deeds, offices which moved large refrigerators from their previous offices, about moving their small refrigerators.

Commissioner Stamper stated a group of citizens contributed \$3,000 to light the murals. Arrangements for the lighting were made privately, without a public bid request being made. The electric bill will be paid by a private party also.

Mr. Patton distributed a memorandum to the Commission regarding revised impact fee legislation.

Commissioner Stamper stated Mr. Patton suggested the final question concerning development fees be put to a vote of the people. Commissioner Stamper stated he originally balked, but has since decided it might not be a bad idea.

The Commission and Mr. Patton discussed the issue in further detail.

The meeting adjourned at 8:42 p.m.

Attest:

Don Stamper
Presiding Commissioner

Wendy S. Noren
Clerk of the County Commission

Karen M. Miller
District I Commissioner

Linda Vogt
District II Commissioner