

**BOONE COUNTY PLANNING & ZONING COMMISSION**  
BOONE COUNTY GOVERNMENT CENTER, COMMISSION CHAMBERS  
801 E. WALNUT, COLUMBIA, MISSOURI  
(573) 886-4330

**Minutes**

**7:00 P.M.**

**Thursday, December 18, 2014**

I. Vice Chairperson Prevo called the meeting to order at 7:00 p.m., with a quorum present.

II. Roll Call:

a. Members Present:

Paul Prevo, Vice-Chairperson

Gregory Martin

Kevin Murphy

Michael Poehlman

Larry Oetting

Derin Campbell

Rocky Fork Township

Katy Township

Perche Township

Rock Bridge Township

Three Creeks Township

County Engineer

b. Members Absent:

Boyd Harris, Chairperson

Eric Kurzejeski, Secretary

Carl Freiling

Loyd Wilson

Vacant Seat

Centralia Township

Missouri Township

Cedar Township

Columbia Township

Bourbon Township

c. Staff Present:

Stan Shawver, Director

Thad Yonke, Senior Planner

Paula Evans, Staff

Uriah Mach, Planner

Bill Florea, Senior Planner

III. Approval of Minutes:

Minutes from the November 20, 2014 meeting were approved by acclamation.

IV. Chairperson Statement

Vice Chairperson Prevo read the following procedural statement:

The Boone County Planning & Zoning Commission is an advisory commission to the County Commission. The commission is made up of individuals representing each township of the county and the county engineer.

The planning and zoning commission makes recommendations to the county commission on matters dealing with land use. Tonight's agenda includes 2 subdivision plats.

The following procedure will be followed for the subdivision plats:

The agenda item will be announced, followed by a report from the planning department staff.

The Planning and Zoning Commission will then make a motion to either approve or deny the agenda item.

All subdivision plats that are approved are forwarded to the County Commission. They will consider the subdivision plats that are on tonight's agenda on Tuesday, December 30th. The county commission meeting scheduled for Tuesday, December 30th will begin at 9:30 a.m. and will convene in this same room.

V. Conditional Use Permits

None

VI. Rezoning

None

VII. Planned Developments

None

VIII. Plats

1. Hane. S22-T49N-R13W. A-R. E. Irene Hane Family Trust, owner. Curtis E. Basinger, surveyor.

Planner Uriah Mach gave the following staff report:

The subject property is located at the southwestern corner of the intersection of Fenton Road and Creasy Springs Road, approximately 1 & ½ miles to the northwest of the city limits of Columbia. The subject property is 27.70 acres in size and zoned A-R (Agriculture-Residential). This property is surrounded by A-R zoning, with a planned A-R property to the northwest. The A-RP was rezoned in 1998. The proposal creates two lots, each approximately 3 acres in size, and leaves the remainder of the property for future development.

Lot 2 has direct access on to Fenton Road, and lot 3 has direct access on to Fenton Road and Creasy Springs Road. Both Fenton & Creasy Springs are publicly-dedicated, publicly-maintained rights-of-way.

Consolidated Public Water Service District #1 can provide domestic service to this property. Boone Electric can provide electrical service to this property. The property is in the Boone County Fire Protection District for fire protection.

On-site wastewater systems are proposed for this property. The Columbia/Boone County Health Department will inspect and approve any on-site wastewater systems.

The current design indicates a 40' setback on lot 2 and a 60' setback along Creasy Springs Road on lot 3. The front yard requirement in the A-R zoning district is 25 feet. Therefore, a 25' building line should be shown along Creasy Springs Road and Fenton Road. The minimum width for any lot that is 2.5 acres or greater is 150' measured at the building line. Lot 2 does not meet the minimum standard for lot width and the plat should be revised accordingly. The building line on Lot 3 should be adjusted to 25' and the lot width should be verified to meet the minimum standard at the revised, 25-foot, building line.

The property scored 63 points on the rating system.

Staff recommends approval of the plat with the following conditions:

1. The building line on Lot 2 should be changed to 25' and the lot width shall be adjusted to meet the 150' minimum width requirement at the 25' building line.
2. Lot 3 shall be modified to show a 25' front building line and verification that the lot is 150 wide at the building line shall be provided.

Present to represent the plat:

Gene Basinger, 914 N College, Columbia

Mr. Basinger presented an excerpt of the zoning regulations highlighting the definition of "Lot, width" and "Minimum Yard Requirements" - (Marked as Exhibit 1)

Mr. Basinger also presented an excerpt of the subdivision regulations highlighting section 1.4.4 Building Line and Table A, Minimum Lot Width at Building Line - (Marked as Exhibit 2)

Mr. Basinger stated that staff did not say that the building lines do not meet the 150-foot as shown on the plat. Staff claims that the lot width of 150-feet is to be measured at the 25-foot building line. In the subdivision regulations the definition of Building Line is "A line specifically established upon a plat or by the zoning regulations with identifies an open area unoccupied and unobstructed from the ground upward, into which no part of a building shall project except as provided by the zoning regulations." Table A states the minimum lot width at the building line is 150 feet. In the zoning regulations shows the definition of a lot width as "The width of a lot measured at the building line". In Section 10 it speaks of yard requirements which is where the building line comes from. This property is zoned A-R, in A-R zoning the minimum front is 25-feet. Section 10 states "The following minimum yards for non-farm uses, measured in feet, shall be provided within the districts indicated below".

Mr. Basinger stated he would like to direct attention to the word "minimum". These are not building line requirements as far as 25 feet or different setbacks, it says minimum yard requirements. No where does it tell you that 25 feet is the building line. 25 feet is the minimum building line, you can set the building line wherever you want. The plat meets the regulations on lot 2 the building line is set at 40 feet which gives the minimum width of 150 feet at the building line as the regulations state. On lot 3 the building line is set at 60 feet to make the minimum 150 feet at the building line. The subdivision regulations stated that the building line is established by the zoning regulations, the zoning regulations state that the minimum is 25 feet. The key word to remember is minimum. The regulations are very specific regarding the yard requirements and lot width. Mr. Basinger stated he believes this plat conforms to the zoning and

subdivision regulations and that he has met the minimum yard requirements and the minimum lot width at the building line.

Commissioner Murphy asked staff's position as he tends to agree with Mr. Basinger that he has provided more than the minimum and has 150 feet at the building line.

Mr. Florea stated staff cannot enforce anything other than the minimum. Staff has to use the minimum, we can't establish a building line farther back than what the minimum allows that is why that is used to measure the minimum lot width.

Commissioner Murphy stated the surveyor could establish one further back.

Mr. Florea stated staff can't enforce it so if someone wants to build in front of that building line we have to issue the permit as long as it meets the zoning yard requirement.

Commissioner Murphy stated if the building line was shown on the plat then staff would have to honor that.

Mr. Florea stated no; county legal counsel has told us we can't. We don't have a regulation that establishes that as the building line, it is a private covenant so it would be enforceable privately but we have no standing and that is why we have to use the minimum.

Commissioner Murphy stated even if there was a notation on the plat?

Mr. Florea stated the county has no standing; there is no regulation that allows us to enforce that. That would be no different than if the surveyor could establish the building line wherever he wants then that means that the county could too and that is clearly not the intent. The intent is that there is a minimum line and we can't enforce any more than the minimum.

Commissioner Murphy stated if staff has discussed that with legal then we should go with that.

Commissioner Martin asked staff if the Planning and Zoning Commission were to approve this with staff conditions it would go to the County Commission; could they make changes at that time?

Mr. Yonke stated the County Commission receives and accepts plats.

Mr. Shawver stated if the Planning and Zoning Commission approves the plat it doesn't go to the County Commission unless it complies with the regulations and the conditions. If the Commission makes a motion to deny the plat then the applicant can appeal the decision to the County Commission.

Commissioner Murphy asked Mr. Basinger how he wished to proceed.

Mr. Basinger stated it was up to the Commission how they wished to vote. Mr. Basinger stated it doesn't matter to him because he is going to the County Commission with it anyway. Mr. Basinger stated there is a lot more information about this plat that the Commission doesn't know that has happened before now and the County Commission is aware of it. Mr. Basinger stated he is here for approval and doesn't believe that what staff is telling the Commission is the truth. The regulations speak for themselves; they are very clear and plain. If the Commission isn't satisfied with the situation they can deny it and it will be appealed to the County Commission.

Commissioner Murphy asked Mr. Basinger if that was his preference.

Mr. Basinger stated yes if this Commission is not going to approve it. Mr. Basinger stated he doesn't want it approved with conditions.

Director Shawver stated he objects to Mr. Basinger's comment in that staff was not being truthful. It is the truth, if Mr. Basinger disagrees with staff's opinion that is acceptable. Mr. Shawver stated he is sure Mr. Basinger didn't mean to imply that staff doesn't tell the truth.

Commissioner Martin made and Commissioner Murphy seconded a motion to deny Hane plat.

Paul Prevo – NO

Gregory Martin – Yes

Larry Oetting – Yes

Kevin Murphy – Yes

Michael Poehlman – NO

Derin Campbell – NO

Motion DOES NOT PASS

Commissioner Prevo made and Commissioner Murphy seconded a motion to reconsider the previous motion.

All members voted in favor of reconsidering the motion to deny the plat.

Discussion:

Commissioner Murphy stated he appreciates staff's opinion on a lot of things. Commissioner Murphy stated he is a surveyor and has done, and seen this done in many different jurisdictions that the minimum is the minimum yard that you need to provide and to make odd shaped lots comply with that you push the building line back. Commissioner Murphy stated he would like to give the applicant the opportunity to argue that with the County Commission.

Commissioner Oetting stated if it is approved it goes to the County Commission and they can accept it without any conditions.

Commissioner Campbell stated he works in the Resource Management Department and we run into this stuff all the time where some regulation appears to be black and white and it gets down to the legal department and they say we can't enforce it. Down the line when someone does something in conflict with the interpretation of the rules it creates a lot of work for staff.

Commissioner Martin stated he agrees with that and with the regulation. The minute we allow something like this there is no stopping it. Commissioner Martin stated he is at the point where we have to give the citizen their chance.

Commissioner Murphy stated he is looking at the definition of the building line in the zoning regulations which states a line specifically established on a plat or by the zoning regulations so it is giving the plat a chance to establish that line which identifies an open area unoccupied and unobstructed for which no building shall project.

Mr. Yonke stated the regulations don't specify how you have to measure it which is where the problem is. The term building line is used in the subdivision regulations, not in the zoning regulations. In the

subdivision regulations it references the zoning regulations. Because the term is not used in the other regulations you have to look at the definition to see which is the closest and you look at that part of the definition that talks about the yard area, that is the closest definition which is why we use that, the minimum setback from the road is where it is measured because that burdens the property the least amount. If you don't use that definition then the surveyor can put the building anywhere on the plat which would render that rule meaningless.

Commissioner Murphy stated as long as it met the minimum.

Mr. Yonke asked how you would do it. It could be that you don't have to be parallel to the road or doesn't have to be along the front property line, there is no guidance whatsoever where that line has to go. If you don't take the interpretation that we have where you use what is in the regulations for consistency then there is no consistent way for staff to review that standard.

Mr. Florea stated we use the setback because there is guidance in the zoning regulations that tells you where to measure so you can clearly measure and establish where the setback is so it is consistent every time as opposed to arbitrarily any time a subdivider chooses to put it on some other location they can do it however they want and that nullifies the regulation.

Commissioner Murphy stated there is different terminology in all of this. You've got your minimum yard requirements, building lines, and lot widths.

Staff showed an example of properties along a cul-de-sac if the setback is not used.

Mr. Yonke stated the way staff does it is consistent because it is measured from the front setback.

Commissioner Murphy stated you have a definition of lot width where the width of the lot is measured at the building line and the minimum yard requirements, the front yard being 25-feet in A-R.

Mr. Basinger stated he didn't believe the examples that staff showed really work because it says the minimum 25 feet, the examples show building lines that aren't even 25 feet. The regulations are specific in that the minimum is 25 feet so those examples would meet the regulations because they aren't a minimum of 25 feet.

Mr. Yonke stated that is staff's point.

Mr. Basinger stated if you can't do it then why is the example shown?

Mr. Yonke stated the 25 foot line would govern in the first example, the building line you've now created on there because you can do anything you feel like is totally inside the 25 foot setback, in other places it crosses over because there is no guidance of where you need to measure that line and where it has to go. You would still have to honor the 25 foot minimum but the building line is meaningless.

Commissioner Murphy stated in Table A it says minimum lot width at building line so you are saying at the building line, Commissioner Murphy doesn't think that means inside the building line.

Mr. Basinger stated all the cities in Boone County you can move the building lines back anytime you like, you just can't get within the minimum building line. Boone County has taken a stand that is different from any other place.

Commissioner Campbell stated regulations are different. City regulations are different from County regulations.

Mr. Basinger stated the regulations are the regulations and if you meet them then you have to approve the plat. Mr. Basinger stated he sued the county over this very thing; they tried to tell me that they had the power to tell me that I couldn't do certain things even though the regulations told me I could. Mr. Basinger stated in his opinion the regulations are very clear and one way or another he is going to the County Commission.

Mr. Shawver stated the Commission can recommend approval with staff conditions, recommend approval without staff conditions, recommend denial, or table it.

Commissioner Murphy stated he wanted to give the applicant the opportunity to plead his case to the County Commission. Commissioner Murphy doesn't want to discount staff or legal counsel's opinions but I have an issue with it and would like to give the applicant the opportunity to further explore and discuss it with the County Commission. If the County Commission denies it the applicant can always bring the plat back.

Commissioner Poehlman stated it could be looked at both ways and this could be an opportunity for staff to make it right and try to be consistent. Staff doesn't have any reason to be against one person or another; they are very consistent. This deserves more discussion.

Reconsidering the previous motion to deny Hane plat:

Paul Prevo – Yes

Gregory Martin – Yes

Larry Oetting – Yes

Kevin Murphy – Yes

Michael Poehlman – Yes

Derin Campbell – Yes

2. Mollies Acres 2. S2-T49N-R13W. A-R. KMMA Properties LLC, owner. Steven R. Proctor, surveyor.

The following staff report was entered into the record.

The subject property is located on State Highway VV between Botner Road and Worstell Lane. It is approximately 16.26 acres in size and zoned A-R (Agriculture-Residential). The proposal is to divide the property into four lots, each ranging from 2.51 acres to 4.12 acres in size. The property has several large structures, some smaller structures, and two ponds present. There is an old house and two other structures slated for removal to become compliant with the zoning regulations on lot 4.

Lots 1 & 2 have direct access on to Botner Road, Lot 3 has access to Worstell Lane, and Lot 4 has access to Botner, Worstell & State Highway VV. All three roads are publicly-dedicated and publicly maintained. The applicant has requested a waiver to the traffic study requirement.

The property is located in Consolidated Public Water Service District #1, the Boone Electric Cooperative service area and the Boone County Fire Protection District. Existing infrastructure can provide domestic service for water and electricity. The existing hydrants on Botner and State Highway VV are at a level of service satisfactory to the requirements of the Boone County Fire Protection District.

The proposed lots are to use on-site wastewater systems. The Columbia/Boone County Health Department will permit and regulate any new or existing on-site wastewater systems. Specifically, there is no sign of an existing system on Lot 4, and residential development of the property will require a new system will need to be installed under permit with the Columbia/Boone County Health Department. The applicant has requested a waiver to the wastewater cost-benefit analysis requirement.

The property scored 43 points on the rating system.

Staff recommends approval of the plat and granting the requested waivers.

Commissioner Prevo made and Commissioner Martin seconded a motion to approve Mollies Acres 2 with staff recommendations

Paul Prevo – Yes

Gregory Martin – Yes

Larry Oetting – Yes

Kevin Murphy – Yes

Michael Poehlman – Yes

Derin Campbell – Yes

## IX. Old Business

### 1. Update on County Commission Action.

Stan Shawver updated the Commission as follows:

The conditional use permit for Allen was approved as recommended.

The rezoning request for Simms was recommended denial by the Planning and Zoning Commission, the applicant did not appeal to the County Commission. The applicant was sent a letter giving them 30 days to cease commercial operations on the property.

## X. New Business

None

## XI. Adjourn

Being no further business the meeting was adjourned at 7:35p.m.

Respectfully submitted,

Acting-Secretary  
Stan Shawver

Minutes approved on this 19<sup>th</sup> day of February, 2015