

TERM OF COMMISSION: December Session of the October Adjourned Term

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

PRESENT WERE: Presiding Commission Daniel Atwill
District I Commissioner Karen Miller
District II Commissioner Janet Thompson
Director Resource Management Stan Shawver
County Counselor C. J. Dykhouse
Deputy County Clerk Mike Yaquinto

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

Resource Management

1. Request by the Thomas D. Hilbert Trust, the Angelia H. Hilbert Trust, the Glenn T. Smith Trust and the Lillie Beatrice Smith Trust to rezone from R-S (Single Family Residential) to A-1 (Agriculture) of: Tract A - 84 acres; Tract B - 122 acres; Tract C - 7.6 acres; located at 5395 W Smith Dr., Columbia.

Stan Shawver read the following Staff Report:

The minutes for the Planning and Zoning Commission meeting of December 19, 2013, along with the Boone County Zoning Regulations and Subdivision Regulations are entered into the record of this meeting.

The property is located approximately one half mile west of the terminus of Smith Drive. The 213 acre tract has been in agricultural use for several decades. Nearly 100% of the tract is in the Perche Creek Bottom and within the 100 year floodplain. The site is flat and level and is bounded on the east by a bluff approximately 100 to 120 feet high.

Perche Creek is adjacent to the site to the west and south. To the north is additional floodplain.

The current and original zoning is R-S, Single Family Residential. Adjacent zoning is as follows:

- North A-1
- East R-S
- South A-2 and R-S
- West A-2

Land to the north and south is in agricultural use, east (on top of the bluff) is urban density residential and to the west is agricultural (floodplain) and rural residential (bluff top).

The Master Plan identifies a sufficiency of resources test for determining whether there are sufficient resources available for the needs of the proposal. In this case the proposed rezoning will significantly reduce the potential demand for resources. In addition, the rezoning will increase the likelihood that the property will remain in predominately agricultural use.

Zoning Analysis: Approval of the rezoning will result in a reduction of the potential theoretical residential density of the property from over 900 units to 21. It will also change the Permitted and Conditional Uses that can be permitted on the property.

The A-1 zoning is more consistent with the zoning of most of the adjacent land within the flood plain and is better suited to the land than the current R-S zoning.

The property scored 31 points on the rating system. Staff notified 212 property owners about this request.

Staff recommended approval of the rezoning request.

The Planning & Zoning Commission conducted a public hearing on this request during their December 19, 2013 regular meeting. There were nine members of the commission present during the meeting, however, one member recused himself for cause and was not present during the hearing or subsequent vote.

Following the public hearing, a motion was made to approve the rezoning request.

The motion carried and so the application comes forward with a recommendation for approval.

Commissioner Atwill opened the public hearing and asked if there is anyone that would like to speak in support of this request.

Jay Gebhardt said he is a civil engineer and land surveyor and owner of A Civil Group and is here with Angie Hilbert, who, with her husband, own ½ of the property and her cousins own the other half. This is a straight forward request going from R-S (Single Family Residential) to A-1 (Agriculture) as the land is being used for agriculture and is in the flood plain, approximately 6 feet lower than base flood elevation which is not appropriate for a single family housing development.

Commissioner Miller asked about the road leading to the proposed area to be re-zoned.

Mr. Gebhardt said they will be putting in an all weather, dust free road. Smith Drive is a public right of way and does go further back to the home. The curvy, gravel section road is not what will be used. We will continue straight in what we believe will be the extension of Smith Drive.

Commissioner Atwill asked where the hill is located and is told that it is a steep drop from there.

Mr. Gebhardt said there is about a 100 foot elevation difference from top to bottom.

Commissioner Atwill asked about the creek.

Mr. Gebhardt said that Perche Creek is west of the property and will not need to be crossed for access.

Commissioner Miller asked about other access to the property.

Mr. Gebhardt said that there are no other access points on the owners property. For scale purposes, where Louisville is and where Smith Drive ends to the point of the bottoms is about ½ mile.

Commissioner Atwill asked if there is anyone else to speak in support of the request. There were no other speakers. Commissioner Atwill asked if there is anyone present that would like to speak in opposition to the request.

Roger Howell said he is here to speak in opposition to the change. This is very aggravating when one is being told half the whole truth, which then is a lie and we are not being told the truth. The notice came about the re-zoning and didn't tell us the use. Agriculture to me is crops and cattle, not strip mining. Sub soil rights and drilling, that's another issue, not agriculture. I believe there has been a misinterpretation of the word agriculture by us in the community. So I ask the Commission to identify for us the real use of the land. The community is growing to the west and allowing a company to come in and strip off 4" of topsoil from 200 acres will create a lot of dust.

Mr. Howell also stated that there doesn't seem to be any regulations of the company to build a concrete road so we don't have a dusty, gravel road from where they would strip mine up to the main road where my house is on Silver Thorne. I am concerned about the dust and us being misled. Sure, they have followed the letter of the law and the lawyers would argue it is the letter of the law, but there must be some compassion for the people that have bought out there with the understanding that it was going to be residential out to the west eventually.

Mr. Howell said he speaks in opposition to the request because we haven't been told the whole truth and have been deceived. There is no guarantee that they are going to control the dust. If there is a drought, are they going to water and grow back. I appeal to not allow the

re-zoning to take place. If they want topsoil, there is plenty of bottom land some place else. Mr. Howell thanked the Commission for allowing him to speak tonight.

Commissioner Atwill thanked Mr. Howell for speaking tonight and asked if there is anyone else present that would like to speak in opposition.

George Batek said he has spoken in front of Planning and Zoning on this issue and he is here tonight to speak in opposition. His backyard looks out directly to the Smith Farm with a straight line of sight to the ridge and the house that sits on the ridge. It is his understanding that the re-zoning is to take place in the bottom land of Perche Creek. He is here tonight not only as a homeowner, but as a representative of the homeowners association. The President and Treasurer could not be here and asked for me to appear. Everyone is in agreement and I have had to explain this to many homeowners as to what is going on. When we heard agriculture, we thought that the land was going back to being a farm. After a conversation with members of Planning & Zoning, we got a different story. In my opinion, it is a soil harvesting operation which is like a rotating strip mine operation.

Mr. Batek said that a natural resource; earth, dirt, soil is taken from the land and being transported down our residential collector street, Smith Drive. When we all bought our homes, we bought thinking that it was R-S behind us. One needs to rely on County or City government, that if the area is zoned residential, it will remain residential. We understand the Harris situation. They have this land they want to sell, they don't live on it. The land has some issues with the karst topography, cave system and the bottom land all the way to Perche Creek. We can't see the bottom land. There is a sufficient drop off from the cliff and doesn't have an impact on us. The main concern is the exit coming from this commercial endeavor. The exit is straight through Smith Drive. We rely on city and county government when zoned residential, it should be kept residential. It has been mentioned that there is agriculture to the north and south. There is also residential to the south, east and west moving that way. The bottom land has limited use, it floods regularly and it will be

interesting to see how the permits are granted concerning all the flooding there.

Our collector street gathers residential traffic. This would be the only commercial traffic coming through and we don't know if the street can handle the weight of the trucks. The neighborhood will be subjected to 20 trucks a day. I have spoken to a random group of the 150 in the neighborhood and no one wants this. We speak in opposition. We had expectations of the type of use for this property and this would be an inconsistent use. The picture speaks for itself. Columbia is moving west. Louisville Park is there and children run across Smith to get there. Other neighborhoods also use it as well. We are going to be subjected to 5 ton trucks on the roads doing who knows what to our foundations and to the neighborhood.

The biggest concern is the exit. If somehow the trucks could exit off UU, then this wouldn't be an issue. Because of this, we don't want to agree, knowing full well the intention is not to grow crops, but dig out topsoil. We would like to keep it residential as when we bought our homes. Mr. Batek thanked the Commission for letting him speak.

Commissioner Atwill thanked Mr. Batek for speaking and asked if there is anyone else that would like to speak in opposition.

Forrest and Laura Maisills said they live on the corner of Silver Thorne and Smith Drive. They purchased the home two years ago with the understanding that the property behind the subdivision is zoned residential. If they were looking to buy this home today, they would not, knowing that there is a strip mine located behind the subdivision. The dust is certainly an issue as are the trucks driving by. Are they covered and what dirt is left on the road as they travel through. Traffic is also a concern. Smith is very congested and is the only way in and out for the residents and now we will be adding commercial trucks to the congestion. We live right across the street from the park and there are children always running across the street to the park. Travelling north on Louisville, there is only a yield sign at Smith drive.

Adding commercial traffic is a major safety concern. There should be a stop sign at the intersection. Smith is a straight shot through the subdivision and goes up an incline and there is no visibility to the kids crossing the street by the Louisville/Smith intersection. There is no reason for anyone to slow down. It is not residential friendly having only one access road for the entire subdivision. If there was another way for the trucks to exit, there would be less opposition.

The notification for the zoning meeting for the 19th came registered mail with a latest pickup date of the 20th which is after the meeting occurred. There are inconsistencies with the notification process to homeowners as to what was going on with this property. In closing, we bought with the understanding of the residential zoning and it is best if it could remain farm land. The dust is an issue. If done right with good roads and covered trucks, that would help. The best is to have the trucks exit somewhere else.

George Batek supplied pictures with views from various homes looking out toward the cliff as well as onto Smith Drive.

Commissioner Atwill thanked Forrest and Laura Maisills for speaking and asked if there is anyone else to speak in opposition.

Patricia Kome Howell said that they are retired and are home quite a bit. Smith Drive does have an up and down grade and they would be hearing all the trucks laboring up and down the hill all day. One other concern would be the fertilizer dust and the possible health concern that it would present. For those reasons I am opposed to the re-zoning.

Commissioner Atwill thanked Patricia Kome Howell for speaking and asked if there was anyone else to speak in opposition.

Jerome Rackers said he would like to know why there are different road surfaces in the

complex, black top as well as concrete. The incline on Smith is scary. There is no flat spot and is very tricky in the winter due to ice build up. It is a matter of flow and a safety issue as is the lack of a stop sign. With A-1 there shouldn't be as much traffic.

Commissioner Atwill thanked Mr. Rackers for speaking and asked if there were any other speakers in opposition. There were no other speakers.

Commissioner Atwill said several questions have been raised about safety, damage to asphalt, dust, after use conditions as well as the duration of the operation. Commissioner Atwill asked Mr. Gebhardt to address these issues.

Mr. Gebhardt said that Smith Drive is one he designed while working for Allstate Consultants. The developer built it, not the city. The first portion is concrete due to low bid. The city has equal standards for both concrete and asphalt. Once additional development occurred, it was required by the city to have another exit for the neighborhood and low bid at that time was for asphalt. The hill that is discussed meets requirements for stopping distances at 35 mph which is the speed limit for this collector street. It is 38 feet wide with sidewalks on both sides.

Angie and her mother were instrumental in putting the park in the neighborhood. They owned the property. As is any collector street system, it is the responsibility of all drivers to act reasonable and responsible and to watch out for children.

The truck drivers are professionals with the required licenses and are much safer than a 16 year old driving in the neighborhood. They sit up much higher and understand their vehicle much better. As for the dust, per the Conditional Use Permit, the road from the end of Smith to the field will be re-surfaced. Also per the CUP, we will be abiding by the county permitting process which includes the land disturbance process. Under the land disturbance process, there is 14 days to stabilize all disturbance areas. This will be done by raising corn

and/or beans. Also, there has been talk about how west of the subdivision will be impacted. That land to the west is owned by the requesters of the re-zoning so the only major impact would be on them.

Commissioner Miller asked if the process for harvesting dirt and making good topsoil could be explained. It would be helpful to everyone here.

Angie Hilbert said that the opposition keeps referring to strip mining. There are 200 acres and we will only be doing a small portion of that. There will be no stripping of anything. We will be putting nutrients in the soil; organic things. This is a positive, not a negative operation.

Mr. Gebhardt said that the bottom land is 244 acres. They will be stripping topsoil of 2-4" on 10-20 acres at a time. If they take thinner lifts, it would need more land. As soon as enough topsoil is stockpiled for the season, they go back to the area where the topsoil has been removed and plant either corn or beans. Testing has been done and the topsoil goes down 5 to 6 feet. Farming has been done the last 10 years with only beans, no rotation, and the soil is in poor condition. Before any of the topsoil can be sold, they must farm corn or beans for at least 2-3 years, harvesting the crop then plowing back the material into the ground to create the organic matter necessary. That will take 2 or 3 years.

Commissioner Miller asked what is the season for this business.

Charlotte Smarr said typically it is the spring and fall. Landscapers usually set the season. We will be doing corn on corn because the organic matter is so low right now due to no rotation. We work closely with the University soil labs. We will work with MFA to get PK's and the potassium and nitrogen levels built up. We will also do grid testing. When done with an area, it will go back to crops to build up the organic matter. The land disturbed isn't disturbed for long. Flooding is good for our business. It enhances the quality of the soil.

Mr. Gebhardt said in early spring, there is a two week window where they will build a stockpile and then plant crops. If the stockpile is depleted, then after the crops have been harvested, they may create another stockpile.

Commissioner Miller asked Ms. Smarr what type of trucks are used.

Ms. Smarr said they are dump trucks and are covered per city ordinance.

Commissioner Atwill asked what timing is expected before the first batch of topsoil is ready.

Ms. Smarr said we are looking at 2 to 3 years. The University said it is a minimum of 2 years. The soil needs to be built up. It will take time and investing.

Commissioner Thompson asked once the topsoil is taken from the 10-20 acres, how often will that portion be used.

Ms. Smarr said that with 225 acres, it will be about 10 years before that same area is re-visited.

Commissioner Atwill noted this will be a long term project.

Ms. Smarr said yes, a very long time.

Commissioner Miller said that the area was originally zoned residential and asked Stan Shawver if that would be allowed today seeing it is in a flood plain.

Mr. Shawver said we have much better mapping capabilities today than in 1973 and would apply a zoning that is more appropriate than what was done in 1973.

Commissioner Miller said that there has been talk of the zoning process and guaranteed zoning designations. That is not how it works and asked Mr. Shawver to explain zoning rights and property rights.

Mr. Shawver said that land use and zoning is applied to the land in an initial application. Generally, it is a broad sweep – short of someone asking to re-zone their land, it does not change. In Boone County, re-zoning is not done unless a property owner puts in a request. Zoning is a hierarchy in Missouri and Boone County, like a pyramid. Highest and best use is residential use, usually by density. As you get to more restrictions in zoning, lot sizes are larger, density more sparse until you get to A-2 which is 2 ½ acres per lot to A-1 which is 10 acres per lot. Best farm land is A-1. Along the river and flood plain, that is A-1. Boone County has wooded and hilly areas and that is A-2.

Commissioner Miller verified that the agriculture zoned areas are not under the stormwater ordinance.

Mr. Shawver said they are not unless the area is re-zoned and the CUP is granted, they would be subjected to the land disturbance permits and stream buffer regulations.

There were no further comments or questions and Commissioner Atwill closed the public hearing for this request and asked County Counselor, C. J. Dykhouse, to describe the procedure to follow at this stage.

Mr. Dykhouse said that for the re-zoning issue, the Commission is acting in a Legislative capacity. What is required of the Commission under the law is to act in accordance with the comprehensive plan. In Boone County, the master plan contemplates the sufficiency of resources test. Down zoning situations are usually non controversial issues. The original zoning in 1973 is appropriate, but by today's standards one could not build there due to the flood plain. The Staff Report on the down zoning from R-S to A-1 clearly indicates it meets

the sufficiency of resource test. Further the theoretical density test, going from 900 units to 21 units in the flood plain also meets the sufficiency of resource test. As stated, the Commission will make a legislative decision if it believes that the down zoning is consistent with the Commissions previously adopted sufficiency of resource master plan.

Commissioner Miller said that if she were to make a determination on the zoning of the affected area, it would be A-1 and knowing what we know about the area and the flood plain, she is comfortable with supporting the request.

Commissioner Thompson concurred with Commissioner Miller.

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby approve the request by the Thomas D. Hilbert Trust, the Angelia H. Hilbert Trust, the Glenn T. Smith Trust and the Lillie Beatrice Smith Trust to rezone from R-S (Single Family Residential) to A-1 (Agriculture) of: Tract A - 84 acres; Tract B - 122 acres; Tract C - 7.6 acres; located at 5395 W Smith Dr., Columbia, MO.

Commissioner Miller seconded the motion.

The motion carried 3 to 0. **Order #583-2013**

2. Request by the Thomas D. Hilbert Trust, the Angelia H. Hilbert Trust, the Glenn T. Smith Trust and the Lillie Beatrice Smith Trust for a permit for topsoil management, harvesting, conditioning and stockpiling on 213 acres, more or less, located at 5395 W Smith Dr., Columbia.

Stan Shawver read the following Staff Report:

This site is located west of Columbia off of the west end of Smith Drive. The zoning for the property is R-S, which is the original zoning. The applicant has also submitted a request to rezone the site to Agriculture A-1. The adjacent land is zoned as follows:

- North A-1
- East R-S
- South A-2, R-S
- West A-2.

Nearly 100% of the 213 acre site is within the 100-year floodplain of Perche Creek. The site is mostly level and bordered by bluffs to the east and west. Land to the north and south of the site is floodplain and in agricultural use. The character of the area is described as agricultural with urban density residential to the east and rural density residential to the west. The master plan designates this site as being suitable for residential land uses.

The request is to allow removal, conditioning and export of topsoil. Topsoil will be removed from a portion of the site each year and stockpiled for sale. The operator may utilize equipment such as agricultural tractors, scrapers, bull dozers, loaders, dump trucks and a topsoil screener. Agricultural operations will continue on the site, and will not be subject to the limitations of a conditional use permit (if granted). Truck traffic leaving the site will enter Smith Drive at the intersection with Louisville Drive, and then proceed about 3000' east to Scott Boulevard. Smith Drive is a Neighborhood Collector with a 38-foot paved width with sidewalks. Scott Boulevard is a four lane Major Arterial with sidewalks.

Potential externalities that could result from the use include noise from equipment and traffic and mud/debris on the road caused by trucks hauling soil from the site. With proper conditioning and operations those impacts can be minimized.

The application must meet the criteria for issuance of a conditional use permit. Those criteria are addressed as follows:

(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.

Externalities such as noise, dust and exhaust fumes should not impact the public due to the isolated nature of the project site. Conditions of approval requiring dust control on the access road should adequately address the possibility of dust related impacts. Noise will be mitigated by the elevation difference between the project site and nearby residential areas and limited hours of operation.

(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.

Activities in the area that are already permitted include agricultural and residential uses. Much of the project activity will be similar in nature to the agricultural uses that have been occurring on the property for several decades. For example, topsoil removal utilizes mechanical scrapers which will sound like a farm tractor from a distance. The noise will occur over a longer period of time however, because the topsoil removal occurs between harvest and planting.

The limited hours of operation will confine the likely impacts to hours when most homeowners are at work or school. However, topography and conditions of approval will provide additional mitigation of impacts.

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

Due to the limited nature of the potential offsite impacts and the proposed conditions of approval it is unlikely that the use will result in diminished or impaired property values in the area.

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

The proposed use does not require any public utilities. The proposed use will utilize Smith Drive (Collector Street) and Scott Boulevard (arterial) for access. Both streets should be able to sustain the additional truck traffic.

(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.

Most of the surrounding property that is outside of the 100-year floodplain has already been developed. The site is separated by areas not within the floodplain by topography. There is an elevation difference between the site and adjacent residential areas ranging from 70 to 120 feet. This should provide adequate screening of the topsoil operation from adjacent residential uses and any undeveloped properties.

(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 applicant anticipates approximately 20 to 30 truck trips per day. Averaging 30 trips over the 12 hour per day operating window yields an hourly traffic count of 2.5 trucks per hour. This will not result in traffic congestion on area roads.

(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.*

Conditions of approval address the need to obtain a Land Disturbance permit and comply with the Stream Buffer Regulations. All other applicable regulations are likewise enforceable.

Staff notified 212 property owners about this request.

Staff recommended approval subject to the following conditions:

1. Hours of operation shall be limited to
 - Monday through Friday 7 AM to 7 PM
 - Saturday 8 AM to 3 PM
 - No operation Sunday
 - No operation on New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day
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2. A land disturbance permit shall be acquired prior to any earth moving on the site. The permit shall specifically identify the portion of the site where topsoil is to be removed on an annual basis.
3. When the topsoil removal site is adjacent to Perche Creek the stream buffer shall be staked so as to prevent removal of soil from within the stream buffer.
4. The topsoil removal operation shall be limited to 20 acres per year which will be enforced through the Land Disturbance Permit
5. The operator shall employ the use of management practices to prevent mud, dirt or debris from being deposited on public roads to the satisfaction of the Director of Resource Management.
6. The operator shall maintain the access road in a dust free condition to the satisfaction

of the Director of Resource Management.

The Planning & Zoning Commission conducted a public hearing on this request during their December 19, 2013 regular meeting. There were nine members of the commission present during the meeting, however, one member recused himself for cause and was not present during the hearing or subsequent vote.

A motion was made to recommend approval of the conditional use permit, with the following conditions:

1. Hours of operation shall be limited to Monday through Friday 7 AM to 7 PM
 - No operation Saturday and Sunday
 - No operation on New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day
2. A land disturbance permit shall be acquired prior to any earth moving on the site. The permit shall specifically identify the portion of the site where topsoil is to be removed on an annual basis.
3. When the topsoil removal site is adjacent to Perche Creek the stream buffer shall be staked so as to prevent removal of soil from within the stream buffer.
4. The topsoil removal operation shall be limited to 20 acres per year which will be enforced through the Land Disturbance Permit
5. The operator shall employ the use of management practices to prevent mud, dirt or debris from being deposited on public roads to the satisfaction of the Director of Resource Management.
6. The operator shall maintain the access road in a dust free condition to the satisfaction

of the Director of Resource Management.

7. Rubber track/rubber tired equipment only.

The motion carried and so the application comes forward with a recommendation for approval with conditions.

Commissioner Atwill opened the public hearing and asked if there is anyone present that would like to speak on behalf of this request.

Jay Gebhardt said he is here with Angie Hilbert and Charlotte Smarr. Charlotte is the contract purchaser and Angie is representing the owners. The conditions set forth by the Planning & Zoning Commission are acceptable to us. There has been a change since the original recommendations by Staff and that concerns no Saturday operations at all and the use of rubber tract/ rubber tired equipment only which are also acceptable to us.

As mentioned earlier, the greatest impact from the Conditional Use Permit will be on the 100 acres retained by the owners. There will be a roadway planned when the property is developed that will extend Smith Drive to the west. Before that occurs, the Smarrs will build a road that is dust free and meets Resource Management's requirements and will comply with Resource Management if any issues arise.

At the Planning & Zoning meeting there were questions concerning the impact on the creek. We have agreed to all the permitting processes, the stream buffer and the flood plain development permit. There will be on going permits, renewed annually, similar to the land disturbance permit relating to stormwater. There will be a stabilization of the soil and stockpile. We feel we are being good stewards of the land. There have been references to a strip mining operation and we feel that harvesting is a more appropriate word.

Traffic is an issue. The site is 3,000 feet from the homes and 100 feet lower. I will make an

assumption that the actual operation is not the issue, but the transportation of the stockpiled material. There will be 20-30 trips a day, two drivers, two trucks. The operation is not open to the public, it is not like having contract haulers coming in and out. They are employees of the Smarrs. They are professional drivers, the loads will be covered. With the help of the Smarrs we will get the stop sign put up at Louisville. It was there at one time and removed for a yield sign. The city has no published traffic counts on this portion of Smith Drive.

My staff and I counted the lots that take access through Smith Drive and it came to about 400. The 40 acres to the east will be developed with 200-250 apartments and some commercial. The 100 acres directly to the west and zoned R-S is room for about 250 homes based on the city statistics of 2.5 lots per acre. The International Traffic Engineers manual says that a single family home creates 10 trips a day. The 400 homes will be creating 4,000 trips and the possible addition of 250 homes from the land zoned R-S is another 2,500. This operation will be adding only 40 trips to these numbers. As I mentioned earlier, I designed Smith Road back in 1996 to city standards. It meets the load requirements for a collector street which includes dump trucks, based on the number of wheels that are on the pavement. The business is seasonal, it is not 20-30 trucks every day of the year. The season is spring to fall and is weather dependent.

Commissioner Miller noted that when the city has a similar situation, they send over to the County for comment. Has the city commented on this issue.

Mr. Shawver said they have not.

Commissioner Atwill asked if there is anyone else present that would like to speak in support of this request. There were no additional speakers. Commissioner Atwill asked if there is anyone present that would like to speak in opposition to this request.

Jerome Rackers asked what actions the Commission is bound to.

Commissioner Atwill said this is a different process and Mr. Shawver, in his report, identified the areas that need to be complied with in order for approval.

Mr. Rackers said there is a tree lined area, a buffer of sorts, that is very important to be maintained and kept. With the 100 foot elevations from where the operation is and the average height of 30-40 feet of the trees, this will stop the dust in some degree. This is the arched tree line and along with the leaves will be a buffer and is it possible to add this on as a condition that it not be removed. I believe the best solution is to work together to resolve these issues.

Another concern is that the CUP does not address if the property is sold. Do the conditions carry forward. Also, the hours of operation, 7 to 7 are very long. The traffic in the morning is very heavy with a backup of 100-150 feet at the light at Scott. After 8:15, the congestions is minimal. In the summer during the evenings, the noise from the diesel trucks can be very loud and those in their backyard by Smith Drive will be affected. Lastly, the stop sign at Louisville needs to be reinstated.

Commissioner Atwill asked the County Counselor to clarify the matter of the CUP should the property be sold.

Mr. Dykhouse said that the CUP accompanies the land.

Commissioner Atwill asked if there is anyone else that would like to speak in oppostion.

Forrest Maisells said that it would be roughly 30 trips in a 12 hour period, essentially one every 24 minutes. The size, noise and vibration of the trucks will have an impact on the homeowners. My house has all the bedrooms on the south side, which is closest to Smith Drive. I have a pool, which was there when I purchased the house. The vibrations of the

trucks could have an effect on pool foundation. I can't say for sure, but it certainly is something to be concerned about. I leave before 7 a.m. because I know after that, the area looks like a parking lot. With the heavy trucks, accelerating very slowly, it will have an impact on the traffic flow so the hours of operation should be condensed. Lastly, I believe that my property value will be affected in a negative way.

Commissioner Atwill asked if there is anyone else to speak in opposition.

George Batek said that the noise coming over the ravine towards the houses will be an issue because the winds blowing from the west will carry that noise into the neighborhood. Even though the P & Z has put limitations on the machinery, it is still heavy, probably 5 ton trucks.

Mr. Gebhardt said the trucks are 15 ton dump trucks.

Mr. Batek said there will be 20 trips of 15 ton trucks along this proposed route. They will create vibrations. Our homes have concrete foundations and some have already cracked during the drought and most certainly be damaged with the heavy truck vibration. This will be the only commercial enterprise on Smith. Mr. Gebhardt said he lives and owns neighboring Graystone and I don't see him offering an alternative to run these trucks through there.

The operation is for the spring and summer and that's when the kids will be out playing. The dust that will come in from the west will be covered with fertilizer. I reiterate that I am in opposition to this request. If it was farming, it would make sense and be subjected to the planting and removal. This is heavy machinery travelling along a city collector street.

Mr. Batek said he contacted city council and the representative, Ian Thomas, had no knowledge of this and what the impact of this would be on the street and houses.

Commissioner Miller said that we have a staff to staff relationship with the city. We always respond to their concerns.

Mr. Batek said that he called the city P & Z and they said it was not appropriate for them to comment on something that would limit access to a public street. The only time they would care is if the tonnage of the truck was excessive. This is not in the best interest of the neighborhood. There is no benefit. If possible, going from 20 to 10 acres for allowable harvesting would limit, to a certain extent, the dust and traffic concerns. Also, the tree line is outside the area of consideration. If there was a way to make sure that tree line stayed, creating a buffer, that would be a positive. Mr. Batek thanked the Commission.

Commissioner Atwill asked if there is anyone else to speak in opposition.

Roger Howell said that he is concerned with any violation on the CUP and who would be the regulator of these violations. There are many issues of concern, notably these trucks coming onto the streets loaded with dirt in the axles and throwing clogs of dirt toward vehicles behind these trucks. We need to make sure that the regulations, if violated, are attended to. These issues need to be resolved before any approval is given.

Commissioner Atwill noted that the recommendations from the P & Z state that the operator shall employ the use of management practices to prevent mud, dirt or debris from being deposited on public roads to the satisfaction of the Director of Resource Management and the operator shall maintain the access road in a dust free condition to the satisfaction of the Director of Resource Management.

Commissioner Miller asked Mr. Shawver if the city has an ordinance about leaving dirt on the street.

Mr. Shawver said they do. The Stormwater Ordinance and Land Disturbance permits prohibit the deposit of dirt on the roads.

Commissioner Miller asked if the business can be stopped if they are in violation of this.

Stan Shawver said they could and the County does this as well.

Commissioner Atwill asked if there is anyone else to speak in opposition.

Laura Maisills said that there is a hill coming from the operation and these trucks travelling east on Smith will be downshifting as they go past my house. We purchased this house 2 ½ years ago and if there was any indication that there was going to be a commercial business behind my home, we never would have purchased. If there was a different way to exit, we could work with them. Dust on the street is visible. The air quality is an intangible. How much dust gets kicked up and travels to our area is unknown. I am not sure I want to sit in my backyard by the pool with the dust and noise. I agree that the land is better suited for agriculture. My house is in a residential neighborhood and the construction traffic will end. This traffic, although limited, has no end. Finally, this will not appreciate the value of our property.

Commissioner Atwill asked if there is anyone else to speak in opposition. There were no additional speakers and Commission Atwill closed the public hearing.

Commissioner Atwill asked County Counselor C. J. Dykhouse to outline the procedure for this request.

Mr. Dykhouse said that Section 15 of the P & Z regulations states the Commission sits in a quasi-judicial capacity passing judgment on the factors A – G in the Staff Report and the public hearing that followed. The Commission makes a judgment on the weight to give

the evidence presented in the form of the P & Z record and public testimony to make a finding as to whether the criteria for approval have been met based on the record. The burden is on the applicant to persuade the Commission in the affirmative for each of the criteria.

Commissioner Miller asked County Counsel if this is done, does the Commission approve tonight, then hold for a later date and deliver the Findings of Fact and Conclusions of Law.

Mr. Dykhouse said that is correct. In the past, because of the detailed nature of the deliverable, we create written Findings of Fact and Conclusions of Law. Commission gives staff direction as to what determination the Commission has made and tasks staff to come back at a later Commission meeting to actually adopt the formal Findings of Fact and Conclusions of Law. Tonight, the Commission gives staff direction if moving forward and then review the conditions that the Commission has determined and ask staff to come back with Findings of Fact and Conclusions of Law incorporating the conditions agreed upon within Commission. Denial could be done tonight.

Commissioner Miller said that 20 trucks a day compared to the multiple houses creating a whole lot more traffic should not impact traffic that much. It is frustrating, but that amount of trucks should have little impact and the stop sign will need to be placed at Louisville.

Commissioner Miller asked about the use of the stockpile.

Mr. Gebhardt said the stockpile is usually used for the season. They will only stockpile what is needed for the season. If, for some reason, additional is needed, they will wait until the crop is harvested and then create a new stockpile.

Commissioner Atwill asked what authority the Commission has subsequent to this if we are

unhappy with the results.

Mr. Dykhouse said that the Commission has the authority to enforce the conditions that the Commission places on the request. If operational use is discontinued for a period in excess of 12 months, then the CUP lapses.

Commissioner Miller said that if they go out of business and sell and no harvesting is done for 12 months, then the CUP goes away.

Mr. Dykhouse said that if it is buyer's remorse on the part of the Commission and wished that other conditions were added, that cannot be done. Can't go back and augment the CUP. Revocation can only happen if they don't comply with the approved conditions.

Commissioner Miller asked if this can be reviewed in one year.

Mr. Shawver said it can be reviewed any time to see if they are in compliance.

Commissioner Thompson asked if they don't start right away and don't harvest for 12 months, does the CUP lapse as a matter of law.

Mr. Gebhardt said per conversations with P & Z, we will tell them when we will be starting and once we start, we can't stop.

Mr. Dykhouse said that is reasonable.

Commissioner Atwill asked if Commission will get notice when they start.

Mr. Gebhardt said yes, because that is when we will get the Land Disturbance permit.

Commissioner Atwill asked if any arrangements have been made to have an annual review as part of the order.

Mr. Shawver said he does not recall. They have had great success with compliance.

Commissioner Atwill asked if Resource Management had any objection to adding this to the order.

Mr. Shawver said no.

Commissioner Atwill said he would like that to be considered in the order if approved.

Commissioner Thompson asked if there are any CUP's created that do not go with the land.

Mr. Shawver said no. It goes with the land.

Commissioner Miller said she supports this but at the same time is trying to consider the concerns of the neighbors so I would ask staff to put the right conditions on this to mitigate the concerns we heard tonight. Have a work session, which would be open to the public, and see if there is anything we need to tweak in this list of conditions. This will show we intend to do this but with the best possible conditions to mitigate the concerns of the homeowners.

Commissioner Atwill said there will be no vote at this time.

Commissioner Miller moved to table the request by the Thomas D. Hilbert Trust, the Angelia H. Hilbert Trust, the Glenn T. Smith Trust and the Lillie Beatrice Smith Trust for a permit for topsoil management, harvesting, conditioning and stockpiling on 213 acres, more or less, located at 5395 W Smith Dr., Columbia.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0.

3. Petition submitted by SS4US, LLC for permission to vacate and re-plat Lot 2 of Pin Oak Subdivision Block III, located at 1312 N Pin Oak Blvd., Columbia.

Stan Shawver said that the County received a petition request to vacate lot 2 of the Pin Oak Subdivision Block III. The petition was submitted by the owner of record, SS4US, LLC. Mr. Shawver read into record the subdivision code 1.8.1.3 regarding said requests. All 55 owners within 500 feet of said property have been notified and Commission is requested to hold a public hearing on this matter.

Commissioner Atwill opened the public hearing and asked if there was anyone present that would like to speak on behalf of this petition request.

Nancy Bundy said she lives at 1409 N. Pin Oak. She has been there since her dad built the house in 1993. When looking for lots back then, Lake of the Woods was an undeveloped area. When she built, there were not a lot of houses on Pin Oak. Looking at the overhead map, there have been five or six houses built since 1993. She is in support of the division of the property lots. When the house was built, it was put on one side of the lot with the intention to re-plat and sell that portion of the lot at a later time. She lives alone with her son and as the neighborhood has developed and more houses have been built, she feels safer having people closer.

Ms. Bundy also said that originally when the house was built, it was in the country and that is not the case anymore. There is a new high school and soon there will be a new elementary school and believes that the area will be eventually annexed into the city. It is still dark in the neighborhood as there are no street lights. There is much more traffic, probably from people using Pin Oak to get to Lake of the Woods. Noise is not an issue and there have been several break-ins of other houses. If the houses were closer together, it would make one more aware

of what is happening. She would eventually like to re-plat her lot. She believes that this has been done prior to some who perhaps know people who assisted in getting this done.

Mr. Dykhouse assured Ms. Bundy that is not the case. If a re-plat occurred, it was not because they knew someone, but because they presented a case to the Commission that had merit for approval.

Commissioner Atwill thanked Ms. Bundy for speaking and asked if there was anyone else present that would like to speak on behalf of this item.

There were no additional speakers.

Commissioner Miller asked if the applicant is present.

Mr. Shawver said they are not here. They were notified and there was contact with a representative of the applicant on this issue.

Commissioner Miller asked why this is even being considered with no applicant present. Usual practice is that the request will be denied.

Mr. Shawver said that in this circumstance, the request will either be denied or tabled, especially if there are no speakers, for or against. When there are speakers other than the applicant, the Commission will listen to those speakers.

Commissioner Miller concurred with that procedure.

Commissioner Atwill asked if there is anyone present that would like to speak in opposition to this request.

Kurt Doolady said he lives at 1505 N. Pin Oak and that this issue has come up several times before. He purchased his lot, about two acres in size, 15-16 years ago with the intention of building, which he has done. Over the years, he has added on to the house as well as built a swimming pool in the back. He liked the geographic location of the lot as well as the rural type setting. He would like to keep it this way. There was a covenant started many, many years ago when the property was sub-divided that the lots were to be a minimum of one acre. Looking at the lots on Pin Oak and Golf, those lots are at least one acre and that was the intention of the area development. As mentioned before, this issue has been before the Commission previously on this property lot. The only difference is that this time there is a different company representing the ownership of the lot.

Mr. Doolady said he has been in contact with other owners who could not attend tonight that are also opposed to this request. He has a letter from one and cell phone number of another if that would have any bearing on the decision tonight. There is also opposition from someone who is just outside the 500 foot regulation for notification. All subdivisions are re-platting. One occurred next to my property which was a two acre tract and broken down into two one acre lots which is still within the covenant guidelines. When this occurred, the houses were offset from the street and changed the appearance of the neighborhood as both were set back further from the street. This property will be adding a second house to a ½ acre tract which will also change the feel of the neighborhood. There is a property across the street, which is a rental, where the owner tried to re-plat in a similar circumstance and was denied.

Mr. Doolady said that most everyone that lives on the street and notified would be in opposition because of the aspect of a rural setting, wanting space between neighbors. Columbia is growing and this is a secluded street with a rural feel. If people want a neighborhood where the houses are close, they have a choice to go there. He bought this property for a particular reason and that is the way it is today.

Commissioner Miller noted how the new High School has changed the neighborhood.

Mr. Doolady said that is true and there are numerous subdivisions going up where people are going there because of the way they are marketed. People are in our subdivision to be in a non-packed residential feeling. If this request is approved, there will be other requests to do the same. This lot in question is an investment lot.

Commissioner Miller said that has no bearing on this request. Land use is land use. Looking at St. Charles, there will be a lot of commercial building which will change the neighborhood.

Mr. Doolady said that is expected. That intersection has many properties that are commercial with gas stations, etc. Living in Boone County all my life, I assumed there would be development. Going east, that farm land will eventually go residential. We have an established , rural setting area and it does not need to be packed with additional houses.

Commissioner Miller said that the reason that the lots were originally big was because of the sewer issue. These lots needed lagoons so a house could be built. When the NID came along, it changed the demographic of the neighborhood. There appears to be ½ lots just down the road.

Mr. Doolady said that those are before his time, but are or were multi-family dwellings and were not built exactly the way they were supposed to be done. 1311 and 1313 are houses and the next two are side-by-side structures.

Commissioner Miller said she did notice a mix of housing when driving through the neighborhood and one needs to be prepared for change.

Mr. Doolady said that the property across the street with the old barn and rental house has since been sold. It is a rental property, the owners don't live on the street and don't have to worry about how it looks. I like it here, it is my investment.

Commissioner Thompson asked about the covenant that Mr. Doolady has referred to.

Mr. Doolady said he believes it is not properly recorded. They are words on a piece of paper that talk of a minimum of one acre.

Commissioner Miller said you can't go by covenants. Those are civil issues.

Mr. Doolady said what you can go by is the way most of the houses are placed on the lot. Most of the lots are over one acre and the house is appropriately positioned on the lot and not pushed to one side. The sewer project occurred just as I was purchasing the lot. My bill for that was about \$7,000.

Commissioner Atwill thanked Mr. Doolady for speaking and asked if there is anyone else present to speak in opposition.

Richard Sorrels said he has lived on a nearby farm for 54 years. The original owner of the subdivision re-platted to what it is today and wanted it that way and there is no need to change it.

Commissioner Atwill thanked Mr. Sorrels and asked if there was anyone else to speak in opposition.

Shannon Bossaller said he lives at 1703 N. Pin Oak. He and his wife lived by Hickman High School and all the chaos. We saved enough money to move and looked at many subdivisions and the way they were platted gave us the same feeling of congestion. When looking at the subdivision we are currently in, we found the open space and the larger lots. It had a rural feeling to it and because of this initial impression, we purchased a house. It is not congested, has a sense of openness and we are not the only ones to feel this way. It seemed like a stable environment because of how the houses were positioned and where they were located. It was

an established area, designed for the type of living we were looking for.

Mr. Bossaller said he spent 1 ½ years re-modeling the house and they feel very fortunate to have it. Some of his clients have made offers to buy the house citing the uniqueness of the area and rural setting. He would like to maintain this characteristic of the area. He agrees that the area is rife with change, but not so sure that change is mandated for such an established area. He is very supportive of keeping this appeal. My neighbor originally wanted to sub-divide his property and has since changed his mind recognizing the appeal of the rural setting. We have city living with a country feel.

Commissioner Atwill thanked Mr. Bossaller for his comments and asked if there was anyone else to speak. There were no additional speakers and the public meeting was closed.

Commissioner Atwill asked if there is a motion to be made on this request.

Commissioner Thompson said that since the applicant is not present, the request should be denied.

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby deny the petition by SS4US, LLC for permission to vacate and replat Lot 2 of Pin Oak Subdivision Block III, located at 1312 N Pin Oak Blvd., Columbia.

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

Commissioner Miller seconded the motion.

The motion carried 3 to 0. **Order #584-2013**

4. Request by Frank W. Glenn and John D. Glenn to approve a final development plan for Judy School A-1P on 10 acres, more or less, located at 11553 E Judy School Rd., Columbia.

Stan Shawver said that the re-zoning request was approved by Commission in October and this is the final development plan on the Glenn property to use 2.5 acres of the 10 acres to build a house which is currently under construction and use the remaining 7.5 acres as agricultural.

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby approve the request by Frank W. Glenn and John D. Glenn on a final development plan for Judy School A-1P on 10 acres, more or less, located at 11553 E Judy School Rd., Columbia, MO.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #585-2013**

5. Readoption of Sections 1 – 27 of the Boone County Zoning Ordinance and the Boone County Stormwater Ordinance.

Commissioner Atwill asked if this is a consolidation of ordinances.

Stan Shawver said that there are seven different Commission Orders that cover the adoption of the zoning regulations with the most recent one occurring in 2004. There was the address ordinance, sign regulation and the stream buffer ordinance. There are no changes to the existing ordinances and this action will have one adoption, in the form of a re-adoption of these ordinances so there is one date for both the zoning and stormwater ordinances. There was an advertisement placed for a public hearing as conducted in the Planning & Zoning Commission meeting in November. There were two additional public hearings, one in Centralia and one in Ashland and at the Planning & Zoning Commission meeting on December 19th, it was recommended that the Commission re-adopt the ordinances. The meeting tonight has been advertised and posted and the request is to have a public hearing tonight on this subject.

Commissioner Atwill opened the public hearing. There were no speakers and Commission Atwill closed the public hearing.

County Counselor C. J. Dykhouse said that at this time there is no order to approve as he would like to get with Mr. Shawver to ultimately prepare a deliverable in the preparation of a Commission Order with some recitals which will reflect all the procedural history as read into the record today. It will include all the affidavits and other pertinent information. It will be a complete document.

All Commissioners concurred with the process set forth by Mr. Dykhouse and will await presentation of this issue at a later meeting.

6. Receive and accept the following subdivision plats:

- **Old Asbury. S29-T49N-R13W. A-2. Bettie L. Asbury, owner. Brian David Dollar, surveyor.**
- **Judy School. S21-T49N-R11W. A-1P. Frank W. and John D. Glenn, owners. J. Daniel Brush, surveyor.**
- **Arens Acres. S23-T51N-R11W. A-2. John W. Arens, owner. Mark B. Holt, surveyor.**

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby receive and accept the following subdivision plats and authorizes the Presiding Commissioner to sign them:

- Old Asbury. S29-T49N-R13W. A-2. Bettie L. Asbury, owner. Brian David Dollar, surveyor.
- Judy School. S21-T49N-R11W. A-1P. Frank W. and John D. Glenn, owners. J. Daniel Brush, surveyor.

- Arens Acres. S23-T51N-R11W. A-2. John W. Arens, owner. Mark B. Holt, surveyor.

Commissioner Miller seconded the motion.

The motion carried 3 to 0. **Order #586-2013**

Purchasing

7. Second reading; Amendment #1 to C208026004 – Data & Voice Wireless Services, U.S. Cellular (1st reading 12-26-13)

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby approve Contract Amendment Number One to C208026004 – Voice & Data Wireless Devices and Service, U.S. Cellular. The terms of this amendment are stipulated in the attached Contract Amendment Number One. It is further ordered the Presiding Commissioner is hereby authorized to sign said Contract Amendment Number One.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #587-2013**

8. Second reading; Bid Award 39-18OCT13, Alarm Systems Equipment & Monitoring (1st reading 12-26-13)

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby award bid 39-18OCT13 – Alarm System Equipment & Monitoring to Alarm Communications Center, Inc. The terms of the agreement are stipulated in the attached Purchase Agreement. It is further ordered the Presiding Commissioner is hereby authorized to

sign said Purchase Agreement.

Commissioner Miller seconded the motion.

The motion carried 3 to 0. **Order #588-2013**

9. Second reading; Request for Surplus Disposal of Public Works Equipment on GovDeals (1st reading 12-26-13)

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby approve the request by the Purchasing Department to dispose of the attached list of surplus equipment by auction on GovDeals or by destruction for whatever is not suitable for auction. It is further ordered the Presiding Commissioner is hereby authorized to sign the Request for Disposal forms.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #589-2013**

Public Works

10. 1st & 2nd reading; Mutual Agreement for Extension of MOU with Local Union 773.

County Counselor C. J. Dykhous said that this extension has been agreed to with the union to allow the bargaining to be extended to March 14, 2014. This will allow the process to move forward without any interruptions.

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby approve, by mutual agreement, the extension of the MOU with Local

Union 773. The terms of the extension are stipulated in the attached Agreement. It is further ordered the Presiding Commissioner is hereby authorized to sign said Extension Agreement.

Commissioner Miller seconded the motion.

The motion carried 3 to 0. **Order #590-2013**

Commission

11. 1st & 2nd reading; Approve Closed Session authorized per RSMo Sec 610.021 (3) and RSMo Sec 610.021 (13) at 9:00AM on January 9, 2014

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby authorize a closed meeting on Thursday, January 9, 2013, at 9:00 a.m. The meeting will be held in Room 338 of the Roger B. Wilson Boone County Government Center at 801 E. Walnut, Columbia, Missouri, as authorized by RSMo 610.021(3), 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 and RSMo 610.021 (13), to discuss individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #591-2013**

12. Public Comment

None

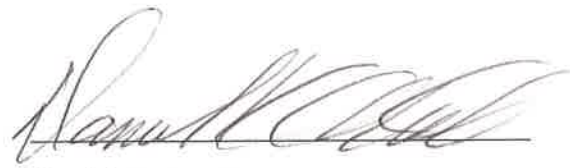
13. Commissioner Reports

None

The meeting adjourned at 10:02 p.m.

Attest:


Wendy S. Noren
Clerk of the County Commission



Daniel K. Atwill
Presiding Commissioner



Karen M. Miller
District I Commissioner



Janet M. Thompson
District II Commissioner