

TERM OF COMMISSION: September Session of the July Adjourned Term

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

PRESENT WERE: Presiding Commissioner Daniel K. Atwill
District I Commissioner Karen Miller
District II Commissioner Janet Thompson
Resource Management Director 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. Public Hearing and Request by Mathew Whitworth for a permit for a creek gravel recovery operation on 270 acres, located at 7401 E Gilpin Rd., Ashland.

Stan Shawver read the following Staff Report:

This request was considered by the Planning & Zoning Commission during their August 21, 2014 meeting.

The minutes for the Planning and Zoning Commission meeting of JAugust 21, 2014 along with the Boone County Zoning Regulations and Subdivision Regulations are entered into the record of this meeting.

The subject property is located off of the end of Gilpin Road, approximately 1 and ½ miles to the southeast of the City of Ashland. The property is approximately 270 acres in size, and is zoned A-2(Agriculture). This is original A-2 zoning, and the property is surrounded by A-2 zoning. There is a house and several outbuildings present on the

property. The application indicates that the property is currently used for recreational uses. The property received a conditional use permit for a creek gravel recovery operation in 1992. That activity stopped in 1997, when the Missouri Department of Natural Resources (MoDNR) Land Recovery program closed their permit for inactivity. The applicant is now seeking to get a new permit from MoDNR Land Recovery for a creek gravel recovery operation.

The applicant is requesting a conditional use permit to operate a creek gravel recovery operation. Staff notified 19 property owners about this request. The property scored 25 points on the point rating system.

The following criteria are the standards for approval of a conditional use permit, followed by staff analysis of how this application may meet those standards. Staff analysis of the request is based upon the application and public comments received following notification of the surrounding property owners.

(a) The establishment, maintenance or operation of a conditional use permit will not be detrimental to or endanger the public health, safety, comfort or general welfare.

If operated in conformance with existing county and state regulations, the use should comply with this criterion.

(b) The conditional use permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted by these regulations.

The comparatively isolated location of the recovery operation should serve to provide substantial physical separation from neighboring property owners, limiting negative off-site impacts. MoDNR regulations on the recovery operation should limit negative

impacts created by the extraction process on the stream itself. Public testimony may provide more information to this criterion.

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

There is no indication that the proposed use will have a negative effect on property values. The physical isolation of the site should serve to mitigate negative impacts on surrounding properties.

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

The subject property is located at the end of Gilpin Road, a publicly-dedicated, publicly-maintained right of way. All necessary facilities will be available.

(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.

The location of the subject property and the limits of existing infrastructure for increased residential development will have a greater impact on future development than the establishment of this conditional use permit.

(f) The establishment of a conditional use permit will not hinder the flow of traffic or result in traffic congestion on the public streets. This will include the provision of points of access to the subject property.

The subject property is located at the end of Gilpin Road, a publicly-dedicated, publicly-

maintained right of way. While there may be an increase in truck traffic from the subject property, it is not expected to exceed the typical traffic generated by an agricultural operation of equivalent size.

(g) The conditional use permit shall in all other respects conform to the applicable regulations of the zoning district in which it is located. The County Commission shall find that there is a public necessity for the conditional use permit.

The proposal conforms to other applicable regulations of the A-2 zoning district.

Zoning Analysis: The applicant is requesting a conditional use permit similar to the previous creek gravel recovery operation conditional use permit granted in 1992. That permit lapsed in 1997, and the applicant is re-applying for that permit. The negative impacts of noise and the recovery activity should be mitigated by the location of the creek gravel recovery operation. The applicant has taken action to re-apply for the necessary MoDNR permits for this activity and being granted this conditional use permit is a step in that process.

Staff recommends approval of the conditional use permit with the following conditions:

- The recovery operation will operate Monday through Friday only.
- That hours of operation be limited to daylight hours of operation as defined by the Boone County Zoning Regulations of April through October 6:00 AM to 9:00 PM Central Daylight Time and November through March 6:00 AM to 7:00 PM.
- Applicant is required to be in compliance with the permits issued by MoDNR for their activities on the property.

These conditions are the same conditions placed upon the 1992 conditional use permit. The Planning & Zoning Commission conducted a public hearing on this request during

their August 21, 2014 regular meeting. There were seven members of the commission present during the meeting.

Following the public hearing, a motion was made to recommend approval of the request with the suggested conditions. The motion passed with a unanimous vote in favor of the motion, so it comes forward with a recommendation for approval.

There were no questions at this time by the Commission and Commissioner Atwill opened the Public Hearing and asked if there is anyone present that would like to speak on behalf of the applicant.

Matthew Whitworth said he is the applicant who had this operation in previous years with his father. His father has since passed away and in order to recover the farm, he needs to re-establish this operation for additional income. He has not had any problems with anyone in the past and sees no reason why the gravel plant can't be re-established.

Commissioner Miller asked how many loads per week will be taken out from this operation.

Mr. Whitworth said on a busy day, probably 3 loads per day. It is a one man operation.

Commissioner Thompson asked if he anticipates any hiring in the future.

Mr. Whitworth said he does not. There is not much of a profit margin to pay workers compensation or insurance.

Commissioner Atwill asked if this is on a named creek.

Mr. Whitworth said it is Fowler Creek.

Commissioner Atwill asked if this drains into Cedar Creek.

Mr. Whitworth said it does, about two miles down.

Commissioner Miller asked if Mr. Whitworth had the DNR permit.

Mr. Whitworth said he does not and is going through the procedure to obtain it. One of the steps is to get Commission approval before he can get the permit.

There were no additional questions and the Commissioners thanked Mr. Whitworth for speaking.

Commissioner Atwill asked if there is anyone else present that would like to speak for or against this request.

Clair DuCharme said she lives directly downstream from Mr. Whitworth and is very concerned about the noise and wild life in the area. She has had a problem with Mr. Whitworth in the past. He had a hog operation and several of the hogs went feral, they were loose all the time appearing on my property. He did not take care of them and was cited for animal neglect. He claimed they were not his hogs. This is someone that should not be in charge of the creek.

Commissioner Miller asked if she lived there when Mr. Whitworth's father had the operation.

Ms. DuCharme said she was and did not hear him that often. She does not understand a commercial business on agricultural property.

Commissioner Miller said she surmised that it is hard to find a commercial creek in the city

for the purposes of hauling rock.

Commissioner Atwill asked if this is a working farm.

Ms. DuCharme said it is not. It is her home on 20 acres.

There were no further questions and the Commissioners thanked Ms. DuCharme for speaking.

Commissioner Atwill asked if there is anyone else present that would like to speak on this issue. There were no other speakers.

Mr. Shawver said that before the hearing is closed, he would like to add that his office, after the P & Z meeting, received a fax from Patricia Nichols of a letter she sent to the Director of Land Reclamation Program with the DNR objecting to the issuing of the permit. She is the trustee of the Nellie Nichols estate. This was not available at the time of the P & Z meeting so it is presented now to make sure it is part of the public record.

Commissioner Atwill asked if this permit is a prerequisite to getting the DNR permit.

Mr. Shawver said that DNR now requires that any local permits required are obtained before they issue their permit.

Commissioner Atwill asked if there is any idea on what the DNR posture is regarding this permit.

Mr. Shawver said they have not been informed as to that. The DNR does issue quick gravel recovery permits state wide and allows these recoveries to take place on state property and those managed by the DNR.

Commissioner Thompson asked what the criteria are they look at for the issuance of their permits.

Mr. Shawver said it is more of an operational issue. There is a threshold of recovery before filing a reclamation bond with the DNR because it is different than a land reclamation. The process is to protect the creek and not to allow any mining out of the creek. All gravel removed must be above the water line. No dredging and any screening is done within a buffer area.

Commissioner Thompson asked how often the DNR monitors the situation. Reviewing the letter from Patricia Nichols, it suggests that this creek has become so much wider and shallow over time. How often do they review the situation.

Mr. Shawver said he doesn't know but when you have gravel deposited on a creek and it is not removed, it does push the stream bed. If removal is properly done, it can enhance the channel and diminish erosion. How often DNR inspects is probably a matter of budgetary approval on their end.

Commissioner Atwill asked if this is granted, how long does it run.

Mr. Shawver said Conditional Use Permits, unless restricted with sunset provisions, run indefinitely unless abandon or non-use by applicant or heirs for a period of 12 months which would cause the permit to become void.

Commissioner Atwill said that the correspondence from Patricia Nichols notes that she is representing the estate of Nellie Nichols and heirs and points out that when Nellie Nichols was alive, she gave Mr. Whitworth permission to do this. It points out that she is concerned about several things, including blasting. Is blasting allowed.

Mr. Shawver said there is no blasting. Creek gravel recovery is a natural process.

There were no further comments or questions and no additional speakers. Commissioner Atwill closed the Public Hearing and asked for further discussion from the Commission.

Commissioner Miller asked if it is possible to condition the request for a year to then evaluate to make sure there are no problems.

Mr. Shawver said that there can be Staff Reviews and Commission Reviews on CUP's.

Commissioner Miller said this could limit some of the concerns. There can be an opportunity to withdraw the permit if there are problems.

Commissioner Atwill asked about the procedure for doing something as suggested by Commissioner Miller.

C. J. Dykhouse said that there would need to be conditions put in the permit that talk about operations consistent with the DNR and have an intentional review. There would then have to be a revocation process, if at that time, the testimony indicated non-compliance.

Commissioner Atwill asked if this would come back to the Commission in one year.

Mr. Shawver said some CUP's have been couched on Staff Review to make sure of compliance. There have been site visits as well. Under our regulations, anytime we receive evidence that something is not being operated in accordance with the conditions approved by the Commission, there is always the opportunity to have the applicant show cause why their permit should not be revoked. When the Commission has revoked permits in the past, there is a process where the applicant is notified and there is a hearing to determine the outcome.

Commissioner Miller said that most recently, the Commission has asked for a Staff Review and a report that the applicant has been meeting the conditions set forth in the CUP. The file can be tagged for a one year review and report to the Commission. This has worked well in the past and should be added as a condition of this permit.

There were no further comments or questions.

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby approve the request by Matthew Whitworth for a permit for a creek gravel recovery operation on 270 acres, located at 7401 E Gilpin Rd., Ashland, with the following conditions:

- The recovery operation will operate Monday through Friday only.
- Hours of operation are limited to daylight hours of operation as defined by the Boone County Zoning Regulations of April through October 6:00 AM to 9:00 PM Central Daylight Time and November through March 6:00 AM to 7:00 PM.
- Applicant is required to be in compliance with the permits issued by Missouri Department of Natural Resources for their activities on the property.
- Staff Review at the one year anniversary of the permit issuance by DNR to insure compliance with said permit.
- Report out to County Commission with the findings of the Staff Review.

Commissioner Miller seconded the motion.

The motion carried 3 to 0. **Order #414-2014**

2. Public Hearing and Petition submitted by The Heartland Trust A and The Heartland Trust B to vacate Lots 4 and 5 of Leatherwood Hills Block 2 Subdivision as shown in Plat Book 11, Page 20 of Boone County Records.

Stan Shawver said the Commission has received a request from Mark Grant, trustee for Heartland Trust for permission to vacate lots 4 and 5 of the Leatherwood Hills, Block 2, which was platted in 1976. It is on Old Plank Road at the intersection of Route K. It is currently zoned R-S. The lots are vacant and the applicant is interested in vacating and attaching to the adjoining land he owns.

In accordance with Subdivision Regulation 1.8.1.3, no subdivision plat may be vacated in whole or part unless the owner of the land for which vacation is sought petitions the County Commission for the vacation in writing and the County Commission finds after public hearing that vacation will not adversely affect the character of the neighborhood, traffic conditions, circulation, the proper location, alignment and improvement of streets and roads within and adjacent to the subdivision, property values within the subdivision, public utility facilities and services, and will not generally adversely affect the health, welfare, or safety of persons owning or possessing real estate within the subdivision to be vacated or surrounding real estate.

Commissioner Miller asked what property connects these two lots.

Mr. Shawver said it is the property to the north. Mr. Shawver reviewed the location of the lots with the Commissioners by visual observation of an aerial view as displayed on the overhead projector.

Commissioner Atwill asked why the owner is doing this.

Mr. Shawver said that he would like to attach it to the rest of the property he owns.

Commissioner Atwill opened the Public Hearing and asked if there is anyone present that would like to speak on behalf of the applicant.

Jay Gebhardt said he is a civil engineering with A Civil Group and is representing the owners of the property. They have these two vacant lots that are surrounded by the larger, 30 acre, lot. He also owns a home in the Highlands Subdivision to the north of the larger piece of property. He will keep the northern part of the adjoining property and the southern portion will be sold. This is the first step in the process of dividing the property into two lots in order to sell off the lower half. This has no impact on the neighborhood.

Commissioner Atwill asked if there is anyone else present that would like to speak on this request. There were no additional speakers or questions from the Commission and Commissioner Atwill closed the Public Hearing.

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby approve the petition submitted by The Heartland Trust A and The Heartland Trust B to vacate Lots 4 and 5 of Leatherwood Hills Block 2 Subdivision as shown in Plat Book 11, Page 20 of Boone County Records.

Said vacation is not to take place until lots 4 and 5 are included in a survey or subdivision plat that complies with Boone County Subdivision Regulations.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #415-2014**

3. Receive and accept the following plats:

- **Akeman Bridge Plat 1. S11-T49N-R13W. A-R. Mary L. Roberts, owner. Kevin M. Schweikert, surveyor.**
- **Woodie Proctor. S22-T47N-R13W. A-2. Russell Schoen, owner. Kevin M.**

Schweikert, surveyor.

- **Country Boys. S15-T50W-R13N. A-2. H-Town Properties LLC, owner. Steven R. Proctor, surveyor.**
- **Sunrise Lot 100. S12-T48N-R12W. R-S. Vida Schneider, owner. Steven R. Proctor, surveyor.**
- **Settlers Ridge Plat 2A. S9-T49N-R12W. R-D. T-Vine Development Corp., owner. James R. Jeffries, surveyor.**

Stan Shawver said there is a correction to Country Boys. It should be S15-T50N-R13W.

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

- Akeman Bridge Plat 1. S11-T49N-R13W. A-R. Mary L. Roberts, owner. Kevin M. Schweikert, surveyor.
- Woodie Proctor. S22-T47N-R13W. A-2. Russell Schoen, owner. Kevin M. Schweikert, surveyor.
- Country Boys. S15-T50N-R13W. A-2. H-Town Properties LLC, owner. Steven R. Proctor, surveyor.
- Sunrise Lot 100. S12-T48N-R12W. R-S. Vida Schneider, owner. Steven R. Proctor, surveyor.

- Settlers Ridge Plat 2A. S9-T49N-R12W. R-D. T-Vine Development Corp., owner. James R. Jeffries, surveyor.

Commissioner Miller seconded the motion.

The motion carried 3 to 0. **Order #416-2014**

4. First reading; Consultant Services Agreement with Shafer, Kline & Warren, Inc.

Stan Shawver said this is a contract to provide preliminary engineering design services for the replacement of four structures located at BR 3380002 Rangeline Road, LWC20440 Vemer's Ford Road, 2076 Marshall Lane and BR 2650011 Remie Road.

There were no comments or questions.

Commissioner Atwill stated this is a first reading and requested the Deputy County Clerk to schedule this item for a second reading at the next available commission meeting with appropriate order for approval.

County Counselor

5. Second reading; Budget Revision for Pending Federal Litigation (1st read 8-28-14)

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby approve the following budget revision for the County Counselor regarding pending federal litigation.

Department	Account	Dept. Name	Account Name	Decrease \$	Increase \$
1123	86800	Emergency & Contingency	Emergency	240,000	
1126	71105	County Counselor	Legal Services		240,000

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #417-2014**

Commission

6. 1st & 2nd reading; Proclamation Recognizing September 2014 as Childhood Cancer Awareness Month

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby recognize September 2014 as Childhood Cancer Awareness Month.

Commissioner Miller seconded the motion.

The motion carried 3 to 0. **Order #418-2014**

7. 1st & 2nd reading; Organizational use of the Government Center Chambers and Courthouse Plaza by MU Voz Latina on September 27, 2014

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby approve the Organizational Use of the Government Center Chambers and Courthouse Plaza by MU Voz Latina on September 27, 2014 from 2:00 p.m. to 7:00 p.m.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #419-2014**

8. Public Comment

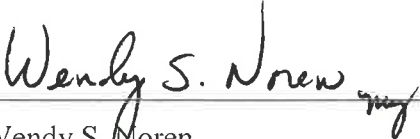
None

9. Commissioner Reports

None

The meeting adjourned at 7:38 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