

TERM OF COMMISSION: January Session of the January Adjourned Term

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

PRESENT WERE: Presiding Commissioner Dan Atwill
District I Commissioner Fred Parry
District II Commissioner Janet Thompson
Director Resource Management Stan Shawver
Planner Uriah Mach
Right-of-Way Agent Natalie Meighan
County Counselor C. J. Dykhouse
Deputy County Clerk Mike Yaquinto

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

Resource Management

1. First Reading: Petition for Vacation of a Public Road: A Portion of Brushwood Lake Road.

Natalie Meighan said she has provided copies of the petition signed by the appropriate number of residents. Due to the re-alignment of Brushwood Road, the city has taken over maintenance of the new section. The older section is still, technically, county right-of-way. It is adjacent on both sides and has the same owner.

Commissioner Parry asked about the relationship of those that signed the petition and the property.

Ms. Meighan said they are all within the same political township and that is the only requirement. Second reading will be at the next adjourned term meeting in April.

There were no further 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 adjourned term meeting scheduled in April.

2. First Reading: Petition for Vacation of a Public Road: A Portion of Old JJ

Natalie Meighan said this is a section up towards Centralia. It again, has a signed petition from the residents of the political township. The county has no interest in this section. This would just be a clarification for record keeping purposes. Both adjacent owners have signed the petition.

Commissioner Parry asked how the right-of-way is split.

Ms. Meighan said at the center line.

There were no further 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 adjourned term meeting scheduled in April.

3. **Request by Jonell Van Dam and Jerry and Rebecca Campbell to rezone from A-1 (Agriculture) to A-1P (Planned Agriculture) and to approve a Review Plan for Van Dam Site on 21.62 acres, more or less, located at 9510 W Graham Rd. and 4920 N Boothe Ln., Rocheport.**

-Rezone

-Review Plan

Stan Shawver read the following staff report:

This request was considered by the Planning & Zoning Commission during their December 21, 2017 meeting.

The minutes for the Planning and Zoning Commission meeting of December 21, 2017, along with the Boone County Zoning Regulations and Subdivision Regulations are entered into the record of this meeting.

The Planning & Zoning Commission conducted a public hearing on this request during their December 21, 2017 regular meeting. There were seven members of the commission present during the meeting.

The subject property is located on Graham Road and Boothe Lane, approximately 3 miles northeast of Rocheport. The property is presently composed of two tracts, one that is 10.12 acres in size, the other being 11.49 acres in size. There is a dwelling and wastewater system present on each tract. The property is zoned A-1(Agriculture) and is surrounded by A-1 zoning. This is all original 1973 zoning.

This proposal seeks to rezone the property from A-1(Agriculture) zoning, which has a 10-acre minimum lot size, to A-1P (Planned Agriculture) that has a 10 acre per residential unit density. This change allows for a lot smaller than 10 acres to be created,

so long as there is no more than 1 residential unit per 10 acres. There are currently 2 residential units on the combined 21.61 acres and that number of units per 10 acres will not change under this planned rezoning.

The Boone County Master Plan identifies this area as being suitable for agriculture and rural residential land uses. The Boone County Master Plan designates a sufficiency of resources test for the evaluation of zoning changes where each proposal is evaluated to see if sufficient utility, transportation, and public safety infrastructure is in place to support the change in zoning. The sufficiency of resources test provides a “gatekeeping” function. Failure to pass the test should result in denial of a request. Success in passing the test should result in further analysis.

Utilities: The subject property is in Consolidated Public Water Service District #1, the Boone Electric Cooperative service area, and the Boone County Fire Protection District. There is no public sewer available in this area as provided by the Boone County Regional Sewer District. Water infrastructure available on Boothe Lane is a 10” water line providing 850 gallons per minute and 200 gallons per minute available on Graham Road from a 4” water line. The line along Graham Road is not capable of meeting fire protection requirements or supporting hydrants.

Transportation: The property has direct access on to Graham Road and Boothe Lane, both publicly-dedicated, publicly-maintained rights-of-way, with Boothe being gravel and Graham being chip-and-seal surfaces.

Public Safety: The property is in the Boone County Fire Protection District, with the station at Midway being closest at 4.16 miles for service.

The property scored 26 points on the rating system.

Zoning Analysis: This proposal seeks to take advantage of the density present on the 21 acres of property to create a 4.4-acre lot around the Graham Road house and leave the remainder of the property with the Boothe Lane house.

On reviewing the proposal, there are outstanding technical issues with the plan document.

The Review Plan does not meet the technical requirements that are contained in the Zoning Regulations Section 6.4.6. Specifically, it fails to identify the use of existing structures on the property and within 200 feet of the property. It also fails to show the location of easements along Boothe Lane and Graham Road.

The list of Allowed Uses for Lot 1, specifically school, place of worship, and veterinary clinic, should be revised to reflect the limited infrastructure available along Graham Road; as all these uses require hydrants and fire protection. Both lists of Allowed Uses (Lot 1 & Lot 2) must be revised to indicate which uses are Permitted Uses and which uses are Conditional Uses. Conditional Uses still require going through the conditional use process in addition to being shown under the Allowed Uses section on the approved plan.

Staff recommends approval of the rezoning request and attached review plan with the following conditions:

That the Review Plan be revised to show the use of existing structures on and within 200 feet of the property as required by the Zoning Regulations 6.4.6.

That the Review Plan be revised to show the easements along Boothe Lane and Graham Road.

That the Allowed Use list be revised as follows:

Allowed Uses:

Lot 1

Permitted Uses:

Agricultural Activity which shall include greenhouses and nurseries

Home Occupation

Family Day Care Home (maximum of six children) and Group Day Care Home (maximum of ten children) provided that the Day Care Home is (1) in compliance with all state regulations and (2) meets all the criteria for a Home Occupation.

Single-Family Dwelling

Lot 2

Permitted Uses:

Agricultural Activity which shall include greenhouses and nurseries

Home Occupation

Family Day Care Home (maximum of six children) and Group Day Care Home (maximum of ten children) provided that the Day Care Home is (1) in compliance with all state regulations and (2) meets all the criteria for a Home Occupation.

Single-Family Dwelling

Equine Boarding Facility for a maximum of six animals on a minimum 10-acre tract

Equine Ranch on a minimum 10-acre tract

Conditional Uses:

Kennel or Hobby Kennel

Equine Boarding Facility for more than six animals on a minimum 10-acre tract

Animal Training Facility on a minimum 10-acre tract

Riding School

Transmission Facility

Bed and Breakfast

Privately operated outdoor recreation facility

The Planning & Zoning Commission conducted a public hearing on this request during their December 21, 2017 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 rezoning request contingent upon submittal of a review plan showing a revised lot allocation. That motion carried by a vote with a vote of 4-3. A motion was then made to approve the review plan subject to the conditions as stated in the staff recommendations. That motion carried by a vote of 5-2.

Commissioner Parry inquired about the transmission facility and how it fits into the Conditional Use Permit and what it is.

Mr. Shawver said it is a cellular tower.

Commissioner Thompson asked if the corrected review plan has been submitted.

Mr. Shawver said it has.

The Commission had no further questions at this time.

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

Jerry Campbell said he is the owner of the adjacent property, next to his mother's property. She has a desire to give up a portion of the property to lessen her burden.

Commissioner Atwill asked if there is anyone else to speak to this request. There were no speakers and Commissioner Atwill closed the public hearing.

Commissioner Parry moved on this day the County Commission of the County of Boone does hereby approve the request by Jonell Van Dam and Jerry and Rebecca Campbell to rezone from A-1 (Agriculture) to A-1P (Planned Agriculture) on 21.61 acres, more or less, located at 9510 W Graham Rd. and 4920 N Boothe Ln., Rocheport.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #1-2018**

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby approve the request by Jonell Van Dam and Jerry and Rebecca Campbell to approve a Review Plan for Van Dam Site on 21.61 acres, more or less, located at 9510 W Graham Rd. and 4920 N Boothe Ln., Rocheport, with the following conditions:

1. That the Review Plan be revised to show the use of existing structures on and within 200 feet of the property as required by the Zoning Regulations 6.4.6.
2. That the Review Plan be revised to show the easements along Boothe Lane and Graham Road.
3. That the Allowed Use list be revised as follows:

Allowed Uses:

Lot 1

Permitted Uses:

Agricultural Activity which shall include greenhouses and nurseries

Home Occupation

Family Day Care Home (maximum of six children) and Group Day Care Home

(maximum of ten children) provided that the Day Care Home is:

(1) in compliance with all state regulations and

(2) meets all the criteria for a:

Home Occupation.

Single-Family Dwelling

Lot 2

Permitted Uses:

Agricultural Activity which shall include greenhouses and nurseries

Home Occupation

Family Day Care Home (maximum of six children) and Group Day Care Home

(maximum of ten children) provided that the Day Care Home is:

(1) in compliance with all state regulations and

(2) meets all the criteria for a

Home Occupation.

Single-Family Dwelling

Equine Boarding Facility for a maximum of six animals on a minimum 10-acre tract

Equine Ranch on a minimum 10-acre tract

Conditional Uses:

Kennel or Hobby Kennel

Equine Boarding Facility for more than six animals on a minimum 10-acre tract

Animal Training Facility on a minimum 10-acre tract

Riding School

Transmission Facility

Bed and Breakfast

Privately operated outdoor recreation facility

Commissioner Parry seconded the motion.

The motion carried 3 to 0. **Order #2-2018**

4. Request by Henry J. Waters III to rezone from A-1 (Agriculture) to A-1P (Planned Agriculture) and approve a Review Plan for Turkey Creek Estates Plat 3 on 4.07 acres, more or less, located at 5150 E Deer Park Rd., Columbia.

-Rezone

-Review Plan

Stan Shawver read the following staff report:

The subject property is located on Deer Park Road, east of Highway 63, approximately 2 miles south of Columbia. The property is currently zoned A-1P having been rezoned from A-1 in 1998. A Revised Review Plan was approved in 2010 to add an additional building lot and potential for a third lot. In 2017 a subdivision plat was approved to create the third building lot. Three building lots is the maximum number of dwelling units allowed by the original Review Plan and subsequent Revised Review Plan. The current plan under consideration would allow the owner of Lot 1 to add approximately 4 acres to that lot.

Adjacent zoning is A-1 to the north and east, and A-1P to the west and south. The property is occupied by a single- family dwelling and a barn.

The Master Plan designates this property as suitable for agricultural and rural residential land uses. The Master Plan also identifies a “sufficiency of resources” test for determining whether there are sufficient resources available for the needs of the proposal.

The resources necessary to serve the proposed development can be broken down into 3 general categories; utilities, transportation, and public safety services.

Utilities:

Consolidated Water has a 2" waterline along the north side of Deer Park Road, fire flow is not available.

Boone Electric provides electric service.

On-site systems as permitted by the Columbia/Boone County Health Department will provide wastewater treatment.

Transportation: The lot will continue to have direct access on to Deer Park Road.

Public Safety: Fire protection will be provided by the Boone County Fire Protection District.

Zoning Analysis: The overall density of three dwelling units, for the development, will remain the same. The list of Allowed uses reflects and is consistent with the level of service available to the property. Uses requiring fire flow have not been included in that list.

A subsequent subdivision plat will be necessary to incorporate the additional acreage into Lot 1. As currently drawn, the future Lot 1A does not meet the minimum lot depth of 250-feet at its east end. In order to plat the proposed configuration, the owner will need to obtain a variance from the Board of Adjustment. If that variance is not granted the applicant will need to revise the Review Plan to incorporate a compliant design.

The property scored 41 points on the rating system.

Staff notified 15 property owners about this request.

Staff recommends approval of the plan subject to the following condition:

1. Prior to approval of a Final Plan, the applicant must either obtain a lot depth variance from the Board of Adjustment or submit a Revised Review Plan that complies with the Subdivision Regulations.

The Planning & Zoning Commission conducted a public hearing on this request during their December 21, 2017 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 rezoning request and the review plan. That motion carried unanimously.

The Commissioners had no questions.

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

Mary Waters said she would like to gain control of this portion for future preservation of the property.

Commissioner Atwill asked if there is anyone else that would like to speak to this request. There were no additional speakers and Commissioner Atwill closed the public hearing.

Commissioner Parry moved on this day the County Commission of the County of Boone does hereby approve the request by Henry J. Waters III to rezone from A-1 (Agriculture) to A-1P (Planned Agriculture) on 4.07 acres, more or less, located at 5150 E Deer Park Rd., Columbia.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #3-2018**

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby approve the request by Henry J. Waters III to approve a Review Plan for Turkey Creek Estates, Plat 3, on 4.07 acres, more or less, located at 5150 E Deer Park Rd., Columbia.

Commissioner Parry seconded the motion.

The motion carried 3 to 0. **Order #4-2018**

- 5. Request by Michael Kent Gilbane to revise a previously approved Review Plan for Gilbane Rebuilders on 2.5 acres located at 10371 E I-70 Dr NE, Columbia. (appeal - tabled 10/31/17)**
 - Rezone**
 - Review Plan**

Stan Shawver read the following staff report:

The Planning & Zoning Commission conducted a public hearing on this request during their October 19, 2017 regular meeting and it was on the October 31, 2017 County Commission agenda. At that time the applicant appeared before the County Commission and requested that the matter be tabled until the January 2, 2018 County Commission meeting.

The subject property is located on I-70 Drive Northeast, approximately 1 ½ miles to the east of the intersection of State Route Z and Interstate 70. The property is located inside the Columbia school district and the Boone County Fire Protection District. The Master Plan describes this area as being suitable for residential land use. The property is 2.7 acres in size and zoned M-LP (Planned Light Industrial). On the property, there is an existing commercial building and a large fenced area. The property has R-M (Residential Moderate Density) to the north, east, and west, with A-2(Agriculture)

zoning to the south across Interstate 70.

The Planning and Zoning Commission recommended denial of the original request in February 2000. The applicant appealed the request to the County Commission who approved the rezoning. The Commission approval included several conditions imposed to aid in making the use compatible with the surrounding neighborhood and as such, limiting the intensity of the use. The rezoning, approved by the County Commission on Commission Order 64-2000, dated February 29, 2000, has the following conditions:

1. That all stormwater is retained on the property.
2. That an 8' privacy fence where appropriate to protect the residential area.
3. That there will be no guard dog on the premises.
4. That there will be no more than 15 cars that are not completed outside the building at any time.

That the Planning & Zoning Staff would work with the applicant for appropriate landscaping on the property. The review plan, approved by the County Commission on Commission Order 178-2000, dated May 1, 2000, with the following conditions:

1. That all stormwater is retained on the property.
2. That an 8' privacy fence where appropriate to protect the residential area.
3. That there will be no guard dog on the premises.
4. That there will be no more than 15 cars that are completed outside the building at any time.
5. That the Planning & Zoning Staff would work with the applicant for appropriate landscaping on the property.

The applicant is requesting a revision to the approved M-LP (Planned Light Industrial) Final Plan on this property. The revisions contained in the proposal include:

- Number and Type of Display Vehicles: The applicant wishes to expand the number of display cars from 15 to 30 and to include four recreational vehicles (RVs) as a type of display vehicle bringing the total number to 34.
- Display Surface: The original plan required a chip seal surface. The applicant proposes to relax that standard to gravel.
- Wastewater: The original approval was based on oversight of the wastewater system by the Department of Natural Resources. A note on the proposed plan indicates that the DNR permit was not renewed based on no reportable discharge. Oversight of the wastewater system by a governmental entity is mandatory. The applicant has not addressed this issue.
- Based on language in the proposed Landscaping Plan it is difficult to determine whether the applicant intends to comply with the original condition regarding vegetative screening.

The Boone County Master Plan identifies this area as being suitable for residential land uses. The Boone County Master Plan designates a sufficiency of resources test for the evaluation of zoning changes where each proposal is evaluated to see if sufficient utility, transportation, and public safety infrastructure is in place to support the change in zoning. The sufficiency of resources test provides a “gatekeeping” function. Failure to pass the test should result in denial of a request. Success in passing the test should result in further analysis.

Utilities: The subject property is located in Public Water Service District #9, the Boone Electric Cooperative service area, and the Boone County Fire Protection District.

Transportation: The property has direct access on to I-70 Drive Northeast, a publicly-dedicated, publicly-maintained right of way.

Public Safety: The property is located in the Boone County Fire Protection District, with the station at Lake of the Woods being closest for service.

Zoning Analysis: The full build-out of this proposal more than doubles the number of display vehicles previously approved on this property. Since its approval in 2000, this property has been a steady source of zoning violation complaints and requests for compliance by the neighboring property owners. The most recent complaint was received in April of 2014. Code enforcement officers contacted the owner in response to this complaint about the violations and failure to abide by the conditions. The property owner took limited corrective action but failed to work out a compliance schedule to bring the property into full compliance. The primary concern was the number of cars and the presence of RV's, which were not permitted under the commission orders and were the basis for the complaints. County staff was compelled to enlist the services of the County Counselor's office to enforce compliance with the conditions set by Commission Orders 64-2000 & 178-2000 in regard to status of the fence, and numbers and types of vehicles on the property. The case was submitted to the County Counsel's office in July of 2014, with compliance not reached until July 18, 2017.

Lack of Compliance with the approved Final Plan:

- The owner has yet to meet the prior condition requiring vegetative screening to the east. Seventeen years of growth of vegetative screening would have mitigated the impact of the use on neighboring property owners and may have limited or eliminated the complaints and requests for compliance by neighbors.
- The owner has yet to meet the prior requirement for a dust-free parking and display surface as shown on the May 2000 Final Plan. Since the applicant is

seeking a more intense use of the property relaxation of this standard would be inappropriate. The owner has not submitted any information justifying the relaxation of this standard.

- The existing display spaces and proposed display and parking spaces do not comply with the current 25' perimeter setback requirement. All display and parking spaces must be on a chip seal surface. Compliance with this standard is straightforward as existing spaces will need to meet this standard if this plan is approved.
- The existing wastewater system has yet to receive approval from the Columbia/Boone County Health Department. While the applicant believes that the level of service is insufficient to cross any thresholds, the health department does not have sufficient information to confirm that the required level of service for on-site wastewater is present.

Failure to Comply with Review Plan Standards: The review plan fails to comply with several standards as prescribed by the Boone County Zoning Regulations listed as follows:

- Uses are shown encroaching into the required 25-foot perimeter setback as required by Section 6.9.1
- A list of Allowed Uses was not provided as required by Section 6.1.2 and 6.4.1
- Required parking spaces are not delineated on the plan as required by Section 6.4.6
- The required landscaping plan is inaccurate and does not address the need to screen adjacent properties to the east and west as required by Section 6.4.3
- Does not show existing zoning districts within 200-feet of the property (Section 6.4.6)
- Does not show the location size and use of existing structures within 200-feet of the property (Section 6.4.6)

Approval of the request should be denied for the following reasons:

Approval of this request would result in an inappropriate increase in intensity of the use and relaxation of the conditions under which the business is required to operate. The purpose of conditions placed on a planned rezoning request is to make uses that are not necessarily in character with the existing surrounding zoning more compatible. When those conditions are not met, the property owner demonstrates a lack of interest in establishing compatibility with surrounding properties. The applicant has developed a track record of consistent non-compliance with the current conditions. Non-compliance with the conditions has consistently generated complaints from neighboring property owners and has required intervention by the County Counselor to compel compliance. The current final plan and conditions are the absolute minimum necessary to maintain the business at this location. Expansion of the use is unwarranted at this site.

Boone County Zoning Regulations Section 6.2.9 states that the Commission shall review the proposed development for conformity with the county Master Plan, Major Thoroughfare Plan, subdivision and zoning regulations, the point rating system and other land planning principles. As detailed previously in this report, the proposed review plan does not conform with Sections 6.1.2, 6.4.1, 6.4.3, three elements of 6.4.6 and Section 6.9.1.

Based on this information, staff recommended denial of the rezoning and review plan.

The Planning & Zoning Commission conducted a public hearing on this request during their October 19, 2017 regular meeting. There were six members of the commission present during the meeting.

Following the public hearing, a motion was made to recommend denial of the rezoning request. That motion carried unanimously. The applicant filed a timely appeal of that denial and the request was placed on the October 31, 2017 County Commission agenda. On October 31, 2017 the applicant appeared before the County Commission and requested that this request be tabled until the January 2, 2018 meeting.

Commissioner Parry asked what the P&Z vote was.

Mr. Shawver said it was 6 – 0, denial.

Commissioner Parry said the review plan called for 15 completed cars and why is there a distinction between completed and not completed cars.

Mr. Shawver said Mr. Gilbane buys cars that have been turned over by the insurance company, so they are in disrepair with body damage. The previous County Commission was concerned it would look like a junk yard. It is a residential area, so they thought having completed cars would be more compatible with the surrounding area.

Commissioner Parry said then it appears the applicant is not allowed to have uncompleted cars in the front of the building.

There were no further comments or questions at this time.

Commissioner Atwill opened the public hearing and asked if there is anyone present that would like to speak regarding this matter.

Nate Kohl said he is representing Mr. Gilbane and was not able to attend the last meeting when this issue was before the Commission. I assume you have the same review plan as I

have. In light of the staff comments, I would like to provide a copy that has some highlighted items that might clarify some issues.

I did not attend the commission meeting in 2000 when this plan was initially approved. I drew up the plan for Mr. Gilbane and when I was given the certified Commission Order, it was the first one as evidently, there are two different ones. I have the copy that has been in my file. It is 64-2000, issued February 29, 2000. It was my understanding, and Mr. Shawver has vocalized this very well, that the Commission did not want a salvage yard at this location. That was not something that the adjacent owners would be good with at all.

So, not having uncompleted cars visible was a key element to the plan from the very beginning. It is interesting to me, that the second order that came forth, contains the three-letter word that has caused Mr. Gilbane some confusion and that being the word NOT. The first Commission Order stated no more than 15 cars that are not completed. I think that would look like a salvage yard if you had these 15 cars in the front of the building. I believe the Commission said we don't want this looking like a salvage yard. I don't know if at that commission meeting anybody was really asking the question as to how many completed cars should be visible. That would be like telling Joe Machens Ford not to have more than 1,000 cars on their lot. People who sell cars get as many cars on their lot. You usually often find those people doing everything they can to encroach into right-of-ways to show their vehicles.

When Mr. Gilbane began to conduct his business, he is buying cars, fixing them up, keeping incomplete cars on the lot in the back and bringing them up front, pulling them in the garage to get fixed up. Occasionally, an incomplete car might be sitting out front of the garage door. I frequent his business and sometimes I would see one that is perhaps waiting on a quarter panel. Mr. Gilbane has tried to comply with the car situation.

Somewhere along the line, someone started complaining about his property. Mr. Gilbane did not think, initially, they were of any great substance because he believed he was not presenting something that looked like a salvage yard. It is true that he began to have more than 15 completed cars out there. That, in his view, was not unsightly. To be a good businessman, you don't want to create something that is unsightly.

At some point in the history of his business, he began to pick up some RV's that got wrecked and he figured out he could repair those and market them. Again, the question of RV's was never brought up in 2000. As I reviewed the current language, still on the books for what a vehicle is, a RV is included in the list of vehicles. I don't think Mr. Gilbane ever felt that he was in violation of the review plan concerning the RV's. I say all this to provide some history.

At a certain point in time, there came this counting game and Mr. Gilbane was reprimanded by county planners for having more than 15 cars. I don't know if he really believed that was a big deal. At some point in time, the county counsel got involved. That was 2014, same time as the last complaint. He then contacted me and said we need a revised review plan to show more than 15 cars. We did that, and we scheduled a concept review and I brought a review plan that showed more than 15 cars. It was not a pleasant meeting for me. I said very little at the meeting and I realized there was a great deal of friction between Mr. Gilbane and staff. I get along with staff. I want to serve my client, but I hated to be at that meeting. The end result of that meeting was that we were told not to come back until we have complied for five years.

In the interim, county counsel and Mr. Gilbane's counsel arrived at a compromise solution and that is why you have this piece of paper in front of you tonight. This compromise solution worked out by legal counsel was to get something on the books that would get Mr. Gilbane in compliance and meanwhile, don't put more than 15 cars, incomplete or not, out there so that can be demonstrated as a good faith effort.

With that, I have laid out enough history just to deal with this item because when I read the report on my plan, I was astonished that there were 6-7-8 citations that didn't meet county regulations. I am looking at that list and the first one shows an encroachment into the 25-perimeter foot set-back. When the plan was submitted in 2000, that particular regulation was not on the books. Mr. Gilbane constructed his business, his building, so that he would have enough room to have a bay out front of his building, 20-foot wide, where nothing is parked except for a vehicle ready to go in or out. Then he had an additional 20 feet where he displayed his vehicles. Sometimes he had two rows of cars, most recently just one row. If he is going to resolve this dispute and have more than 15 vehicles, he needs the two rows, he needs the 20-foot area to move the vehicles. If you go to the 25-foot set-back, he can't do that. That's why we can't figure a way to comply with the new 25-foot set-back.

Looking beyond that, a list of the allowed uses was not provided per section 6.1.2 and 6.4.1. I apologize, I did not put in the word "allow". My plan clearly says prepared land uses and it says Mr. Gilbane is going to do, on this property, what he has been doing for the last 17 years, buying the salvage vehicle, fixing it up and putting it up for sale. It is clearly on the plan although I omitted the word "allow"

The next item says required parking spaces were not delineated on the plan. I know that was on the first comment sheet I got back. I, unfortunately, did not do a good job of looking at what the printer produced for me. Sometimes the colors do not convert very well to grayscale and that is what happened on this plan. I've shown where all the vehicles are supposed to be on the plan and did not do that very well originally.

There are two vehicles spaces out front and space for four RV's and if he builds the future building, there will be 15 additional spaces. Also, referring to what the book says we need for employees, which amount to 27 cars, Mr. Gilbane has one employee and himself, so 27 cars for employees is a little excessive, but we do have room for them.

The required landscape plan is inaccurate. What we understand is staff wanting Mr. Gilbane to put up screening, right up to the highway, on both sides, which essentially eliminates the view of the cars from I-70 and that does not work well for his business. We are trying to communicate, sometimes not very effectively, that we are trying to do something about this misunderstanding about the number of vehicles on the property.

This just leaves us with the issue of the lagoon. Initially, Mr. Gilbane knew he was not going to have a lot of people use the bathroom facilities at this property. He does not have a public rest room, has only one employee and initially he built a one-cell lagoon there which was more than he would ever need. The state came and said he needed a two-cell lagoon. So, in 2004, I submitted an extensive plan for a two-cell lagoon to the state that was built to that plan and permitted. Its never filled up, not even the first cell and the second cell has been empty all this time. Water records indicate he has used maybe 3 to 4 gallons of water per month. We designed this facility with two 30' x 30' lagoons, which is enough to service 10 to 12 employees. No one takes a shower there and the toilet is used a couple of times a day.

The current regulations now say you can't have a lagoon at all. If Mr. Gilbane was not in compliance, they could have him do that. There is no discharge and the state said not to send them anymore reports since there are no violations.

The last comment I have as the design engineer and surveyor on this project is that this is an appropriate location for an auto salvage, reselling business. I would like to know how many points it has on the points rating system. That is almost always a factor in the staff report and I did not see that in this report. They see this as an inappropriate business out there and I have travelled that area and I see a lot of commercial businesses out there. I don't see why this is not appropriate. I thank you for your time and will be happy to answer any questions.

Commissioner Parry asked if the 8-foot fence was ever built.

Mr. Gilbane said it has always been there. The county came out and inspected the building and fence in 2001 when they issued me an occupancy permit.

Mr. Kohl said the fence was not completely built to what the original plan showed. That is a key point because Mr. Gilbane has re-built a portion of the fence making it higher, 10-feet, so the cars were not visible. He did that because the bushes were not planted and if anyone's house had a view of his back parking lot, he has tried to make sure they could not see the uncompleted cars.

Commissioner Parry asked if the surface of the parking lot has been paved.

Mr. Gilbane said it has not and that was based on staff coming out during the evaluation of the property.

Commissioner Thompson asked when that was.

Mr. Gilbane said it was in 2001 when they reviewed the property and staff did not say anything about parking or bushes at that time.

Mr. Kohl said that he submitted, during that time, that the gravel parking lot for display vehicles should be acceptable due to the 16 years of business and that dust generation has not been a problem. Display vehicles are not frequently moved. Clean, fresh rock, at least 1" in size, has been placed in this area with great success. It functions much like a block paving system, allowing maximum infiltration of rainfall, and minimizing storm water runoff. Mr. Gilbane is willing to comply on the requirement for a chip seal surface in those areas where vehicle traffic occurs, realizing that is a good compromise.

Commissioner Thompson asked if there is acknowledgement, as the record reflects, that Mr. Gilbane actually proposed the chip seal surface as a condition in 2000.

Mr. Kohl said yes, he would acknowledge that. In fact, his plan shows a dust free surface. He does not deny that at all.

Mr. Gilbane said it was a request along with the fence. It was certain conditions the county put down at the time and I am not denying that, and would the Commission like to see an aerial of what it looks like with two rows of cars.

Commissioner Parry said sure.

Mr. Gilbane said it was taken on May 7th and he is trying not to have two rows of cars.

Commissioner Parry asked about the DNR issue.

Mr. Gilbane said Boone County is aware of it. Boone County has a unique regulating system on waste water systems and they control any system below 3,000 gallons/day. This is my second lagoon. I am a small business person and many businesses have systems that last 20 – 30 years. I have replaced it a second time with an engineered, DNR system.

Commissioner Atwill asked Mr. Shawver if he had anything to add.

Mr. Shawver said he would like to reference the document that was submitted at the last meeting from the State of Missouri, Missouri Clean Water Commission and Missouri Department of Natural Resources addressed to Mr. Gilbane. It is a final judgment issued on March 14, 2014, citing violations of parts of the clean water commission. Citing lack of permits, re-applying for permits and setting a compliance schedule. To the best of my knowledge, none of this has been complied with.

Mr. Gilbane said the DNR relinquished all control of the system considering it is a non-discharge system and Boone County controlled the regulating of any system under 3,000 gallons/day and it falls under that jurisdiction.

Mr. Shawver said that is not the information he has received from the Health Department and the other entities.

Mr. Gilbane said he can certainly provide something from the Health Department regarding this.

Commissioner Atwill asked about the reasons given by the P & Z for their decision.

Mr. Shawver said continued non-compliance and not working toward resolving the things over the past 16 years. The plan did not comply with the regulations as set out.

Mr. Gilbane said his biggest crime is just being successful. In 2001, I set up my business and had no idea what to expect. Actually, originally, we asked for more cars at the time, but at that time, I thought, 15 cars, if I could sell that, it would be great. It has turned out, I have been a little more successful out there than I anticipated. We are not changing anything and are more than willing to work and compromise on issues such as the lagoon and chip seal.

When we had the 22" snow storm, I went out and helped the neighbors. I am not a bad resident. I would like to say we had no one come out and voice a complaint or opposition. We have had one opposition and that has been staff. I tried to comply and have had no complaints in 2007, 08, 09, 10, 11, 12 or 13, not until 14. We have tried, but there are only so many cars you can hide. I just can't let my employee live paycheck to paycheck because we now have too many cars and can't bring in anymore. I have tried with staff to comply.

Commissioner Parry asked what would motivate Mr. Gilbane to chip seal his parking lot.

Mr. Gilbane said the approval of the vehicles.

Commissioner Parry said going from 15 to 30 vehicles.

Mr. Gilbane said yes.

Commissioner Thompson said this seems to put the cart before the horse saying give me something in addition to what is already there and then I will comply with a provision that is already set.

Mr. Gilbane said doing this gets issues addressed that have been lingering and going on for some years. It also helps me address the violations that I have been incurring on and off for these years. I would have to resolve these issues prior to me being allowed to increase vehicles. So, I have to stay at 15 vehicles until I get chip seal and lagoon certification. I have to take care of that in lieu of having these vehicles. I'm 65 and probably won't work more than 5 or 6 years, enough to payoff my divorce debt and then that's it. I assume the chip seal and lagoon system would address the present issues we have. I can get along with 15 cars and no RV's.

Commissioner Thompson said she would be more likely to consider this if Mr. Gilbane were first to comply with the provisions that were in the prior order.

Mr. Gilbane said he agrees with that.

Commissioner Parry asked about the distinction between vehicle and RV.

Mr. Gilbane said the Department of Motor Vehicles lists cars, SUV's, Pickup Trucks, and RV's as vehicles. When filling out my sales reports, they are classified as the same thing.

C. J. Dykhouse said that the distinction between vehicles and RV's was expanded upon in the 2000 meeting minutes and there was a distinction made at the time of application. I feel compelled to say, to correct the record, when something is occurring on this property that does not comply with the Commission Order, it's a violation. This idea that Mr. Gilbane and

Mr. Kohl are articulating, that violations occur only when one gets a letter, is simply not how the law works. It is remarkable, in 20 years of practicing law, this is the first time when someone has articulated the position that it is only a problem if someone tells me it is a problem. I'm concerned about the norming off of that very little baseline, that I can violate as long as I want until someone complains and then address only these things that are issues of the complaint and the rest is not a violation. Actually, no chip seal is a violation as is the screening issue.

Commissioner Thompson said that what was said just a few minutes ago by Mr. Gilbane is that he is willing to address these requirements and so, I think the request to exceed the vehicle number and RV's are premature until there is a remedy to the current violations. For me, I would be willing to consider this were you not in current violation of the agreement.

Mr. Gilbane asked if the Commission make this decision on the basis that these things will be addressed.

Commissioner Parry said that this was done in 2001 and it did not happen. That is why this is an issue today. Mr. Kohl made a point in his earlier comments about the word "not" and could you elaborate on that.

Mr. Kohl said that when asked to revise the plan, he put the words in there "not more than 15 cars that are not completed." That was the end of it.

Commissioner Parry said that is 15 cars not completed vs. 15 cars that are completed.

Commissioner Thompson said the later order, dated May 1, 2000, says "no more than 15 cars that are completed outside the building at any time."

Mr. Shawver said that the first order was actually a re-zoning request and the Commission considered it without the review plan, but said you have to come back with a review plan. At that point in time, they had misspoken on the first order and corrected it on the second order. There was no review plan submitted, it was a re-zoning application. They then let him come back with a review plan and that is where the correction was made.

Commissioner Thompson said that was the order issued on May 1, 2000 which superseded the earlier order.

Mr. Shawver said that is correct.

Commissioner Parry asked that if this is denied tonight, is there a time restriction on whether this can come up again.

Mr. Shawver said that without substantial changes, they are barred from coming back for a one-year period.

Commissioner Thompson said by substantial, would that include compliance with items 1 through 5 as listed on the May 1, 2000 order.

Mr. Shawver said that would certainly help.

Commissioner Parry asked what the five conditions were on the May 1st order.

Commissioner Thompson said they were:

- All Stormwater is retained on the property
- An 8' privacy fence be built to protect the residential area
- No guard dog on the property
- No more than 15 cars that are completed outside the building at any time
- P&Z staff would work with the applicant for appropriate landscaping

Those were the conditions set forth on Commission Order 178-2000.

Commissioner Atwill asked if there is anyone else present that would like to speak to this issue. There were no additional speakers and Commissioner Atwill closed the public hearing.

Commissioner Parry moved on this day the County Commission of the County of Boone does hereby deny the request by Michael Kent Gilbane to revise a previously approved Review Plan for Gilbane Rebuilders on 2.5 acres located at 10371 E I-70 Dr NE, Columbia.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #5-2018**

6. Request by Danny Hill and Greg Logsdon to approve a Final Development Plan for Lot 4, Concorde South Plat 2 on 1.81 acres located at 4801 E Meyer Industrial Dr., Columbia.

Stan Shawver read the following staff report:

The subject property is 1.82 acres in size and located approximately 1/4 mile south of Columbia, on Meyer Industrial Drive. The property is zoned M-GP (Planned General Industrial). The M-GP was also rezoned in 2012. The property is currently vacant.

The M-GP plan has been revised to allow for construction of a sports training/recreation facility. This facility will allow for indoor baseball & softball training and conditioning. The Boone County Zoning Ordinance identifies three standards for approval of a Final Development Plan: all required information is accurately portrayed on the Final Plan, the Final Plan conforms to the approved Review Plan, and the Final Plan demonstrates compliance with all conditions, which the County Commission may have imposed on the Review Plan.

After review of the submitted Final Plan, staff has determined that the Final Plan meets the identified standards.

Staff recommends approval of the Final Plan.

Commissioner Parry asked if there is a set period to start the project.

Mr. Shawver said there is not.

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 Danny Hill and Greg Logsdon to approve a Final Development Plan for Lot 4, Concord South Plat 2 on 1.81 acres located at 4801 E Meyer Industrial Dr., Columbia.

Commissioner Parry seconded the motion.

The motion carried 3 to 0. **Order #6-2018**

7. Request by Westward Home Builders LLC to approve a Final Development Plan for North Battleground Development on 38 acres, more or less, located at 8321 E St Charles Rd, Columbia.

Stan Shawver read the following staff report:

The property is located on the north side of St. Charles Road approximately 1700-feet west of Route Z. In February 2017 the Planning and Zoning Commission recommended approval of a Rezoning from A-2 to R-SP and an accompanying Review Plan. The County Commission approved the rezoning and Review Plan, Commission Orders 90-2017 and 91-2017. The review plan was approved with three conditions:

1. Prior to approval of the final development plan the developer shall enter into a development agreement, addressing traffic impact mitigation, with Boone County.
2. Prior to final plan submission the developer shall submit preliminary water quality BMP calculations on Boone County Stormwater Forms for review and approval by the Director. The Director may require submittal of a revised review plan and preliminary plat if warranted by the findings of the preliminary calculations.
4. Prior to final plan approval the developer may submit a new annexation agreement with Columbia that does not require compliance with Columbia's Stormwater Regulations.
5. The Zoning Regulations state that the Commission shall approve a Final Development Plan when it is satisfied that:
 - All required information is accurately portrayed on the plan
 - The Final Plan conforms to the approved review plan
 - The Final Plan demonstrates compliance with all conditions, which the County Commission may have imposed on the Review Plan.

Staff has reviewed the plan. All required information is accurately portrayed, and the plan conforms to the review plan.

The conditions imposed by the County Commission have been complied with.

Staff recommends approval.

The Commissioners had no comments or questions.

Commissioner Parry moved on this day the County Commission of the County of Boone does hereby approve the request by Westward Home Builders LLC to approve a Final Development Plan for North Battleground Development on 38 acres, more or less, located at 8321 E St Charles Rd, Columbia.

Commissioner Thompson seconded the motion.

The motion carried 3 to 0. **Order #7-2018**

8. **Clear Creek Estates preliminary plat. S1-T47N-R13W. JQB Construction, Inc., owner. Timothy J. Crockett, engineer (report only).**

Stan Shawver read the following report for information purposes:

Clear Creek Estates preliminary plat is located on the east side of State Highway 163 approximately 1700 feet east of the intersection of Providence Road and State Highway 163. The property is 153.63 acres in size and contains a home that is proposed to be removed. This preliminary plat proposes the division of the property into 45 buildable lots, public streets, and four common lots. The property is zoned A-2 (Agriculture).

9. **Bethpage Estates preliminary plat. S19-T50N-R12W. A-2. Nathan King, owner. Kevin M. Schweikert, surveyor (report only).**

Stan Shawver read the following description for information purposes only:

Bethpage Estates preliminary plat is located at the northeast corner of the intersection of Sportsman Drive and Friendship Church Road, approximately 4 miles west of Hallsville. The subject property is 150 acres in size and zoned A-2 (Agriculture). The proposal divides off twelve lots, ranging in size from 3.05 acres to 5.15 acres, from the parent parcel.

10. **Second Reading: Annual Consultant Service Agreements. Allstate Consultants; CFS Engineers; Engineering Surveys and Services, LLC; Howe Company, LLC; Klingner & Associates, P.C.; Malicoat-Winslow Engineers, P.C.; Poepping, Stone, Bach & Associates, Inc.; Ross & Baruzzini; Scroggs Architecture, P.C.; Shafer, Kline & Warren. (1st Read 12-28-17)**

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby approve the attached 2018 Annual Consultant Service Agreements for Professional Services with:

Allstate Consultants, LLC

CFS Engineers

Engineering Surveys and Services, LLC

Howe Company, LLC

Klingner & Associates, P.C.

Malicoat-Winslow Engineers, P.C.

Poepping, Stone, Bach & Associates, Inc.

Ross & Baruzzini

Scroggs Architecture, P.C.

Shafer, Kline & Warren, Inc

The terms of the Agreements are stipulated in the attached Agreements. It is further ordered the Presiding Commissioner is hereby authorized to sign said General Consultant Services Agreements.

Commissioner Parry seconded the motion.

The motion carried 3 to 0. **Order #8-2018**

Commission

11. Public Comment

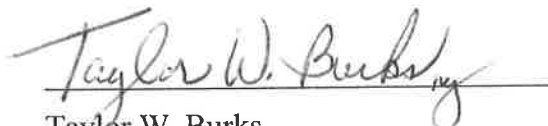
None


13. Commissioner Reports

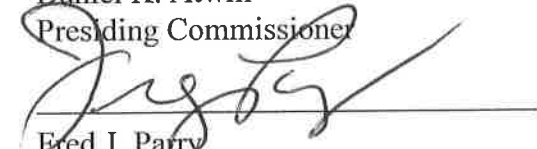
None

The meeting adjourned at 8:15 p.m.

Attest:


Taylor W. Burks
Clerk of the County Commission


Daniel K. Atwill
Presiding Commissioner


Fred J. Parry
District I Commissioner


Janet M. Thompson
District II Commissioner

