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**Benton County Planning Board
Public Hearing
Technical Advisory Committee Meeting**

TELLER
SOLICITORS
COUNTY, ARK

June 7, 2017

6:00 p.m.

Benton County Administration Building
215 East Central Avenue, Bentonville AR 72712

Meeting Minutes

PUBLIC HEARING:

Call to Order: The meeting was convened at 6 p.m. by the Planning Board Chair, Ashley Tucker

Roll Call: Bob Bracy, Jim Cole, Ron Homeyer, Terry Maienschein, Ashley Tucker and Rick Williams were present. Sean Collyge was absent.

Staff present: Kevin Gambrell – Planning Director, Taylor Reamer – Planning Division Manager, Tracy Backs – County Planner, Glenn Tracy – Building Official and were present.

Public Present: Twenty people signed the sign-in sheet.

Disposition of Minutes: May 17, 2017

Mr. Cole motioned to approve the May 17, 2017, Planning Board Meeting minutes. The motion was seconded by Mr. Maienschein. The motion carried 6-0.

General Public Comment: None

Old Business: None

New Business – Items for Public Hearing:

- I. **Lost Bridge Village Community Association Telecommunications Tower Review, #17-093 12487 Lodge Drive, Garfield 18-01362-000**

Representative: Marc Trollinger, Benton County Fire Marshal, 4700 Nelson Hollow Road, Lowell

Staff gave a presentation on the Lost Bridge Village Community Association Telecommunications Tower Review, #17-093 12487 Lodge Drive, Garfield 18-01362-000

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LEAH J. JENSEN
CLERK OF PROBATE
WAGON COUNTY, OR

Mr. Tucker: Mr. Trollinger, do you have anything to add?

Mr. Trollinger: Negative.

Mr. Tucker: I noticed that we had a couple of letters in the file that I would just like to bring up. We do have at least two of our volunteer fire departments who have written letters in support of the construction of the tower. Did we receive any feedback, e-mail or otherwise, late this afternoon that was negative in nature from the public or anything?

Mr. Reamer: Staff has not received any correspondence from any citizens in the area.

Mr. Tucker: Okay. Is there any future plan for co-location of cellular on this tower?

Mr. Trollinger: We have not been contacted for the cellular side of things of interest. There is a provision in the lease with the POA that if somebody comes to us, and they want to go on to it with cell phone that that can be done. There would be a splitting of the rental fees between the County and them. We are not looking to find a renter for that space, it is for emergency communications.

Mr. Tucker: It's the County's preference to co-locate wherever possible and that would, obviously, prevent another tower from being built if that is a possibility.

Mr. Trollinger: What we looked at when we started talking to Lost Bridge, is they have pretty good cell coverage up there now. There are some other towers quite a way away but they have pretty good coverage. So, we have not heard of any interest up there at this point. Obviously, that could change.

Mr. Bracy: So this is exclusive to telecommunications for emergency access?

Mr. Tucker: Currently.

Mr. Trollinger: When we discussed it with the POA originally, we advised them if a cellular company came to them or to us, they would probably have to come through Planning to add more of anything to that site. It was out of our wheelhouse, so to speak, to know all the regulations with that. We assumed that they would have to come to Planning to add anything.

Mr. Tucker: Okay.

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Mr. Homeyer: I guess for the general public, you are going to remove the current tower after you get this one operational, right?

CLERK
CLERK
CLERK

Mr. Trollinger: Yes. We are not reusing any of the antennas on the current tower. We are putting all new up. It will be a flip of a switch. We plan on using a Road Department crane to take out our old one and then dispose of it.

Mr. Homeyer: Just making sure because I didn't see it in the comments anywhere that you were taking the old one down. For general public, I just wanted to make sure that was pointed out that that would be removed.

Mr. Trollinger: The tower will be removed. The POA has requested that we leave the building for them to use as storage for their tennis courts and such.

Staff Comments: None.

Public Comments:

Adam Black, 2108 South 21st, Rogers

Mr. Black: I am here to speak on behalf of the Lodge at Whitney Mountain which is the owner of the property that completely surrounds on all sides this parcel where this (tower) would be placed, where it is proposed to be placed. I am a bit confused as to why there is no negative comment in the record. We did exchange e-mail with Mr. McGowen. We also met with him physically on the site. I am not sure why there is not a record of that in your account. Nevertheless, I am glad I showed up to speak.

The concern that we have number one, that I believe is of concern to everyone, is that although the documentation that was shown on the board showed that they had negotiated the access to the site with the property owner, they actually have not. They will be crossing our property without an easement in order to access this site.

Mr. Tucker: You do know that this is an existing tower.

Mr. Black: I do know that this is an existing tower that they are currently accessing without an easement. Yes, I am aware of that.

Mr. Tucker: Okay.

Mr. Black: I don't know if it is possible to pull back up the site map. The yellow highlighted....

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THE CLERK
BENTON COUNTY, ARK

Mr. Reamer pulls up the aerial view of the site.

Mr. Black: You can see there the roadway that is marked in the dark color that says Lodge Drive, the dark roadway is the public roadway marked in black with the green tag that says Lodge Drive. Where they would be exiting there, where the grey roadway is exiting toward the yellow box, from the point of exit on Lodge Drive, is our property. Until we received the notification in the mail, no one had even bothered to speak to us regarding this project. We were out of town during the public call in May. But shortly thereafter we spoke to Mr. McGowen. He met us on the site in order for us to discuss the concerns that we had. As I understand it, he went and spoke to one of the judges in Benton County who also concurred, as it has been expressed to us by Mr. McGowen, is also concerned about the easement required for access that they do not have in order to access this site.

So, the concern that we have, number one, is.... I don't know how many of you have been to Whitney Mountain Lodge, but it is one of the most elegant outdoor wedding facilities in many hundreds of miles. It is the highest point in Benton County. Literally the most beautiful scenery we have in Benton County seen from Whitney Mountain Lodge. If you have not seen it, I highly recommend you visit our website. There is a drone video there you are welcome to look at that shows the exterior views.

The placement of this tower being basically twice the height of the existing tower, is of great concern to us. We own land that we would be happy to donate to the relocation of the tower a few hundred feet to the west I guess it would be. To the upward direction on that map. We spoke to Mr. McGowen about this. The current placement there, as you can see with our facility, that area you see just to the lower portion from our building, is where people get married. We totally support a location of a 911 tower. We didn't have any real concern about the 80' tower that is there now because in comparison, it is significantly non-disruptive to our facility and what we do and the enjoyment of literally hundreds of thousands of people over the years.

It is unfortunate that the company spent \$20,000 or so already, in regard to this site prior to even speaking to the land owner they have to cross to get to it. That is unfortunate but we would strongly encourage a tabling of this or a relocation of this tower (I don't know what your procedures are.) to a more appropriate location in regard to the existing businesses that are present there. The placement of a 150' tower with a potential for ongoing additions. I don't know who he spoke to. I am in that building a lot of hours a week. Cellular service out in Lost Bridge is not good. I literally have an ATT guy in my speed dial. I call him once a month. He said, don't call me any more than once a month. It won't do you any good because our cell

service being so poor. I can't more strongly advocate for having a 911 tower but having it in a more practical location. Number one, for right of access which they do not possess and number two for the reduction of impact on the most pristine and beautiful view in the County. That's all I've got off the top of my head to say.

Mr. Bracy: What light-colored road?

Mr. Black: That's a private drive.

Mr. Maienschein: How have they been accessing the existing tower?

Mr. Black: Across my private drive. If they wanted to push the fact that they have been accessing it, there is no evidence of driving to their site. If they wanted to push the fact that they have been doing it for more than seven years to the existing site, if they want to get into that kind of position with us as the land owner, I hate to see that kind of thing be how a 911 tower goes up in Benton County.

Mr. Tucker: The tennis court, is that part of your property?

Mr. Black: It was originally part of the Lodge property. When we bought the Lodge, the entity that is the building just upward from us is the Lost Bridge Community Association building. The folks that we bought the property from it was deeded to them at the time of that sale. That was early 2002 when that deed happened. The Community Association was deeded the "yellow box." We talked to the folks when the existing 911 tower went up. It was several years after we bought the property but I couldn't say exactly when.

Mr. Tucker: Was access not granted at the time of the sale?

Mr. Black: That is correct. Access was not granted. The Community Association put some gravel down for people to park because historically people used to park over by their building and walk across our land, basically, over to the tennis court. You can see kind of in the upper corner there is a kind of gray patch that is gravel. We spoke to them about their ability to place some gravel there for people to park on which we didn't obstruct their ability to do that.

Another thing that may be more information that you need but it is our intention to utilize the portion of our property that is currently the bottom of that map for our next piece of development on the property which will cause the roadway that is currently there to be abandoned and parking to be built in the sort of upper portion of that "vee" greenspace. Without this easement, without proper written access, then we get into a

fight as to whether I can abandon my road that is now in a place that I don't want it. It's an issue that these folks haven't bothered to address going into their statement to you that they have negotiated with the property owners for access. That's not a fact. That's a false statement.

Mr. Tucker: That is a civil matter.

Mr. Bracy: Did I understand you right that you expressed to the Association that you would donate the piece of land upward of where it says "tower base?"

Mr. Black: I am absolutely happy to do that. I own all the land that is pictured to the north of where it says, "tower base" as well as everything you see to the north or the upward portion of it on that picture. I am absolutely happy to do that. Years ago, the water department out there at the time the two-ton loop got connected to the Lost Bridge Water Department, they have had issues because the top of the mountain is higher than where their tank is and there is a subdivision up there. We have a lot, basically that we would donate to their purpose of the future placement of a water tank to properly pressurize all of Lost Bridge rather than just the portion below us, as well as this tower to be utilized for public service in general. I wouldn't sell the lot for \$10,000 but I would be happy to donate it to that cause. Had I been asked, I would have said that three months ago but nobody bothered to ask.

Mr. Tucker: Okay. Thank you, sir. We appreciate it. I would like to continue the discussion or debate about the access. If proper access is not granted to the parcel, generally we don't have any regulation requiring access at the time of the hearing.

Mr. Gambrill: I am doing a plat scan by parcel ID. We have this .98-acre piece is showing up on some surveys that were dated from 1976. This piece of land where the tennis courts exist has old surveys. I am trying to come up with a survey that shows any description of an easement or any way to demonstrate that it is not land locked. This predates planning regulations. The fact that our current planning regulations are only as recent as 2014 but even prior to that, the earliest planning regulations we have was in the late '80's, well after the production of a .98 piece of land. Today, we don't create land locked parcels nor would we approve them; but the piece of land that we are talking about and access to it predate planning.

Mr. Cole: Do we have a copy of the deed tract that we could verify that there was no access retained at the time that the property was conveyed?

Mr. Gambrill: I don't think we did any deed research. With our GIS system and some of the tools we have in our office, we could certainly do that but we do not have

deed research. I am on the internet right now that allows you to search by parcel ID for this. Although there are dashed lines that say, "to Lodge Drive," it demonstrates the gray asphalt drive that's away from Lodge Drive. It's clearly private. It does not indicate whether there was or was not ever some sort of private easement agreement established. So, we don't know if there is a presence of an easement or not.

Mr. Cole: Should we table this application?

Mr. Tucker: The tower, as far as we know based on the discussion at TAC, is still functioning. While it has a lower coverage area than desired, it does serve the purpose it was built for. We would just expand to more housing beyond the area of its capabilities.

Mr. Bracy: Mr. Chairman, since it was brought up just now that the property owner is willing to donate land to the north of this location, what harm would it be to the communication to have that located to the north?

Mr. Tucker: Does Smith Communication do your research?

Mr. Trollinger: Yes. We contracted with them and started this last year. I am not really aware of some of the historical data prior to January.

Mr. Tucker: I know that you inherited this project. Is any of this a surprise to you?

Mr. Trollinger: Quite a bit of it. We have been using that tower. I have been with Benton County Fire for 20 years. We have had the northeast tower for that long. In '05, I think we added 20' to the top of tower to try to increase our coverage. We have been using it forever. I didn't know anything about easements. We have been dealing with the POA for this whole process up to now. They are the ones that granted everything...access to the tower...so this is kind of news to me.

Mr. Cole: Would you have any objections to tabling this until the research is done on the easement?

Mr. Trollinger: It would probably be in the best interest to do some more research. This is new information. Obviously, the County spent a lot of money to this point...\$25,000 or so.... getting all this done. I would hate to see that wasted. In looking at another location, it would be above me to make those decisions.

Mr. Tucker: Just so the public knows, the right of the County is that they could do this preeminently without asking our permission. The County has decided to go

through the Planning Board as a good policy to make the public well engaged in the process. While they have the right, it was the decision of the County to go ahead and bring this to the Board to give you this opportunity to hear what we hear. Obviously, to have your petition heard as well. It would be in the best interest to at least have Mr. Spence do the research to see if there is proper access to the site. I don't know how much it would cost to have Smith Communications tell you if that site would be suitable or not. I know from my own experience, moving an antenna 10' can make it completely useless. I have actually moved one at my home as much as 10' to make it work better.

Mr. Trollinger: My only concern of going to another lot with the County regulation of set back of the height of the tower plus 50', the Lodge Drive (the dark paved road) the lot is going to be in such a position to that road, that the discussed donation would possibility get into that setback area that we wouldn't be permitted to put a tower up into there. That is why this was a good location from the get go knowing that we didn't have that problem with a county road.

Mr. Tucker: The issue with a county road or even an occupied building is that in the winter ice sheets form on the tower and the wind tends to blow them off. They blow about the height of the tower plus between 20 to 50 percent of the height of the tower. If a piece of debris blows off it tends to blow at least the height of the tower when it falls. Towers don't collapse. They don't fall over. We don't want them to. We usually don't have that problem. It's usually the sheets of ice and things like that. I would entertain a motion either way at this point. It's really up to the Board.

Mr. Cole: I would motion that we table the application until research has been done as far as access to the lot that the tower will be constructed on.

Mr. Maienschein: Second.

Mr. Tucker: We have a motion and a second. This is a procedural vote so it can be done by voice or by raising of hands.

Mr. Homeyer: Mr. Chairman, before we vote I have a question. Are we going to break the notice chain by indefinitely by tabling this? I wanted to ask before I voted.

Mr. Tucker: No. Good point of discussion. It must be heard again in two weeks. It could be tabled again in two weeks or the applicant could request tabling it to a specific date which we would announce at the hearing.

THE CLERK
BENTLEY COUNTY, ARK

Mr. Reamer: I was going to bring up to the Board, tabling any project has to have a specific date that it will be heard at next.

Mr. Cole: I was worried about that.

Mr. Gambrell: This being essentially the Public Hearing, the folks attending tonight's Public Hearing will at least have a finite date. You are not asking for the applicant to resend written notice by a specified date. You are not asking the applicant to repost the signage by a specific date. The specified date has to come from the Board.

Mr. Cole: As part of this conversation, I would want to give it adequate time to do the due diligence either way. I don't see the next meeting as really adequate time to target it.

Mr. Gambrell: The first and third Wednesday of the month. The first Wednesday in July would be the 5th.

Mr. Tucker: We will meet on the 5th.

Mr. Cole: Do you think it will be adequate time? July 5th?

Mr. Tucker: Do you have a preference what date is called as a return? Two weeks or four weeks?

Mr. Trollinger: To be in best interest so that we are not rushed, I would say the four weeks.

Mr. Tucker: Okay.

Mr. Trollinger: As much as I want this thing to move forward, I want to do the due diligence.

Mr. Cole: I motion that we table the application until July 5th's meeting.

Mr. Maienschein: Second.

Mr. Tucker: We have a motion and a second. All in favor, raise your right hand. All opposed, same sign. Motion approved. We will bring it back on July 5th.

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II. Minnie Septic Waiver, #17-096, 16655 Dogwood Valley Road, Rogers; 18-04888-000

CLERK
PUBLIC CLERK
COUNTY, ARK

Representative: Troy Minnie, 16655 Dogwood Valley Road, Rogers

Staff gave a presentation on the Minnie Septic Waiver, #17-096, 16655 Dogwood Valley Road, Rogers; 18-04888-000

Mr. Tucker: Mr. Minnie, do you have anything else to add?

Mr. Minnie: No sir.

Board Comments: None.

Public Comments: None.

Mr. Cole motions to approve the Minnie septic waiver. Mr. Homeyer seconds the motion.

Motion approved 6 – 0.

III. Kidder Septic Waiver, #17-105, 12875 Reams Road, Gentry; 18-08471-000

Representative: Rex Kidder, 12875 Reams Road, Gentry

Staff gave a presentation on the Kidder Septic Waiver, #17-105, 12875 Reams Road, Gentry; 18-08471-000

Mr. Tucker: Mr. Kidder, just to confirm it in my mind: house, shop, house and shop?

Mr. Kidder: Now?

Mr. Tucker: That what you are future building.

Mr. Kidder: Yes, well, my dad's house and then my brother's and then the place that we are going to build. We were going to build a house and a shop all in one. We will just add on to it for money's sake. It is going to be easier to do that than it was to build a shop and then years later try to build a house.

Mr. Cole: Same family, the Kidder Family Trust?

Mr. Kidder: Yes, my uncle owns the whole deal.

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Public Comments: None.

TRACY L. JONES
CLERK
JEFFERSON COUNTY, ARK

Mr. Cole motioned to approve the Kidder septic waiver. Mr. Matenschein seconds the motion.

Motion approved 6 – 0.

IV. Church (Tufco Flooring) Site Plan Review, #17-106, 20807 + 20811 Arkotex Road, Siloam Springs; 18-13849-001

Mr. Tucker recused himself. Mr. Homeyer took over as Chair of the meeting.

Representatives: Kelsey Kreher and Emma Heron of Harrison, French and Associates (HFA), 1705 South Walton Boulevard, Bentonville

Staff gave a presentation on the Church (Tufco Flooring) Site Plan Review, #17-106, 20807 + 20811 Arkotex Road, Siloam Springs; 18-13849-001

Mr. Homeyer: Do you have any additional comments?

Ms. Kreher: No comments.

Mr. Homeyer: Is there any reason why the fire access lane around the building is not shown on the site plan as required by the Fire Marshal?

Ms. Kreher: I have an e-mail from Marc Trollinger on May 9th where he said, "After further review of our conversation of yesterday, I am okay with dropping the requirement for the fire access road." That was sent to Taylor (Reamer).

Mr. Homeyer: Okay.

Mr. Bracy: There is a two-hour fire wall here. How is that divided?

Ms. Kreher: The exact location of the fire wall hasn't been yet determined. I think it will be once the building is in place. Per the fire code, neither side will have more than 12,000 square feet so we don't need to sprinkler the building.

Mr. Bracy: If there is no roadway for a fire engine to go around this building, how will the Fire Department get to both sides of this fire wall? Can you go back to the Fire Chief's comments please? Number 4 says a fire access road is required around the building.

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Ms. Kreher: Right, that's why I have the e-mail from Mr. Trollinger, the Fire Marshal, where he states that he dropped that requirement. I can show you the e-mail if you like.

Mr. Bracy: No, that's fine.

Mr. Gambrill: Can you verify without passing it around that we have that e-mail? Staff has the e-mail. If you guys want it, you can have it.

Mr. Homeyer: That's fine. Looking at the dimensions, it's probably in compliance. I think you have to be within 150' of any point of the building. The front and rear drive will probably provide that coverage which is probably why he removed that requirement.

Mr Cole: Can you remind me from the TAC meeting what is the justification for the waiver on the landscaping?

Ms. Kreher: We mentioned the proximity to the neighboring properties and the natural screen. I have some pictures that we showed last time. There are some tree buffers that block those residential properties.

Mr. Cole: So, it is existing vegetation?

Ms. Kreher: Yes, there is a tree line that covers both of the residential properties.

Mr. Homeyer: Do you (*Mr. Cole*) need to see any photos?

Mr. Cole: No.

Public Comment: None.

Mr. Cole motions to approve the landscaping waiver. Mr. Bracy seconds the motion.

Motion approved: 5 – 0.

Mr. Cole motions to approve the Tufco Site Plan Review. Mr. Maienschein seconds the motion.

Motion approved: 5 – 0.

V. **Hawks Landing Estates Major Subdivision Preliminary Plat, #17-107, Hawks Landing Drive, Rogers; 18-04911-000, 18-04910-004, 18-04910-001, 18-04910-002, 18-04866-000, 18-04864-000**

Representative: David Hawkins, 15600 Hawkins Drive, Rogers

Staff gave a presentation on the Hawks Landing Estates Major Subdivision Preliminary Plat, #17-107, Hawks Landing Drive, Rogers; 18-04911-000, 18-04910-004, 18-04910-001, 18-04910-002, 18-04866-000, 18-04864-000

Mr. Hawkins: Well, I am about five down on the seven. I have a few more to go. I requested to table this for at least a little while longer. I think until the next meeting. Hopefully this will give me enough time to finish with ADH. That's the only major one I have left.

Mr. Tucker: Are there any of these that you want to give us an update on now or do you want to wait until later?

Mr. Hawkins: I do have the approval from Carroll Electric. The engineers basically have all the drainage stuff pretty well done. That took off a bunch of the list. Those two things were a major part of the list.

Mr. Tucker: Okay. Let me confirm that correctly. You are asking to table it for two weeks.

Mr. Hawkins: If that is a reasonable request. I am hoping by next meeting, I will have ADH approval. Then we can proceed. If not, I may have to run over here again and ask for another table.

Mr. Tucker: It is reasonable. That does occasionally happen from time to time with larger subdivisions. It's not unusual. So, don't feel like you have to rush. If you want to do it in two weeks, or four weeks, is okay as well.

Mr. Hawkins: It's been three months. I am ready to go.

Mr. Gambrill: Just a point of order. The applicant is requesting that the Planning Board table this to a designated, specified Public Hearing date. That next date would be the 21st of June. Is that what the Planning Board is accepting?

Mr. Homeyer: I move that we table this until the June 21st Planning Board meeting.

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Mr. Gambrill: That's for the betterment of the public so they know on the 21st to possibly have a decision at that point.

CLERK OF COURT
SOLICITOR GENERAL
BENTON COUNTY, ARK

Mr. Cole: I second that.

Mr. Tucker: Because it is a procedural vote and the applicant has requested that we table it, at this point, the Hearing is essentially moved to the next meeting on the 21st. If you are in the audience and you would like to comment, the 21st would be your next best opportunity. You will have more current information available. I just want to clarify that because we are not going to ask for public comment on this project tonight because it has been requested to be tabled. Any additional discussion?

Because this is a procedural event, we can vote by raising of hands. All in favor, raise your hand. All opposed, same sign. *All hands raised in approval of tabling this application until June 21, 2017.*

TECHNICAL ADVISORY COMMITTEE

- 1. Call to Order:
- 2. Old Business / Ongoing Applications: None
- 3. New Business:

- I. **Driggs Septic Waiver, #17-116, 2105 McCollum Road, Bentonville; 18-07516-000**

Mr. Reamer: Update from Staff: Based on the submittal of public hearing requirements, as far as USPS certified mail as well as the signage on site, the applicant has rescinded the application for this Planning Board meeting. They will revisit the Board at a future date.

- II. **Qualls Septic Waiver, #17-117, 12081, 12075 Carr Place, Hindsville; 18-00496-000**

Representative: Linda Qualls, 12081 Carr Place Road, Hindsville.

Staff gave a presentation on the Qualls Septic Waiver, #17-117, 12081, 12075 Carr Place, Hindsville; 18-00496-000

Mr. Tucker: So they have to get the septic waiver first and then the mobile home permit.

Ms. Qualls: It's already been tied down.

Mr. Tucker: There is a permit required for that so you will have to see the Building Official for that. We don't do that but the Building Official does. I also wanted to make you aware that one more trailer house and that makes it a trailer subdivision or a mobile home park. You will have to go through the planning regulations for a mobile home park. This is the second one we have seen in a couple of months so we just want to make sure you are aware of that as well since a lot of people weren't.

III. Garcia Site Plan Review, #17-119, 17182 North 59 Highway, Sulphur Springs; 18-15390-000 and 18-15404-000

Representative: Cendy Garcia, 17182 North 59 Highway, Sulphur Springs

Staff gave a presentation on the Garcia Site Plan Review, #17-119, 17182 North 59 Highway, Sulphur Springs; 18-15390-000 and 18-15404-000

Mr. Tucker: Ms. Garcia, do you have anything to add?

Ms. Garcia: No, sir.

Mr. Tucker: I am trying to picture where this is. There is a strip of commercial-ish properties as you go toward Southwest City, Missouri.

Ms. Garcia: We are right on the state line with Noel, Missouri.

Mr. Tucker: Okay. So, you are a little further east. You are on the state line with Noel.

Ms. Garcia: As soon as you pass the state line, we are right there.

Mr. Tucker: Okay. Thank you. So, there are several commercial buildings in this area. So, it's not really an isolated or spot use. It's consistent with what else is there. How long has the building been there?

Ms. Garcia: Oh, I'm not sure but it has been there for many years. At least more than ten years.

Mr. Tucker: I couldn't remember if the buildings that we were looking at were in Missouri or Arkansas. It looks like they are in Missouri.

Mr. Cole: What was the building used for before?

Ms. Garcia: It used to be a junkyard I believe.

Mr. Tucker: I can confirm that. It was a junkyard. It has been cleaned up quite a bit. I don't know if it's all gone or it's not.

Ms. Garcia: It took us a while to actually get it done but yes.

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FRANKLIN
SHERIFF'S OFFICE CLERK
SEAL OF FRANKLIN COUNTY, ARK

Mr. Tucker: All the vehicles and other scrap metals, all gone.

Ms. Garcia: Yes, everything.

Mr. Tucker: It's been a couple of years since I've been up that way.

Mr. Tracy: Even the one across the state line in Missouri, that's cleaned up too.

Mr. Tucker: Oh, it is.

Mr. Tracy: It's not as clean as this but they have been cleaning up that whole area. We don't have jurisdiction on the Missouri side.

Mr. Tucker: From this picture, it definitely looks better than it did the last time I was up there.

Mr. Bracy: If that was a junkyard, ADEQ had to buy off on the property that it was clean because of fuel and stuff like that or was required?

Mr. Tucker: It's commercial. If that was residential, there are some testing standards for residential property. Do you plan on putting up any additional signage besides the one on the front of the building?

Ms. Garcia: Besides the one we have already put?

Mr. Tucker: Do you plan on putting a pylon sign up or anything like that?

Ms. Garcia: We have discussed it; but, we are not sure yet.

Mr. Tucker: If you think you want to do that, I would go ahead and show it on your site plan. That way, you get the approval for it now and you don't have to come back. That would be fairly easy. Pick where you want it. Mark it on the plan. Say future sign. I think that will help in the future when you come to get a building permit for it, even if it is five years from now. That would definitely be very helpful for you.

Ms. Garcia: Okay.

IV. Alvarado Septic Waiver, #17-128, 22351 Davidson Road, Siloam Springs; 18-14055-001

Representative: Wilmer Alvarado, 22351 Davidson Road, Siloam Springs

Staff gave a presentation on the Alvarado Septic Waiver, #17-128, 22351 Davidson Road, Siloam Springs; 18-14055-001

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Mr. Tucker: Mr. Alvarado, do you have anything else to add?

Mr. Alvarado: No.

TELLER
COURT CLERK
SEARCY COUNTY, ARK

Mr. Tucker: The trees that are there, I am assuming you are going to clear those or have they already been cleared?

Mr. Alvarado: They have already been cleared. Yes.

Mr. Tucker: Okay. The east side where the septic field is going to go.

Staff Comments: None.

V. Kelly Septic Waiver, #17-129, 15820 Patton Road, Pea Ridge; 18-05539-008

Representative: Jack Kelly, 15820 Patton Road, Pea Ridge

Staff gave a presentation on the Kelly Septic Waiver, #17-129, 15820 Patton Road, Pea Ridge; 18-05539-008

Mr. Tucker: Mr. Kelly, do you have anything to add?

Mr. Kelly: We need to build this house so my brother-in-law can move in there mostly to help me keep the place up. I am getting too old for what we need. You guys all understand that.

Board Comments: None.

4. Other Business: None

5. Staff Updates - Administrative Approvals:

- I. Cudmore Minor Subdivision, #17-082, 22651 Kane Road, Gravette; 18-15105-001
- II. Walden/McCullough, #17-083, 9009 LaRue Rd, Rogers; 18-00561-001, 18-00561-002
- III. Broadway Development Minor Subdivision, #17-084, 17848 Hidden Meadows Drive, Siloam Springs, 18-12883-001, 18-12883-002, 18-12883-006
- IV. Gum Springs Farms, #17-098, Peterson Rd at Shelley Rd, Gentry; 18-14746-000
- V. Gum Springs Farms, #17-101, Peterson Rd at Luedecke Rd, Gentry; 18-11687-000, 18-11671-000, 18-11667-000.
- VI. Safarik and Pitts Minor Subdivision, #17-113, 13820 Pitts Road, Garfield; 18-01234-000 and 18-01235-000
- VII. Graham Minor Subdivision, #17-115, Graham Rd, Gravette; 18-16280-000.
- VIII. Hayes Minor Subdivision, #17-120, 16280, 16288 Russell Yeates Rd, Pea Ridge; 18-05405-000; 18-05405-001; 18-05404-005; 18-05406-001; 18-05406-002

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- IX. Horton Minor Subdivision, #17-124, 15722 Mt. Olive Road, Gravette; 18-12297-000, 18-12297-002
- X. Phillips Minor Subdivision, #17-125, Parrick Road, Gravette; 18-12278-000, 18-12276-000, 18-12217-000
- XI. Noland Minor Subdivision, #17-127, 4571 Luper Road, Lowell; 15-16382-000

6. Discussion Items: Plat Vacation Procedures

Mr. Tucker: The Discussion Item tonight is a topic near and dear to my heart especially when we see another tens of thousands of lots around the lake that are still for sale.

Mr. Reamer: We don't have a specific application in the office. It's more for guidance for citizens. They have an inquiry into the office as far as any potential vacation of plats. I know that this Board, most of the members, saw a plat vacation in the southwest side of the County. In that situation, there were two property owners involved. So, it wasn't an overburden on the property owner or the applicant. To specifically gain, as highlighted in this graphic, valid or in part notice of a consent of all property owners of such platted area. That notice of consent is to be submitted to the Board. Staff is seeking some guidance on: 1) what is the medium in which consent can be given by the property owners? 2) the specific platted area definition of this requirement.

Mr. Gambrill: This came from the Blue Book.

Mr. Tucker: It did.

Mr. Reamer: So in essence, there is a potential project that would involve a very small area of a platted subdivision of which there are multiple property owners involved. It isn't as simple as a single owner owning an unimproved subdivision that was never developed. This is a fully developed subdivision in which they wish to not vacate the plat but there are portions thereof that they are wishing to change. Number One again, consent of all property owners (i.e. the entire subdivision) or in this case, possibly a platted area and then again, what is that consent? Is it a form of signed, notarized 8-1/2" x 11" that the applicant provides to each property owner? Or is it a petition of signatures? What is that medium that needs to be provided?

Mr. Tucker: I can tell you what we have seen in the past. It's individual letters. In a few cases, we have seen every member of the subdivision sign the plat.

Mr. Gambrill: So in any case, it is truly all of the property owners.

Mr. Tucker: Do you remember the one, Mr. Cole, that had over 200 members?

Mr. Cole: You are talking about here?

Mr. Tucker: Here.

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Mr. Cole: No. I was just wondering if it would be signatures on the revised plat?

Mr. Tucker: That's the one that had the signatures on the revised plat. It was well over 200.

Mr. Reamer: In that given situation, did they revise the final plat of the approved subdivision or just the area in which...

Mr. Cole: You have to do the entire subdivision.

Mr. Tucker: Yes. That is where I am going with that. Essentially, when you buy a lot in a subdivision, you are buying the concept of the entire subdivision. It's going to be developed in a certain way. You have the right to have that protected for both your property value, your access, health safety and welfare for fighting fire, receiving service utilities for health and things like that. Major changes to the plat impede people who invest a lot of monies to ability to feel secure. That's where that came from.

Mr. Reamer: Correct.

Mr. Tucker: We have seen it a few ways. The one I am thinking of was where there was a federal judge involved and a law suit because he didn't provide access to several lots. It wound up being done by prescription of the Arkansas Supreme Court and that was not fun. We were basically told to vote how to vote. Lane Grill was the Chairman then.

Mr. Cole: I must have missed that one.

Mr. Tucker: Oh you missed it. They signed the whole plat or they signed a letter. We've seen it both ways.

Mr. Gambrell: Could you do this by a plat amendment but by reference to the original plat? Meaning you wouldn't have to resurvey the entire original but you would have to survey the amended portion of the plat but still reference the original plat. Or do you have to do a bonafide full-plat revision? We are trying to keep the discussion broad but let's just presume that there is a specified location that is relatively small. Would you have to resurvey the whole thing or can you make reference to the original? Let's just pick a date, circa 1978.

Mr. Cole: You are saying get all the signatures?

Mr. Gambrell: But still get all the signatures. In any event, still getting all the signatures. It's just what is surveyed?

Mr. Homeyer: For that question, I would say that you could reference the original plat if you haven't changed anything and nothing has changed through the years. With this requirement, I can imagine that there's not many changes through the years.

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Mr. Gambrill: You would hope.

Mr. Homeyer: I guess the *vacation* word is what keeps jumping out at me because that means you are doing away with part of the plat. Whereas an amendment, lot line adjustment, consolidation or anything like that, I wouldn't consider a vacation necessarily.

Mr. Gambrill: Let's be more specific if we could. Let's say you had an area that was platted as a county right-of-way but was never actually used in that way but still platted that way. It is for the benefit of the entire community that owns property but may or may not be used that way. Somebody wants to go ahead and acquire that piece.

Mr. Homeyer: That's different. When you are actually taking a public right-of-way and putting it back into private ownership. That is vacation.

Mr. Gambrill: That's the situation we're dealing with.

Mr. Tucker: That would actually go beyond us, wouldn't it? That would go to the Quorum Court because technically the right-of-way....

Mr. Reamer: It would go to the Judge's desk as far as any type of potential conveyance. Real property would change hands.

Mr. Gambrill: You are talking about a County platted right-of-way that would be treated like surplus.

Mr. Homeyer: It was never approved. Hasn't been used by the public. It's simply shown on a document.

Mr. Reamer: Correct. It's just been recorded.

Mr. Gambrill: But privately, for everyone's deed and title, it's for their enjoyment per original plat even though it was never improved that way. Legally it's for the enjoyment of everyone even though it's not being actually enjoyed by everyone and really never has. Staff has not been out to see what it is actually used for in actuality. From 30,000 feet looking down, at a piece of paper.

Mr. Homeyer: Unfortunately in the 30 plus years of doing this, I have no experience with anything in the County. The only time I have run across this it was in the city and it is petitioned to the City Council to be vacated. They actually approve an ordinance that vacates it. And then, their regulations, half goes to one property owner and the other half goes to the other property owner.

Mr. Gambrill: You answered the early part of our question about *all*.

Mr. Tucker: But the Planning Board would still approve the final plat and you could do that as a final plat, not a preliminary final plat.

Mr. Homeyer: Is it a survey? It's in a platted subdivision and they want to do an amendment of some sort to where they take and vacate that right of way and ownership goes to either one half to one side one half to the other or if the person owns on both sides, they get all of it. Right?

Mr. Gambrill: It's a platted public right of way that a private citizen that has adjacent land wants to have.

Mr. Tucker: Oh. See that's a different scenario because when you vacate the plat, it goes back to the original ownership. It doesn't become surplus.

Mr. Gambrill: No, that was wrong verbiage. This is not surplus.

Mr. Tucker: So, it would essentially be divided equally into the original ownership.

Mr. Homeyer: Now we are getting back to the, does this have to be done by plat or is it something done by an informal plat consolidation? Are we dealing with more than one lot here of the original plat or is it all just one lot? I am trying to keep it hypothetical as well so I don't really need the specifics. This is a good one.

Mr. Gambrill: We have a platted right of way that was never improved. So, essentially, it's a paper street that is tied into a larger subdivision that a property owner is requesting to purchase or to acquire from the County. It is technically parceled out as 99-99999-999 if you clicked on it on our GIS map. It is not as if it is an easement. It's actually divided out that way. A lot of them aren't. This one happens to be.

Mr. Cole: By plat?

Mr. Gambrill: Yes, by plat.

Mr. Cole: So, does County have to vote to abandon?

Mr. Gambrill: I suppose, yes.

Mr. Homeyer: Does the Quorum Court has to approve vacations of roads?

Mr. Reamer: We haven't got that far. They will have to contact the Judge's office. He has ultimate authority over that liquidation of real property that is owned by the County. An appraisal will have to take place.

Mr. Tucker: I think this is a little bit different issue than ownership. If you vacate the road, the road goes back to the owner. So, it's not really owned by the County. The County has the right to access over it.

Mr. Reamer: So the original developer 50 years ago would then retain ownership?

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Mr. Tucker: Or a succession of whoever owns it now.

Mr. Homeyer: The typical policy is, since it's all been sold through the years, the original developer is not involved any more. It's the adjacent property owners who then have the rights to that right of way if it's vacated.

DEWITT COUNTY
CLERK OF COURSE
DEWITT COUNTY, ARK

Mr. Reamer: Consent of one property owner to not take place in the transaction. Would that hold?

Mr. Homeyer: If there are two separate property owners, they both have to agree to the vacation. Because only one of them cannot get it vacated if the other property owner doesn't want it.

Mr. Gambrell: Taylor (*Reamer*), there is one addressable structure back there. Is it accessed using this or is it accessed elsewhere?

Mr. Reamer: It's accessed using this but it is common ownership with the party involved.

Mr. Gambrell: There is one addressable structure at the end of this thing that this person happens to own. It's just the land between.

Mr. Homeyer: That's what I am saying. If the same property owner owns both sides, they are the only one who has to petition. If there are two or more property owners along a link that is being requested vacated, that all have to agree.

Mr. Gambrell: So, it's physical adjacency.

Mr. Homeyer: Right.

Mr. Tucker: Universally in every state I have worked in, that's how they have always done it.

Mr. Bracy: But if a county road from years ago on a plat goes through a single person's property, and they fence it off, what happens then? They don't have to go to anybody if it's never been used in its....

Mr. Gambrell: Well, they can't fence it off if it's basically negating emergency access. That's essentially why it is there, to provide E-911 access. I have seen all sorts of things with adverse possession. If you continue to occupy land for more than a year and you have notified the owner and they have never acted on it, you have effectively Quick Claim the property as long as you are not negating 911 access.

Mr. Bracy: If the road went through a property, and they fenced it off, it was only there because it was part of their property, they still have access to the property.

Mr. Homeyer: You are saying the road serves no one other than the property owner?

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TRUSTEE
PUBLIC CLERK
SHERIFF'S OFFICE, NYK

Mr. Bracy: No one other than that property owner.

Mr. Gambrill: We tried obviously to keep this general but it just mires you down into the details every time. The answers are dictated by the specifics of the situation. In this situation, we have a platted right of way that is not used for that purpose. There is one addressable at the end. It happens to be platted out as a County road. It is a County road even though it is not used that way that the private property owner wants for their enjoyment. We don't want to go beyond the all property owners' permission because it is essentially a civil matter that you would be compromising if everybody's deed is telling them that they had enjoyment of this thing.

Mr. Homeyer: So Ashley (*Tucker*), do you read this vacation applying just to right of way or to lots and right of way?

Mr. Tucker: Anything that was platted in the subdivision.

Mr. Homeyer: If there are no lots being vacated and all you are closing is a road or public right of way, would that fall under this requirement anyway?

Mr. Tucker: I think it would.

Mr. Homeyer: That's way too inclusive.

Mr. Tucker: I think it is anything that was on the plat.

Mr. Gambrill: Or any portion thereof. I tend to agree with Mr. Homeyer. That's a very wide blanket.

Mr. Bracy: Who would bring that to this Board then?

Mr. Tucker: I don't think it would come to the Board. I think it would go to the Quorum Court or the Judge.

Mr. Gambrill: So, you see there is language that Staff has to rustle with the practicalities of implementation. This happens to be a fairly simple scenario because it actually is a public right of way parceled out. There is no subjectivity with easement. We know what it is. It is mechanizing any possible transfer beyond getting notification and getting the consent. Anyhow, you have answered our question. If there is only one property owner then it doesn't affect anybody else except for the property owner looking to acquire this. It becomes one big tract unless I am using the wrong verbiage.

Mr. Homeyer: The right of way becomes part of that tract.

Mr. Gambrill: It would be a tract, not part of that subdivision any more.

Mr. Homeyer: So, they want to vacate completely out of the subdivision by doing that?

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CLERK
COUNTY, ARK

Mr. Gambrill: I don't know about that.

Mr. Reamer: They are trying to absorb the right of way land acreage in order to build in a more suitable area.

Mr. Gambrill: They are hemmed in.

Mr. Homeyer: So basically, we are adjusting the lot lines to make one large tract out of two tracts and a right of way in between?

Mr. Reamer: Not in between, adjacent to.

Mr. Homeyer: For general purposes, I would say in between. I don't need specifics.

Mr. Gambrill: Yes can revisit next time and have the specific graphic. I think this is enough for us to go on in terms of notice. The main thing was how many property owners to we get signatures from. Right now, yes, it's a wide blanket but that's what it is.

Mr. Tucker: Unless we amend the Blue Book too. Good luck with that.

Mr. Homeyer: I think I ran into this on a project before and we ended up just not doing whatever it was in lieu of trying to get all the signatures.

Mr. Gambrill: It is how to get there from here.

Mr. Homeyer: So you are satisfied that you have an answer. That is good.

Mr. Gambrill: I think we are satisfied with the answer. We can move on.

Meeting Adjourned: 8 p.m.


Next Meeting: Wednesday, June 21, 2017

APPROVED THIS 21st DAY OF June, 2017

ATTEST:

APPROVED:


PLANNING DIRECTOR or
PLANNING MANAGER


PLANNING BOARD CHAIR or
PLANNING BOARD VICE CHAIR

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