

TERM OF COMMISSION: September Session of the July Adjourned Term

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

PRESENT WERE: Presiding Commissioner Dan Atwill
District II Commissioner Janet Thompson
Director, Resource Management Stan Shawver
Planner Uriah Mach
County Counselor C. J. Dykhouse
Deputy County Clerk Mike Yaquinto

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

Resource Management

1. Public Hearing and Request by SWC Properties 2, LLC to rezone from R-S (Single Family Residential) to R-M (Moderate Density Residential) on .67 acres, more or less, located at 7241 E Sunny Vale Dr.; and, .596 acres, more or less, located at 7261 E Sunny Vale Dr., Columbia.

Stan Shawver read the following staff report:

This request was considered by the Planning & Zoning Commission during their September 18, 2014 meeting.

The minutes for the Planning and Zoning Commission meeting of September 18, 2014 along with the Boone County Zoning Regulations and Subdivision Regulations are entered into the record of this meeting.

The subject property is located approximately 1000 feet from the city limits of Columbia, on Sunny Vale Drive, just south of I-70 Drive Southeast. The property is

composed of two lots, 7241 Sunny Vale Drive and 7261 Sunny Vale Drive. The applicant is seeking a rezoning from R-S (Residential Single-Family) to R-M (Residential Moderate-Density). The property is currently zoned R-S, and each lot has a 6-plex multi-family structure. There is R-S zoning to the south & east, R-S & R-M to the west, and C-G (General Commercial) zoning to the north. The property was divided as part of Sunrise Estates in 1964, and the 6-plexes built prior to zoning.

After a fire in August, the owners decided that to continue the use of the 6-plexes, rezoning would be appropriate to confirm the current use and insure that they can be rebuilt even after a destructive fire.

The Boone County Master Plan has indicated that this property is suitable for residential land uses. The master plan also designates a sufficiency of resources test for the approval 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.

Utilities: The subject property is located in Public Water Service District #9, which provides domestic water service to the property. Boone Electric Cooperative provides electrical service. The wastewater collection system is served by the Boone County Regional Sewer District and the sewage is then treated by the City of Columbia.

Transportation: The property is located at on Sunny Vale Drive, a publicly-dedicated/publicly-maintained right-of-way.

Public Safety: The property is located in the Boone County Fire Protection District, who maintains a station near Lake of the Woods.

Zoning Analysis: This request would make the property's zoning compatible with its current land use. Under the property's current zoning, events such as the fire that took

place in August could render the remainder of the structure unusable, depending on the severity of the damage, and staff would be unable to issue a building permit to allow reconstruction. Action to resolve inconsistencies between zoning and current land use is appropriate when existing resources can support the proposed change of zoning per the sufficiency of resources test.

The property scored 62 points on the rating system.

Staff recommended approval.

The Planning & Zoning Commission conducted a public hearing on this request during their September 18, 2014 regular meeting. There were seven members of the commission present during the meeting.

Following the public hearing, a motion was made to recommend approval of the rezoning request. The motion passed unanimously, so it comes forward with a recommendation for approval.

The Commissioners had no questions at this time.

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

Eric Schafer said he is one of the owners. They plan no changes and want to put it back to the original state.

Commissioner Atwill asked if this is to get the paperwork straightened out.

Mr. Schafer that is correct.

The Commissioners thanked Mr. Schafer for addressing this issue.

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

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby **approve** the request by SWC Properties 2, LLC to rezone from R-S (Single Family Residential) to R-M (Moderate Density Residential) on .67 acres, more or less, located at 7241 E Sunny Vale Dr.; and, .596 acres, more or less, located at 7261 E Sunny Vale Dr., Columbia.

Commissioner Atwill seconded the motion.

The motion carried 2 to 0. **Order #459-2014**

2. Public Hearing and Request by Jeremiah and Carmen Wade on behalf of Verizon Wireless for a transmission facility, including a 180' tower, on 11.68 acres, located at 6969 W Bruce Ln., Harrisburg.

Stan Shawver read the following staff report:

The subject property is located on Bruce Lane, approximately 1 mile to the southeast of the City of Harrisburg, south off Highway 124. The property is 11.68 acres in size and is zoned A-2(Agriculture) and is surrounded by A-2 zoning. This is all original 1973 zoning. The property is currently undeveloped. The Master Plan describes this area as being suitable for agriculture and rural residential land use. Staff notified 18 property owners about this request.

A description of the lease area site has been submitted by the applicant in the application materials. The lease area for the tower is approximately 10,000 square feet out of the 11.68 acre parent tract. The actual site of the tower may cause difficulties in the future if the applicants seek to subdivide the property. The proposal for a transmission facility is for a 180' monopole tower and support facilities. The applicants have met the submission requirements identified for a conditional use permit for a transmission facility

Staff analysis of the request is based upon the application and public comments received following notification of the surrounding property owners. As a conditional use permit, the proposal must meet the following criteria from the zoning ordinance to be eligible for approval:

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

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

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

If operated in conformance with existing regulations, this use should not be injurious to the use & enjoyment of other property in the immediate vicinity for purposes already permitted by the regulations. Public testimony may be indicative as to whether this criterion can be met.

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

The application meets this criterion as per the zoning ordinance Section 15B section 4, subsection (e). However, this is a purely technical analysis as constructed by the regulations. Public testimony may better reflect any impacts on property values.

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

The use has limited needs with respect to utility infrastructure and so the site has adequate facilities to support the proposal.

(e) The establishment of a conditional use permit will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the zoning district.

This area is zoned A-2, with residential uses limited to 2.5 acre tracts or larger. Future development of the area will be accomplished through the existing zoning, or will require rezoning to achieve a higher density of development. The nature of the site and its location with respect to road infrastructure will likely have a greater negative impact on the area development than the proposal. However, public testimony may be indicative as to whether this criterion is met.

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

The proposed use is a minimal traffic generator and should not hinder traffic or cause congestion on public streets.

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

The proposal conforms to other applicable regulations of the A-2 zoning district, particularly since no land division is proposed. Public necessity has been discussed by the Federal Telecommunications Act of 1997 to allow for widest dissemination of wireless communication services.

Staff recommended approval of this conditional use permit.

The Planning & Zoning Commission conducted a public hearing on this request during their September 18, 2014 regular meeting. There were seven members of the commission present during the meeting.

Following the public hearing, a motion was made to recommend approval of the conditional use permit with the following conditions:

1. Prior to issuing the building permit, the applicant submit a landscaping plan showing medium to large shade trees around the perimeter fencing spaced appropriately for mature growth.
2. A depiction of a stealth monopole that matches the existing trees.

3. A utility plan indicating no power poles to the site.

The motion passed with four members voting in favor of the request and three were opposed to the motion. The request comes forward with a recommendation for approval with conditions.

The Commissioners had no questions at this time.

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

Curtis Holland said he is representing Verizon Wireless and the land owners, Jeremiah and Carmen Wade with respect to the CUP. The staff has issued its report and recommendation to the Planning Commission and the County Commission. It covers a lot of background information. I will give a high level review and am prepared to answer any questions and talk about specific details the Commission may have an inquiry about. I am a telecommunications lawyer and doing entitlements for Verizon as well as other carriers and tower developers for the past 20 years. About seven years ago, Verizon came to Boone County and at that time, the County had no coverage. We brought a number of applications to Boone County and I represented Verizon in those cases.

It is no surprise there are folks here on this particular application. During previous proceedings and hearings, there was similar interest from residents who live near those applications and raising similar complaints. We were able to work through those applications and all were approved but one. We have been to Boone County before. With this application, we are trying to improve the coverage in Boone County, specifically along Hwy. 63, north to Randolph County and then with this particular site, called the Harrisburg site, along Hwy. 124, west of Hwy. 63 over towards Harrisburg.

Like we do with any of our applications, there is a significant amount of due diligence that takes place before any application to the County is submitted. In this case, we identified a need for coverage and then the radio frequency engineers for Verizon identify the location. We then go into these areas to see if there are any existing structures that the antenna can be located on. There is an internal co-location study done to see if we can put an antenna on an existing tower structure or some other structure in the area. In rural areas, the only kinds of structures that may be available are other communications towers of sufficient height and water towers or structures of those types. There are no tall buildings. Other options were looked at and identified, but the engineers deemed those sites not suitable.

The determination, in this area, was to minimize any perceived impact knowing the neighbors might object. We tried to find ground that would fit the RF Engineers network parameters and minimize any impact for the joint property owners. In this case, we identified the Wade property along with some other locations. These sites were taken to the planning staff and vetted, looking at advantages, benefits, problems, etc. and concluded the best site was the Wade property. No matter what site is chosen, there is going to be opposition. That is the nature of this business. We try our best to minimize the perceived conflicts.

A significant amount of information was submitted with the application as noted in the staff report, meeting all the requirements for the County. Any issues were worked through with staff being very helpful and any additional information required was provided with staff ultimately recommending approval. We agree with staff that we meet the County criteria for considering the application and also the Planning Committee heard testimony and recommended approval of the application. This is a site, one site, of a number of other sites that will be coming forward in the future.

Submitted is a report from the RF Engineers from Verizon discussing their build program in Boone County and along Hwy. 63 and their cover objectives are detailed. Also, noted are the alternate sites they looked at and any problems that would occur with co-locating on an

existing site. The neighbors did provide a list of other towers and sites. A thorough analysis was done to see if any of these sites were viable and the engineers determined them not to be suitable.

There are significant County ordinances and regulations in terms of submitting information to support the application. Overriding the local application, there are Federal laws and regulations. NEPA (National Environmental Protection Act) is once such Federal law and we need to abide by those rules and we need to do a thorough analysis to determine if any of the NEPA issues are impacted. We are also vetted in terms of Federal requirements for endangered species. The FAA also looks at the site and has done that. They have issued a report that the tower will not need lighting. The FCC also has many rules and regulations we must meet as well. There are also state regulations regarding a review for any impact on historical properties. We have received approval from the state on this also There are a number of reviewing agencies looking at the site and all have indicated we meet the requirements.

Our application is for a 180' galvanized steel monopole structure which is permitted under County code. There is a stipulation per the Planning Commission which requires a stealth monopole looking like the trees. We have done lots of stealth applications when appropriate. If it is in the right context we have done many stealth type of trees. The technology has gotten better. One must consider the environment and context. In this location, there are a lot of trees which is a benefit to the neighbors because I don't believe they can see this tower from their home. There are no 180' trees in Missouri. The largest pine is about 100'. We are not opposed to this when appropriate and in the right context. We disagree in this case and believe a 180' stealth tree would look odd and probably be more visible than the tower. Over time, these facilities tend to blend in with the background and disappear so to speak.

Landscaping is something we would be definitely providing per recommendation. It is asked that the equipment compound at the bottom of the tower, with a chain link fence, be

surrounded with landscaping. We will do that with evergreens.

Regarding property values, we have submitted samples of property value studies with respect to communication towers and staff indicated they have reports showing property values increasing and decreasing. I will say that is anecdotal and opinion. One can look at Boone County or any other county in the state or any other state and look at property values and the property next to those towers and see that the property has not decreased in value.

At this point, that is all I have and will be happy to answer any questions.

Commissioner Thompson said she drove over to the area and was wondering where on the property this tower would be placed.

Mr. Holland said it would be in the clearing about 200' from the road.

Commissioner Atwill asked why a tower is needed in this location.

Mr. Holland said that there is no coverage in this area. The maps provided with the application show there is no coverage in this area. We are trying to improve service along Hwy. 63 and also cover Hwy. 124 to Harrisburg. There are no facilities in that area and no coverage. These are coverage sites as opposed to capacity sites. This is a coverage objective based on where the existing sites are located.

Commissioner Atwill asked if he had a Verizon phone and was in this area, would he have service.

Mr. Holland said probably not. If there was service, it would be unreliable. Signal strength would not be significant to carry a call while travelling through the area. Verizon and other carriers try to provide the best signal possible, what is called "in building" coverage. While

outdoors, the signal can travel more freely as opposed to when in a building such as a home. In this area, there are residences in Harrisburg and people want to have use of the service. Most people are dropping land lines. This type of service is used about 75% of the time when calling 911. So, to provide quality coverage and address public safety and 911 concerns, these towers are necessary. There will be two more sites east and north and a site has been identified south of Columbia which we can co-locate on that tower. We do try to co-locate whenever possible. These structures are expensive to build and do get opposition.

Commissioner Thompson asked if Verizon allows other carriers to co-locate on their towers.

Mr. Holland said absolutely. It is the company policy to allow co-location. In this case, the height of the tower is capable of supporting co-location and most certainly interest in other carriers. A shorter tower of 100 -120 feet minimizes the opportunity to co-locate.

Commissioner Atwill asked about the reach of a 180' tower in this location.

Mr. Holland said it varies because of topography, trees, buildings, density of population and travelers on the road. Typically, one would get a radius of 1 – 3 miles of coverage with strong in-building coverage, further for in-vehicle coverage. At a minimum, there will be in-vehicle coverage from Hwy. 63 to Harrisburg.

There were no additional comments or questions at this time for Mr. Holland.

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

Kevin Allemann said he owns property adjacent to the Wade property. He is opposed to the placement of this tall structure adjacent to his property. The one take away from the P & Z

Meeting was that due to Federal and State rules, local governments have little discretion in considering citizens input on cell tower construction except for several items mentioned in the Conditional Use Permit. The first consideration is that it would not be injurious to the use and enjoyment of other property owners in the immediate vicinity. From a personal standpoint, having our home in this area would make us enjoy our property a little bit less. The second consideration is that it would not substantially diminish or impair property values. Verizon has given us comparables on how property values are not diminished. Two of the comparables were for urban properties and dated. This is a rural property and there are a lot of resources to do a comparable here, it is expensive, so it is not in our realm.

Mr. Allemann also said there are plenty of reports that consider the proximity near a wireless tower as a negative amenity that may reduce residential property valuation. Also, several weeks ago, the Verizon CFO said the company is open to divesting their cell towers. Perhaps Mr. Holland can comment on that. I am here tonight to ask the Commission to deny this request and would like to submit the following article "The Impact of Wireless Towers on Residential Property Values" to the Commission.

The Commissioners thanked Mr. Allemann for speaking tonight.

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

Ryan Lidholm said he discussed at a previous meeting the elevation of a nearby property that is higher by 30 feet and why the tower could not be put there which would allow for a shorter tower. He spoke with Uriah Mach of Resource Management and was told that they have looked into that and that the signal would bleed into other coverage areas. It is hard to believe that 475 yards will make that much of a difference. Also, that this other land was used for salts and oils making the soil bad and an expensive proposition for Verizon, is something that can be rectified. I am an Engineer and am currently working on a similar soil project.

In a previous meeting, there was discussion of an ideal location, but we were never told of that location. We would like to know.

Uriah Mach said that Verizon provided eight locations and for various reasons most of them failed to meet the minimum standards within the County. This location met the criteria.

Mr. Lidholm said they are entitled to know this ideal location so more than a couple of people can decide if this is a good location for the tower. His theory on this is that the Wade family contacted Verizon and said there is bad cell phone service in this area and we would like to open our land to be a tower location. Verizon can then go and submit eight locations knowing seven will fail and call this a proper site analysis. We don't think this is a proper site analysis so we are asking that the Commission seek a non-bias, third party to do a proper site analysis.

Lastly, in a previous meeting, the Verizon representative said people do not want towers in residential areas, but in remote areas which we agree with. This is not a remote area location. There are multiple residences and we are there constantly. We do not want to hear the noise and see it constantly which will affect how we view our property. The tower should be in commercial areas. I have made a list of general conditions which we would like the Commission to consider and apply to the request if it is approved. They are:

- Provide a landscape plan with medium to large sized trees and shrub that are native to the area
- Generators must be high efficiency, quiet, and located inside of the building constructed for the tower
- The structure built for the tower must have an acoustical sound screen constructed around it in order to dampen the sound emitting from the building
- Construction cannot begin until December 1st due to how the surrounding land is used. It will have a drastic negative impact if construction is occurring during deer season

which is why much of the land in the area has been purchased

Mr. Lidholm said he is in opposition of this request.

The Commissioners thanked Mr. Lidholm for speaking.

Commissioner Atwill asked if there is anyone else to speak on this issue.

Elizabeth Allemann said she is a family physician here in Columbia but lives on Bruce Lane. Her concern is that the location of the tower has changed since the meeting 12 days ago. The location is right up to her property line. There is a lot of money invested in this property. Some say it will not affect property values. That may be true in the city where owners are concerned what's happening on their lot and the surrounding lots. Investing in rural real estate is not the same. It is not the same kind of person who would want a cell tower against their property line. The big concern is that it can be approved and then the location can be moved. The property value will be affected as well as my ability to afford to own it.

As a physician, Ms. Allemann said she wanted to speak about the health effects. She knows that the 1996 Telecommunications Act prevents the Commission from considering the health effects of cell towers when deciding on this request. This act, and no act of Congress can actually prevent the health effects from happening. This does not prevent us from talking about it. We know cell towers emit energy and that those energies have affects on human and animal tissue. We know that we do not fully understand the affects and that the closer to the tower, the more powerful those affects will be. We know cell phones can detect a signal as far away as 45 miles with perfect conditions and human beings can be affected. We don't know the safety data so we have to make our decisions in ignorance. We know of dentists taking x-rays unshielded and dying of devastating illnesses only to discover the causes later. There are reports of young women with breast cancer due to carrying the cell phone in their bra. Cell phones have health affects. Cell phone towers are constant. You can turn off your

cell phone, but not the tower.

In the U.S., there are limits on what is considered safe. Here it is between 500 and 1,000 milliwatts per square centimeter. In Australia it is down to 200 and the Swiss have there limit at four milliwatts. It is injurious to my enjoyment of the property we own. We have gone to great expense and effort to have a piece of rural property that is wooded and beautiful and hope that the Commission denies this request.

The Commissioners thanked Ms. Allemann for speaking tonight.

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

Jeff Beringer said he has several observations. Mr. Holland said the coverage is for Hwy. 63. If the signal from the tower is 1 to 3 miles, it will not reach Hwy. 63 which is about six miles away. Also, if it is for the people of Harrisburg, there are only 183 residents in Harrisburg and I doubt they all have Verizon. Another thing is that Hwy. 124 is a dangerous road to drive and no one should be on the phone. There are some inconsistencies coming from Mr. Holland.

What is the point of zoning. When we bought the property, we signed for the zoning that was with the land. Now the proposal is changing the zoning right next to us. It will certainly affect the way we use our land because everyday you see that tower. It is depressing and makes me angry that you cannot enjoy your land the way you did before this. This fits the description of being injurious to our use and enjoyment. Also, how is this a public necessity when there is not that many people there and it does not reach Hwy. 63. It is not serving very many people. Does this set the stage for later requests when the possibility of co-location occurs, can other pieces of land be re-zoned.

C. J. Dykhouse said for the record, this is not a re-zone. This is a Conditional Use Permit. The property is A-2 and will be A-2 afterward. This is not a variance, but a CUP application on how our regulations govern our analysis.

Mr. Beringer said he has nothing further to add and thanked the Commission.

The Commissioners thanked Mr. Beringer for coming and speaking.

Commissioner Atwill asked if there is anyone else that would like to speak on this issue.

Eric Lidholm said he owns the property east of the tower site. Originally, the Wade tract was purchased to build a house, now we are looking at a cell tower. Previously, Mr. Holland mentioned the tower will have co-located antennas. Is the 180 foot tower needed to co-locate a bunch of antennas. If approved, it would be unsightly to have a whole stand of antennas and once that was full, they would build another. That is my concern.

The Commissioners thanked Mr. Lidholm.

Commissioner Atwill asked if there is anyone else that would like to speak on this issue.

Steve Bradshaw said he lives to the north of the Wade property. The Wade 11.6 acres was actually part of our family land. He came to us and said he was putting up a residential house, now it is going to have a tower. Is there going to be a house with the tower or is this land now useless because of the tower. When looking out my back deck, I oversee all the trees down Bruce Lane. I'm told there are 80-100 foot trees and now I can look at a 180 foot tower. It is not a pleasant thing to look at. I like the animals. How will this affect the animals.

Also, we heard that towers can co-locate. There is an AT&T tower one mile up the road.

Why can't they use that tower. How many more towers will go up if coverage is only 1 – 3 miles. That is not very good coverage. We were told two years ago that is was residential. Now there is going to be a tower. The Wades were going to build a house. I helped them clean and clear the land and now they buy a house in Harrisburg and want to have a tower on the land we cleared. This sounds money driven. As I said before, there is an AT&T tower one mile up the road that can be used to co-locate.

The Commissioners thanked Mr. Bradshaw for speaking tonight.

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

Robert Nix said he is a friend of the Allemann's and is very familiar with the property. For a number of years he has entertained the idea of purchasing the small piece of property that the Allemann's own next to the Wade property with the intent of building a small house in the woods. It is a very nice location and he would build the type of house that would blend into the neighborhood. Now, with the cell tower next door, there is little to no interest in pursuing that piece of property. The value of the property has just completely diminished with the cell tower next to it.

Mr. Nix also said he questions the concept that the land the tower is to go on is declared as undeveloped. The property has been extensively developed in preparation of a rural residence. Electricity has been brought to the site. Extensive clearing has been done completely changing the initial character of the property. The property has been developed, the development has not been completed.

Also, to reiterate that there is a tower on Route J, about one mile to the west of this site where the elevation of the land is higher than the site on the Wade property. The tower there is taller than the one proposed for the Wade property. For coverage purposes in the Harrisburg area, Route J would be a superior site and it is already developed as a cell tower.

Also, there are three cell towers that straddle very close to Hwy. 63 that would offer the opportunity to co-locate and if you look at the signal radius for co-location on the Route J site and the Hwy. 63 sites, they would provide coverage superior to the single site on Bruce Lane.

Mr. Nix thanked the Commissioners for their time.

The Commissioners thanked Mr. Nix for coming tonight and speaking.

Commissioner Atwill asked if there is anyone else to speak on this issue. There were no additional speakers.

Commissioner Atwill asked Mr. Holland if he had any remarks in the form of a rebuttal.

Mr. Holland said he would like to clarify what he said earlier, perhaps poorly, that this site is one of four being built along Hwy. 63 and along Hwy. 124 to cover this area up to Randolph County. This specific site is not for Hwy. 63, but for Hwy. 124 and coverage for Harrisburg and the roadway from Hwy. 63 to Harrisburg. Even though there are 183 people in Harrisburg, we want to provide coverage for them and this particular site is not intended to cover Hwy. 63. It is to provide coverage on Hwy. 124 from Hwy. 63 going west to Harrisburg. There will be other locations along Hwy. 63 for that coverage. We have looked at existing structures, in particular the one mentioned on Route J. The report from the RF Engineers indicates that the site will not provide the coverage necessary.

Concerning the health effects; I know the County Counselor can advise on what can and can't be considered at these hearings. Everything that was mentioned should not have been allowed, but people can say what they want to say and that is what these hearing are about. That testimony should not be considered. As mentioned earlier, this is a highly regulated industry and so is this specific application. There is the 1996 Act which says specifically that

health effects shall not be considered as long as the applicant is in compliance with FCC guidelines. We are and will be. There is no proof or evidence to support what was said on this issue.

About co-location; the County code says we allow for co-location and we clearly would. In this case it is not built specifically for co-location, but specifically for Verizon use. We did look at the tower to the west and the RF Engineers report said it was not suitable.

The issue of noise was mentioned. The noise is from the A/C units. Unless one is close enough to it, you will not hear it. The generator is for emergency situations when the power is down. This is only for a short period of time until the power is back. In fact, the tower has a battery backup system which provides six hours of power before the generator is needed. The generator is a Federal requirement.

Mr. Holland said he can't speak to when construction would start, but it is doubtful it would start this year although that is not something he is 100% sure of. He could get an answer on that for the gentleman that raised this issue.

Mr. Holland said that if there is anything specific the Commission would like to address, he is happy to answer their questions.

Commissioner Atwill asked Stan Shawver what is meant by a depiction of a stealth monopole that matches the existing trees.

Stan Shawver said the Planning Commission was trying to get to a stealth configuration on the tower like the one on South Providence Rd. Recognizing there are no 180' pine trees in the area, they were suggesting a type of tree for camouflage purposes that could be used.

Ryan Lidholm said the residents do not want a 180' stealth tree. They don't want the tower,

but a 180' tree in this area would look ridiculous.

Commissioner Atwill said it would probably attract more attention than the tower.

C. J. Dykhouse said he has several items to address with the knowledge that the controlling law is the FCC Act of 1996. First, to avoid Federal pre-emption in this area, the Commission does not want to administer the zoning code in a way that it has the effect of essentially prohibiting the installation of towers to the extent that arguments can be generalized that towers are not welcomed anywhere in Boone County and that would be a problem under the Telecommunications Act.

Secondly, the health effects are the purview of the Federal Government to administer. The Commission can require that a tower operate within FCC guidelines and the County would do that. Once in operation within FCC guidelines, we are prohibited at the local level to consider health and environmental issues.

Regarding the value question, the County Commission local regulations speak specifically to this item. As referenced in the staff report read by Mr. Shawver, the regulation states that transmission towers shall have the least practicable adverse affect on the environment and property value. We define when a condition is met, when it is deemed to have the least practicable affect on property values. The regulation says the transmission tower complies with the standard if it complies with the following:

- The tower is 200 feet or less in height
- It is more than 10,000 feet from an airport
- It has a galvanized finished or painted silver

With this regulation as defined, this application meets those guidelines.

Commissioner Atwill asked how many towers in the County have been subject to a Conditional Use Permit.

Uriah Mach said that it is about 35 to 38.

Commissioner Atwill asked if any had been rejected.

Mr. Shawver said one had been rejected and that was before the Telecommunications Act.

Elizabeth Allemann said the County Commission rejected one in 2006.

Uriah Mach said that was over by I-70 and the Bradley Lane area.

Steve Bradshaw wanted to verify that a residential home can still be built on the property with the tower.

Mr. Shawver said that a house can be built there.

There were no additional speakers or rebuttal and Commissioner Atwill closed the Public Hearing.

Commissioner Thompson said since on the Commission, the one issue that has taken hold of this County is the 911/OEM Center and the whole notion of public safety. When talking to folks around the County about the need for the center, the real question was cell phone usage. As noted earlier, people are giving up their land line and using cell phones for making 911 calls. This, for me, is a public safety issue. With the lack of adequate service, it is a concern. About a month ago, while on the tractor, it almost rolled over. Thinking at that moment, that someone could call for help on their cell phone provided there was adequate service. Again, it is truly about public safety and the lack of adequate cell service which is

the deciding factor for me. Driving down that road, it is understandable to keep the status quo. It is a beautiful neighborhood with beautiful trees. The hope is, with conditions, to limit the vision of the tower so the impact on the land would be minimized.

Commissioner Atwill said it is still about important property owner rights. While this may not have been thought of at the time, when the property was sold to the Wade's, restrictions could have been part of the deal to prevent this very thing. Within the restrictions placed on the County regarding zoning, CUP's and other things, it appears they have met all the requirements that are involved. They have met the Federal and State requirements in order to install the tower.

Our latitude in denying this type of application is very limited. Per the comments earlier, very few times has this type of application been denied by the Commission. I believe the owner is entitled to do what the owner wants within the law. There are many Federal laws that give some preference to a cellular network. While it might be appropriate in some circumstances to question the motives and the reason for doing this, they have the right to make those decisions. There is little opportunity here except for approval.

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby **approve** the request by Jeremiah and Carmen Wade on behalf of Verizon Wireless for a transmission facility, including a 180' tower, on 11.68 acres, located at 6969 W Bruce Ln., Harrisburg, with the following conditions:

- Prior to issuing the building permit, the applicant submit a landscaping plan showing medium to large shade trees around the perimeter fencing spaced appropriately for mature growth.
- A utility plan indicating no power poles to the site.

Commissioner Atwill seconded the motion.

The motion carried 2 to 0. **Order #460-2014**

3. Summers Place. S35-T50N-R13W. A-2. Rex and Ava Summers, owners. Ronald G. Lueck, surveyor.

Stan Shawver said this is a one lot subdivision on state highway VV. It is 4.5 acres in size and includes a stream buffer. It is zoned A-2 and the P & Z approved this at the September 18, 2014 meeting. It is now ready to be received and accepted by Commission.

Commissioner Atwill moved on this day the County Commission of the County of Boone does hereby receive and accept the following subdivision plat and authorize the presiding commissioner to sign it:

Summers Place. S35-T50N-R13W. A-2. Rex and Ava Summers, owners. Ronald G. Lueck, surveyor.

Commissioner Thompson seconded the motion.

The motion carried 2 to 0. **Order #461-2014**

4. First reading; Missouri Highways and Transportation Commission Road Relinquishment Agreement

Stan Shawver said back in 2006 when Hwy. 63 North was being resurfaced, MoDOT approached the County Commission and asked if they would resurface the access points and in-turn would give the right-of-way to the County. Those access points were at Hwy 63 and Friendship Church Road and Roy Barnes Road. The County Commission agreed to this and nothing actually happened. In May of this year, MoDOT contacted Commissioner Atwill to inquire about the agreement. They provided the Commission with the original offer and the County advised that they would follow through with this agreement. MoDOT did provide a survey of the two right-of-way areas. We received the survey and the agreement which was

contingent upon a quitclaim deed.

Looking at the survey, we noticed that on Friendship Church Road there were not one, but two tracts of land given to the County. After further investigation, it was discovered that the survey of the second tract of land had landscaping features and a gate and fence from an adjoining property owner. The state essentially said you can have the land and do what you want with it. The survey was verified and also a verification of the existence, if any, of utilities. We then went to talk to the property owner and found out the day before we made contact with the property owner, MoDOT did a quitclaim deed on this tract and gave it to this owner.

After discussions with MoDOT, the agreement before Commission, once signed by both parties, says that MoDOT will issue the County a quitclaim deed for the appropriate tracts of land for recording into the County records.

There were no comments or questions.

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

Auditor's Office

5. Second reading; Budget Revision – expenditures for Federal Litigation (1st read 9-25-14)

C. J. Dykhouse said this Budget Revision draws funds from the Emergency account and per state statute requires all three Commissioner signatures. At present, there are only two Commissioners in attendance.

Commissioner Atwill said this item will be rescheduled for unanimous consent.

Commission

6. 1st & 2nd reading; Appoint Elizabeth Heidt to the Boone County Family Resources Board

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby appoint the following:

Name	Board	Period
Elizabeth Heidt	Boone County Family Resources	September 30, 2014 through December 31, 2015

Commissioner Atwill seconded the motion.

The motion carried 2 to 0. **Order #462-2014**

7. 1st & 2nd reading; Accept resignation of Terry Cassil as Chair of LEPC and approve appointment of Doug Westhoff as LEPC Chair effective October 22, 2014

Commissioner Thompson moved on this day the County Commission of the County of Boone does hereby accept the resignation of Terry Cassil as Chair of the Local Emergency Planning Commission effective September 25, 2014 and approve of the appointment of Doug Westhoff as Chair of the Local Emergency Planning Commission effective October 22, 2014.

Commissioner Atwill seconded the motion.

The motion carried 2 to 0. **Order #463-2014**

8. Public Comment

None

9. Commissioner Reports

None

The meeting adjourned at 8:48 p.m.

Attest:


Wendy S. Noren
Clerk of the County Commission



Daniel K. Atwill
Presiding Commissioner



Karen M. Miller
District I Commissioner



Janet M. Thompson
District II Commissioner

