

BENTON COUNTY PLANNING BOARD
Technical Advisory Committee Meeting Minutes
September 5, 2007, 5:30 p.m.

Call to Order & Roll Call: The following Benton County Planning Board members were present: Scott Borman, Mark Gray, Caleb Henry, Bill Kneebone, Adele Lucas, Tim Sorey, and Heath Ward. The following Benton County Planning Office staff members were present: Ashley Pope and Karen Stewart.

Announcements:

Staff made no announcements.

Old Business:

1. Variance from Wireless Communication Ordinance - **Callahan Tower Joint Venture** - Wehmeyer Road, Bentonville - Satterfield Land Surveying

Attorney Jay Penix, Dave Reynolds of Smith Two-Way Radio, and Jason Steele of Callahan Tower Joint Venture represented the project.

Ms. Pope explained that this project had been before the Board previously, was appealed before an appeal board comprised of three justices of the peace, and was sent back to the Planning Board for reconsideration and restudy.

Mr. Penix stated that the pertinent issues regarding this project are:

1. The variance request, which he stated was not asking for 80 feet, but only 44 feet. He stated that during Hurricane Katrina, only 200 monopole cell towers of the 24,000 cell towers in the area failed, and all fell within the engineered radius, according to an FCC study, which is 90 feet. He reported to the Board that, after speaking with the attorney for the opposition, the variance will probably not be an issue in contention

2. The restrictive covenants: Mr. Penix stated that covenants are not favored and that the language of covenants must be "clear and unambiguous." He added that the covenants do not state who can enforce them, but it is not the Planning Board. He added that he did not believe the covenants applied in this case, but if they do, they do not prohibit the construction of a cell tower.

Mr. Penix stated that there were no technical issues with this project, such as easements or utilities, which needed to be addressed.

Ms. Pope stated that it would be appropriate for the Board to request any additional information that they might need at this time.

Mr. Sorey asked if all Board members, except him, had been present for the initial presentation of this project; Ms. Pope stated that the hearing took place two months ago and that only five Board members had been present: Bill Kneebone, Adele Lucas, John Butler, Heath Ward and Scott Borman.

Mr. Sorey stated that he would like to cover any pertinent information at this meeting in order to get all Board members "up to speed." He asked about the covenants in place.

Mr. Penix went over the 1973 covenants, since they superseded the 1971

covenants; he stated that the copy of the covenants is barely legible and would have a copy typed up. Mr. Sorey asked if the Board could have the typed copy early enough to be able to look them over. Mr. Penix stated that he could have them to Staff the next day.

Mr. Penix stated that there were many "bad covenants" in the lake area that were filed; he elaborated that they were unclear, poorly written and the purpose of many of them was to exclude chicken houses. He added that Arkansas law does not favor restrictive covenants and that the courts will enforce them only if absolutely necessary. He stressed that it is not the Board's job to enforce covenants.

Mr. Penix stated that, "covenants are in the nature of a personal contract, shared as a burden and restriction on the property by those people having lots in the subdivision." He added that the final plat should clearly state that restrictive covenants apply, but in the case of Rush Estates covenants were filed after the final plat. He conceded that the covenants are filed for record, so, "to the extent they (covenants) apply, these have to be contended with." He asked the Board to bear in mind that covenants must be "clear and unambiguous." He read part of the covenant: "No lot shall be used and no dwelling shall be erected, altered, placed or permitted to remain on any lot other than for residential purposes."

Mr. Penix argued that a cell tower is not a dwelling, but a structure, so the covenants are unclear in that regard. He stated that the opposition's argument seems to be that a cell tower is a commercial structure. Mr. Penix maintained that it is not commercial and asserted that it is a twenty-first century telephone pole. He stated that to exclude cell towers simply because someone profits, one would also have to exclude other public utilities such as water, sewer, telephone, and cable.

Mr. Penix stated that if the Board were to look at the legal aspects of the case, they would have to look at whether or not the covenants were actually valid, whether or not all residents of Rush Estates signed the covenants, and whether or not the people who enacted the covenants had the right to do so, among other issues.

Mr. Sorey asked about the variance request; Mr. Penix stated that the variance has shrunk from 80 feet to 44 feet. Mr. Sorey asked if that was the location between the pole and the property line; Mr. Reynolds answered that it was the location from the center of the pole to the edge of the pavement.

Ms. Pope stated that the cell tower ordinance requires that the tower have a setback of the height of the tower plus fifty feet away from roads and residences, adding that the applicant meets all of the set-backs, except for the set-back from the road.

Mr. Sorey asked if, per the applicant's diagram, the tower is 201.15 feet from the road; Mr. Reynolds answered that that is the distance to the edge of the pavement. Mr. Sorey asked the height of the tower; Mr. Reynolds stated that it is 195 feet tall. Mr. Sorey clarified that even if the tower fell straight down, it would not reach the road; Mr. Reynolds concurred.

Ms. Pope stated that photographs of the proposed site would be shown at the public meeting.

Ms. Lucas asked if the 44 feet that Mr. Penix spoke of is part of the "plus fifty feet" requirement. Mr. Penix answered that the tower is 201 feet from the road, but the required distance would be 245 feet from the road, hence the 44-foot variance

request.

- Staff requested better copies of the survey from the applicant.

2. Large Scale Development - **Martin Building Products** - South Old Wire Road, Rogers - Gene Buescher

Bill Platz of W/R Consulting was present; he stated that he is assisting Gene Buescher with engineering aspects of the project.

Ms. Pope stated that this project was brought before the Board as a result of a citizen's inquiry into the business. The applicant has met all requirements for a large scale development.

Mr. Sorey asked if this was a matter of enforcement; Ms. Pope stated that this is an existing business.

Mr. Platz stated that the building was built in 2004 and an existing business was moved into the building (from Oklahoma). The applicant brought the project to the previous Planning Staff informally; Mr. Platz submitted a copy of the letter that the applicant had received from the Planning office. He added that the work was all done during 2004, 2005 and 2006 and that nothing has been done recently.

Ms. Pope asked if the applicant has an easement for his gravel driveway from Old Wire Road across the Wilson property; Mr. Platz stated that it was filed today and that he would get a copy to Staff.

Ms. Pope stated that the drainage report was done recently; Mr. Platz stated that he helped the applicant with what should have been done.

Ms. Pope stated that Staff has no objections to approval, but the applicant may need to place a buffer between his property and the Palmer property to the west.

Mr. Sorey asked if the parked trailers shown on the plat are moveable; Mr. Platz stated that they are and that they are being used for storage.

Stipulations:

- Buffer between applicant's property and the Palmer property to the west

New Business:

1. Large Scale Development - **Spring Creek Nursery** - North Airport Loop Road, Rogers - Sandcreek Engineering

Mr. Sorey excused himself from the meeting.

Brian Sartain of Sandcreek Engineering represented the project, which he stated had been presented to the Board last month as a conceptual project. He stated that he was not aware of any significant issues with the site. He stated that Staff had advised the applicant that additional buffering might be required, but noted that the concrete block bins had been moved back from the property line by ten feet. He added that there are existing evergreen trees between the proposed office space in the existing house and the property to the west. Mr. Sartain stated that the applicant might agree to plant additional trees around the concrete bins, but that they do not see a need for buffering all the way around the property since it is surrounded by pasture land and trees will be planted in these areas.

Ms. Pope pointed out that the property may not always be surrounded by pasture land and asked what buffering or fencing the applicant is proposing; Mr. Sartain stated that beyond buffering around the concrete bins, the applicant did not propose any further buffering. He added that ball and burlap trees would be planted along the property line.

Mr. Borman asked if the adjacent property owner had been the person he spoke with at the last meeting and if the adjacent property owner had been provided with the information that he needed; Mr. Sartain answered affirmatively on both counts.

Mr. Borman expressed concern with the traffic in the area of Airport Loop and Highway 94, but stated that it is not the applicant's issue. Mr. Borman clarified that the truck traffic would be limited; Mr. Sartain affirmed that it would be four to six trucks per week and mentioned that a truck has more sight distance than a car would have.

Mr. Borman stated that he believed that a section of Airport Loop Road behind the airport would be closed down, but the proposed location would not be affected; Mr. Sartain stated that he spoke with a road superintendent for that region who told him that if the runway at the airport were extended, which would be the reason that the road might be shut down, that section of the road would be boxed under the runway.

Mr. Kneebone mentioned that at some time in the past, a subdivision was proposed in this area but was denied.

Mr. Borman asked if the applicant had met with the Rogers Airport; Mr. Sartain affirmed that they had and that airport personnel had no concerns regarding the proposed project.

Ms. Pope stated that Staff would need a letter from the Rogers Airport; Mr. Sartain stated that it had already been submitted.

Mr. Borman asked if Staff needed something from Benton County Water District 1 regarding water service; Mr. Sartain stated that there is a well on the property and that the existing pond will be used for irrigation. He stated that Rogers Water services the area but that the property will not be connecting to Rogers Water.

Mr. Borman asked how many employees the proposed business would have; Mr. Sartain answered that there would be four to six employees. Mr. Borman asked about customers; Mr. Sartain stated that he could not say how many customers would be onsite, but noted that their customers would be landscaping companies picking up plants. Mr. Borman stated that since a well is serving the property, the applicant would need to check with the Health Department to avoid getting into, "a non-transient, non-community water system situation."

Mr. Gray asked about the building on the east edge of the property that appears to overrun the property line. Mr. Sartain replied that it is an old horse barn with metal siding and wood frame that will be left where it stands.

Ms. Pope commented that the Board could require the building be dealt with as a condition of approval.

Mr. Gray asked what use the applicant planned for the building; Mr. Sartain said that it would be used for storage of equipment or materials.

Ms. Pope stated that the applicant could buy the part of the property on which the building stands or they could do a lot line adjustment.

Stipulations:

- Department of Health approval regarding the well
- Satisfy the requirements of the airport board
- Lot line adjustment
- Buffering using ball and burlap trees along both sides of the property and additional buffering of the concrete bins

Mr. Sorey returned to the meeting.

2. Preliminary Plat Time Extension - **Emerald Ridge Subdivision** - Fielding Road, Gravette - HGM Consultants

Larry Kelly, of Larry Kelly and Associates Realty, was present.

Ms. Pope asked the Board if they had received an email from Mr. Kelly in their packets; Board members answered affirmatively. Ms. Pope stated that the email explains why Mr. Kelly is present; she added that Staff had no objection to the time extension.

Mr. Borman asked if Mr. Kelly's project was under, "the old RDA, before Centerton;" Mr. Kelley answered, "Yes."

Mr. Sorey asked if the Board had any questions or issues; nothing was brought up.

3. Tract Split Variance - **Bernard Thorne** - East McNelly Road, Bentonville - Clifford Bass Surveying

Cliff Bass represented the variance request.

Ms. Pope stated that the applicant is requesting a variance in order to split land that had been previously split.

Mr. Bass informed the Board that several years ago the applicant had split land off of the parent tract for his son and now wished to split the property again. Mr. Bass added that the ordinance does not state that only one tract split is allowed on a piece of land.

Mr. Sorey stated that a variance can be granted in family cases, but multiple tract splits eventually become subdivisions.

Mr. Bass stated that the applicant wanted to split off the north end of the parent parcel; his son's property is to the south.

Ms. Pope pointed out that the split would yield irregularly-shaped parcels, but stated that the applicant's options were limited. She added that Staff had no objections to the variance request.

Mr. Sorey stated that he is familiar with this property and that the majority of the center of this parcel is very steep; he did not foresee anyone building on that part of the land. He asked that the dimensions be added between the shed and the property line and stated that the well needs to be located on the plat; the applicant also needs to submit Health Department approval.

Ms. Pope added that the Board should be aware that this property is within the Bella Vista planning area; the applicant would be required to submit a letter of release from Bella Vista.

Stipulations:

- Add the dimensions between the shed and the property line
- Locate the well on the plat
- Submit Health Department approval
- Submit a letter of release from Bella Vista

4. Large Scale Development - **Draco, Inc.** - Airport Road, Siloam Springs - James Surveying

Mark Smithson of Draco, Inc. represented the project.

Ms. Pope stated that this business would be located within the City of Siloam Springs' planning area, but Siloam Springs is not reviewing large scale developments outside of their city limits, only subdivisions. She stated that the applicant had met the minimum requirements for large scale development.

Mr. Sorey asked the applicant to explain his proposal; Mr. Smithson stated that the business will be a warehouse for pool tables, jukeboxes and video games, which they will lease out. He stated that they will have a small office and added that there would not be customers coming to the premises.

Mr. Kneebone asked about facilities in the building; Mr. Smithson stated that there would be a half bath onsite.

Ms. Pope stated that the applicant is requesting a waiver of the drainage study; Mr. Sorey stated that the applicant's site is 1.42 acres and would fall under some erosion control guidelines; the Board would need a drainage letter from an engineer.

Mr. Gray asked if this was an existing lot or if it is being created for this project; Mr. Smithson stated that the lot currently exists.

Ms. Pope asked if the applicant had received Health Department approval; Mr. Smithson affirmed that they received it today.

Mr. Sorey asked if the site is on city water; Mr. Smithson answered that it is.

Mr. Gray asked about the dimensions of the building closest to the property line; Mr. Smithson stated that they would have the dimensions added.

Mr. Smithson noted that the water use by this facility will be less than 40 gallons per day; it is simply a small office and a warehouse. Ms. Pope then asked if anything would be stored outside of the building; Mr. Smithson answered, "No".

Ms. Pope asked how many employees would be working out of this warehouse; Mr. Smithson stated there would only be two employees: Mr. Smithson and his business partner. Ms. Pope then asked about truck traffic; Mr. Smithson answered that their trucks, as well as UPS trucks twice a month, would be coming to the site.

Mr. Ward clarified that there would be no tractor-trailer traffic; Mr. Smithson stated that there would not be any large trucks.

Stipulations:

- Submit a drainage letter
- Add building dimensions to the plat

5. Large Scale Development - **Cannich Substation** - Highlands Boulevard, Bella Vista - Allgeier/Martin

Karl Kinler of Allgeier/Martin represented the project.

Ms. Pope stated that the project is a proposed electrical substation on two acres outside of Bella Vista; she described it as a standard utility site with chain link fencing and graveled yard.

Staff suggested buffering, but conceded that it is difficult to buffer a substation.

Mr. Ward asked how close the adjacent property owner's (Mr. Hingle) residence is to the site; Mr. Kinler answered that Mr. Hingle has chicken houses on the adjacent property, but he did not believe he had a residence there. He stated that there are some residences ¼ to ½ mile away to the south.

Ms. Pope asked how far the gated area is from the property line; Mr. Kinler stated that the south gate is 20 to 25 feet from the property line and the north gate is 30 to 40 feet away, due to the road curving away.

Mr. Kinler asked if there was any real need for buffering to the south of the property, since it faces the chicken houses; none of the Board members saw the need for it and Mr. Borman stated that with the lines running in and out of the property, it would be impractical to require it.

Mr. Sorey asked about the applicant's drainage letter; Mr. Kinler stated that a letter was included in the substation's application, signed by him, "stating that Carroll Electric has prepared a construction Storm Water Pollution Prevention Plan; within the next week it will be submitted along with the request for a permit," to ADEQ so that the applicant can begin grading and construction.

Mr. Sorey stated that the Board would require a letter, stamped by an engineer, stating that there would be "no adverse impact downstream based on this development." Mr. Kinler asked if the Board had received a letter, dated August 29, bearing his signature and if that was sufficient; Ms. Pope clarified that the letter needed to state that there would be no adverse impact to adjoining properties.

Stipulations:

- Submit a letter stating that there will be no adverse impact to adjoining properties as a result of this development.

6. Large Scale Development - **Jimmy Jones Excavation** - East Highway 264, Lowell - Gray Rock Consulting

Phil Swope of Gray Rock Consulting represented the project.

Mr. Swope informed the Board that the applicant wished to construct an 80-foot by 120-foot building in order to store construction equipment.

Ms. Pope stated that a vicinity map is required on the plat. She asked Mr. Swope to verify that the building would be used for the storage of equipment only and would not be used for any commercial activity. Mr. Swope affirmed that that was correct - only Mr. Jones' own trucks would be on the property.

Mr. Ward asked Mr. Swope if there would be any repairs made on equipment on-site; Mr. Swope answered, "Only if absolutely necessary." He added that there

would be no bathroom on site, only electricity for lighting.

Ms. Pope stated that the applicant would be required to move the dumpsters farther back to the side of the building or screen the dumpsters.

Mr. Sorey enquired about the proposed home on the property; Ms. Pope answered that the applicant already has a building permit.

Mr. Gray asked if the tract involved was being split; Mr. Swope stated that it is not being split.

Ms. Pope stated that she couldn't differentiate between tract 1 and tract 2; Mr. Swope assured her that he would darken the property lines on the plat.

Mr. Sorey stated that the septic and lateral lines need to be indicated on the plat; Mr. Swope stated that he would take care of that.

Mr. Sorey also noted that the contours west of the proposed building on the plat are "weird"; he stated that 1380 is repeated. Mr. Swope stated that he would correct the issue.

Ms. Pope outlined the stipulations:

- Add a vicinity map to the plat
- Screen the dumpsters and move them back toward the building
- Darken the property lines to ensure that tract 1 and tract 2 are distinctly visible & make tract 1 more clear
- Indicate septic and lateral lines on the plat
- Correct the contours west of the proposed building
- Show the driveway to the proposed house

7. Variance from Subdivision Regulations - **Judy Duncan** - Highway 279, Bella Vista - Cochran & Associates

Judy Duncan represented the variance request.

Ms. Pope stated that the property involved is currently divided into three parcels; the applicant is asking to split it into five parcels - three parcels for their children and two for their grandchildren.

Mrs. Duncan confirmed that they are planning their estate; she added that tracts 1, 2 and 3 of the proposed split are currently one parcel.

Ms. Pope noted that the split would land-lock some of the parcels; the proposed 30-foot ingress/egress easement only serves three of the parcels. She stated that if the Board chose not to grant the variance and the applicant submitted a subdivision, it would look similar. She added that the existing lot configuration makes it difficult to see how else the land could be divided.

Mr. Sorey clarified that the adjacent property owners are Carroll Electric and CCI (Cooper Communities, Inc.) and that they should not need access through the Duncan property. Mrs. Duncan noted that Carroll Electric does have access on the south edge of their property, but it is adjacent to the property, not through it.

Ms. Pope stated that the worded description of the easement needs to be included on the plat.

Mr. Gray asked that the spelling of the word "removal" in the title block be corrected.

Mr. Sorey asked if the legal descriptions of lots 4 and 5 would suffice as the description of the easement; Mr. Gray stated that, at some point, family members would probably be trading deeds, so a separate legal description of the easement should be defined on the plat to avoid future issues.

Stipulations:

- Include a separate legal description of the easement on the plat
- Correct the spelling of the word "removal" in the title block

Mr. Sorey stated that the Board needed to exercise caution and remember that they are setting a precedent in considering a family tract split. He noted that the Board has no control over lots being sold once this is done. He stated that in this case it makes sense to handle the land in this way, but it may still cause issues in the future.

8. Informal Plat Subdivision - **The Point at Sugar Hollow** - Woods Road, Prairie Creek (Rogers) - Caster & Associates

Steve DeMent represented the project; he stated that he is attempting to purchase his neighbor's property.

Mr. Ward stated that the existing house, the well, and the septic system all need to be indicated on the plat.

Ms. Pope stated that the legal description of the easement needs to be added to the plat; she added that a release from the City of Rogers would be required and recommended he contact Derrel Smith.

Mr. Sorey asked if additional lots would be created in the future; Mr. DeMent stated there would not be additional lots - he only wants to create three lots for his three children.

Ms. Pope stated that the road is gravel and asked if it belongs to the County; Mr. DeMent stated that it does not: it is a private, blue-sign road called Woods Road.

Mr. Sorey asked if anyone else uses the road; Mr. DeMent stated that he believed about 15 other families used this road.

Mr. Gray requested that the dedication of the right-of-way (of fifty feet) be shown on the plat. He added that the dedication of the right-of-way would create a de facto lot to the west of the right-of-way (on the opposite side of the road). Mr. Sorey clarified that the created lot would be about 2 acres; Mr. DeMent stated that it would be 2.2 acres.

Mr. Sorey asked if there is any buildable area on the lot on the west side; Mr. DeMent stated that there is. Mr. Sorey asked if he would mind making that a separate lot; Mr. DeMent stated that he actually preferred to make a separate lot, but stated he was told by the Health Department that if the land is under 3 acres, he would have to "do a subdivision thing" which could take 60 to 90 days. He added that the lady that he is purchasing the property from is attempting to move to Colorado, so he is trying to close on the property as quickly as possible in order to pay her. He stated that he would like to leave that lot as it is until he is ready to

do something with it.

Mr. Sorey stated that he believed that Mr. DeMent could still get through the informal plat process with relatively little trouble, but that Health Department approval would be a requirement before obtaining a building permit to build anything on that lot.

Ms. Pope asked why the lot could not be platted as lot 4 and make Health Department approval a condition of Mr. DeMent being able to build on that lot; Mr. Sorey agreed that that was what he had suggested, and added that it allows the applicant to get through the process and file the plat for record.

Stipulations:

- Indicate the existing house, the well, and the septic system on the plat
- Add the legal description of the easement to the plat
- Submit a release from the City of Rogers
- Add a note to the plat stating that Health Department approval is required prior to building on lot 4
- Indicate 50 foot right-of-way for Woods Road.

Ms. Pope stated that D & L Auto had been pulled from the agenda, but asked if the applicant could address the Board regarding his project; Mr. Sorey stated that they should stay on track for now and hear D & L Auto afterwards.

9. Planned Unit Development - **Lost Rock Ranch, LLC** - Lakeview Bay Road, Rogers - Community by Design

Brian Teague of Community by Design represented the project.

Mr. Borman asked about the potable water treatment; Mr. Sorey recommended Mr. Teague give his presentation, and then answer questions.

Mr. Teague stated that Community by Design is part of a team with three other design firms and that they wish to "do something special out here on the lake;" they want to create a modernist, low-impact, park-like setting for vacation homes and cabins. They are planning hiking and biking trails, boat docks, community pavilions, and an outdoor amphitheater for this project, which was initially presented to the Planning Board last fall. At that time, they planned 36 units on 129 acres, but now they have acquired 30 additional acres and plan on a total of 56 units.

Mr. Teague stated that they decided to do a planned unit development to avoid having to submit several waiver requests. Their plan includes a minimum lot size of 6000 square feet in order to cluster development to allow for more open space. He added that while they are asking for a smaller lot size, they only have a density of .36 units per acre. Mr. Teague stated that they are also asking for a 5-foot set-back at the front of the lots, as opposed to the ordinance requirement of 25 feet; Lost Rock is also requesting a 5-foot side set-back instead of the customary 10 feet.

Mr. Teague stated that in keeping with low-impact development principals, Lost Rock would use the existing roads, trails, and existing topography as much as

possible. A 30-foot utility and access easement has been proposed. They have also added an entrance in an attempt to "remove the requirement that we would have to sprinkle all the houses."

Mr. Teague said that with the acquisition of the added acreage to the east of the original property, Lost Rock Ranch now surrounds a long stretch of Benton County Road 600, which they would like to make private. He informed the Board that utilities would be located in 30-foot easements along the fronts of the lots. He stated that the original plan included drilling wells, but now the newly-formed Pinetop Water District will supply water. Mr. Teague added that the sanitary sewer lines will be located in the 30-foot access and utility easement and that the sewage will be treated using a septic tank effluent pumping system, which will convey wastewater to a centralized step system. The treated waste water would then be put into the ground using drip irrigation.

Mr. Sorey asked if the step system is tentatively located on the plat; Mr. Teague stated that APEC has submitted plans to the Health Department and is working towards approval. Mr. Borman noted that the drip field area must be designated on the plat. He added that the operating and maintenance costs, as well as other "financial capacity requirements" would have to be met and stated that APEC is aware of these requirements. He stated that the Board would need to know who would be responsible for operating the system and informed Mr. Teague that the operators would have to be licensed. Mr. Teague stated that Lost Rock would be "using the Bio Clear system," and stated that they were hoping to gain contingent approval. Mr. Borman emphasized that the basics were not listed on the plan and enquired again about the potable water treatment; Mr. Teague stated that that should not be on the plat.

Mr. Borman expressed concern that fire flows would be provided to the development and asked if the Pinetop Water District is built and operating yet; Mr. Teague stated that there is a 24-inch main 5000 feet south of the Lost Rock Ranch property that carries water from the Pinetop Water Treatment Facility to tanks owned by Madison County Regional Water. Mr. Borman asked if Pinetop is fully functional; Mr. Teague stated that it is not, but that Lost Rock Ranch would be its first customer; a 3000-foot extension of the water line to the 24-inch main must be completed before Pinetop begins operations.

Mr. Borman stated that the applicant would need to get a letter from Madison County regarding the proposed connection to the Pinetop Water District, and another letter from Pinetop Water District affirming that they will supply water to Lost Rock Ranch and that they will have adequate flow and fire flow. Mr. Sorey added that the Board would need to see the offsite water line design as part of the development, since easements would be required in order for the water lines to cross adjacent property owners' land.

Ms. Pope stated that the lots cannot be created the way that they are depicted on the plat - common areas must be platted as such. Mr. Sorey added that the lots are disconnected from any direct access, which may be a violation of State law.

Ms. Pope called attention to the small lots to the south corner and asked how big the lots are; Mr. Teague was uncertain and mentioned needing to adjust the buildings' footprints. Ms. Pope suggested pursuing a condominium agreement on those lots. Mr. Teague observed that the Board seemed to have an issue with the plan to have a private drive and separate lots. Ms. Pope stated that separate lots

can be created, but that everything must be in a lot, pointing out that much of the open space is not within a lot.

Mr. Kneebone noted that the roads seem to be very narrow and that the width of the roads is not shown on the plat.

Mr. Sorey stated that Lost Rock has a lot of work to do on the plan, but commended Mr. Teague on the concept of the presentation. Ms. Pope stated that this is in far eastern Benton County and it would be a great get-away area.

Mr. Borman agreed that the concept is great and the decentralized sewer system is preferable, but stated that the applicant must resolve the utilities issues before the Board looks at this project any further.

Ms. Pope informed Mr. Teague that the applicant would need to petition the County Judge to vacate the County road, which would be a separate process from the PUD application. She asked about the street profiles and whether the applicant proposed any "cut and fill." Mr. Teague stated that they would try to match the existing grade as much as possible. Ms. Pope asked if the applicant would maintain a 10% grade, Mr. Teague stated that he believed that they had some grades greater than 10%, but he was unsure of what their maximum grade would be. Ms. Pope stated that road profiles would be required and that they must be acceptable for fire protection. She expressed surprise that the applicant is not proposing any sort of road development; Mr. Teague stated that they were going by what was approved last fall, and the road layout was not changed.

Mr. Ward asked where the fire station would be located; Mr. Teague answered that it would be two miles away, next to the Pinetop Water Treatment Facility. Mr. Ward asked if the firehouse exists now; Mr. Teague stated that it does not, but it is about to be built.

Ms. Pope asked if Lost Rock had created an improvement district for the sewer system; Mr. Teague answered that they had.

Mr. Borman asked if each house would be metered individually; Mr. Teague stated that they would be. Mr. Borman then asked if each residence would be direct customers of the Pinetop Water District, or if Lost Rock would be sub-metering. Mr. Teague answered that they would be sub-metering. Mr. Borman stated that that would make Lost Rock a public water system and that they would need to contact the Department of Health. Mr. Teague stated they had had discussed several options during the course of planning; Mr. Borman emphasized that if Lost Rock paid Pinetop Water District for water, then charged residents for water usage, Lost Rock would be a public water system and would need to meet all the requirements of a public water system. Mr. Teague stated that he thought he might have answered Mr. Borman's question incorrectly.

Mr. Teague asked about the Board's process and whether or not Lost Rock would have an opportunity to resubmit plans; Mr. Sorey asked if, when the plan was originally presented to the Board, it was presented as a conceptual plan; no one was able to answer his question. Mr. Sorey stated that if the Board approves the conceptual PUD, the next step would be to present a preliminary PUD, which would involve construction documents. Mr. Sorey stated that, in his opinion, this presentation "isn't anywhere close to construction documents."

Mr. Borman stated that he believed that the Board did not vote on the plan when it was originally presented, it was brought to the Board as a concept only and the

Board gave feedback. The Board discussed this and agreed.

Mr. Sorey summarized by telling Mr. Teague that Lost Rock would need profiles of the water lines and road profiles (whether they are dedicated or not). Mr. Teague interrupted to ask if the Board required profiles of the water line; Mr. Sorey answered that he believed that the State Health Department would require them, but if they don't, he stated that Lost Rock would need them to calculate the air relief valves needed. Mr. Sorey went on to say that Lost Rock has issues with the sewer that needed to be resolved, although the Board could choose to approve a development contingent upon completion of the wastewater system.

Ms. Pope stated that the Board would need information on the sewer system before approval would be granted. Mr. Sorey agreed and added that the development would also need to resolve property line issues. He stated that there are easement lines on the plat that need to be corrected. Mr. Sorey concluded by saying that if the applicant was seeking approval from the Board in order to begin construction, it is not feasible at this time.

Mr. Sorey asked if the project should be kept on the agenda as a conceptual PUD, stipulating that the applicant could not move forward with any construction until they submit all checklist items and engineering documents. After Board discussion, Mr. Sorey suggested keeping the project on the agenda.

10. Large Scale Development - **D & L Auto Sales** - Bloomfield North Road, Gentry - The Engineering Group

Jorge Duquesne represented the project.

Ms. Pope informed the Board that this project was initially dropped from the agenda due to the adjacent property owner notifications not being turned in to Staff, but that they had been turned in that day, so the large scale development requirements had been satisfied. She expressed concern regarding this site; Staff received a letter from the Health Department stating that the septic system serving the business had been installed without supervision from the Health Department and that the septic tank had not been capped properly. The letter stated that the site would be monitored and if a problem arises, the owner would be responsible for correcting it. Ms. Pope stated that the owner's intention is to use the existing septic system for the sales office.

Mr. Duquesne said that the letter also states that the system is currently working, but if there are issues, they would be corrected.

Mr. Sorey clarified that this property is five acres and is not being split; Mr. Duquesne verified that that is correct. He added that the building and the gravel are already in place - this project is "as built;" Ms. Pope verified that this is being brought before the Board as a matter of compliance.

Mr. Borman asked what the variance request for storm water regulations entailed; Ms. Pope stated that she believed that the applicant wanted a variance from the drainage report and the Storm Water Pollution Protection Plan requirements. Mr. Duquesne stated that the applicant wished to avoid adding a detention basin - he added that the property is in an agricultural area and the impact of the business is minimal. Mr. Borman stated that a letter from a professional engineer to that effect would be required; Mr. Duquesne agreed to obtain a letter.

Mr. Sorey enquired about the location of the existing septic system; Mr. Duquesne

stated that the septic system is to the south of the building and was originally installed for a trailer that was previously on the property.

Mr. Henry asked who was going to monitor the septic system; Mr. Duquesne said that that was not stated in the letter, but he assumed that if the owner noticed unusual odors that he would rapidly attempt to resolve the issue.

Mr. Sorey asked if the property is currently served by public water; Mr. Duquesne stated that he believed so. There was discussion by the Board; Mr. Borman concluded that the property is probably served by Gentry Water, which runs all the way to Colcord, Oklahoma.

Mr. Ward asked when the septic system was installed; Mr. Duquesne was unsure, but felt sure that it was in the last couple of years.

Mr. Sorey asked what the building is being used for; Mr. Duquesne stated that automobiles will be repaired onsite, and then sent by trailer elsewhere – they will not actually be sold from this location.

Stipulations:

- Drainage letter

Other Business

1. The chair then recognized Randy Ritchie of Steadfast, Inc. Mr. Ritchie discussed his project, Angler's Bend, which he stated was submitted to be on this month's agenda, but was dropped. He stated that he had had a special meeting with Ms. Pope to go over the 23 stipulations that he had to address as a result of the last TAC meeting he attended in reference to this project. Mr. Ritchie stated that during that meeting, he and Ms. Pope went over each of the stipulations, the next day, he brought a set of plans to Staff and felt that his project was acceptable. He said he just received a call yesterday that the project was being pulled off of the agenda. He stated that he was given five reasons that the project was being dropped, three of which were that he needed to submit a copy of the covenants, a drainage letter, and a letter of release from the City of Rogers. He stated that he had already submitted three of the items he was told about, but Staff did not have them. He stated that he had emailed those three items to Staff today. He stated that it comes down to one remaining stipulation being unfulfilled: the sewer system information. He felt that it was unfair that his project was dropped from the agenda due to one missing stipulation.

Ms. Lucas stated that she knew that Angler's Bend was being dropped from the agenda several days ago, since she works with a resident of the subdivision across the street from the proposed site location. Mr. Ritchie stated that he received a call the previous day between 4 and 5 p.m. Ms. Lucas stated that she had felt it was interesting, since she had not yet seen an agenda, so she emailed the Planning office to request an agenda; Ms. Stewart responded that Angler's Bend had been on the agenda until the previous day. Ms. Pope clarified that the person must have been talking about the City of Rogers' Planning Board agenda, since Angler's Bend was pulled from their agenda. Mr. Ritchie verified that that was true and stated that the project should never have been on their agenda.

Mr. Borman stated that the Board had been very specific regarding the waste water

system and the items they wanted to see, among them the placement of the drip field irrigation and calculations in regards to flow. Mr. Borman stated that he assumed that the density of the project had changed from what Mr. Ritchie originally planned. Mr. Borman reiterated that the Board had been very specific, and stated that whether or not Mr. Ritchie thought "it's a small thing or not, I think it's a pretty big thing." Mr. Borman felt that the Board should not spend it's time looking at incomplete project information.

Mr. Ritchie stated that the system was "not drip – it's discharge." Mr. Borman stated that that changes the situation entirely. Mr. Ritchie stated that existing system has been permitted and operating since 1990. He added that the system is permitted for a million gallons per month and that for the density of the project just a bit more than that would be needed. Mr. Borman asked if all of this information had been submitted to Staff; Mr. Ritchie stated that it had not been, but it may have been due to a misunderstanding. He stated that the stipulation reads, "Provide the operation and maintenance plan for the plant." Mr. Borman interrupted, stating that during the last meeting he had been left with the impression that the applicant had a decentralized sewer system, rather than a direct discharge operation.

Mr. Ritchie stated that the existing plant would remain in place, but the applicant is prepared to add another unit or increase the capacity of the existing unit. Mr. Borman clarified that this information was not included in the applicant's submittal; Mr. Ritchie stated that the plans would not be finalized for some time yet. He added that he did not believe that those plans were necessary until he submitted his final plat application. Mr. Borman stated that he had been led to believe at the last meeting that significant changes would have to be made to the existing system and that Mr. Ritchie was unsure of the system's capacity at that time. Mr. Sorey interjected that he remembered that Mr. Ritchie did not know all of the details of the waste water treatment plan at that time, but that the Board was going to have to have that resolved.

Ms. Pope stated that it was discussed in the last meeting regarding this project that the waste water system was going to be evaluated by a company from Little Rock; she believed that Mr. Ritchie should have some documentation from that company evaluating the performance of the system, but had yet to submit a copy to Staff. She stated that it was her understanding that some form of documentation would have to be submitted to the Board before approval of the preliminary plat; Mr. Kneebone and Mr. Ward concurred with her statement.

Mr. Ritchie stated that the main reason for the Technical Advisory Committee meeting is to apprise applicants of items they might be missing; he stated that if that was not going to be done, then the TAC meeting should not take place. He reiterated that he only had one missing item; Ms. Pope stated that it was an important item.

Mr. Ward respectfully disagreed with Mr. Ritchie, stating that due to the magnitude of the project the waste water treatment needed to be carefully evaluated. He stated that this something that would require a bit of time, not something the Board should review only on the night of the TAC meeting. Mr. Ward stated, "It's not like you didn't have a letter from a fire department, this is a pretty major issue."

Ms. Lucas pointed out that there is a great deal of opposition to this project, so

public attendance would be high; she added that Mr. Ritchie should be prepared for the meetings so that he didn't have to address the concerns of the Planning Board as well as the public.

Mr. Ritchie pointed out that he would have to re-notify the adjacent property owners again.

Due to the proposed site's location within the City of Rogers' planning area, Mr. Sorey stated that it is futile for Mr. Ritchie to attempt to finalize his plans with the Benton County Planning Board until he meets all of the City of Rogers' requirements.

To show that he is going through the proper channels in Rogers, Mr. Ritchie stated that the project is on the agenda for the Rogers Water and Sewer Commission's meeting on September 17th. He restated his objection to being dropped from the Planning Board's agenda due to missing one stipulation, since he is only applying for preliminary plat.

Mr. Sorey said that the meeting that Mr. Ritchie will be attending is not for the City of Rogers, but the Rogers Water and Sewer Commission, which is a separate entity with a separate approval process. He stated his belief that if the City of Rogers has opinions regarding this project, then the Benton County Planning Board needs to know of those opinions before granting its approval.

The Board discussed the relationship between the County Planning Board and individual city planning boards, how the relationship is supposed to work, and how it actually works.

Mr. Ritchie stated that he had been confused after reading the minutes of the last meeting he attended, thinking the Board wanted to see a new waste water treatment system for this project. He restated that he had had a special meeting with Ms. Pope to cover the stipulations and he did not realize that he did not have everything he needed to be on the agenda. Ms. Pope emphasized that Mr. Ritchie had told her that he would provide the information on the sewer system.

Mr. Ritchie stated that he had asked to be on the agenda, but have the project tabled; the Board discussed it and decided that it would not be feasible. The Board had previously decided that if a submission is incomplete, they did not want to see it, and that decision stands.

Remaining stipulations:

- Obtain approval or letter of release from the City of Rogers
- Provide waste water treatment information

2. County General Plan Discussion

Ms. Pope thanked the Board members for attending the workshop and stated that she understood that the Board wanted to go the Quorum Court next week to ask them for a resolution in support of the County Planning process. She stated that she believed that the Quorum Court might be more apt to support the planning process if the Board first undertook a few months of public education.

Ms. Pope proposed a video, created by Benton County Information Systems, profiling the benefits of planning and zoning in the unincorporated areas of Benton County. She stated that some members of the Quorum Court liked the idea of

holding meetings within each district at which the public could view the video and receive a fact sheet regarding the benefits of planning.

Ms. Pope stated that the foundation of the planning process should be laid carefully and without haste; Mr. Ward agreed, but didn't want the process to get bogged down so that no progress was made.

Mr. Sorey agreed that the public education regarding planning is a good idea, but wanted to know if there is any assurance that the Quorum Court will continue to support the Planning Board; he also asked if the Quorum Court would be attempting to get feedback from the public meetings.

Ms. Lucas stated that she believed public education might yield better committees once the citizen involvement phase of the planning process began. Mr. Kneebone noted that previous public meetings regarding zoning were not well-received by the public.

Ms. Pope stated that during the workshop, the Board decided that it would not go forward with the planning process without the support of the Quorum Court; she added that attempting to gather support along the way might cause issues. She stated that public education cannot hurt and proposed modifying the scope of work to include a schedule of meetings in each district for the purpose of public education. Ms. Pope stated that citizen interest forms could be made available at these meetings.

Ms. Pope also suggested the idea of pre- and post-video surveys to see what effect the videos have on public perception. She stated that she believed that the members of the Quorum Court would like the proposed public education.

Mr. Henry asked if the public would recognize that these meetings could ultimately lead to zoning ordinances; Ms. Pope stated that she wanted to be completely "up front" and would inform the public that the video is for public information and supports the planning process that will lead to zoning. Mr. Ward added that the steps of the process need to be made clear.

Mr. Sorey reiterated his question of whether the Board should await Quorum Court support before beginning the planning process; Ms. Pope stated that she believed that the Quorum Court wished the Board to begin public education before asking for the Court's support. Mr. Sorey expressed his wish for direction from the Quorum Court before the Board invests time in what could be a futile effort.

Mr. Henry asked what kind of time the Board would have to invest in this process; Mr. Sorey answered that he didn't believe that the public education would take much of the Board's time, but the rest of the process could be time consuming. The Board concurred that after the public education, but before launching into the planning process, they would require the approval of the Quorum Court.

Ms. Pope felt that in order for zoning to succeed, it would have to have "grassroots support;" the people in the community who don't normally get involved in the community would have to understand what is taking place. She also felt that the people of Benton County care what is happening in the County.

Mr. Ward asked what the next step should be; Ms. Pope stated that she would get a revised scope of work together, then email it to the Board to get feedback. After that, Staff could work on getting the video completed and start scheduling public meetings.

Ms. Lucas stated that the video should be started; Mr. Borman concurred.

Ms. Pope stated that the Board has another option - the scope of work could be broken into two parts: planning and regulatory. Mr. Ward stated that it was two separate processes; Ms Lucas disagreed, stating that the Board should keep it simple. Ms. Pope stated that they might receive support on half of the plan earlier than the other half of the plan.

Mr. Sorey asked what exactly Ms. Pope had in mind in separating the planning and regulatory phases; Ms. Pope stated that there are two cycles to the planning process: the planning phase (in which the plans are created), and the regulatory phase (in which the plans are put into regulations). Ms. Pope stated that they might receive support on one before they received support on the other; Ms. Lucas stated that they might receive support on one and get "slammed on the other."

Ms. Pope stated that the Board also had the option of deciding that "it's all or nothing," meaning that they would not go through the planning process if they would not be able to implement the plans afterwards. The Board concurred with that statement.

Mr. Sorey called the Board's attention to the current regulations, which he felt were badly in need of revision. He asked if they will have to wait until after the proposed planning process is complete. He expressed his frustration with having "bad rule(s) and still having to follow it..." Ms. Pope felt that adopting new plans and regulations would be preferable to attempting to correct what is currently in place; Mr. Sorey concurred. Mr. Ward suggesting making corrections to those regulations that are particularly dissatisfactory, but stated that he would not advocate a comprehensive revision of the regulations; Mr. Sorey concurred and stated that when the Board sees a particular problem with a regulation, they should correct it.

Ms. Lucas stated that the worst issue for the Board currently is when citizens come before the Board telling tales about "the old Planning people" and bringing letters from the previous Staff. Mr. Sorey stated that that issue cannot be corrected.

Chair then recognized an unidentified member of the public, who wished to remind the Board that they would need the consent of the Quorum Court to change existing regulations. He added that if the Quorum Court saw that the Planning Board working toward a land use plan, they might support the Planning Board's efforts and assist the Board with the regulatory process. The Board thanked him for his comments.

3. Citizen Inquiry - **Linda Frasier** - 12796 Rhoden Lane, Lowell

She stated that Staff had received a complaint regarding a business being run on Ms. Frasier's property located at 12796 Rhoden Lane. She stated that the complainant accused the property owner of running a dog kennel without authorization.

Mr. Kneebone asked if this was being run in a neighborhood with covenants; Ms. Pope responded that there are no covenants.

Ms. Pope asked if the Board wished Ms. Frasier to submit a large scale development application. Ms. Lucas and Mr. Borman both enquired as to the number of puppies being kept onsite; Ms. Pope answered that there were three or four adult dogs and about five puppies.

Mr. Borman asked if Benton County had any regulations regarding the number of dogs a property owner may keep on his or her property; Ms. Pope stated that she

did not believe so. Mr. Borman asked for verification before a decision is made.

Ms. Pope noted that it did not appear that Ms. Frasier was running a commercial kennel; Mr. Borman commented that if Ms. Frasier only had three or four adult dogs and was breeding them and selling the puppies, he did not believe that that constituted a large scale development. Mr. Kneebone concurred.

Mr. Henry asked if anyone knew exactly to what Mr. Dillard's letter referred when he stated, "this is obviously in violation of Benton County (regulations)." Mr. Borman stated that it is Mr. Dillard's opinion. Ms. Pope stated that she had been to the site and she did not see any signage on the property indicating that the owner had dogs for sale. Ms. Pope stated that she did not see evidence of a commercial dog kennel and wanted the Board's opinion regarding the complaint.

Mr. Borman asked if Ms. Frasier was just selling dogs over the Internet; Ms. Pope stated that appear so. Ms. Pope stated that Ms. Frasier told her that she was not running a kennel. Ms. Pope then showed photographs of the site; the Board also reviewed copies of pages from Ms. Frasier's website.

Mr. Sorey asked if the site was visible from the road; Ms. Pope stated that it is not.

Mr. Ward stated that this business is akin to someone having a garden out of which they sell some of the fruits or vegetables - that would not be considered a full-scale farm. The Board concurred that Ms. Frasier's property does not constitute a large scale development. Mr. Sorey stated that an opinion from the County Attorney might be appropriate in this case.

Adjournment: The meeting was adjourned at 8:35 p.m.