

Benton County Planning Department  
TAC Committee Minutes May 4, 2011

Present:

Lane Gurel  
Starr Glenn  
Ken Knight  
Mark Curtis  
Cindy Jones  
Jim Cole  
John Pate

Staff:

Elizabeth Bowen  
Ronette Bachert  
Donna Fallin

Quorum Court:

Tom Allen

New Business:

Item 1: The Kennel for Yorkies. Wanda Atkins, 15168<sup>th</sup> Daniels Rd, Bentonville. Ms. Atkins stated she is already in the kennel business and is relocating. The building for the kennel already exists and wants to have it moved. She wants to construct a fence around it. Ms. Bachert stated there has been several email discussions over this project and there is usually a \$300.00 fee for commercial projects, but the fee has been waived and that this was the only unusual aspect of this project.

Mr. Curtis stated that it was introduced to the Quorum Court, that there needed to be another fee in place for small commercial projects, but the idea had been rebuffed and dismissed by the Quorum Court.

Mr. Gurel suggested that a recommendation to the Quorum Court be made concerning a change of fees for smaller commercial businesses. It would have to be determined what the definition of a small, medium or large impact business is to get the fees adjusted.

It was asked if any of the board members had any question. A question was asked if the Health Department had been notified. Ms. Atkins stated that she had contacted the Health Department and was told that they don't monitor businesses like this. She said the business is monitored, but not by the Health Department. ADEQ monitors a dog kennel, but the Health Department monitors the septic system. It was entered by Mr. Gurel that a stipulation be added that requirements from ADEQ be met for an approval by the board.

The plat plans for the kennel were viewed. There will be eight feet of fenced area on the back of the building. Mr. Gurel stated that the county requires ten feet of set-back for the building. There will be a separate septic system for the kennel.

It was asked if any utilities would interfere with the placement of the building. Ms. Atkins stated she didn't think so, but will confirm.

**A question was asked if approval was needed by ADEQ before the board could give approval and Ms. Atkins can start her business. The approval would be made during a public meeting in two weeks. It takes 5 to 6 months to get approval from ADEQ, & Ms. Atkins stated that she would not move the kennel until approval was made and that she would drive to the existing kennel 12 miles away.**

Item 2: Team Mobil Central LLC Wireless Communications is asking for a variance on set-back. There is an ordinance that towers have to be set back away from buildings and roads the distance as the tower is tall. Ed Michaels, 8500 W. 110<sup>th</sup> Street, Suite 300, Overland Park, KS 66201. Mr. Michaels stated

that the ordinance is 50 feet plus the height of the tower. In this instance, the distance for the tower to the road would be 215 feet. They are asking for a variance for a distance of 36 feet.  $215 - 179 = 36$  feet. This means the tip of the tower will be 14 feet from the road if something should happen. The tower would be a mono-pole, made to collapse in the middle. There are no guy-wires.

A question was asked if any space would be leased to other companies on the tower. Mr. Michaels stated that the tower is designed to be a three carrier tower so it is designed to handle two more carriers.

It was asked how close the tower is to residential structures. Mr. Michaels gave the following distances; to the north, 535 feet to the base of the tower, to the east, 530 feet, to the south, 805 feet, and to the west, it is an open field. Carol Electric will be the electric provider. A generator back-up will be used.

A question was asked as to what kind of material would be used for the access road. Mr. Michaels answered that access roads are usually constructed with crushed white rock on a bedding material, designed to hold semi trailers.

A question was asked if there would be a problem with construction traffic to the tower site. Mr. Michaels stated the road is flat going into the tower area; the road handles large trucks for chicken houses, and does not see a problem.

**A statement was made that it is thought that joint property owner names needed to be added to the plat map. Mr. Michaels stated that the property owner on three sides is the same, and the fourth side is a different owner.**

A question was asked to Mr. Michaels that if the board did not grant a variance, is there a reason that he is looking at this particular piece of property. The property owner, Mr. Reams, offered this piece of property away from residences and out of the flood plain. This property is also a higher elevation and further away from Hwy 12.

It was asked if there had to be frequency coordination on this project. Mr. Michaels answered that Team Mobile broadcasts between 1900-2100 megahertz spectrum devoted to cell phone use, and it should not interfere with any other broadcasts. It was asked what kind of power is being transmitted from this tower. Mr. Michaels answered that he did not have the exact amount, but it was very low.

It was noted that there are contour lines on the plat map, and it was asked if the land dropped off on that side and if the tower was pushed back as far as it can go. Mr. Michaels answered that the land drops off into the flood plain and the tower would sit on the plateau.

It was asked if the staff could clarify if there are any state regulations involved with the tower height plus 50 feet ordinance. It was answered that there are none that they are aware of. This is only a Benton County ordinance. It was stated that the tower height plus the 50 feet ordinance needed to be checked out, no precedence will not be set for future projects.

Ms. Bachert stated that if this project had been brought to the staff for administrative review, that there is a choice to make, that if the applicant does not have a 400 foot distance to a residence, the applicant can get approval from the resident for permission for the tower to be closer than 400 feet and it would be approved. The matter is different for a road. Improved technology has impacted safety issues of the towers since the ordinance was drawn up. It was also stated that the ordinance offers a variance dealing with topographic and natural features.

Item 3: Lot line adjustment, a review and comment from the city of Centerton. Matt Emerterio 11996 Hwy 72 West, Bentonville and Lorene Burnes, the Centerton Planning Director. Ms. Burnes stated that

this project is in Centerton's Planning Area and would have jurisdiction, but Arkansas Code requires (County) Benton County's review and comment.

A question was asked if there is a lot line adjustment, or just changing the boundary?

Ms. (Bryanton?) answered that it was just changing the boundary and not creating any new parcels. She stated that there are a few minor corrections that need to be made; NE needs to be changed to NW, add the dimensions from the center line of the street right-away to Hwy 72, and verify that the asphalt is 40 feet. She also stated that the building set backs are created as if they were made from the Centerton zoning ordinances but the property is not in the city limits.

It was stated that the change would be from 1.50 to 1.83 acres. Point 33 acres would be added.

A comment was made that since the property is in the Centerton Planning jurisdiction, the Centerton set back distance should hold force.

Ms. Bachert stated she could not find any authority for staff to do review and comment of any projects in any planning area of any city. She had found regulation in the Arkansas code stating the county planning board is the only one with governmental authority that has the right to review and comment, and the only one that has responsibility to do review and comment in a planning area. She stated that there could be a resolution to give staff the authority to review and comment. For now, review and comment will be brought to the board. She said she was open to any suggestions that the board may have. A comment was made that if some projects are brought to the board, they all should. It is going to be difficult synchronizing between the cities and the approval of the county board.

Another comment was made about fees. Does the applicant have to pay both the city and the county for review? The county does not have a fee schedule. Chris Glass had been adamant about not charging twice. Other comments ensued on the charging of fees. It was stated that it is being a citizen (resident) of the county, doing the review and comments on projects and not charging, and helping out the cities. The county has the right to make a land use decision. The city can not force its zoning outside the city limits. It can enforce its building code standards. Everyone is still trying to figure out territorial jurisdiction.

No further comments were made.

Item 4: Variance of Benton County TAC split regulations, City of Siloam Springs. Ms. Bachert stated according to ordinances, a parcel can only be split into two parcels. An informal plat had been submitted. This is a variance from a tract split. The main concerns are septic systems and water. It was stated that this property would fall under state conditions – three or more lots less than 3 acres would be a subdivision. Ms. Bachert stated that the Board can relinquish this project to the City of Siloam Springs, where it has already been approved. Inserting new information “The project was recommended for approval by the Planning Commission by a 6-1 vote. It is presently scheduled to be reviewed and approved by our Board of Directors on June 7, 2011 per Ben L. Rhoads, AICP Long Range Planner, City of Siloam Springs.” It was decided that the project will be tabled until the public hearing in two weeks.

**Mr. Curtis stated that he believed this project is a subdivision. Discussion ensued over the property split. It was noted that there is a shared road between two lots and there is a set back allowed. Clarification is needed and will be discussed in two weeks.**

Ms. Bachert asked if the project needed a full review and would be tabled until next month, or make a decision from information received about septic and water, and vote on the project at the public hearing. It was decided to wait for further information and bring the discussion up at the public hearing.

Old Business:

Item 1: Ms. Bachert gave a discussion on Planning Department regulations. She stated that the regulations she had emailed to Board members are a combination of all the Planning Ordinances including the 1998 ordinances through 2011 ordinances. She stated that the emailed regulations should be used to review all projects. She suggested that the regulations be separated into chapters, with a table of contents, and every chapter is reflective of a specific kind of land project. Ms. Bowen made a comment that she wanted to take the regulations to the Quorum Court to be used as the 'Blue Book'. She asked that before she presents the regulations to the Quorum Court, that they be reviewed and commented on, and that all City Planners can review them, so everyone can follow the same document.

Comments were made as to the appreciation for Ms. Bachert and Ms. Bowen bringing the regulations up to date. Ms. Bowen stated she believed the document will have to be approved through public hearing and George Spence is looking into this.

Item 2: The question, is commercial development included in territorial jurisdiction? When do cities make the decisions for projects outside their city limits. The answer should have been: when they develop ordinances and follow the procedures as outlined in the Arkansas code. The Attorney General Opinion: City Planning Boards have exclusive authority within the five mile territorial jurisdiction. This does not include zoning authority. Further discussion is required.

It was asked if someone would call Siloam Springs to ask if they have commercial in their ordinance for five mile jurisdiction.

The meeting was adjourned.