

SMITHVILLE PLANNING COMMISSION

REGULAR SESSION

June 14, 2022

7:00 P.M.

City Hall Council Chambers and Via Videoconference

1. CALL TO ORDER

Chairman Melissa Wilson called the meeting to order at 6:59 p.m.

A quorum of the Commission was present: Melissa Wilson, Alderman John Chevalier, Mayor Damien Boley, Billy Muessig, Rob Scarborough and Deb Dotson. Dennis Kathcart was present via Zoom (joined at 7:02 pm).

Staff present: Jack Hendrix and Brandi Schuerger.

2. MINUTES

The May 10, 2022, Regular Session Meeting Minutes were moved for approval by MAYOR BOLEY, Seconded by SCARBOROUGH.

Ayes 6, Noes 0, KATHCART was not present at the time of the vote. Motion carried.

3. STAFF REPORT

HENDRIX reported:

Informed that we are at 53 single family residential building permits since January 1, 2022. No new commercial building permits but the 7 from last year are all still under construction.

He anticipates that we will see infrastructure construction work starting and building permits for McBee's Coffee and Carwash soon. They have recently recorded the plat and paid the bonds.

There are 13 buildings with a total of 26 units under construction at Eagle Ridge. The first ones will be ready for final occupancy in about 2 to 3 weeks.

Diamond Creek Subdivision has a little more work to complete before they will be ready for construction of homes. This subdivision is open for any person or builder to buy a lot and build on.

We are still working with Fairview Crossing to get sewer issues resolved and traffic issues resolved with the developer and MODOT. We are making progress.

WILSON asked how close the Shamrock gas station is to opening?

HENDRIX stated that they just got their temporary certificate of occupancy this morning. It's a temporary because they have not gotten grass growing yet. It's also his understanding that this property has also been sold and has a new owner.

4. PUBLIC HEARING: REZONING LOTS 1-6 AND THE NORTH 100.93 FEET OF LOT 7, WAIT ACRES B-3 TO R-1A

Public Hearing opened

HENDRIX informed that the packet has the staff report addressing this. This was zoned B-3 decades ago and it was most all of the Wait's property from 169 Hwy to N. Main Street. It was subdivided in 1994 for houses and no one bothered to change the zoning. You are not supposed to build houses in the B-3 district. One of the current property owners was preparing to sell their house and wanted to know what he could do with some of his vacant lots which is how we noticed the B-3 zoning.

Truman Hiatt---18304 N. Main Street--- Stated that they have lived there for 22 years, and this was a total surprise to us. We dug through our tax paperwork, and it shows that we have paid residential taxes the whole time we have lived there.

Mark Walsh---304 NE Stanton Lane Lee's Summit, MO 64064--- Stated that him and his wife own property at 18209 N. Main Street. They are across the street from these properties. Of course, we would like to see this corrected for our neighbors. We are in the process of building our own home right across the street from the 5 acres that is undeveloped. We would not like to see a business go in across the street. If you are not familiar with N. Main St., he I would ask that you at least consider driving from 180th Street to 188th Street to see that it is all single family dwellings

and there is no commercial properties there at all. I appreciate your consideration of approving this application.

Public Hearing closed

5. REZONING LOTS 1-6 AND THE NORTH 100.93 FEET OF LOT 7, WAIT ACRES B-3 TO R-1A

MAYOR BOLEY motioned to approve rezoning lots 1-6 and the north 100.93 feet of lot 7, Wait Acres b-3 to R-1A. Seconded by MUESSIG.

DISCUSSION:

ALDERMAN CHEVALIER asked how these residents are paying residential taxes while their property is currently zoned B-3?

HENDRIX stated that you are taxed on the use of the property and not the zoning. For example, if you own a large farm, the house and one acre are taxed at the residential rate and everything else is taxed at the agricultural rate.

DOTSON stated that we just correcting a mistake made a long time ago.

HENDRIX stated yes. A potentially big mistake. His concerns were the same as what was mentioned during public comment. Someone could have potentially put a business on one of these lots had this not been caught.

THE VOTE: MAYOR BOLEY-AYE, KATHCART-AYE, DOTSON-AYE, MUESSIG -AYE, WILSON-AYE, ALDERMAN CHEVALIER-AYE, SCARBOROUGH -AYE.

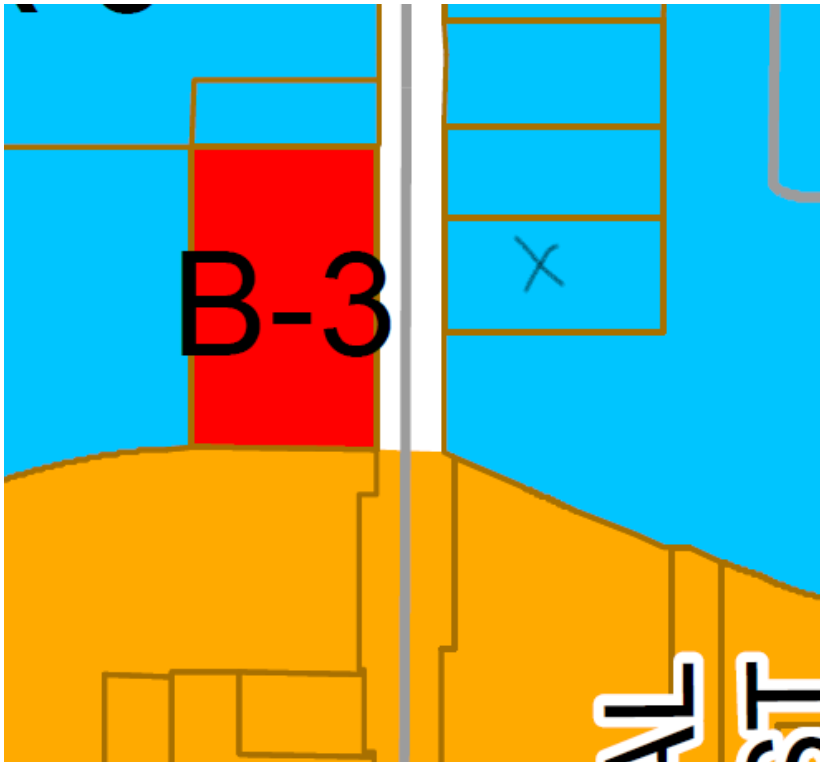
AYES-7, NOES-0. MOTION PASSED

6. PUBLIC HEARING: REZONING 211 N BRIDGE ST FROM R-3 TO B-4

Public Hearing opened

HENDRIX informed that first house on the north side of the bridge on the east side of the road. They are seeking to have their multi-family zoned property with a single-family home on it rezoned to B-4 which allows for

both residential and commercial. They would like to open a business inside their home that they can't do under the standard home occupation code. This is a transitional area. The street scape is preparing to go north. The Curry property across the road has recently sold. Page 2 of the staff report shows a colorized version of the zoning map. B-4 is all of the orange area on the south side of the river. The blue area is all multi-family. Across the street is a B-3 district which is the Patterson House Museum.



Public Hearing closed

7. REZONING 211 N BRIDGE ST FROM R-3 TO B-4

MAYOR BOLEY motioned to approve rezoning 211 N Bridge St from R-3 to B-4. Seconded by DOTSON.

DISCUSSION:

SCARBOROUGH asked what kind of business they are looking at opening?

HENDRIX believed it was selling plants. They want to have the ability to have customers come to the house. They can't do that anywhere else. For example, if you go south on the bridge the first house across from the church is now a business because it's in the B-4 district.

THE VOTE: MUESSIG-AYE, WILSON-AYE, ALDERMAN CHEVALIER-AYE, MAYOR BOLEY -AYE, KATHCART-AYE, SCARBOROUGH-AYE, DOTSON -AYE.

AYES-7, NOES-0. MOTION PASSED

8. PUBLIC HEARING: REZONING LOT 1, ADA'S ESTATES FROM A-1 TO A-R

Public Hearing opened

HENDRIX informed that this is an application to change the zoning to A-R. It's currently zoned A-1 which has a minimum lot size of 10 acres. A-R district has a minimum lot size of 2 acres with sewer or 3 acres with septic. The purpose of the rezoning is so they can divide this lot into 3 total lots. One of these lots will have the original house on it. Agenda items 10 and 11 are for the subdivision part of this and that is all contingent on this rezoning.

David Payne---13904 N Virginia Avenue— Stated that he has lived here for 35 years, and the city has told him that they have a Comprehensive Plan which explains what they want this area to look like in the future. He was told that they want it to be green space with everything to be 10 acres or more. Currently from the bridge on Amory Rd to N Virginia Rd and south the lots are 10 acres or more as far as he knows. I would like to see it left the way it is. He has lived there 35 years and doesn't want to have neighbors behind him. People near him have 40 acres so what are we going to do then? Start dividing them up and have little subdivisions or what? I just don't care to have this happen. Does this property even perk? It's kind of a low area. I would like to see if left the way it is but it's tax dollars and that's all the city is worried about.

Public Hearing closed

9. REZONING LOT 1, ADA'S ESTATES FROM A-1 TO A-R

DOTSON motioned to approve rezoning Lot 1, Ada's Estates from A-1 to A-R. Seconded by KATHCART.

DISCUSSION:

ALDERMAN CHEVALIER asked if what is being proposed meets the Comprehensive Plan?

HENDRIX stated that it meets the most recent Comprehensive Plan and the most immediate one behind it. We have Comprehensive Plans from 2 years ago, one from 2006 and prior to that it was one from 1992. The most recent one shows large lot residential or agricultural. It defines large lot as not less than 3 acres.

SCARBOROUGH stated that if he understands this correctly this could rezone to 2 acres depending on the sewers.

HENDRIX stated yes. If there were sewers available, it could be 2 acres lots but there are no sewers close though. The other thing is that in this area 2 acre lots wouldn't meet the Comprehensive Plan since it calls for 3 acres or more.

MUESSIG asked how many acres you must have for septic?

HENDRIX stated 3 acres. Mr. Payne also asked if the lots would perk. If they can't get a permit from the Clay County Health Department for a septic system, they won't get a building permit from us.

DOTSON asked if most septic systems were engineered?

HENDRIX stated yes. They now do a soil morphology test which is an engineered test conducted by a soils engineer. In the areas where they can't get that to happen there is a new design where they build it on top on the ground and then cover it with proper soil.

MAYOR BOLEY stated that there was also a comment made about tax dollars and he hears this too often. Tax dollars on this property will be about \$300.00 per year. We recently spent about \$200,000 to fix Amery Road.

\$300.00 is not motivation. This is about the property owners' rights to what they want with their property.

MR. PAYNE asked why residents are never notified when the city changes their Comprehensive Plan?

WILSON informed that there were several opportunities for the community to come to a lot of the meetings they had. Notification was on social media, the newspaper, our newsletter.

ALDERMAN CHEVALIER stated that it was a long 18-month process.

THE VOTE: ALDERMAN CHEVALIER-AYE, WILSON-AYE, MUESSIG-AYE, SCARBOROUGH-AYE, DOTSON -AYE, KATHCART-AYE, MAYOR BOLEY -AYE.

AYES-7, NOES-0. MOTION PASSED

10. PUBLIC HEARING: SINGLE PHASE FINAL PLAT, DIBBENS ESTATES (3) LOTS AT LOT 1, ADA'S ESTATES

Public Hearing opened

HENDRIX stated that this is a 3-lot subdivision of roughly 11 ½ acres. The 2 new lots on the back side would be 3.81 acres each and the lot with the existing house would be 3.9 acres. Frontage would be onto Amory Road. This plat will have a condition placed in its dedications that requires the lots to join and specifically not oppose the creation of a district to improve the roads in the future.

David Payne---13904 N Virginia Avenue— Stated that he just doesn't what this divided up. He has 10 acres next door and asked if he could divide that up? He stated he has 350 feet of road frontage but that's probably not enough. At one time the city told him that they wouldn't let him do a flagpole lot. He asked the commission to not approve this. If this was next to know you might not want it yourself. If this is approved, he is worried that he will have people trespassing on his property.

HENDRIX stated that for Mr. Payne to divide his property up it would require him to construct some sort of road to get enough frontage. This proposed

subdivision that we are considering tonight has the required frontage on Amory Road. Clay County allows flagpole lots, but we don't.

Public Hearing closed

11. SINGLE PHASE FINAL PLAT, DIBBENS ESTATES (3) LOTS AT LOT 1, ADA'S ESTATES

SCARBOROUGH motioned to approve the Single-Phase Final Plat, Dibbens Estates (3) lots at lot 1, Ada's Estates. Seconded by MUESSIG.

DISCUSSION:

DOTSON wanted to inform Mr. Payne that she understands that change is difficult the loss of his surrounding causes upset and some grief. Not too long-ago Jack and herself attended a seminar on housing and zoning. One of the things they said was to never fall in love with what you don't own. That is harsh but is true. She has been in his position. She owned a beautiful piece of land and the property around it eventually subdivided. The Dibbens have the right to develop their property if it's legal.

THE VOTE: MAYOR BOLEY-AYE, KATHCART-AYE, DOTSON-AYE, SCARBOROUGH-AYE, MUESSIG -AYE, WILSON-AYE, ALDERMAN CHEVALIER -AYE.

AYES-7, NOES-0. MOTION PASSED

**12. PUBLIC HEARING: CONDITIONAL USE PERMIT—
TELECOMMUNICATIONS TOWER AT 904 NE 180TH ST**

Public Hearing opened

HENDRIX stated that we have not had one of these Condition Use Permit requests since 2009 so it look him a little more research to go back through the process to make sure he was following the same procedures that needed to be followed. The notification process of this is the same as a rezoning. The approval process is also the same as a rezoning. It goes through this commission for a recommendation on the findings. Based upon the findings there is an ordinance that will get recorded with the county if it

is approved. The steps of this process if identified in the staff report and there is also a draft of a potential Findings of Fact. Both of these were in the packet. Code specifically says that there is a limitation of 100 feet in height unless there are certain certifications provided. You would then have the discretion to allow it to go to 150 feet in height. You have been provided the colocation certification letter and the fall certification letter. This meets the minimum standards, and it is within this commissions discretionary authority to grant the 150' monopole. The only reason they can get the extra 50 feet is if they allow more than one user on it. In this case it requires at least 2 more users.

James Allsbury---902 NE 180th Street— Stated that a 150' tower will be able to be seen Greyhawke, Harborview, Rock Point and other adjacent neighborhoods. It is literally in our backyard. The way to get to this tower will be through a driveway shared by themselves, the Beggs and another neighbor. We have concerns about this. Over the years we have all looked out for each other. When we have seen unknown vehicles, we would call each other and make sure someone knew who it was. We did this to make sure everyone was safe. Now we will have no idea who is coming up our driveway day or night, 7 days a week, 24/7. They will now have the right to do that. The driveway itself is gravel and there will be large equipment trucks using it. During heavy rains, the driveway down towards the street already washes out. What will happen when we have heavy equipment using this driveway that we have to use every day? Also concerned about pets or grandchildren getting hurt by one of these trucks using the driveway.

Rochelle Allsbury---902 NE 180th Street— Stated that she is a real estate agent and on disclosure you have to disclose certain things on your home. Right now, cell phone towers are not one of them. However, you do have to disclose any hazardous conditions and environmental issues. If I have to mark yes, when I go to sell my property will that affect the sell of my land? Health is another issue. My husband has heart issues and spots on his lungs. Is this going to make it worse on him? Will this make it work for all of the out lying areas. There is no evidence because there are no studies, but they have studied in 28 countries that there is cancer related to cell phone towers and cell phones. They say that you are not supposed to live within a quarter of a mile of a cell tower. Our property is 450 feet away. This is concerning to her. He was diagnosed with heart disease at 36 years old and has been in and out of the hospital. She doesn't want to lose him. She lost her mom to cancer at a very young age, and she doesn't want to

do that to her children. Would you all want to look out into your backyard and see this? This is all about the love of what I have, my love for my family and other people. I don't want to see anybody harmed by this. As a city there is monetary value to be gained by having a tower on the land. Why can't the city take that monetary value and put it towards historical preservation, for the schoolhouse, the animal shelter. She can't speak for the other landowner that was notified but couldn't be here tonight. She has been in contact with her, and she was supposed to be sending out her own email in opposition of this.

Gabe Grider---808 NE 180th Street— The property in question is directly behind his. In the zoning code under telecommunications, it lists out 5 criteria that need to be met. The first criteria is to encourage the location of towers in nonresidential areas and minimize the total number of towers throughout the community. He would like to point out that there are 6 towers within 5 miles. The closest one being 1.1 miles away and the next one being 2.3 miles away. The second criteria is to strongly encourage the joint use of new and existing towers and sites. There is a water tower a mile away that the city could rent out for this same purpose. There are already antennas and radios on 2 of the water towers in Smithville. The third criteria is encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal. There are currently 9 properties contiguous to this to this property with another one being planned. Not to mention Greyhawke and Harborview being able to see this. The fourth criteria is encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas. If the tower goes to the whole 150 feet in height this will be maybe 90 feet above the tree line and will be seen from everywhere. The neighbors that just spoke also received a letter to have a tower put on their property and they denied because they value their neighbors. My property is a watershed which goes onto Terry Evans property. I take great care to make sure I am not putting down chemicals on my property which goes down into his pond. He asked that the commission not recommend this for approval and stop it right here and not send it on to the Board of Alderman.

Patrick Erwin---Applicant— Tillman Infrastructure is proposing this structure in order to facilitate AT&T's First Net system. This is a nationwide broadband network dedicated to public safety for use by first responders and public safety agencies. This proposed tower will provide a much needed service for the First Net subscribers. Many of the AT&T users of the network

have complained over the years that service in this area is extremely lacking so this is the whole purpose of our application here today. Stated that he would like to address a few concerns from the neighbors. The issue with the workers that will be onsite. Once this tower is complete workers would only be accessing this site on about a monthly basis in a pickup size truck. All of the trucks would be marked with AT&T or First Net decals. As far as reduction in home values, we have done appraisal studies over the years and have never seen one that an actual quantifiable reduction in home values. I would be happy to provide one of that he did recently in the last 18 months. The health effects, we all know that this is something we can't address legally by Federal law and Missouri State law.

Public Hearing closed

13. CONDITIONAL USE PERMIT—TELECOMMUNICATIONS TOWER AT 904 NE 180TH ST

MAYOR BOLEY motioned to approve the Conditional Use Permit—Telecommunications tower at 904 NE 180th Street. Seconded by KATHCART.

DISCUSSION:

ALDERMAN CHEVALIER stated that he is going to recuse himself as he works for the Telecom industry. (Alderman Chevalier left the building.)

SCARBOROUGH asked Mr. Hendrix if he could address Mr. Grider's concerns about this not meeting our code.

HENDRIX stated that Mr. Grider wasn't saying that it didn't meet the code he was asking that the commission consider that it didn't meet the code. Our staff report and the applicant's application address all of the items that are in the code. I believe Mr. Grider is just asking you to consider those. From my perspective you have 8 items to consider in the staff report and the proposed Findings of Fact. Those are the facts you have to make. There has been a motion to accept those Findings of Facts. If you have a concern with any of those 8 items now would be the time to address them.

MAYOR BOLEY stated that one of the things he sees in the picture from the packet and the pictures passed around is that the property owner has an existing tower there already. Is that correct?

HENDRIX stated yes, there is a ham radio tower.

WILSON asked if it is known if any of our first responders use this First Net system?

HENDRIX stated that his guess is no since we don't have any towers that have it.

MAYOR BOLEY stated that we have discussed it before. We have some alternatives, but they are not great. The applicant also mentioned that a lot of these are also driven by the people complaining about the lack of service in the area. He did speak with some of the folks that live up there and they don't have good cell service. Our Police department also uses cell phones so that is a concern as well.

SCARBOROUGH asked if this would only be an AT&T tower?

HENDRIX stated no. It's an AT&T tower but there is a specific requirement that they have to allow others to put their equipment up there to get the 150 foot height approved.

DOTSON asked if our Police Department can benefit from this?

MAYOR BOLEY stated that this would be a question for Chief Lockridge. We just replaced radios so we know they can at least talk through their radio.

MUESSIG asked if they selected this property by sending out letters?

HENDRIX stated that he can't answer how they specifically selected this property. Usually, it involves elevation so you can get the biggest coverage. This is not the first company to look in this area. One of the public commenters mentioned a water tower south of here. We have had numerous people inquire about that over the years but to date no one has installed on it. He thinks that it's because it would have great coverage on the lake but lacks when you head north and east.

MR. ERWIN stated that he could speak about how they selected this property if the commission would like. WILSON said that would be great.

MR. ERWIN stated that before they start out looking for locations the engineers give them a latitude and longitude and in this case they give us a

radius. In this case it's very small and needed to be in a confined area so they way this proposed structure would work with other adjacent towers and neighboring jurisdictions. The first thing we do is look for colocations. We want to find an existing tower or a water tower that might work. In this case the water tower that the neighbor mentioned was just too far away. A mile away was just too far. We needed to be between 1200 feet of the coordinates that we have. This area meets all of our needs.

WILSON stated that there is still a lot of agricultural land north of town and wondered if that was looked at as possible sites.

MR. ERWIN stated that this property is as far north as we can go. Any parcels north of this will not work for them. We don't want to upset neighbors, but they really feel the way this parcel is set back from the road with tree cover around it that this was ideal.

SCARBOROUGH asked if all of the neighbors on this shared drive responsible for maintaining it. It's not a county or city road?

HENDRIX stated that it is private.

MUESSIG stated that maybe there should be something entered into this that they will need to address some of the issues if they are going to be utilizing that driveway. Putting a culvert in or something. Since it's a shared driveway they need to share the responsibility in that too.

HENDRIX stated that it would be an issue between the property owners. Mr. Beggs has a potential lessee on it so it would be his responsibility to maintain any damage done by the tenants. He is unaware of any private agreements on it.

WILSON asked if there was any agricultural land on the west side of 169 Hwy that would work?

MR. Erwin stated that he would have to look again at our search area, but he doesn't have that with him.

THE VOTE: MAYOR BOLEY-AYE, KATHCART-AYE, DOTSON-AYE, SCARBOROUGH-NO, MUESSIG -NO, WILSON-NO.

AYES-3, NOES-3. NO RECOMMENDATION.

14. ADJOURN

MAYOR BOLEY made a motion to adjourn. DOTSON seconded the motion.

VOICE VOTE: UNANIMOUS

WILSON declared the session adjourned at 8:01 p.m.