

***TANEY COUNTY BOARD OF ADJUSTMENT
APPEAL OF PLANNING COMMISSION STOP WORK ORDER DATED
SEPTEMBER 21, 2016
PROJECT: ROAD CONSTRUCTION EMERALD POINTE PHASE XII
APPLICANT: EMERALD POINTE, LLC
REPRESENTATIVE: VINCENT O'FLAHERTY
BOARD OF ADJUSTMENT CASE NUMBER 2016-0002A JANUARY 18, 2017***

On January 18, 2017 a motion to approve the appeal of the Planning Administrator's Stop Work Order issued on September 21, 2016 for the road construction in Phase XII was made and seconded with the following changes to the Staff Recommendations: #2 be removed and #3 be modified to allow acceptance of an estimate be presented to the Planning Staff by Tom Boyce for the Itemized Cost Estimate. With three (3) of the four (4) Board members present the vote was two ayes and one nay. The appeal was not approved. The Stop Work Order will not be removed.

Staff recommendations made with the motion had the motion passed were:

STAFF RECOMMENDATIONS:

If the Taney County Board of Adjustment approves the appeal of the Planning Administrator's Stop Work Order issued for all on-going road construction activities within the Emerald Pointe Subdivision, the following requirements shall apply, unless revised by the Board:

1. The Stop Work Order issued for all on-going road construction activities with the Emerald Pointe Subdivision shall be released in writing by the Planning Administrator.
2. The applicant shall submit **Engineering Construction Plans** for the streets and storm sewers within Phase XII of the Emerald Pointe Subdivision to the Taney County Road & Bridge Department.
3. Once the Engineering Construction Plans have been reviewed and approved by the Taney County Road & Bridge Department, the applicant shall submit an **Itemized Cost Estimate** for the improvements in question to the Taney County Planning Department office.
4. Once the Itemized Cost Estimate has been reviewed and approved by the Planning Department office, in conjunction with the Road & Bridge Department,

the applicant shall then submit a **Performance bond** from a qualified insurance or bonding company, an **Irrevocable Letter of Credit** from a certified lending institution or **cash bond** in an amount sufficient to pay the estimated cost of the required improvements plus ten percent (10%)

5. Compliance with all of the other provisions of the Taney County Development Guidance Code.
5. The Decision of Record shall be filed with the Taney County Recorder of Deeds Office within 120 days or the approval shall expire (Chapter 7.3.4 Taney County Development Guidance Code).

Taney County Board of Adjustment Bylaws

Article XIII. VOTING.

- a. Each Board of Adjustment member shall be entitled to one vote on all issues presented to the Board of Adjustment. It shall require the concurring vote of at least three (3) members of the Board of Adjustment to constitute a decision of the Board of Adjustment

The following summarizes the Findings of Fact and Conclusions of Law of the Taney County Board of Adjustment:

The Board based its decision upon the requirements of Missouri Revised State Statutes and the Board of Adjustment Bylaws, which grant the Board the power to hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by an administrative official in the enforcement of the county zoning regulations. The Board did **not** find, beyond a reasonable doubt, that there was an error of law that had been committed by the Taney County Planning Commission to approve the appeal of the September 21, 2016 STOP WORK ORDER for Emerald Pointe, LLC Phase XII.

Per the provisions of the Board of Adjustment Bylaws, any interested party may, in writing and delivered to the Secretary of the Board within seven (7) days of the posting of the Board's decision in the office of the administrator (or the Board); request that the Board reconsider on the record any decision which adversely affects such party. Requests for Reconsideration will be heard at the next regularly scheduled Board of Adjustment meeting. The Board shall not grant a party's Request for Reconsideration if that party did not appear at the original hearing and does not demonstrate that substantial injustice would result as a refusal to grant such Reconsideration request. Granting of the Request for Reconsideration shall act as a nullification of the Board's previous decision.

Per the provisions of the Board of Adjustment Bylaws, any interested party aggrieved by a decision of the Board may request a rehearing. The request for rehearing shall be in writing and within seven (7) days of the posting of the Board's decision in the office of the Secretary of the Board. Rehearing Requests shall be heard at the next regularly scheduled Board of Adjustment meeting. The Board shall not grant such request for rehearing to any party who did not appear at the original hearing and who cannot demonstrate that there is new evidence that was not in existence at the time of the original hearing or was not available to the person making the request because another interested party had prevented the discovery of such evidence and because such evidence could not have been discovered by the party making the request through diligent efforts on his/her part. The decision of the Board to grant such request for rehearing shall act as a nullification of the Board's previous order, and the Board shall direct the Administrator to have the appropriate notices given for the rehearing.

Per the provisions of RSMo 64.870, "Any owners, lessees or tenants of buildings, structures or land jointly or severally aggrieved by any decision of the board of adjustment or of the county commission, respectively, under the provisions of sections 64.845 to 64.880, or board, commission or other public official, may present to the circuit court of the county in which the property affected is located, a petition, duly verified, stating that the decision is illegal in whole or in part, specifying the grounds of the illegality and asking for relief there from. Upon the presentation of the petition the court shall allow a writ of certiorari directed to the board of adjustment or the county commission, respectively, of the action taken and data and records acted upon, and may appoint a referee to take additional evidence in the case. The court may reverse or affirm or may modify the decision brought up for review. After entry of judgment in the circuit court in the action in review, any party to the cause may prosecute an appeal to the appellate court having jurisdiction in the same manner now or hereafter provided by law for appeals from other judgments of the circuit court in civil cases."