



## TANEY COUNTY PLANNING COMMISSION

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### **MINUTES TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, JANUARY 18, 2017, 6:00 P.M. COUNTY COMMISSION HEARING ROOM TANEY COUNTY COURTHOUSE**

#### Call to Order:

Chairman Dan Boone called the meeting to order and established a quorum with three members present. They were: Dan Boone, Howard Kitchen, and Tony Mullen. Staff present: Bob Atchley and Bonita Kisse-Souttee.

The statutes which govern the Board of Adjustment were read by Mr. Atchley and the speakers sworn in before the hearing.

A motion was made by Mr. Mullen to table the election of officers until a full board is present. Seconded by Mr. Kitchen. The vote to table election of officers was unanimous.

Mr. Atchley read a statement explaining the public hearing procedures and placed the Taney County Development Guidance Code into evidence as Exhibit A, the staff report as Exhibit B, and the staff files including all pertinent information as Exhibit C, the Board of Adjustment bylaws as Exhibit D.

Mr. Boone explained that since only three members were present the applicant could choose to postpone until a full board is present. Legal counsel for the applicant stated that they would choose to proceed.

#### Public Hearing:

Emerald Pointe, LLC – Appeal; a request by Shane Naugher, and Bruce Menke, represented by legal counsel Vincent O’Flaherty to appeal the Planning Administrator’s decision to place a stop work order on all on-going road construction activities within the Emerald Pointe Subdivision, until such time that a form of security is provided to Taney County that is in compliance with the provisions of both RSMo. 64.825 and Article 8, Section 6 of the Taney County Subdivision Regulations. Mr. Atchley read the staff report and presented pictures and a video of the site.

Ken Bell who is a property owner representing the homeowners in Emerald Pointe shared a summary of the interactions between them and the applicants. The applicant stated at that time, he wanted to turn over all responsibilities to the homeowners because he didn’t have the money to finish the requirements of the

County road standards. The property owners association told him that by law he was responsible to them not the other way around. The property owners would like the Board to uphold the requirements of the Code to protect them.

Steve Prock, who lives at Emerald Pointe, explained that the developer had not met most of the County Requirements throughout the development, and would like the Board to uphold the regulations. He pointed out that procedure as he understands it would be the developer must post the bond before construction begins and if he doesn't construct according to standards the bond must be used.

Vince O'Flaherty, legal counsel for the applicant addressed the Board regarding granting the appeal and why it should be granted. He stated that this is a private subdivision and that Taney County has no public road responsibility in his opinion. He addressed four topics, history of Emerald Pointe, negotiations with staff, issues, and the proposed resolution of the problem. He stated that the statutes in place at the time that the bond was posted that pledging stock was acceptable. His argument was that no regulations were violated which were in place at the time grading took place and no one objected to any work being done at the time. A meeting took place with Mr. Atchley in August regarding road construction and bonding. Mr. O'Flaherty stated that until that time the applicant didn't know he needed engineered drawings, and that by then it would have been futile. He quoted from the road standards which state that gated communities should be treated differently and that it suggests or encourages a developer to construct according to county standards. Bankers for the applicant were present to report that Emerald Pointe has sufficient funds to finish the roads in the Phase 12 section. Mr. O'Flaherty asked that the stop work order be rescinded, the bond accepted, and current roads be approved. He explained how by not receiving approval the harm that would cause the applicant. In his opinion Mr. Naugher is trying to do the right thing.

After discussion Mr. Boone asked the county legal counsel if staff could hold the applicant to the rules and regulations of the County. Mr. Cotty stated that staff could certainly do that. They are public roads and that makes them susceptible to the regulations and statutes in his opinion. He explained why a performance bond is needed, and where the flaw in the request lies. Mr. Boone asked Mr. Tom Boyce who is the contractor for the project, if he is able to proceed with construction and how much work yet needed to be done. Mr. Boyce answered the questions and reported that these roads were being done just like the other roads in the subdivision. He stated that work needed to be completed to keep the soil from eroding, but would not be up to county standards. Mr. Boone asked the board if they were prepared to make a decision at this meeting. Mr. Kitchen made a motion based upon the proposed decision of record to grant the appeal only if staff recommendations are included. Mr. Boone seconded. Discussion followed regarding slope. Mr. Kitchen stated that history shows that a proper bond should be posted. Mr. Boone stated that he trusts the contractor and the bankers. Mr. Mullins pointed out that the road standards are for everyone's protection and asked

Mr. Boyce if he thought the slopes of the roads were safe. Mr. Boyce stated that it was not an ideal situation, but he had seen roads constructed that steep but it would not be his choice. He stated that now it is impossible to reconstruct the roads after they had been constructed to this point. If the applicant can't proceed he can't afford to go back and redo them in Mr. Boyce's opinion. After discussion Mr. Kitchen amended his motion to include the cost estimate to be done by Mr. Boyce and remove item two in the proposed decision of record. Mr. Boone seconded. The vote was two ayes and one nay with Mr. Mullen voting nay. The appeal was not approved with only three members present. The stop work order will not be removed.

#### Review and Action:

Minutes, December 2016; with no additions or corrections a motion was made by Mr. Kitchen to approve the minutes as written. Seconded by Mr. Mullen. The vote to approve the minutes was unanimous.

#### Old and New Business:

Mr. Atchley announced to the Board that he has turned in his resignation and this is his last meeting. There are no requests for February at this time. Discussion followed regarding the applicants next option.

#### Adjournment:

With no other business on the agenda for January 18, 2017 the meeting adjourned at 7:09 p.m.