

PLANNING AND ZONING BOA PACKETS FEBRUARY 2007

MINUTES
TANEY COUNTY BOARD OF ADJUSTMENT
WEDNESDAY, FEBRUARY 21, 2007, 7:00 P.M.
ASSOCIATE CIRCUIT COURT DIVISION II COURTROOM
TANEY COUNTY COURTHOUSE

Call to Order:

Establishment of Quorum
Election of 2007 Officers
Explanation of Public Hearing Procedures
Presentation of Exhibits
Governing Statutes

Public Hearings:

Gary R. Stecklein
Thomas W. Schaefer

Old and New Business:

Review and Action:

Minutes, December 2006

Adjournment.

TANEY COUNTY BOARD OF ADJUSTMENT

STAFF REPORT

THOMAS W. SCHAEFER

DECEMBER 20, 2006

#06-8

Public Hearing for Thomas W. Schaefer located at Lakeshore Dr. in the Branson Township Sec. 28 Twp. 23 Rng. 21.

The applicant Thomas W. Schaefer requests a reconsideration of the denial of an appeal of the Taney County Planning Commission decision of November 20, 2006 to deny approval to develop a condominium project.

History: Denied by the Planning Commission based upon incompatibility.

General Description: The subject property contains 2.5 acres and is located in the Lakeside Subdivision Tract 7. The adjoining properties to the request consist of commercial and residential.

Review: The proposed site would consist of one 5 story 25 unit condominium building, and six 2-story townhouses with 3 units each for a total of 18 townhouse units. The entire site will consist of nightly rentals and timeshare. The property is to be serviced by the Taney County Sewer District and Public Water Supply District #2.

Summary: If the Taney County Board of Adjustment approves the appeal, the following requirements shall apply, unless revised by the Board:

1. Compliance with the provisions of the Taney County Development Guidance Code that include plans for the following:
 - a. Sediment and erosion control (Appendix B Sec. VI Item 2)
 - b. Stormwater management (Appendix B Item 3)
 - c. Land grading permit (Appendix B)
 - d. Delineation of the 100 year floodplain (Taney County Floodplain Management Ordinance 60.3b Sec. A)
 - e. Utility easements and building line setbacks (Table 12)
 - f. Foliage screening or fencing for commercial area that adjoins residential tracts (Appendix C)
 - g. Improvements with scale of buildings, streets, onsite parking and utilities (Table 6)
2. Compliance letters from the Fire, Sewer, and Water Districts (Chapter VI-VII).
3. No outside storage of equipment or solid waste materials.
4. Division II Permits will be required for all applicable structures in the development (Chapter 3 Sec. I Item B).
5. This Decision of Record shall be filed with the Taney County Recorder's Office within 120 days or the approval shall expire (Chapter II Item 6).

TANEY COUNTY BOARD OF ADJUSTMENT

STAFF REPORT

GARY R. STECKLEIN

#07-1

Public Hearing for Gary R. Stecklein, located at 2151 Birmingham Road, in the Swan Township, Sec. 11 Twp. 23 Rng. 20.

The applicant requests a variance from the setback from Birmingham Road for an encroachment of the existing garage onto the required 25' setback.

History: An addition was constructed onto an existing garage building within the setback area.

General Description: The subject property contains 8 acres and is located off Birmingham Road. The adjoining properties to the site consist of agriculture and residential.

Review: Since there is no easement established by the County the setback is measured from the edge of the road. The variance request will consist of at least 12' pending information from either the County Road Department or legal counsel.

Summary: If the Taney County Board of Adjustment approves this variance, the following requirements shall apply, unless revised by the Board:

1. Variance is for the specified amount set forth by the Board (Appendix H, Table 12, Setbacks, Taney County Development Guidance Code).
2. Compliance letter from the Fire District and Taney County Road Department.
3. This Decision of Record shall be filed with the Taney County Recorder's Office within 120 days or the approval shall expire.

MINUTES
TANEY COUNTY BOARD OF ADJUSTMENT
WEDNESDAY, DECEMBER 20, 2006, 7:00 P.M.
ASSOCIATE CIRCUIT COURT DIVISION II COURTROOM
TANEY COUNTY COURTHOUSE

Call to Order:

Chairman Dave Clemenson called the meeting to order at 7:00 p.m. A quorum was established with four members present. They were: Dave Clemenson, Bob Anderson, Alan Lawson, and Carl Pride. Staff present: Eddie Coxie, Bonita Kisse, Marla Pierce, and Bob Paulson.

A statement explaining the meeting procedures was read and the Taney County Development Guidance Code was placed into evidence as Exhibit A, the Staff Report as Exhibit B, and the staff files, including all pertinent information, as Exhibit C, and the Taney County Board of Adjustment bylaws as Exhibit D. The State Statutes that empower and govern the Board of Adjustment were read. The speakers were sworn in before each case was heard.

Public Hearings:

John and Bonnie Kingsley: an appeal of the November 20, 2006 Planning Commission decision to deny a request to develop a 160 unit condominium project on property located at 1660 Hill Haven Road. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Clemenson asked if anyone had any questions for the staff. No one did. Rick Minx representing MGM Properties introduced Martin Gugel who is the engineer for the developer explained the design and approach to land use compatibility. He stated that the plan is for whole ownership and will be constructed to fit in with the topography. Plans are for minimum impact to the environment according to Mr. Gugel. Visual impact will be minimal because of the topography. Lift stations will be used to move the wastewater from the project. He continued to explain the wastewater plans and land use. Mr. Clemenson asked Mr. Gugel if in his opinion there was any information the Planning Commission did not take into consideration. Mr. Gugel stated that the information that he presented was also presented to the Planning Commission. Mr. Minx discussed land use and consumer desires, trends, and higher density uses. He compared land use compatibility to the project called Sanctuary on the Lake, which is closest to the property, then named all the other similar projects approved by the Planning Commission. In Mr. Minx opinion the Lake dictates higher residential uses. He also stated that the closest landowners to this site do not oppose this request. Mr. Paulson asked Mr. Minx how many

five-story buildings are located in the vicinity to this project. Mr. Minx stated that there were none, however, this property in his opinion with the type of buffering would not be as visible as in other areas of the county. Mr. Anderson discussed compatibility with Mr. Minx. John Kingsley clarified distances from his property to the other compatible uses, and size of the property and length of road in question. Mr. Paulson discussed a letter Mr. Kingsley wrote opposing another project in the area, and asked what made this project ok and the other one not ok. Mr. Kingsley felt that his project is more away from the other houses in the area and the other project was in his opinion right in the middle of them. Andy Bennett opposing the appeal representing nine property owners in the area discussed incompatibility with the other residences on the "point" which are single-family residences. The road is too narrow to handle the added traffic in his opinion. He stated the topography would not be adequate to hide the parking lot or structures from view. He reminded the Board that the Planning Commission denied another request in the same area but it was smaller in scale than this one. He read a letter from the property owners written a year ago to the Planning Commission opposing this type of development for the same reasons, including traffic safety and width of the road. Mr. Bennett explained letters from the property owners and a packet of information addressing their concerns opposing the project. He hoped the Board would observe the consistency the Planning Commission had started. Mr. Paulson asked Mr. Bennett why the other projects either side of the property wouldn't constitute compatibility. Mr. Bennett stated that because the quality of the other homes made this use incompatible. Shanelle Long who lives on Hillhaven Road presented maps addressing the location of the other projects and houses in the area. Proving in her opinion that they are too far away from the request to constitute compatibility. She also discussed all the other concerns brought forth by the other property owners previously. Mr. Minx pointed out that so far none of the adjacent property owners had voiced opposition to the request at this meeting. He stated that the lower density property owners would be driving through the higher density development to get to their property. Mr. Clemenson asked for names of the people who were the adjacent property owners. Mr. Minx gave these names as best as he knew and stated that Mr. Bennett might be better able to know who they were. Mr. Gugel agreed that this is a sensitive area to wastewater, but would be treated with a state of the art wastewater disposal system, which would be maintained by a professional company. He also stated that the property falls 160' and explained how the buildings would be constructed on that slope making the topography conducive to hiding the structures. Mr. Anderson stated that based upon the rules of the Board there has not been enough evidence proving that the Board should over turn the Planning Commission decision. Alan Lawson seconded. The vote to deny the appeal was unanimous. Mr. Clemenson explained that the decision of record would be mailed to the applicant and what the applicant's recourse could be.

Thomas W. Schaefer: an appeal of the November 20, 2006 Planning Commission decision to deny a request to develop a condominium project on property located at Lakeshore Dr. Mr. Coxie read the staff report and presented pictures and a video of the site. Mark Ruda representing the Schaefer's presented a map of the surrounding area on Lakeshore Dr., which borders the Lake and calculated all existing businesses, single-family homes, and other uses, proving this area is commercial and has been for a very long time. He also presented pictures of other businesses in the area with this same use. He acknowledged the Smally home next door and stated that even though it is a nice place does not make the area incompatible. He stated that just because you build a home in the middle of a commercial area does not constitute it to be residential. Mr. Paulson asked Mr. Ruda how many other 5-story developments on Lakeshore Dr. there were. Mr. Ruda stated that there weren't any but that Branson Landing was across the Lake from this and Kamp Kanakuk had buildings of 3 stories. He also stated that there are other multi story buildings in Taney County. Mr. Ruda also answered another question from Mr. Paulson regarding wastewater capacity and stated that a letter from the Sewer District exists in the file stating sewer capacity. Mr. Paulson and Mr. Ruda also discussed added traffic to Lakeshore Dr. Mr. Lawson stated to Mr. Ruda that Kanakuk Kamp is grand fathered. Mr. Clemenson asked how the property would be accessed. Mr. Ruda stated that roads have been platted but not built and presented a map showing these. Matt Trokey representing Gary and Norma Smally and other property owners reminded the Board that the Planning Commission unanimously denied this request. He continued to point out that this request is incompatible with the area and reviewed all the concerns of the property owners those being, traffic safety, wastewater capacity, adequate water supply, no error of law being proven, and adequate buffering. Mr. Paulson discussed what would make this area incompatible. Mr. Ruda again stated that there are no other 5 story buildings, high-density developments in the area. Robert Hanselon opposing the request discussed traffic safety, adequate access, infrastructure, a five story building not being compatible, play areas for children, family oriented structures in the area, and if Kanakuk Kamp would receive approval if asked today. Jim Stevenson a real estate agent working for the Smallys, stated that he is not opposing the development simply wanted the Board to know he doesn't feel this request is compatible with the surrounding area. He also pointed out the property being in the floodplain and would need to be taller to comply with the floodplain ordinance. He also reported that this request would devalue the Smallys property. Roger Gibson who lives in the area opposing the request stated that a lot of the land in that area consists of sports playing fields for the Kanakuk Kamp. His other concerns were traffic safety, children's safety, and the area being family oriented would be incompatible with this kind of use. Mr. Ruda addressed these concerns and stated that Great River Engineering had sent a letter regarding two options for wastewater disposal, and the current sewer lines had capacity to handle the added wastewater. Mr. Paulson stated that even

though the system had capacity did it have adequate pumps to take the wastewater to the plant. Mr. Clemenson asked about the questions of the floodplain concerns. Mr. Ruda stated that these would have to be taken into consideration. Mr. Ruda also addressed the timeshare concerns by adding that these are very expensive timeshares and would have a higher caliber of customers than the current resorts would have in the neighborhood. Mr. Paulson and Mr. Ruda then discussed the traffic issue. Mr. Lawson made a motion to deny the request and based it upon the Planning Commission Decision of Record that this project is incompatible, based on the incompatibility of height, excessive number of units and the devaluing of the surrounding property. Bob Anderson seconded. The vote to deny the appeal was unanimous. Mr. Clemenson explained the next procedure to the applicant.

Vogel Properties of Branson, LLC: an appeal of the November 20, 2006 Planning Commission decision to deny a request to develop a condominium project on property located at Candlestick Road, Taney Street, Mt. Branson Dr. and Como Ave. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Coxie gave the history of the Planning Commission public hearing and pointed out the comment made in the hearing that the point was brought forth that there are no other similar uses in the neighborhood. Harry Styron representing Ross Vogel asked that all the people opposing the project be allowed to speak first and that they keep the focus on incompatibility since that is the issue. Geneva Stice was the first property owner to speak and stated that she is in favor of the project because she is in hopes the road will be widened. In her opinion compatibility should not be an issue. She pointed out several businesses in the area, and that most of the people in the neighborhood are in favor. The only ones opposing are the people who live closer to the Lake. Janice Carlson who lives on Mt. Branson Dr. stated that across from her house is a tourist center where people pull over to look at Branson Landing, there are tour buses turning around in her driveway going in and out of the Candlestick Inn all the time. Ray Savage also lives on Mt. Branson Dr. stated that he bought his property because he thought that he could someday sell it for commercial and make some money. Jesse Cook lives on Como Ave. and is in favor of the project and feels that he can move his trailer somewhere else. Kevin Stice lives at Como Ave. and stated that he doesn't have anything to gain from the project but pointed out that a bond issue was voted on and passed last year for the water district specifically for development. He feels because all the taxes etc. have gone up, growth needs to be allowed to off set the burden of utilities and taxes. Mr. Lawson asked if the terrain would allow him a view over the project. Mr. Cook stated that the project would block his view. Mr. Carlson who lives on Mt. Branson Dr. is in favor of the request. Jacob Moll who lives on Mt. Branson Dr. is in favor of the request because he wants to see the area improved. Marva Hardesty lives on Como Ave. stated that the houses in the neighborhood are run down and would like to see improvements made to the area. Cody Stice lives and

owns property on Como Ave. and owns Stice Mobile Home Park in the area of the request. He stated that the area is dilapidated and the property values are going down. In his opinion this request would improve the area and help the residents obtain loans to improve their properties. Ross Vogel pointed out the compatible uses in the area of the request. He addressed the traffic issues and stated that he has worked very hard to make his project compatible and has done his own traffic study which showed that a project of this size would generate very little added traffic to the area. He has already met with the sewer district and addressed infrastructure for the property. Mr. Paulson reported how the traffic study was done. Mr. Vogel stated that Mt. Branson Landing at one point is only 700' from this property. The building is six stories and parking is plentiful. Mr. Paulson addressed compatibility issues. Mr. Vogel answered questions from Mr. Paulson and stated the building to be six stories, 13,000 sq. ft. and there will be green space, and that there are no other buildings of this size in the immediate vicinity. Mr. Styron produced a synopsis of the history of the project, the Code as it applies to this project, and pointed out the section that in his opinion constituted an error of law by the Planning Commission. He stated that the Code states that buffering shall be used to separate different uses then discussed these. He stated that as a matter of law if the Planning Commission isn't going to use the point system they should not use the rules as the Code applies to the point system. In his opinion the burden is not on the applicant as the Code states, but as the state law states, then read the Mo law. He addressed what the Code states is the Boards job, and how in his opinion the Board can approve this project. Mr. Paulson addressed the land use compatibility section of the Code and how it applies to this request. Mr. Anderson stated that the Branson Landing was approved by the City of Branson. Richard Davis presented a petition from the Mt. Branson property owners asking the request be denied. Mr. Davis feels that there shouldn't be any more cars added to the currently crowded highway and gave the results of a traffic study done by the county. He doesn't feel the streets surrounding the property are adequate to handle this project. The tour busses have trouble navigating those streets. He reported seeing the cars backed up in all directions and was concerned that with the growth the roads cannot keep up with the traffic. In his opinion the large structure would distract from the area. He stated that the area is made of "shelf rock" and it is easy to move, and is concerned that blasting would damage all the structures in the area. He feels that the Board would be doing Mr. Vogel a favor to deny the request because in his opinion no one would want to buy in that area. Bob Nichols who has property on Taney St. feels this request is a non-conforming use. He stated that the people in the area should not have to shoulder the burden of paying for improvements of infrastructure. He felt the project would be too dense for the area. He felt that the streets, water, sewer and fire district could not handle this request. Mr. Paulson asked if this use wouldn't increase property values. Bob Porter lives on Eastlake which is down hill from the project was concerned about blasting and that it would harm his

basement and cause it to leak. June Soukoloic who lives on Taney St. likes the peacefulness of the neighborhood, and is concerned about noise. She stated that all the construction from Branson Landing is noisy, and dirty. She doesn't want any more construction near where she lives and had concerns regarding traffic, compatibility, and density. Lavonne Chase who lives on Eastlake was concerned about the wildlife, noise, traffic, compatibility, and property values. Kim Parris who lives on Taney Street next to the treatment plant was concerned about the existing treatment plant being able to handle the added wastewater. Elizabeth Tomelleri owns property between Candlestick Road and St. Hwy. 76. Mrs. Tomelleri was concerned with privacy because of the high-rise building and stated that a building that tall cannot be buffered. She asked that this Board not compare them to the Branson Landing. She stated that she had talked to all of the entities who stated that their approvals are contingency approvals. She also stated that she doesn't live on her property full time. Marcia Haseltine lives at 220 Angels trail on the rock bluff above Lake Taneycomo, presented a petition requesting this project be denied. She stated concerns regarding water runoff, compatibility, wastewater capacity, traffic, noise pollution, blasting, fractional ownership and nightly rentals, stormwater pollution and drainage, density, open space density, fire safety, security, privacy, property values, and higher taxes. Mr. Styron pointed out that the concerns from the people fall under the umbrella of compatibility and is different than the Code addresses. Bob Anderson discussed these and made a motion to deny the appeal based upon that the Planning Commission did not error in law and that compatibility is a wide area of discussion and that this request would be a burden to the surrounding property owners, amount of impervious cover, height incompatibility, building bulk and scale, use compatibility, sewer capacity, and added traffic. Carl Pride seconded. Alan Lawson voted no. The request was denied with three in favor and one against.

Review and Action:

Minutes: November 2006: with no additions or corrections a motion was made by Alan Lawson to approve the minutes as written. Seconded by Bob Anderson. The vote to approve the minutes was unanimous.

Old and New Business:

No Discussion.

Adjournment:

With no other business on the agenda for December 20, 2006 a motion was made by Alan Lawson to adjourn. Seconded by Bob Anderson. The vote to adjourn was unanimous. The meeting adjourned at 10:00 p.m.