



Planning and Zoning Commission Meeting

November 8, 2022

7:00 p.m. – City Hall Council Chambers and Via Videoconference

Anyone who wishes to view the meeting in real time may do so as it will be streamed live on the city's YouTube page through YouTube Live or may use the Zoom link below to access the meeting.

1. **Call to Order**
2. **Approve the October 11, 2022, Planning Commission Minutes**
3. **Staff Report**
4. **Public Hearing**
 - Revisions to Fence Regulations
5. **Revision to Fencing Regulations**
6. **Adjourn**

Join Zoom Meeting

<https://us02web.zoom.us/j/84109563887>

Meeting ID: 841 0956 3887

Passcode: 860313



SMITHVILLE PLANNING COMMISSION

REGULAR SESSION

October 11, 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 7:00 p.m.

A quorum of the Commission was present: Melissa Wilson, Alderman John Chevalier, Billy Muessig, Dennis Kathcart and Deb Dotson. Mayor Damien Boley & Rob Scarborough were absent.

Staff present: Jack Hendrix and Brandi Schuenger.

2. MINUTES

The September 13, 2022, Regular Session Meeting Minutes were moved for approval by KATHCART, Seconded by DOTSON.

Ayes 5, Noes 0. Motion carried.

3. STAFF REPORT

HENDRIX reported:

We are at 56 single family residential building permits since January 1, 2022.

An update was provided on the following commercial construction:

The medical marijuana facility has a Temporary Certificate of Occupancy.

The new Phillips 66 gas station (formerly Shamrock gas station) has opened as of last week. They still need to reinstall the landscaping that died over the summer.

A new residential subdivision is anticipated to come forward at our December meeting. It's located off of Second Creek Rd.

The old Kay Furniture building (currently Holliday's Outlet) is about to change ownership. They are proposing a mixed use scenario. It's possible that this will come forward at our November meeting.

DOTSON asked for an update on the stalled construction on the townhomes between E. Main Street and E. Meadow St.

HENDRIX stated that his understanding is that there is an offer on it to be bought and taken over by someone else. Our building inspector has been in contact with the potential buyer about what inspections have been completed and what still needs to happen. There are some plan updates that need to happen to pass any inspection going forward.

4. PUBLIC HEARING:

- **REZONING A PORTION OF 18601 N 169 HWY FROM R-1B TO B-3**

Public Hearing Opened

HENDRIX stated that applicant is seeking to have a portion of this property zoned B-3 so they can have a lodge facility on it. Our zoning code considers that to be a hotel even though it doesn't operate in the traditional hotel sense.

Mark Walsh—304 NE Stanton Lane Lee's Summit, MO 64064— Stated that his wife Donna and himself own property and are building a home at 18209 N Main Street which is down the street from the proposed location. In reference to items # 1 and # 6 from the Findings and Facts in the packet. The majority of the properties south of the proposed site are single family homes. A hotel is not a good fit for the area and is not compatible. Item # 2 points out the city's comprehensive plan for the area under consideration to be used for civic or institutional uses and it provides examples. The proposed hotel is to be built in support of the Herzog Foundation. A private hotel does not meet this requirement. Item # 7 speaks to the extent to which zoning Amendment may detrimentally affect

nearby property. All Property Owners along North Main will be impacted. The street dead ends at 180th St and 188th St. It was not designed to take heavy traffic. It's a neighborhood road that serves the locals on that live on that street. Also please consider the additional vehicles getting on to 169 Hwy from 180th St and 188th Street. We currently see significant traffic delays at both of those intersections. Item # 8 whether the proposed amendment provides a disproportionately great loss to the individual landowners nearby relative to the public gain. I've already described some of the adverse impact to landowners. What is the public gain for a private hotel? Build the hotel along 169 Hwy where it would be compatible with other operations such as the church, Herzog and the truss company across the street. This would avoid the traffic problems and other issues. Speaking for my wife and I we would have no objections to this private hotel off of 169 Hwy. It's just wrong for N. Main St.

Chris Hibbs---106 Rock Creek Terr—Stated that she is here on behalf of neighbors who have also been concerned of traffic and the amount of good that the city would receive by something that is for a private entity. Mr. Walsh covered most of the concerns that our neighbors have about the traffic. The street that goes right there we have a very small neighborhood and it already does carry a lot of traffic through there.

David Horrocks---18405 N. Main St— The traffic that would be coming out off that road on to N. Main St. The City of Smithville doesn't maintain that road in the first place. The county maintains that road. We've been back and forth with the county on that to do something with that road. The only thing the county ever did was maybe put a little patch work down on that road. The city does not want that road. They will not maintain that road. We've asked time and time again for them to maintain that road but they don't want to put up the funds to do that road so what makes you think that they're going to maintain that road with all this added traffic on this road. That road started out as a gravel road then went to chip and seal and it went back to gravel and now it's back to chip and seal. The County's did this every time. The city won't do anything with the road because when the gas company went in there and went up that road we told them they need to make the gas company do something about this road and they said we would and they did not and so the last time we tried to get them to do something about the road nothing happened. Adding more traffic from this hotel is going to deteriorate that road even more and put more traffic coming in and out. Even there the 188th St when you come out on that road you've got to turn to the right to even see traffic coming from the north. If

you're going to add more traffic coming out there then it's not going to be feasible to even have anything to do with it. I say it's not a good idea to come out on North Main. Even people come out of Rock Creek on to that road on a driveway. When that all got rezoned back 20 something years ago to put Rock Creek in. No driveways or anything was to come out onto North Main back then. That was the agreement that we had with the city. We said go ahead and you do the development of Rock Creek. We will let you put the sewers through our property to do that as long as nobody can come back out onto North Main to add more traffic onto a road which nobody wants to take care. I even offered to the county to make this a private road and we'll take care of the road because the city doesn't want to do it and the county doesn't want to do it. The County says that they give all of their money to Smithville because you share a road with Smithville.

Mitch McGuire---18511 N. Main St--- I live off of North Main Street as well. I actually piggyback off of what Mr. Horrocks spoke about. I've lived there over 10 years. I've seen progress go through the city. We've built up and I've seen a lot of construction on our street on the north and south side. There is an influx of traffic and like he said the road is not maintained. We've been back and forth with the county, the Mayor of Smithville for probably a little over year. That's the road issue. Stormwater, I look at that that was proposed. We keep putting more and more blacktop down. We already messed with the stormwater on the North side with the Herzog Foundation. My property has a creek that runs right through it and my driveway runs over the creek. In the past few years, if we get a lot of rainwater it'll actually go over my driveway. So, we have that issue with stormwater now. The side of the street with the culverts where the drainage is they haven't been serviced by the side of the streets. I've told Clay County that as well. I'll jump over to the plumbing issues too. If we keep adding 74 hotels rooms we're going to have an influx in sewer usage. The sewer line goes through my property as well. I'm hooked up to the positive side of the force main and the whole Rock Creek subdivision is hooked to it as well. I don't see anywhere that the lift station can handle that and there's no evidence of that. What's this going to do to City water pressure? We talked about the traffic on North Main and the area and you look at history of putting more commercial in a residential area we're looking at devaluation of home areas. The Rock Creek subdivision is brand new and no one wants to see a hotel go up right next to that. I believe that's why people move from the city to Smithville to get away from that and then we're bringing this up north. I understand this is individually owned but who knows what

the future holds with building a commercial setup like that. I'm not for the hotel. Let's see what we do.

Trudy LaForce---411 NE 188th St—My property is a corner property so the west side of my property is on North Main. I was quite surprised to hear about this. I did get the letter from the city about it however it mentioned nothing about a hotel, lodge or anything else. I have two concerns. One is with the water issue. There is so much runoff there and I know that Herzog Foundation did spend a lot of money doing new infrastructure under 188th Street from the field on the north side of 188th Street. I don't know if that has increased the drainage from there. It may not have anything to do with it but the last rain we had of significance there was water over a lot of North Main. It has been doing that ever since Rock Creek was built and they put that little service road into Rock Creek from North Main. I also remember there was not supposed to be an entrance to Rock Creek from North Main. I have not objected to what is there now because in an emergency there would be two ways for people from Rock Creek to leave that area. I also don't understand how this can come about. I think there's been a history of people or companies coming to the city and wanting to do things and what they present will be approved according to the guidelines but then they come back and there will be some reason they can't do it the way the city okayed and there's a history of the city going ahead and going along with what the person needs to do if it's going to cost a person more money. To me it's that person's responsibility not the cities responsibility to change what was presented to them in the first place and accept that. I was not aware there were going to be cabins there until they came up with that. They aren't even finished yet so I don't know if that's an issue. I doubt if that will be an issue. Another thing with the hotel would be a parking lot and the more concrete that is put down the more runoff you have. We need more areas that will absorb the water than we do more concrete for it to run off from. Those are just my thoughts on it. I can't believe that this is something that is being proposed and I do object to it.

Nancy and David Farrow---18302 Rock Creek Dr—We have street runoff coming behind our property and everything that comes off the street goes down into a ditch area and right behind our house. The sewers and the runoff water, if it increases any at all it's going to be a real problem for our resale value on our home. We are worried about our property values. There's lots of places north or South of town where they're building and it's not residential. Why can't they go someplace like that?

Kimberlea Dupuis---18303 Rock Creek Dr— I would just like to back up everything that everyone is saying. And I hope that the city takes to heart with the residents here in Smithville would like to say. Thank you for considering objecting this.

Darrell Jones---712 Apache Ct— I am the President of Herzog Foundation a new resident to Smithville. I love your town and thanks for what you've done. I lived in Saint Joseph for 35 years and pastored there. Within the last year I moved to Smithville. My wife and I love it here. It's a great community and the mission of the foundation is to advance Christian education across the country. Because there's not a federal Board of Christian education it's like the wild wild west among Christian Schools across the country. We have built a training facility that brings up to 75 people at a time into Smithville using local restaurants to cater all of the meals. We're bringing them here to train them in donor development, marketing, board staff relationships and strategic planning those kinds of things. We believe that the lodge is really going to enable us to do that more of efficiently and more effectively for the sake of the private dollars that are in the foundation. I think the primary advancements to North Main Street have been adjustments and modifications that the foundation has made in terms of storm runoff and I know that there are additional codes that the city is going to require that that we maintain and make happen certainly for storm runoff, sidewalks and maintaining North Main Street in general. I think if you drive by our facility you'll see that we really want to be good neighbors and we really want to increase property value and we really want to make the neighborhood something that all neighbors can be proud of. I just wanted to come and speak on behalf of the foundation regarding the mission and the purpose. The majority of people who will be coming to our conferences are coming from out of state so the vast majority are flying into Kansas City and we pick them up with shuttle vans that we have that will transport them for 2-4 days depending on the training to the lodge itself. Even in terms of the number of cars that will be on North Main Street it really will be significantly less than the 74 rooms that are being discussed. The reason is because we transport them and then they're here. I do believe we're going to have a fleet of e-bikes that will utilize the trail system here. But for the record it's for the most part people that are coming in for maximum of four days at a time and we'll shuttle them from the airport to the campus and then once they're on campus they're there. That's pretty much the mission and the use for how the lodge will work but for the record we just feel like it's going to be a much better experience for those

who are coming to experience Smithville on the same campus and come to appreciate the same community that my wife and I have come to love.

Anthony Luca---1632 Jefferson St. Kansas City, MO — I work for Focal Design Studio. We are the Architects for the Herzog Foundation, Herzog Cabins and the future Lodge. I'm going to try and get to all this in 3 minutes as there's a lot of valid concerns that have been brought up and I want to make sure I get a point to address all of them. The main topic here is zoning. A lot of these other questions while very important valid questions are things that we will further study and will eventually come back to you and the community for the site plan review which will include traffic, storm and all the other support information that will help. I don't talk about traffic for too long because I feel like Mr. Jones did a great job and kind of minimizing that it's going to be primarily a shuttle service so there's not going to be a lot of traffic involved. We know the city will eventually require us to do a traffic study when it comes to the design of that road. Talking about stormwater, if you drive by the Foundation building as it currently sits you can see how dramatically improved 188th Street is both from the road, the sidewalk and the storm infrastructure that came along with it. As far as the runoff associated with that project the city had actually required us to detain any additional runoff that was coming off that property with the construction of the new building. There's a multi-thousand gallon cistern buried underground in the current Herzog Foundation building that is detaining any additional runoff from paved surfaces, from the building, from any hard surfaces to control that runoff and to slowly release it when the demand on the system has been reduced. This this requirement will also be in place for the lodge. Since it is a currently unimproved site, any additional hardscape that we put on there is going to have to be mitigated with detention in some form or fashion so we don't stress the neighbors and the existing roadways and infrastructure that's currently in place. Again, with the improvements on Northeast 188th Street this is something similar that will eventually be required for Main Street as well so that will turn the corner and continue down for the full length of the property that is under question. Plumbing was brought up as well. They system and what it is capable of is unknown and we will have to have engineers test it and tell us what we can and can't do and what improvements will have to be made so we don't over tax anything. It is not our intent to over stress the system as it currently sits. The Foundation building that is complete and the cabins that will soon be complete there are completely conscious of the site and being good stewards of their property and their program and being good neighbors. They have a high commitment to quality. They see the value in the land and

the beauty of the land and is every bit their intent to use that as an asset and to develop around that and to make this building fit with the other buildings on the campus and not be an overbearing presence. All of that design is still underway and eventually once this rezoning and replating process is done we will have to come back before you with the full site plan review that has renderings of the project, additional details, materials, plantings and information that is so very important for every neighbor and community member to be aware of.

Chris Hibbs---106 Rock Creek Terr—Stated that she wanted to add more to her previous comments. None of us has any doubts of their intentions and I don't think anybody objects to their Foundation or any of their goals or any of those kinds of things. I think that we are thinking about how this is benefiting an entity and we are people that already live here, we already pay property taxes and it affects us a lot. They are thinking about their entity and not our city. This doesn't really benefit Smithville it benefits Herzog which I guess maybe indirectly. That's what I wanted to say.

Public Hearing closed

5. REZONING A PORTION OF 18601 N 169 HWY FROM R-1B TO B-3

DOTSON motioned to discuss the Rezoning at 18601 N 169 HWY from R-1B to B-3. Seconded by MUESSIG.

DISCUSSION:

DOTSON stated that drainage has been brought up along with some other issues. Is the foundation willing to work with the neighbors in order to move the project forward in an amicable way?

Mr. JONES stated that he will speak for himself and on behalf of the foundation that they would be happy to work with the neighbors. Typically, that would be done through the city. Trying to talk to all of the neighbors in the neighborhoods would be rather challenging responsibility but through the city, the codes and the design that would be the formal communication structure. But yes, we do want to be good neighbors and I would hope that the Good Sheperd Catholic Church would attest to that.

ALDERMAN CHEVALIER stated that we are supposed to be talking about the zoning and the site information is a separate issue. I think that we just need to stick to the zoning issue at hand.

MUESSIG asked with this being a hotel in B-3 zoning, what is the allowed height?

HENDRIX stated that he is not 100% certain but thinks it's 5 stories is the maximum height but it can go up taller from a setback standpoint. The farther you get away from a property line you can go up higher. For example, the Catholic Church has an 84 foot high steeple but they are centered on that lot.

MR. LUCA informed that it is the intent of the foundation that the main foundation building that is currently on the site stay the most prominent building on the campus. In order to do that the lodge building is currently designed as a 2 story building. We are trying to keep it as low and in the landscape and tucked behind the existing tree line as much as possible. I agree that 5 stories is too tall.

ALDERMAN CHEVALIER stated again that he believes we are talking more about things with the site plan itself but he asked the question about B-3 and that will allow 5 stories. If we do rezone this there is a potential that may not be with this particular thing. In the future definitely something can happen and once we go there we can't really go back at that point.

Kevin Weinger with Focal Design Studio stated that you could make a conditional requirement on the rezoning to only allow two stories.

HENDRIX stated not with the current version but we do have a conceptual plan concept that would have those restrictions and could be something that could be placed in. You can restrict buildings, you can restrict uses, you can restrict whatever but it has to be a conceptual plan.

DOTSON stated that we could go ahead and rezone to B-3 and then implement later.

HENDRIX stated no. Once it's B-3 it's B-3. If you're going to do it you need to do it simultaneously. It's a bell that once it's rung you can unring the B-3

bell. If you do a conceptual plan simultaneous with the rezoning then you can cap the B-3 potential uses with the conceptual plan. WILSON stated that here don't have that here.

HENDRIX stated correct. The first mention of bringing it down was Mr. Wineinger just a few seconds ago.

KATHCART asked if that would apply to all B-3 in the city after that point or just this site.

HENDRIX stated that the Conceptual Plan applies to the land that the business is approved on. Similar to what happened down south by 144th Street and Central Bank there's a conceptual plan over it that limits the uses and the density of housing and those things. Similar concept but from a city strategic standpoint once a zoning is approved by the board of aldermen that zoning and all the uses listed are available options. So, at that point it becomes more of an administrative function related to what kind of building they want to put up that can change at any time. And there is no real restriction other than are they protecting the water quality as it leaves the site, stormwater detention, the water line and sewer line stuff from cities perspective isn't an issue because it was designed to have 160 houses additional sitting on it and Catholic Church bought that land.

MR. HORROCKS stated he was sitting here looking at the map on this. He has live there for 40 years and where you are planning on rezoning this it is all a spring. I don't know if any of you guys been up there to look at it but this spring has been coming up there for years right behind where they built the cabins. If you put a hotel in there and that spring come in and it feeds my pond and all this runoff comes into my pond, it's filled up my pond with runoff. Besides that, when you build right there in that area how's the foundation going to sit in that because that spring has been there forever. That's soft ground and there's cattails growing in there right and you're going to disturb that natural spring that's right there coming out comes in feeds my pond. I take the majority of the runoff from all of this. If all this runoff that's going to be on this property and then you put concrete and everything there it's all going to come to me. It's going to run over my dam so nothing is going to absorb into the ground because it's already wet ground right there. If you don't believe it go up there and see it because I've lived there for 40 years and I know. That spring even in the driest part you go up there right now because it's so dry and that spring is still running. It's an underground spring that has never dried up. Even back in the 90's

when it got very, very dry that spring never stopped. That's what you're getting ready to do. You're going to let them build that and that's going to sink down and you're going to have more problems because that's over wet ground there.

WILSON stated this probably goes more to the site plan side but with the B-3 and what we're looking at maybe doing here I do have a question. I guess for us they're coming to the city but yet I'm hearing that that road is a county road so do we work with the county? How are we going to work with the county to make sure that all the infrastructure and everything meets what we're looking at doing if we rezone this?

HENDRIX stated we've been working with the county since 2018 to try and redo the Shared Road Use and Maintenance Agreement that we have with them. It sounds like the last conversation I had heard is that it's maybe getting somewhat close to doing some of it but not all of it. To the extent that we have site plan rules that were changed last year or the year before to incorporate the subdivision rules. That's where we address all of those issues. One of them would be improvements to the road. Similar to the site plan work and the development agreement we did the Herzog Foundation building to put in the curb, gutter, sidewalk and all of that. Similar requirements would be for N. Main Street but only to their property line. They don't have to do this all the way down for everyone else. There would be paving, curb, and gutter requirements there as a part of that process. Until we know what the building will look like and how much parking we don't want to try to answer the question without all of the data. We don't know the traffic, the stormwater impact but we do know we have procedures in place to address those issues when that time comes.

WILSON asked if this portion of N. Main Street affected by this rezoning inside city limits. Is part of that road our responsibility?

HENDRIX stated that most of N. Main Street is inside the city limits. Mrs. LaForce and Mr. Horrocks both have a section that are not inside the city limits and they are all on the east side. Everything on the west side of N. Main Street is in the city. But it's still part of an agreement from 2012 that we have been trying to get updated with the county now for 4 years. It is the counties maintenance responsibility.

ALDERMAN CHEVALIER stated that he is still just concerned that we keep talking about the site plan issues and we're confusing the issue at this point.

I appreciate everyone that commented but everything that I heard is mostly related to site plans versus the actual rezoning which is what we need to focus on.

WILSON stated that she understands that but a little bit of it is tied in with making our decision. If we don't have any other discussion we are going to move on to going over the Finding of Facts and Conclusions of Law. Items # 2, 7, and 8 are going to involve some discussion to reach a decision. Does anyone on the commission have any concerns about Items # 1,3,4,5,6 or 9?

1. Character of the neighborhood.

The surrounding area is a mix of R-1 single family housing to the south of the Catholic Church, as well as many acres of undeveloped land to the south and east. The lot north is B-2 and houses the Foundation offices and the four cabin buildings.

3. Adequacy of public utilities and other needed public services.

The application is to allow an 8-acre portion of the land to be used for constructing a lodge facility. All utilities and services are available currently, but must be extended to this facility at the applicant's sole cost and expense.

4. Suitability of the uses to which the property has been restricted under its existing zoning.

The current use is as a church facility to the west, but the subject portion of the land is undeveloped.

5. Length of time the property has remained vacant as zoned.

The property was zoned to the existing district classification of R-1B in 2004 for the Rock Creek Subdivision. In 2009, after the housing bubble burst no construction occurred in the brand-new residential development, the future development area of the subdivision was acquired by the Catholic Church and the church was constructed.

6. Compatibility of the proposed district classification with nearby properties.

The adjacent land (except the church and applicants' other facilities to the north) is either residential, or vacant,

undeveloped land, with a future land use designation of either agricultural or residential. The intended district will expand the impact of the uses from the original impacted area of 188th St. and 169 Hwy significantly.

9. That in rendering this Finding of Fact, testimony at the public hearing on October 11, 2022, has been taken into consideration as well as the documents provided.

DOTSON motioned to approve the Finding of Facts and Conclusions of Law Items # 1,3,4,5,6 & 9. Seconded by KATHCART.

DISCUSSION:

ALDERMAN CHEVALIER stated that Item # 4 talks about the suitability of the uses which the property has been restricted and its existing zoning. Can you explain that response to me?

HENDRIX stated generally in Missouri law associated with these issues the question becomes it can't be developed in the way it set and is the zoning that is on site and its restrictions is it suitable? It's currently zoned for single family housing so that that issue becomes a little blurred by the fact that when the Catholic Church acquired it the zoning doesn't change because they're not subject for their Church facility, a worship facility, isn't subject to city zoning. They are subject all the other rules but not zoning. So, you have single family housing zoning where a church sets. That's how it how it ends up here. Is the single family housing zoning appropriate for there? Is it suitable? That's the question.

ALDERMAN CHEVALIER stated that he is assuming that the answer indicating that it's not that's why they're asking for this rezoning right?

HENDRIX stated yes.

ALDERMAN CHEVALIER stated this is a finding of fact and that is true that the current zoning will not allow them to build what they are planning on.

HENDRIX stated the question is not whether the current zoning will or won't allow them to build. The question is that zoning suitable, is that restriction to single-family housing appropriate for this site and this area. Like I said, it

got blurry when the church bought it because now you got a church and a parking lot in the middle of it so is it suitable to build houses around it or not? I hope that answered your question.

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

AYES-5, NOES-0. MOTION PASSED

WILSON stated that we will now address specifically Item #2 of the Findings of Fact and Conclusion of Law. We need to discuss and vote on either A or B.

2. *Consistency with the City's Comprehensive Plan and ordinances.*

A. The existing Comprehensive Plan was approved on November 10, 2020 and calls for this area to remain Civic or Institutional. Civic and Institutional uses include, but are not limited to, educational facilities and campuses, libraries, places of worship, and other community-oriented areas. A proposed lodge building with 72 rooms for the support of the Herzog Foundation to the north meets this definition in that it can be considered part of the larger campus.

or

B. The new Comprehensive Plan was approved on November 10, 2020 and calls for this area to remain as Civic or Institutional uses. The proposed district of B-3 does not comply with the Comprehensive Plan.

WILSON motioned to approve the Finding of Facts and Conclusions of Law Item # 2, B. Seconded by ALDERMAN CHEVALIER.

DISCUSSION:

WILSON stated that the reason she is going with B is we did do a new comprehensive plan. I think once we start deviating from our comprehensive plan it's easier and easier to continue to do that. So, that's where I'm looking at B myself.

MUESSIG stated the only portion of Item 2, A, is just the 72 rooms is the issue because otherwise you still have all those in a B-3 right or not?

HENDRIX stated that the question is that the Comprehensive Plan specifically calls out for civic and institutional uses and every word in there came directly out of the Comprehensive Plan up to the point where it says oriented areas. The next one is a finding that you would have to make to say that a proposed Lodge building is or fits a Civic or institutional use as defined in the Comprehensive Plan. That last sentence of that finding is what you'd have to make that a lodge building like it's described meets the definition of civic or institutional as called for in the Comprehensive Plan. If you don't think it does its B. If you think it does then it's A.

DOTSON asked if a conference center would fit the comprehensive plan?

HENDRIX stated that if you look at the Comprehensive Plan and the map in it the B-2 zoning that was done occurred prior to the new Comprehensive Plan so it was incorporated into that and it's the future land use maps specifically shows that section there. The entire block of the Catholic Church owned land is the area that's in the purple for purposes of the Comprehensive Plan aspect of it.

MR. WEININGER stated that we may need to cut this off and request a stay.

HENDRIX informed Mr. Weininger that he could make a request to the Chair and ask to table this and come back and maybe reorganize or something. That would be up to the Chair and the rest of the board. They can either table it or you can pull it either one. It ultimately is a procedural scenario.

DOTSON asked if they were to put a 72 room school or a 72 room college would that be within?

HENDRIX stated that's literally the question you guys are tasked with.

ALDERMAN CHEVALIER stated or a pool. Anything that the public can use. I think they clearly said this for out of town people so I don't see where anyone in our town can use these facilities so I don't consider that civic.

DOTSON stated I'm thinking the physical building because I'm trying to wrap my head around a physical building.

HENDRIX stated to keep in mind the Comprehensive Plan isn't talking about any buildings. It says specifically the use.

WILSON stated since it's been asked of the public is this something that we want to dissect further in another meeting or do some more studying ourselves before we move forward with voting on the additional Findings of Fact?

HENDRIX stated no, you have you held the public hearing. You've got your information and if you don't have enough information to make your decision ultimately now's the time to ask those questions. If you're asking what if they come in and propose a slight change, then, it's all start over and starting off fresh.

MUESSIG stated he thinks they should just move forward and finish this up. We have a couple questions about the room issue and that's really one of the biggest questions. Is it an institution or is it civic? I agree with you on that John, if it's civic then it's not for the general public but if it is an institution then it could be a school.

ALDERMAN CHEVALIER stated that he would still consider an institution still civic or institutional use. I kind of feel like these aren't educational facilities. This is for out of town people to come in for this business. I think when Mr. Walsh said the no public gain for a private hotel that kind of stuck with me because I feel that's more of a public service type thing for the city and that's what the Comprehensive Plan is saying this area needs to be. I don't feel like this particular plan that we see today meets that definition in my opinion.

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

AYES-5, NOES-0. MOTION PASSED

WILSON stated that we will now address Item #7 of the Findings of Fact and Conclusion of Law. We need to discuss and vote on either A or B.

7. *The extent to which the zoning amendment may detrimentally affect nearby property.*

A. No detriment is anticipated to the adjacent nearby undeveloped land.

Or

B. The ability of the adjacent land to develop in accordance with the Future Land Use Map of the Comprehensive Plan will be detrimentally impacted by the expansion of more intense business district further from the 169 Hwy/188th St. intersection that generated the initial ability of business zoning at that corner.

ALDERMAN CHEVALIER motioned to approve the Finding of Facts and Conclusions of Law Item # 7, B. Seconded by WILSON.

DISCUSSION:

MUESSIG asked Mr. Hendrix about the drawing that was provided to them. The red area, what zoning is that? It looks like it's all the way across 188th St.

HENDRIX stated that it's identified as commercial and that's the B-2 zoning that is in place on the Herzog Foundation. Below it is the institutional civic stuff and that's everything north of Rock Creek and south of Herzog.

ALDERMAN CHEVALIER stated that option B shows that this plan deviation detrimentally impact the other businesses surrounding. Correct?

HENDRIX stated that it's not businesses it's land.

ALDERMAN CHEVALIER stated that in his opinion if they build this 72 room lodge/hotel and another business wants to build something on their land that's suitable for this and this isn't giving any tax revenue I feel like that is a detriment or could be considered a detriment to those who are trying to build a hotel on their own. Right?

HENDRIX stated that he would suggest that you reread Item # 7 specifically which states: The extent to which the zoning amendment may detrimentally affect nearby property. So, not somebody wanting to put a hotel in another location. It's talking about the neighbors around it. Neighbors to the north, south, east and west of it.

ALDERMAN CHEVALIER asked if there is not a business close by. I thought there was.

HENDRIX stated there is a bunch of commercial zoning north and northwest. The secondary aspect, just so you understand, the Comprehensive Plan and its compliance applies to rezoning. If there's commercial zoned land in town like we talked about earlier that land doesn't have to go through the Comprehensive Plan review. Does it meet the Comprehensive Plan standards because that only occurs in a rezone. Then it's down to the engineering, water, sewer, stormwater, streets, traffic. All that kind of stuff. They are separate and distinct. This is your one bite at the Comprehensive Plan apple is what I am saying.

DOTSON stated back when we were working on that Comprehensive Plan the citizen input at the time was to try to keep as much commercial or business as possible to the south end and keep the north end not as congested.

ALDERMAN CHEVALIER stated that he thinks this is one of the few Findings of Fact that kind of addresses some of the traffic and other concerns that we've heard today as well.

DOTSON stated that she thinks that if the zoning to B-3 were allowed and you could do a lodge or hotel then there is land across 169 Hwy that could eventually come back and say hey they did it we'd like to have B-3 zoning because we want to build a mega hotel because the lake is down the road and that would completely obliterate our Comprehensive Plan.

WILSON stated that's why she made that comment on Item #2 about or Characteristic areas that we drafted.

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

AYES-5, NOES-0. MOTION PASSED

WILSON stated that we will now address Item #8 of the Findings of Fact and Conclusion of Law. We need to discuss and vote on either A or B.

8. *Whether the proposed amendment provides a disproportionately great loss to the individual landowners nearby relative to the public gain.*

A. No loss to landowners is expected.

Or

B. The undeveloped, adjacent property will lose value as its' future development opportunities will be limited given the Future Land Use Map requirements and its proximity to the heaviest use business district.

DISCUSSION:

DOTSON asked Mr. Hendrix to clarify option B.

HENDRIX stated that we have a Future Land Use Plan that identifies the land around it agricultural or residential low density agricultural or something along those lines. Most of it is either county agricultural, R-1B, or city agricultural. The question is can that be developed in lower density residential agriculture? Can it be developed in that fashion if you have the highest density use right next to it? Will the people living in houses want to live next to B-3? Will they want to develop their house next to B-3?

ALDERMAN CHEVALIER motioned to approve the Finding of Facts and Conclusions of Law Item # 8, B. Seconded by WILSON.

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

AYES-5, NOES-0. MOTION PASSED

HENDRIX stated that lastly you have to decide if you make a recommendation of approval to the Board or not. Your options are as follows.

Based on the foregoing findings of fact, we conclude that:

- A. This application and the Rezoning of this property from R-1B to B-3 is governed by Section 400.620 of the zoning ordinance of Smithville, Missouri.
- B. The proposed zoning (is or is not) compatible with the factors set out in Section 400.560(C) of the zoning ordinance.
- C. The Planning and Zoning Commission of the City of Smithville, Missouri (does or does not) recommend approval of rezoning the property to B-3 subject to compliance with the Site Plan Ordinance when development occurs.

WILSON motioned that B. The proposed zoning is not compatible with the factors set out in Section 400.560(C) of the zoning ordinance. And C. The Planning and Zoning Commission of the City of Smithville, Missouri does not recommend approval of rezoning the property to B-3 subject to compliance with the Site Plan Ordinance when development occurs. Seconded by MUESSIG.

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

AYES-5, NOES-0. MOTION PASSED

6. PUBLIC HEARING:

- **SINGLE PHASE FINAL PLAT FOR A 1 LOT SUBDIVISION TO BE NAMED HERZOG LODGE**

7. REZONING 1103 S COMMERCIAL FROM B-2 TO B-3

HENDRIX asked the applicants if they would like to table agenda items 6 and 7 based on the recommendation of agenda item 5 to the Board of Alderman.

Mr. Weininger stated that they would like to table this.

HENDRIX stated that we should probably postpone this indefinitely which will give the applicants more options.

ALDERMAN CHEVALIER motioned to postpone indefinitely. Seconded by DOTSON.

Ayes 5, Noes 0. Motion carried.

8. ADJOURN

DOTSON made a motion to adjourn. KATHCART seconded the motion.

VOICE VOTE: UNANIMOUS

CHAIRMAN WILSON declared the session adjourned at 8:20 p.m.

NOT YET APPROVED



Date:	October 31, 2022
Prepared By:	Jack Hendrix
Subject:	Fence Regulations

Two aldermen requested that the Planning Commission review the city’s ordinance related to fences after hearing from citizens who live on corner lots who constructed fences before obtaining permits out of vinyl coated chain link fence material, which doesn’t meet the “decorative” fencing requirements. Since the matter has been advertised properly to discuss fences, staff felt it was important to identify several issues that are recurring questions or issues with our ordinances that can be addressed at this time as well.

Obviously, most of the provisions related to corner lots generate conflicts related to not only “decorative” fences, but often it is either the 50% open or the 4’ height that generates questions. There are also times when questions about electric fencing are brought up. Electric fences fall into two categories – people who seek to install traditional electric fences, or those who seek to install underground “dog fences”.

Staff has completed a detailed review of the current version of the Fence regulations contained in the zoning code as well as the ban on electric fencing contained in §525.040. The electric fence ban has remained the same as it was when adopted in 1997. The fence regulations have changed various times over the years. Staff have reviewed previous versions of the fence code to ascertain the circumstances upon which changes were based. The following is a history of the Fence Regulations as contained in the city’s zoning code.

Fence Regulations in the Zoning Code

The first instance of any regulations concerning fences occurred following the adoption of the first Comprehensive Plan and Zoning Code in 1966. That code had four provisions – no traffic hazard; no hazard or dangerous to persons or animals; no obstructions to the view, light or ventilation; and fence height for non-public places limited to 8 feet. This zoning code provision remained unaltered until 2004.

When the city adopted the International Building Codes in November of 2002, it ultimately prompted the first look at our fence code regulations. For the first time in Smithville, a building permit was required to construct a fence. As a result, the Development department sought to update the 1966 fence codes to make the regulations enforceable and understandable. The vague nature of the provisions adopted in 1966 made them subject to legal challenges if enforced, so specific rules

were suggested. The first attempt at the update the fence regulations, while approved by the Planning Commission, failed to pass the Board of Aldermen in November of 2003. Staff was asked to consider various comments of the Board and bring a new version to the Planning Commission.

Several months later, in March of 2004, the Planning Commission reviewed and recommended a new version of fence regulations. The Board of Aldermen adopted those changes with Ord. No. 2259-04 on March 16, 2004. The meeting minutes and documentation indicate that the staff used the City of Ellisville's version as a template for the new regulations. A review of their fence regulations and the Smithville version that was adopted, reveal the basic premise of the Ellisville version was adopted, but the organizational structure of the Smithville ordinance changed how the regulations were to be interpreted. Following the 2004 adoption, the code was amended in 2008 (B-4 setbacks 2632-08), in 2013 with the new zoning code update (structure and layout) and 2019 (B-4 changes 3043-19). The 2013 update of the zoning code did include some minor changes to wording in the code, and most notably clarified the hierarchy of the various subparagraphs originally adopted in 2004.

The 2004 ordinance was similar to the version that failed in 2003, but added various provisions discussed by the Board as mentioned above. The original version included the basic provisions of the Ellisville code, including the definition of decorative fences, the 50% open requirement and the 4 feet height limitation on fences located beyond the build line (front yard setback). It also included a provision that review could be reviewed by the City Council. In accordance with the Board comments in 2003, the basic provisions were to be included, along with a provision that staff conduct the review instead of the Board and clarifications for double frontage lots. The Ellisville version did not make variations for double frontage lots, all provisions were the same.

When including the staff review provisions, the method used to incorporate those provisions materially altered the apparent original intent. Specifically, the problematic code provision is contained in the Section 5-108.1.1A. (now 400.350) as shown below:

5-108.1.1 *No fencing can be built forward of the front building line except as noted below:*

*A. On double frontage lots (corner lots, or lots with a street abutting a rear property line) no fence can be built forward of the building lines abutting a street without the approval of the Community Development Director. **Said approval shall only be given after consideration of the following:***

B. Fences shall not impede the view of any intersection and shall not be constructed within 30' of the street intersection. Under no circumstances may a fence be located within 12' feet of the right of way.

C. No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals. This would include barbed wire, electrically charged, or otherwise detrimental to persons.

D. If a fence extending beyond building lines is to abut the front yard of a residentially used property, said fence shall be decorative or ornamental and shall be restricted to 4' in height and shall be at least 50% open, except for stone or brick walls which shall not exceed 3' feet in height. Chain link fences, fence wires, wire mesh fences, snow fences, or fences constructed in any part with such materials shall not be considered decorative or ornamental.

This code provision starts off with the premise that no fencing can be built forward of the front building line {underlined for emphasis} except as noted below. The first provision thereafter starts with "on double frontage lots . . . no fence can be built . . . {in the front yard] without the approval of the Community Development Director." However, it does go on to say that this approval "shall only be given after consideration of the following:" and then provides three additional paragraphs for that consideration.

When interpreting this provision, it effectively prohibits any fence located beyond the front build line except on double frontage lots. It does not appear that this was the original intent, but it is the effect. Using standard statutory interpretation, the only time a fence can be placed beyond the build lines is on a corner or double frontage lot. If a property owner wanted to place a small, 50% open picket fence in the front yard, the code as written would not allow the construction.

Staff has proposed a draft version of the code that would eliminate the layout issues and allow standard front yard fences to be installed, and to handle corner and double lots differently. Specifically, the intent of a fence code provision that changes the fence type on corner or double lots when the fence "abuts the front of a residentially used property" is to protect the visibility of vehicles leaving the adjacent property into traffic and to reduce the obstruction of the view as generally discussed in the original 1966 fence code provisions.

For example, if two adjacent corner lots have homes that back up to each other with no driveway on the side of the house, there is no need to protect the visibility of vehicles leaving the driveway or the view to the entrance, so allowing standard 6' fences that are 100% closed adequately protects the public and allows the property owner the most control of their property without infringing on the adjacent property.

Since the initial adoption of the ordinance in 2004, the code has consistently been interpreted to meet the original intent. Permits have been issued consistently for front yard fences on all lots if they met the decorative and open provisions. If on a corner lot the adjacent property did not have its' entrance facing that street, then full sized fences

could be constructed. Clearly the original intent and subsequent interpretation of the code do not match the actual wording of the code.

Electric Fence Provision

The electric fence provision was adopted in Ordinance 1742-97 in July of 1997. It only included two whereas provisions – electric fences have been known to cause serious injury and it was in the best interest of public safety to regulate the location and installation of electric fences. It banned electric fences in all zoning districts except Agricultural districts and required agricultural electric fences to be at least 75 feet from the property line.

The newer buried electrified dog fences do not cause a threat to public safety and have not been considered electric fences under the codes.

Agricultural District Fences

The current code provisions do not require a permit for fences in the agricultural districts. The zoning code bans on electric and barbed wire fences do not apply to these districts either. There is a separate code provision (525.040) that regulates electric fences in these districts must be not less than 75 feet from a property line.

Summary

As initially indicated, now would be the time to address these issues with a new ordinance regulating fences. The issues to be addressed are as follows:

1. Define the phrase "Decorative Fences" to include or exclude those provisions deemed appropriate.
2. Determine if front yard fences on all lots is allowable if they meet the new "Decorative Fences" definition.
3. Describe the circumstances when lots with multiple "front yards" may vary the decorative fences provisions.
4. Should the electric fence provision be incorporated into the overall fence regulation scheme?
5. If it is incorporated, should the electric fence provisions be amended?
6. Should the ban on barbed wire fences in all districts except agricultural be adjusted to include industrial and/or commercial?







169 HWY

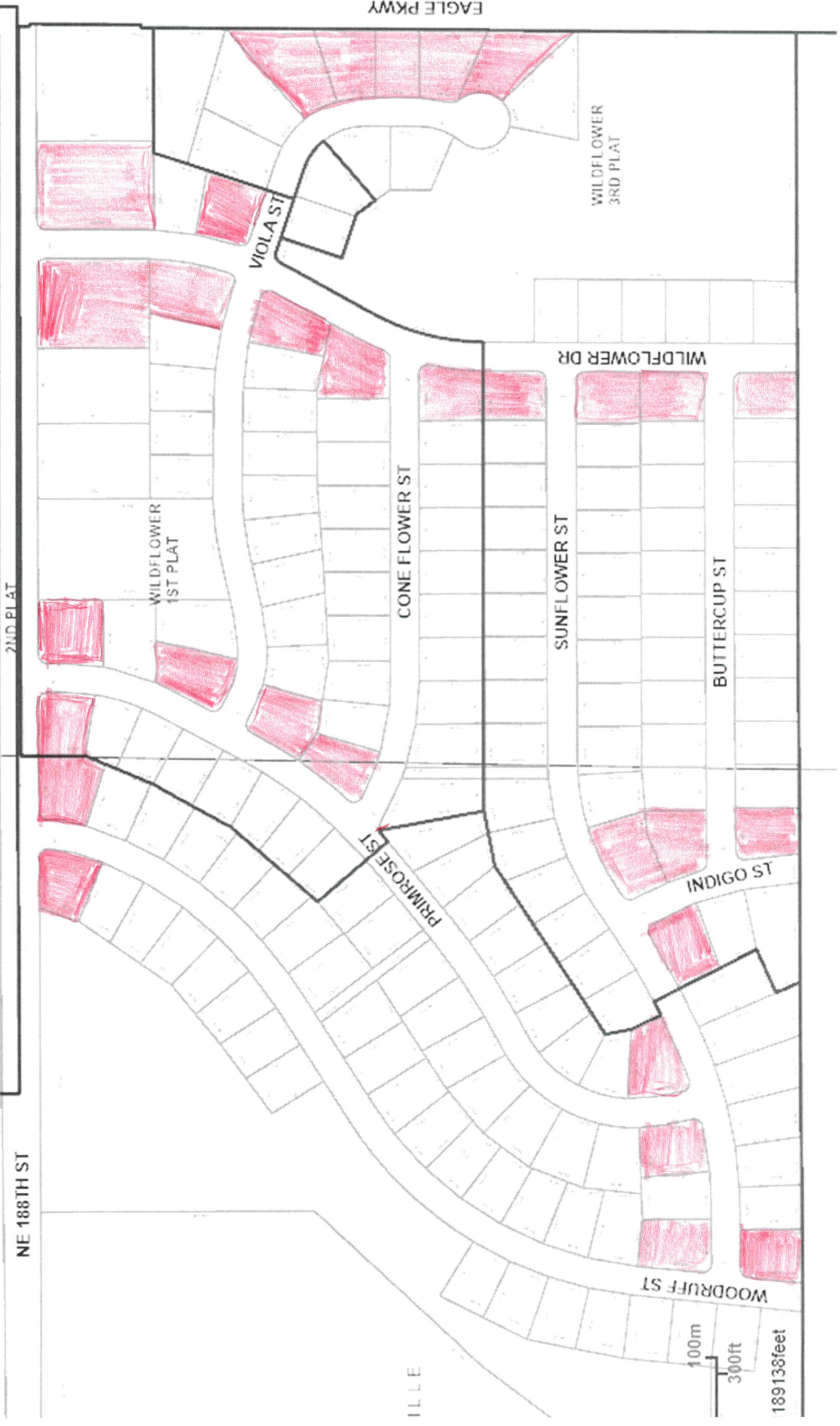
ROCK RDG S

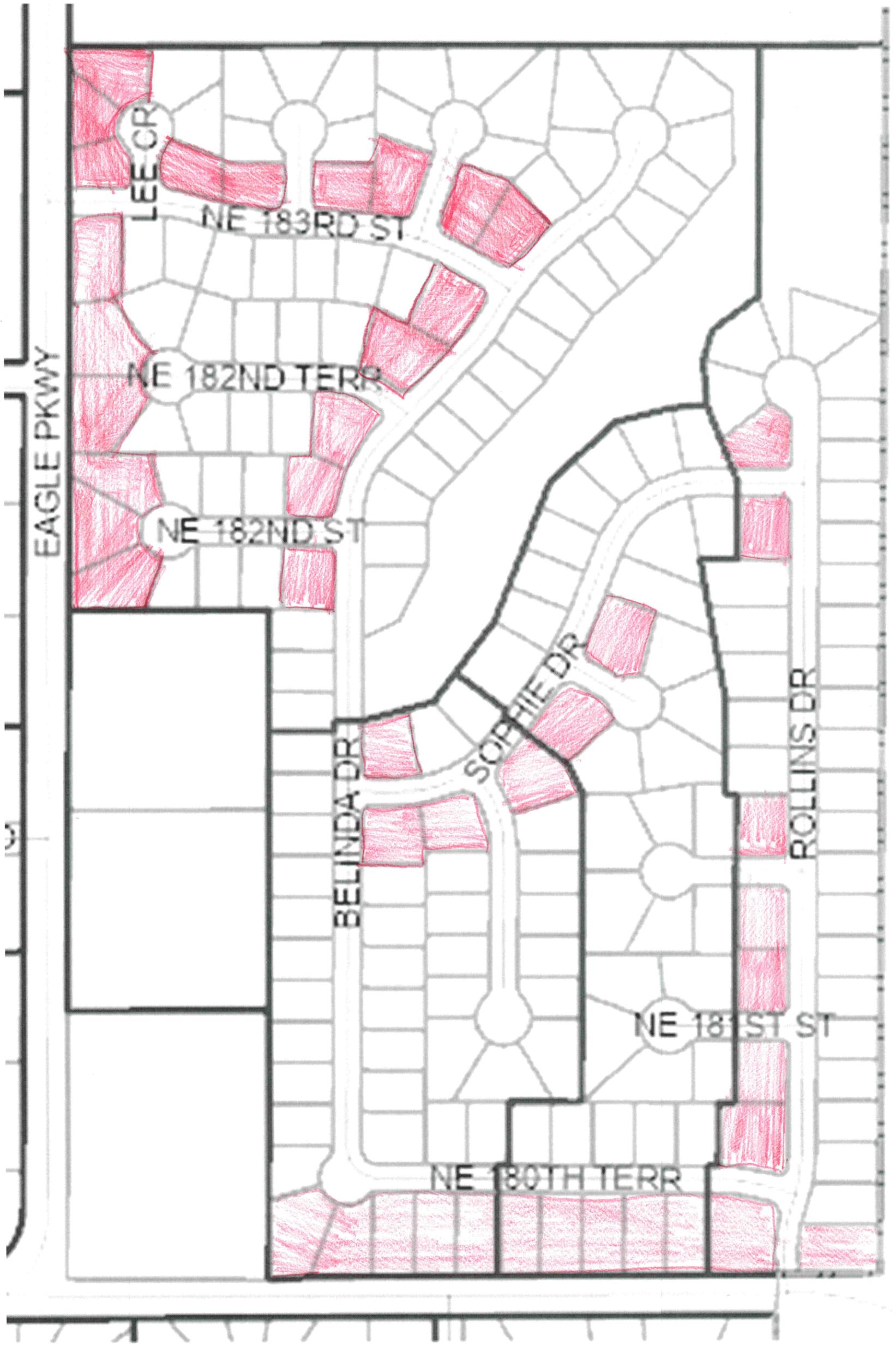
ROCK RDG N

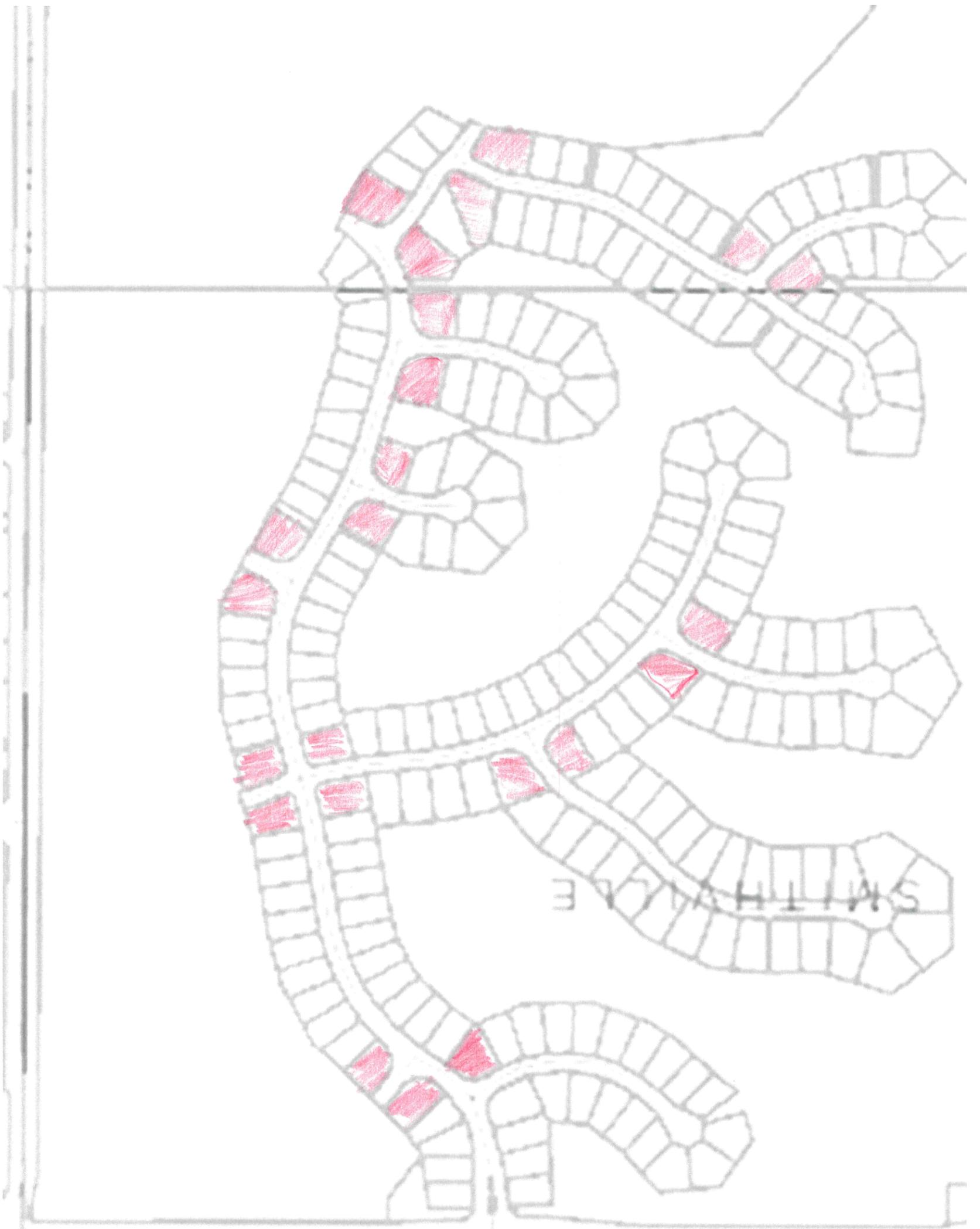
CREEK VALLEY TERR

ROCK CREEK DR

MAIN ST







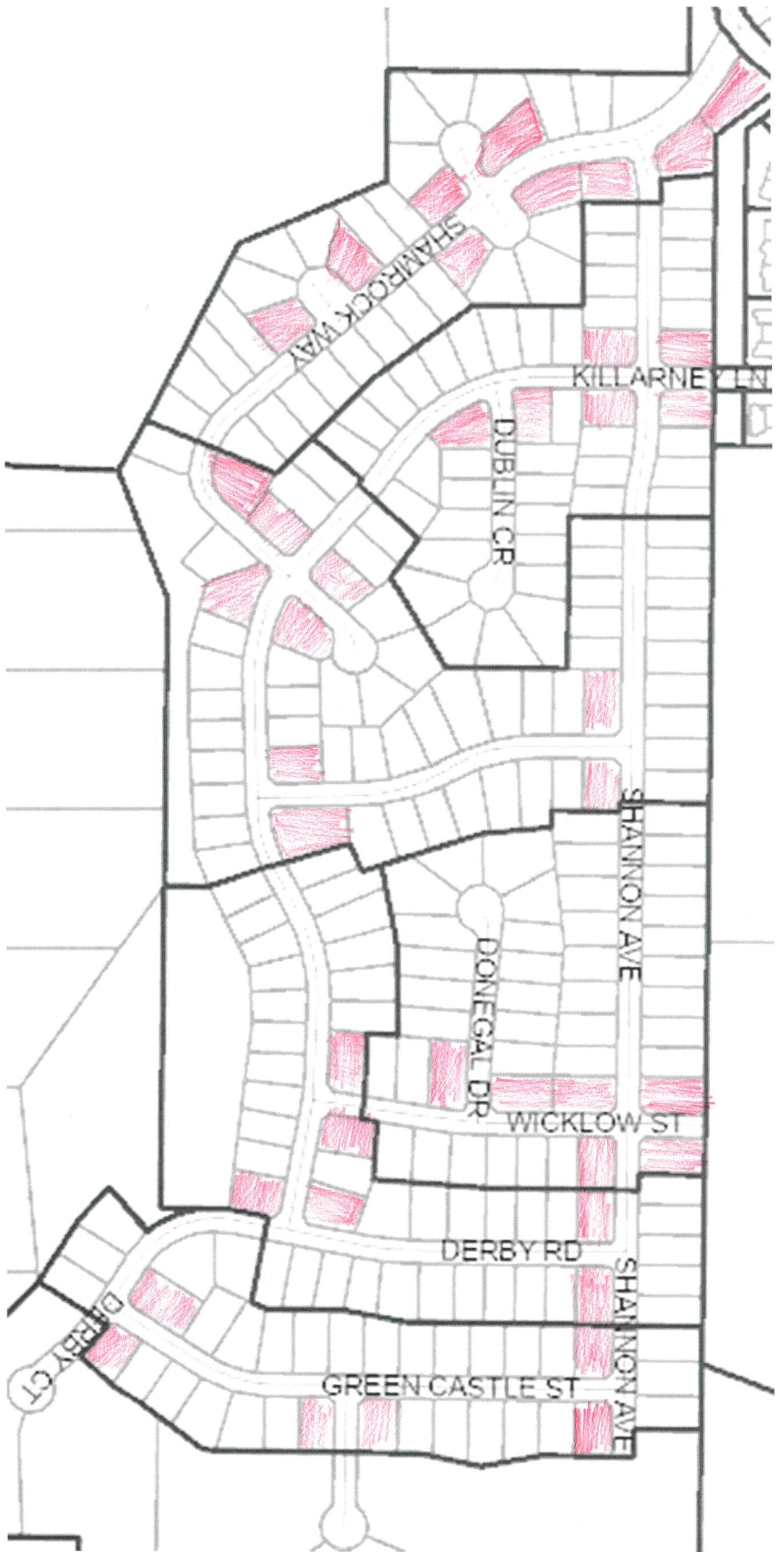


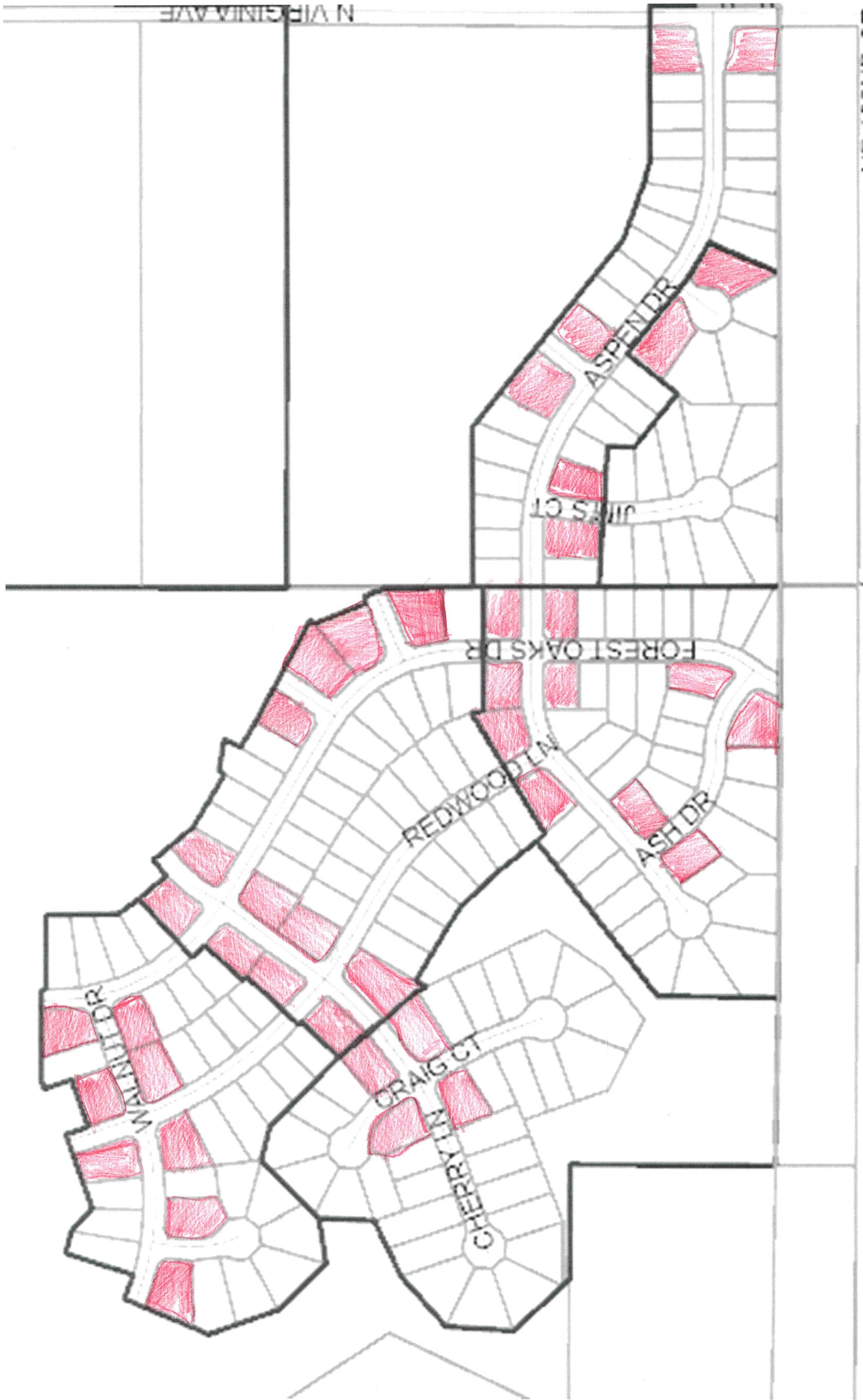












Section 400.350. Fences

- A. Except as otherwise specifically provided in other codes and regulations, the following regulations shall apply to the construction of fences:
1. As used in this Chapter, the following terms shall have the meanings indicated:
 - a. Fence, Decorative or ornamental
A fence constructed of wood, metal, vinyl, or a combination of such materials that is not more than four (4) feet in height and is at least fifty percent (50%) open OR is a stone or brick wall that does not exceed three (3) feet in height. Chain-link, wire, wire mesh, snow fences or fences constructed in any part with such materials shall not be considered decorative or ornamental.
 - b. Fence, electric
A fence constructed above ground through which an electric current can be passed, giving an electric shock to any person or animal touching it.
 - c. Front Yard Fence
A decorative or ornamental fence located in a front yard that contains or abuts an adjacent lot that contains, the primary entrance to the building or a driveway access to the lot, or both.
 2. All fences erected in the City of Smithville must have a permit, except those in the Agricultural districts. Applications for a fence permit shall be accompanied by a general layout of the property indicating the location of the fence to be erected on the lot.
 3. All fences shall conform to the requirements of the sight triangle as defined by these regulations. For purposes of these fence regulations, an alley shall also be subject to the sight triangle regulations at an intersection with a public street.
 4. No fence shall be constructed which will constitute a traffic hazard nor shall be constructed within one (1) foot of any street right of way.
 5. No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous. This would include barbed wire, electrically charged or otherwise detrimental to persons, except as stated herein. Electric fences may be constructed in A-1 and A-R districts, but only if such fence is constructed not less than seventy-five (75) feet from the property lines of adjacent property. Barbed wire fences may be constructed in the agricultural districts; barbed or razor wire may be used in the Industrial districts and the B-3 district, but only as a component of security or anti-climb fences with such component not less than six (6) feet above the outside adjacent grade and such measure must not extend beyond the outside face of the fence.
 6. No fence, except fences erected upon public or parochial school grounds or in public parks and in public playgrounds, shall be constructed of a height greater than eight (8) feet *in the industrial districts*, provided however, that the Board of

Adjustment may, as an exception, authorize the construction of a fence higher than eight (8) feet if the Board finds the public welfare is preserved. In the Business and Residential districts, fences shall not exceed six (6) feet in height, except for hedges and shrubs, which do not have a height restriction, except as noted otherwise in this Chapter. In the B-3 district, any security or anti-climb component may extend an additional two (2) feet above the standard height.

7. All fences shall be constructed to face the neighboring property with its structural elements on the building side of the fence. A shadow-box style fence shall be considered compliant with this provision.
8. On lots with more than one Front Yard (e.g., Corner lots or double frontage lots) as defined in this Chapter shall construct a front yard fence as defined herein where required and rear and side and rear yards may have other fences that meet the standards of this section.
9. These fence regulations are independent of any rules or regulations imposed by homeowners' associations or other agencies not affiliated with the City of Smithville.
10. Any provision of §400.575.C. to the contrary notwithstanding, the repair or replacement of fifteen percent (15%) or more of any portion of an existing fence shall trigger the requirement that the entire fence be brought into compliance with this section.

1966 Ordinance

the owner. Upon conclusion of the permitted time period or completion of the principal structure, whichever occurs first, the owner shall remove the temporary housing or make the necessary changes for the property to be in conformance with the regulations of the district in which the property is located.

- 5-107. Determination of Building Setback Line: The building setback line shall be determined by measuring the horizontal distance between the property line and the nearest exterior wall of the existing or proposed structure.
- 5-108. Fences: Except as otherwise specifically provided in other codes and regulations, the following regulations shall apply to the construction of fences:
- 5-108.1. No fence shall be constructed which will constitute a traffic hazard.
- 5-108.2. No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals.
- 5-108.3. No person shall erect or maintain any fence which will materially damage the adjacent property by obstructing the view, shutting out the sunlight or hindering ventilation or which fence shall adversely affect the public health, safety and welfare.
- 5-108.4. No fence except fences erected upon public or parochial school grounds or in public parks and in public playgrounds shall be constructed of a height greater than eight feet; provided, however, that the Board of Adjustment may, as an exception, authorize the construction of a fence higher than eight feet if the Board finds the public welfare is preserved.
- 5-109. Home Occupations: Home occupations shall be permitted in the A-1, R-S, R-1, R-2, R-3 and R-4 Districts.
- 5-109.1. Restrictions and Limitations:
1. The home occupation shall be incidental and subordinate to the principal residential use of the premises and not more than twenty-five (25) percent of the floor area of any one floor of a dwelling unit, or one room whichever is the smaller, shall be used for a home occupation.

BILL NO. 1343-97

ORDINANCE NO. 1742-97

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SMITHVILLE BY INSERTING A NEW SECTION 525.040 REGARDING ELECTRIC FENCES

WHEREAS, electric fences have been known to cause serious injury; and

WHEREAS, the Board of Aldermen deems it in the best interest of public safety to regulate the location and installation of electric fences;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI AS FOLLOWS:

Section 1. Chapter 525 of the Code of Ordinances of the City of Smithville entitled Miscellaneous Construction Regulations is hereby amended by inserting a new section 525.040 to read as follows:

SECTION 525.040 REGULATIONS CONCERNING ELECTRIC FENCES

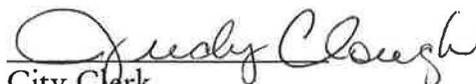
- A. Installation of electric fences shall be prohibited in zoning categories R-1, R-2, R-3, B-1, B-2, B-3, B-4, I-1, and I-2.
- B. Any electric fences installed in compliance with Section 525.040 Subsection A. and adjacent to lands upon which electric fences are prohibited shall be installed at least seventy-five (75) feet from the nearest property line.

Section 2. This ordinance shall take effect and be in full force from and after its passage according to law.

PASSED THIS 15 DAY OF July, 1997


Mayor

ATTEST:


City Clerk

BILL NO. 1914-04

ORDINANCE NO. 2259-04

**AN ORDINANCE AMENDING ARTICLE 5, SUBSECTION 5-108
OF THE ZONING ORDINANCE OF THE CITY OF SMITHVILLE,
MISSOURI REGARDING FENCES**

WHEREAS, The Planning Commission and the Mayor and Board of Aldermen of Smithville, Missouri have considered the zoning codes of the City of Smithville related to fences; and

WHEREAS, a public notice was advertised in the Smithville Lake Herald on February 18, 2004; and

WHEREAS, a public hearing was held on March 4, 2004; and

WHEREAS, the Planning Commission has recommended to the Board of Aldermen passage of the requirements contained herein; and

WHEREAS, it is the desire of the Board of Aldermen to adopt said requirements; and

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI AS FOLLOWS:

Section 1. Article 5 Subsection 5-108 of the Smithville Zoning Ordinance entitled Fences is hereby repealed and a new Article 5 Subsection 5-108 entitled Fences is hereby enacted to read as follows:

5-108 FENCES:

Except as otherwise specifically provided in other codes and regulations, the following regulations shall apply to the construction of fences:

5-108.1.1 All fences erected in the R-1, R-2, R-3, R-4 and B-1, B-2, B-3, B-4 zoning districts must have a permit. Applications for a fence permit shall be accompanied by a general layout of the property indicating the location of the fence to be erected on the lot. The following regulations relate to the afore-mentioned zoning districts. For A-1 and R-S zoned districts fence regulations shall not apply.

5-108.1.2 On a corner lot in any district, development shall conform to the requirements of the sight triangle as defined by this regulation.

5-108.1.3 No fence shall be constructed which will constitute a traffic hazard.

5-108.1.4 No fencing can be built forward of the front building line except as noted below:

5-108.1.4

A. On double frontage lots (corner lots, or lots with a street abutting a rear property line) no fence can be built forward of the building lines abutting a street without the approval of the Community Development Director. Said approval shall only be given after consideration of the following:

B. Fences shall not impede the view of any intersection and shall not be constructed within 30' of the street intersection. Under no circumstances may a fence be located within 12' feet of the right of way.

C. No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals. This would include barbed wire, electrically charged, or otherwise detrimental to persons.

D. If a fence extending beyond building lines is to abut the front yard of a residentially used property, said fence shall be decorative or ornamental and shall be restricted to 4' in height and shall be at least 50% open, except for stone or brick walls which shall not exceed 3' feet in height. Chain link fences, fence wires, wire mesh fences, snow fences, or fences constructed in any part with such materials shall not be considered decorative or ornamental.

5-108.2 No person shall erect or maintain any fence which will materially damage the adjacent property by obstructing the view, shutting out the sunlight or hindering ventilation or which fence shall adversely affect

the public health, safety and welfare. Additionally, the good side or finished side of the fence shall face the neighboring property.

- 5-108.3** No fence except fences erected upon public or parochial school grounds or in public parks and in public playgrounds shall be constructed of a height greater than eight feet; provided, however, that the Board of Adjustment may, as an exception, authorize the construction of a fence higher than eight feet if the Board finds the public welfare is preserved.
- 5-108.4** Fences in general cannot exceed six (6) feet in height, with the exception of hedges and shrubs, which do not have a height restriction, except as noted otherwise in this ordinance.
- 5-108.5** Fences that are in existence prior to the adoption of this ordinance shall not be subject to these fences regulations, however with the removal or replacement of said fence(s), this action will subject the replacement fence to the regulations contained herein.
- 5-108.6** These fence regulations are designated by the City of Smithville and do not supersede any rules or regulations imposed by homeowner's associations or other agencies not affiliated with the City of Smithville.

Section 2. This ordinance shall take effect and be in full force from and after its passage according to law.

PASSED THIS 16 DAY OF March, 2004



Mayor

ATTEST:

Current Ordinance

Section 400.350 **Fences.**

[R.O. 1991 § 400.350; Ord. No. 2865-13 § 1(Exh. A § 400.350), 4-2-2013; Ord. No. 3043-19, 9-3-2019]

A.

Except as otherwise specifically provided in other codes and regulations, the following regulations shall apply to the construction of fences:

1.

All fences erected in the "R-1", "R-2", "R-3", "R-4" and "B-1", "B-2", "B-3" and "B-4" Zoning Districts must have a permit. Applications for a fence permit shall be accompanied by a general layout of the property indicating the location of the fence to be erected on the lot. The following regulations relate to the aforementioned zoning districts. For "A-1" and "A-R" zoned districts, fence regulations shall not apply.

2.

On a corner lot in any district, development shall conform to the requirements of the sight triangle as defined by these regulations. For purposes of these fence regulations, an alley shall be subject to the sight triangle regulations at an intersection with a public street.

3.

No fence shall be constructed which will constitute a traffic hazard.

4.

No fencing can be built forward of the front building line except as noted below:

a.

On double frontage lots (corner lots or lots with a street abutting a rear property line), no fence can be built forward of the building lines abutting a street without the approval of the Development Director. For all districts in which a permit is required, said approval shall only be given after consideration of the following:

(1)

Fences shall not impede the view of any intersection and shall not be constructed within thirty (30) feet of the street intersection. Under no circumstances may a fence be located within one (1) foot of the right-of-way.

(2)

No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals. This would include barbed wire, electrically charged or otherwise detrimental to persons.

(3)

Additional regulations.

(a)

If a fence extending beyond building lines is to abut the front yard of an adjacent residentially used property, said fence shall be decorative or ornamental and shall be restricted to four (4) feet in height and shall be at least fifty percent (50 %) open, except for stone or brick walls which shall not exceed three (3) feet in height. Chain-link fences, fence wires, wire mesh fences, snow fences or fences constructed in any part with such materials shall not be considered decorative or ornamental. For purposes of this Section, the "front yard of an adjacent residentially used property" shall apply only to the front yard adjacent to the primary entrance to the structure if such structure is also located on a double frontage or corner lot.

(b)

In the business districts where there are no specific yard setbacks, for purposes of fence installation, the "front yard" and "front building line" shall mean any area between the structure on the lot and the adjacent street right-of-way. Any fence installed in the front yard or beyond the front building line shall be decorative or ornamental, not more than four (4) feet in height and shall be not less than fifty percent (50%) open, except for stone or brick walls, which shall not exceed three (3) feet high. Chain-link fences, fence wires, wire mesh fences, snow fences or fences constructed in any part with such materials shall not be considered decorative or ornamental.

(c)

No person shall erect or maintain any fence which will materially damage the adjacent property by obstructing the view, shutting out the sunlight or hindering ventilation or which fence shall adversely affect the public health, safety and welfare. Additionally, the fence shall be constructed to face the neighboring property with structural elements on the building side of the fence. A shadowbox-style fence shall be considered compliant with this provision.

(d)

No fence, except fences erected upon public or parochial school grounds or in public parks and in public playgrounds, shall be constructed of a height greater than eight (8) feet; provided, however, that the Board of Adjustment may, as an exception, authorize the construction of a fence higher than eight (8) feet if the Board finds the public welfare is preserved.

(e)

Fences in general cannot exceed six (6) feet in height, except for hedges and shrubs, which do not have a height restriction, except as noted otherwise in this Chapter.

(f)

Fences that are in existence prior to the adoption of this Chapter shall not be subject to these fence regulations; however, with the removal or repair of more than 15% of the total fence or replacement of said fence(s), this action will subject the replacement fence to the regulations contained herein.

(g)

These fence regulations designated by the City of Smithville are independent of and do not supersede any rules or regulations imposed by homeowners' associations or other agencies not affiliated with the City of Smithville.