



Christian County Commission

100 West Church St, Room 100
Ozark, MO 65721

SCHEDULED

MEETING ATTACHMENTS (ID # 5414)

Meeting: 08/03/23 09:00 AM
Department: County Clerk
Category: Meeting Items
Prepared By: Madi Hires Raines
Initiator: Madi Hires Raines
Sponsors:
DOC ID: 5414

Meeting Attachments

ATTACHMENTS:

- HIGH MEADOWS ESTATE - TIMELINE (PDF)
- AERIAL PHOTOGRAPHS - FINBROOK RD. (PDF)

High Meadows Estates

Timeline

High Meadows Estates, a four-lot named subdivision was approved by the P&Z Commission on April 17, 2006 and issued permit #2006-0568. Mr. Rick Parham is the developer.

The approval of the subdivision plat was based on the understanding that this development would be served by an internal road built to County specifications. In order to record a plat which allows the developer to sell lots, the public infrastructure must either be completed or have its completion guaranteed by an appropriate financial security instrument.

In lieu of constructing the road immediately, Mr. Parham presented Irrevocable Standby Letter of Credit No. 98, dated 9/12/2006 from Ozark Bank in the amount of \$12,241.00 to serve as guarantee that the road would be built.

Mr. Parham did not complete the road within the 12 months covered by the initial LOC. On 9/11/2007 he provided the County with a new LOC No. 107 from Ozark Bank in the amount of \$12,241.00 to replace the original and renew his commitment to construct the required road. He was subsequently allowed to renew this LOC in 2008, 2009, 2010, 2011 & 2012.

In all, Mr. Parham was allowed to renew his letter of credit six times while never completing the required road. He has, however, enjoyed the benefit of selling off all of the various lots. One would expect that a portion of those proceeds would have been used to fulfill his obligation.

There can be no question that Mr. Parham understands that he is responsible for completing construction of this road.

In 2013, after seeing no progress toward completion of the road, the County Commission directed the Planning Administrator to draw down the funds guaranteed by the LOC. Those funds were placed in a Certificate of Deposit by the County Treasurer where they have remained since that time.

Periodically, over the last 10-12 years, Mr. Parham has reached out to the Commission several times in hopes of resolving this matter with proposals which all fall short of constructing the road as required. He has consistently been informed of the County's expectations and has consistently chosen not to complete the road.

Mr. Parham blames the County for his failure to complete construction of the road. His claim is that at some point shortly after the approval of his subdivision the County road crews raised the level of Finbrooke Rd. which causes water to erode the connection point where High Meadows Drive would connect to Finbrooke.

Analysis

After researching this claim, staff is able to provide the following facts:

The Highway Administrator could find no record of the type of work described by Mr. Parham ever being done to Finbrooke Rd. in that location. Given that this location is within the mapped Special Flood Hazard Area, any significant work done in the area would have required special analysis and a floodplain development permit. This fact is supportive of the position that if such work was indeed done, we would have some documentation to confirm it. Additionally, a review of aerial photography from 2005 – 2009 shows no identifiable appearance that any work or changes had been done.

Incidentally and as an example – a project which would raise the level of a road by three feet as claimed by Mr. Parham and Mr. Monteith, for the 1,000 foot stretch between Homestead and 918 High Meadow would require over 3,200 cubic yards of fill or the equivalent of 225 typical dump truck loads. In order to maintain proper slope away from the new road surface, the base would naturally taper wider out visibly on aerial photos. This would have been an extensive and costly project not likely to have been undertaken in that timeframe and not without significant records of engineering and accounting records associated. A physical change of this magnitude would be obvious in aerial photography.

A review of both the prior and current floodplain maps for the area indicate that the point at which Mr. Parham has placed the entrance to High Meadows Estates is located within the mapped 100 yr floodplain. Obviously, when an area has been designated as FEMA floodplain, much of the adjacent area contains contours which actually convey the rainwater within the watershed to the area of mapped floodplain. This was known at the time this subdivision was planned. A letter from Mr. Parham's contracted engineer within the original case file for High Meadows Estates confirms this.

Mr. Parham's placement of a road connection point has, in itself, created an impediment to the prior natural flow of water during extreme rain/flooding events.

The responsibility for designing and constructing roads such as this falls on the developer.

Long term County employees including Rick Maggard and Richard Teague can confirm that the County made no changes to Finbrooke Rd. as Mr. Parham contends. The only change to the area was his placement of a connection to Finbrooke Rd. which is in the path of water flow.

Based on the information above, staff does not agree that any actions taken by the road department have kept Mr. Parham from completing his road. If in fact, Mr. Parham had a genuine interest in completing this road, he would have hired an appropriate engineering firm to design a proper entrance which would allow for water flow and then he would have simply built it.

Our task is to help Mr. Parham resolve this situation in a manner which is compliant with the County's adopted Development Regulations and any other applicable laws. He appears to have two basic options.

Option One

Fulfill the obligations he committed to when his plat was approved, executed and recorded for High Meadows Estates subdivision.

Specifically, to construct a road which meets current County specifications and can therefore be conveyed to the County for perpetual maintenance. This may require some professional design assistance to accommodate the natural existing waterflow within the mapped floodplain.

Due to the fact that all of the lots within the development have been sold, conveyance of a completed road to the County will require that individual legal descriptions be created for the area of ROW to be conveyed for each property owner to deed to the County.

Prior to any additional road improvements intended to comply with County standards, it would be advisable for Mr. Parham to consult with an engineer on at least two specific issues. He should have the existing road base inspected to be certain that it is acceptable and should also have his engineer determine the appropriate size box culvert to be placed near the connection point of High Meadows and Finbrooke. Our Highway Administrator believes that if it is sized correctly, the proper size culvert allowing the water to flow in its natural course will alleviate future washout issues.

Additionally, it appears that the physical location of the base rock gravel road in place at the site may not conform to the location provided for it on the recorded plat. It would be advisable for Mr. Parham to verify this before any additional construction is done. If the existing gravel base is not within the platted ROW, the current partial road improvements would either need to be modified so that the completed road conforms to the plat, or there will need to be a replat which modifies the road easement to fit the actual location.

Option Two

Attempt to change the status of the required road within High Meadows Estates from public to private and to also remove the easements shown on the recorded plat.

The recorded plat for High Meadows Estates contains information which conflicts with Mr. Parham's expressed intentions of making High Meadows Drive a "private road" which would need to be resolved.

The exhibits below are certifications taken directly from the plat for High Meadows Estates which was recorded in 2006.

DEDICATION & EXECUTION OF PLAT

WE, RICHARD S. & LISA A. PARHAM, HUSBAND & WIFE, HAVE HAVE THE FOLLOWING DESCRIBED TRACT OF LAND SUBDIVIDED AS INDICATED AND DESIGNATED AS THE FINAL PLAT OF HIGH MEADOWS ESTATES, A SUBDIVISION LOCATED IN SECTION 34, TOWNSHIP 28, RANGE 20, CHRISTIAN COUNTY, MISSOURI, AS INDICATED ON THIS PLAT. ROADS AND EASEMENTS ARE DEDICATED FOR THE USE OF THE PUBLIC.

IN TESTIMONY WHEREOF, WE THE SOLE OWNERS, HAVE HEREUNTO SET OUR HANDS THIS 12th DAY OF September, 2006.

Richard S. Parham
RICHARD S. PARHAM

Lisa A. Parham
LISA A. PARHAM

ACKNOWLEDGMENT

CITY OF WILMINGTON
BOOK 298 PAGE 4303

SE 1/4
SE 1/4

722.13'
A SIGNED CERTIFICATE OF APPROVAL ON THIS PLAT DOES NOT CONSTITUTE ACCEPTANCE OR APPROVAL OF ANY ROADS BY CHRISTIAN COUNTY

CERTIFICATE OF OWNERSHIP

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY DESCRIBED HEREON, AND THAT WE HEREBY FREELY ADOPT THIS PLAN OF SUBDIVISION AND DEDICATE TO PUBLIC USE ALL AREAS SHOWN ON THIS PLAT AS STREETS, ALLEYS, WALKS, PARKS, OPEN SPACE, AND EASEMENTS, EXCEPT THOSE SPECIFICALLY INDICATED AS PRIVATE. AND THAT WE WILL MAINTAIN ALL SUCH AREAS UNTIL THE OFFER OF DEDICATION IS ACCEPTED BY THE APPROPRIATE PUBLIC AUTHORITY. ALL PROPERTY SHOWN ON THIS PLAT AS DEDICATED TO PUBLIC USE SHALL BE DEEMED SO DEDICATED, AND AUTHORIZED BY LAW WHEN SUCH OTHER USE IS APPROVED BY THE APPROPRIATE PUBLIC AUTHORITY IN THE PUBLIC INTEREST.

DATE: 9-12-2006

Richard S. Parham
RICHARD S. PARHAM

Lisa A. Parham
LISA A. PARHAM

CERTIFICATE OF APPROVAL

I HEREBY CERTIFY THAT ALL STREETS AND OTHER IMPROVEMENTS SHOWN ON THIS PLAT HAVE BEEN INSTALLED OR COMPLETED OR THAT THEIR INSTALLATION OR COMPLETION (WITHIN 12 MONTHS AFTER THE DATE BELOW) HAS BEEN ASSURED BY THE POSTING OF A PERFORMANCE BOND OR OTHER SUFFICIENT SURETY, AND THAT THE SUBDIVISION SHOWN ON THIS PLAT IS IN ALL RESPECTS IN COMPLIANCE WITH THE UNIFIED DEVELOPMENT CODES FOR CHRISTIAN COUNTY, AND THAT THEREFORE THIS PLAT HAS BEEN APPROVED BY THE CHRISTIAN COUNTY PLANNING AND ZONING DEPARTMENT, SUBJECT TO IT BEING RECORDED IN THE CHRISTIAN COUNTY REGISTRY WITHIN 60 DAYS OF THE DATE BELOW.

DATE: 9-12-2006

Shonda Hammond
PLANNING DIRECTOR



IN
STATE
COUNTY
FILED
20--
AND C

Re
ROY MI
COUNT
REPUT

Christian County, Missouri

To be perfectly clear – Every single plat which is presented for approval and recordation is drawn up at the direction of and paid for by the property owner. On this plat presented by Mr. Parham which he has signed in multiple places and paid to have recorded, he has dedicated all areas shown as roads, easements, etc. to the public. Furthermore, within this same plat, it is also very clear that all streets and improvements shown on the plat were to have been completed within 12 months.

As the County Commission reviews this matter now, 17 years have passed since these areas shown on the plat were dedicated to public use and 16 years have passed since Mr. Parham committed to complete the road which is shown on the plat.

In 2006, by dedicating roads and easements for the use of the public, Mr. Parham conveyed a form of ownership right to the public which is a real and quantifiable thing. It does not go away simply because he no longer wants it that way. That right (or selected portions of it) which is currently owned by the public must be relinquished or given back by the public through a proper formal process.

The plat for High Meadows Estates was originally approved in 2006 under the Unified Development Codes which was the regulation in place at that time. As of 2010, the Christian County Subdivision Regulations contain the requirements and guidance we must follow. Article 7, Section 6 addresses the matter of replatting.

Within this Section, the Regulations require that changes to any platted subdivision lot shall require a replat.

It requires that a replat shall follow the same procedures as a final plat and that the fee involved is to be \$150 as shown in our adopted fee schedule.

Article 7, Section 4 addresses Final Plat Approval. Based on the guidance within this Section, Mr. Parham would need to submit his proposed plat which includes revisions to the Planning Office at which time it would be placed on the next available Planning and Zoning Commission agenda for review. Placement on an upcoming agenda requires the submittal to be received 30 days prior to an upcoming meeting date to allow for the statutorily required public notice period and staff review time. The applicant is responsible for the cost of certified mail notification to all property owners within 1000 feet of the subject property as well as publication of notice in the local newspaper.

In its review of the replat request, the Planning and Zoning Commission will consider the changes requested within the context of the requirements of the County's adopted development regulations.

It will also allow for public comment and provide opportunity for the property owners within High Meadows Estates to voice any opposition to the proposed changes.

The Planning and Zoning Commission will finally vote upon a motion to either approve, approve with specific changes, or reject the proposed replat.

Section 6 of the Christian County Road and Access Standards contains several notable requirements with regard to private roads and streets:

- Private streets shall be permitted only with the approval of the Planning and Zoning Commission and the County Commission.
- Where private streets are permitted, the restrictive covenants must contain provisions to assure maintenance of the streets, sidewalks, and other common improvements. Restrictive covenants must be approved by the office of the Christian County Counselor and must be recorded with the final plat.

- Private streets shall be constructed in accordance with the Christian County Road and Access Standards. Any private street located within an ingress / egress / utility and drainage easement shall have the same width as the right-of-way provided for local streets in the Christian County Road and Access Standards.
- A sign shall be provided at the connection of the private street with any public street or road to notify the public that the street is privately owned and maintained. Signs shall comply with requirements set forth in the Christian County Road and Access Standards. Signs shall be provided at the developer's expense but shall be installed by the Christian County Highway Department.
- The recorded plat of any subdivision that includes a private road shall clearly state that such road is a private road.

It should be noted that existing easements shown on the recorded plat provide direct connection to adjoining properties and were initially required as part of the plat's approval in order to facilitate future development. It would make sense for these property owners to express some objection to removal of these easements and could arguably create a conflict with the County Commission's ability to allow for this road to be designated as private.

Ultimately, Mr. Parham has expressed his desire that he not be required to construct his "private road" according to any standard specifications required by the County. Setting aside the fact that Mr. Parham agreed and is required to construct this road and has refused to do so, this request is in conflict with a very basic principle and requirement within our Development Regulations. Where a means of access is required to serve more than three tracts of land, such access must be a road which is constructed according to County standards. High Meadows Drive serves 4 lots. Additionally, notes within this case file document that this precise fact was explained to him on 2/20/2007 in a meeting with the Planning Administrator. If the Commission were to instruct the Planning Administrator to allow this, it would undermine the integrity of the County's Development Regulations and create a conflict with thousands of other landowners who have been required to comply with this provision over the course of many years.

Mr. Parham may wish to argue that he should only be required to build a road which meets the specifications which were in place back in 2007 which was a double coat of chip/seal.

In 2013, the County Commission upgraded the County's minimum road construction requirements to a standard of asphalt or concrete and removed chip/seal as an acceptable option. The durability and reduced frequency of maintenance for asphalt roads allows our road department to better maintain more road miles with its limited funds. As we are now 9 years beyond that change, the proven benefit of this upgrade makes a request to do something less a difficult case to make. Arguably however, the County Commission could approve such a variance if it can cite some justification or rationale specific to this circumstance.

As a first class county in the State of Missouri, the County Commission does not have sole discretion in these types of issues:

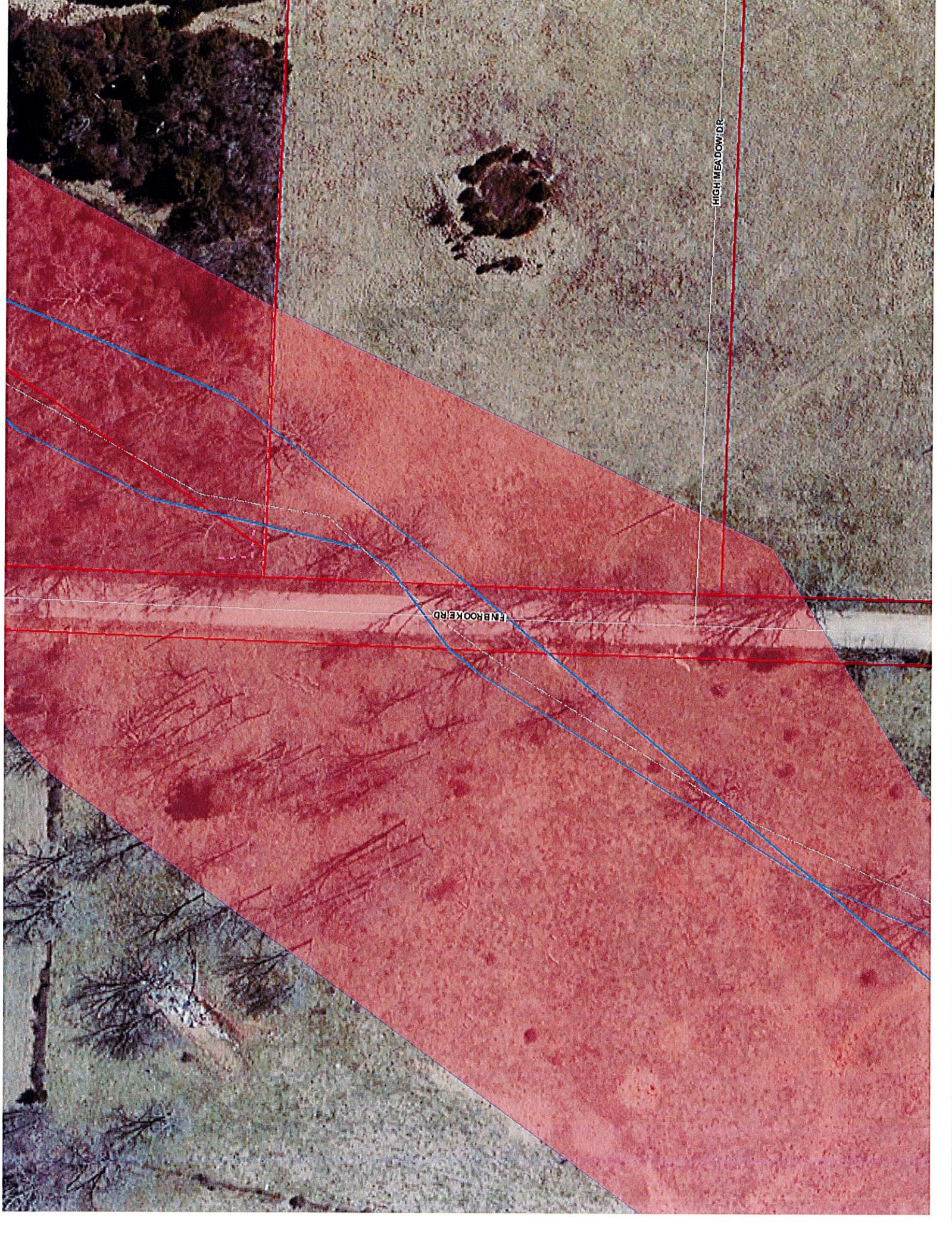
61.061. Administrator's powers and duties – written report, failure to file, effect of (certain first class counties). – The highway administrator shall directly supervise the construction, maintenance, repair and reconstruction of all public highways, roads, bridges and culverts in the county. The expenditure of all county road and bridge funds, special or otherwise, shall be approved by the county commission. The county commission shall not order a road established, changed or vacated until its proposed establishment, change or vacation has been examined and approved by the highway administrator in a written report filed with the county commission; except that if the highway administrator does not file a written report on such proposal within thirty days after being notified thereof by the county commission, the commission may proceed to make any orders respecting such proposal without such report.

If some type of variance is considered, allowing for a lesser type of construction in combination with the road's designation being approved, the County Highway Administrator would simply verify the road is a properly constructed chip/seal road. The owners would also need to have a shared maintenance agreement in place. In this scenario, the County would have formal documentation absolving it of any future obligation to maintain such a road and a definitive answer on file in the event that 10 years from now, future property owners inquire as to why the County doesn't maintain their road.

Lastly, there is a precedent example for this type of situation and how it was resolved.

Back in 2012 the Commission directed us to draw down on a LOC provided by Frankie Rogers for the roads in Green Hills Estates in the amount of \$17,600.00. We held those funds in a CD for several years. Ultimately, in 2018 the developer completed the road and conveyed it to the County. Once that was done, we were able to release the original funds being held back to the developer.

To be perfectly clear, in these circumstances we do not simply release the funds back on the front end, trusting the developer to build the road. The funds we are holding in a CD are currently the very same financial security instrument Mr. Parham provided in 2006. The only difference is that his LOC was converted to cash. The situation still requires that we retain that financial security until he completes the road. Once it is completed and inspected and we are provided with a lien waiver from any contractors involved, the Commission would then direct the Treasurer to release the \$12,241.00 back to him.



ENBROOKE RD

HIGH MEADOW DR

