

**MINUTES OF REGULAR MEETING
OLDHAM COUNTY
PLANNING AND ZONING COMMISSION
Tuesday, September 26, 2023**

At 9:00a.m., local time on the above date, this meeting of the Oldham County Planning and Zoning Commission, hereinafter called the Commission, was called to order in the Courtroom of the Oldham County Fiscal Court Building, La Grange, Kentucky, by Chairman Greg King.

Other Commission members present were:

Iva Davis
Sam Finney
Rollo Fox
Bob Klingenfus

William Douglas
Thomas Elder
Berry Hampton
Tom Marsh

John Falvey
Joe Ender
Sue Ann Jones
Ben Winters

Commissioners Katie Nasser and Suzy Walser were absent.

Others present and sworn in were Planning & Development Services Director Jim Urban, Assistant Director Brian Fogle, Senior Planner Ryan Fischer, and Oldham County Engineer Jim Silliman. Attorney Berry Baxter was present for the meeting and Administrative Assistant Christy Edgar was the Secretary for the meeting.

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Approval of Minutes

Motion was made by Commissioner Douglas and seconded by Commissioner Marsh to approve the August 22, 2023 minutes as submitted with the following corrections. Motion carried by unanimous voice vote.

Corrections

- Page 2: 9th bullet point, change optical to optimum.
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Secretary Christy Edgar called and read Docket:

DOCKET PZ-23-019 – An application has been filed by Alex Nakad for the approval of a Development Plan and Zoning Map Amendment on approximately 0.515 acres. The property is located at 7600 E. Orchard Grass Blvd., Crestwood. The proposed change is from C-2 Community Business District to C-3 General Business District.

1. Introduction of the new information by staff and questions by the Commission:

Senior Planner Ryan Fischer, presented the following:

- Summary of the application.
- Case History (see Exhibit A, Staff Report dated, September 26, 2023).
- Site history.
- Aerial Photos of the site.
- Photos of property.

Jim Silliman, Oldham County Engineer, presented the following:

- The plan states "There will be no site improvements associated with this project." Based on this statement, Oldham County Engineering has no comments associated with the zoning change.
- Based on the area of the proposed building, trip generation based on data from the Institute of Transportation Engineers (ITE) has been calculated to be 7.8 peak hour trips (for used automotive sales). Based on these values, a Traffic Assessment or Traffic Impact Study is not required in accordance with Oldham County Zoning Ordinance.

Commissioner Falvey asked, is there a difference in the sign ordinance between a C2 and C3?

Assistant Director Fogle replied, basically the same but with some differences. The C3 would allow a greater size.

Commissioner Falvey asked, what size would the monument sign be allowed?

Assistant Director Fogle replied, in C2 if you are setback 10 feet then you are allowed a 24 square foot sign, C3 with the same setback are allowed a 32 square foot sign.

Commissioner Falvey asked, can the sign be lit?

Assistant Director Fogle replied, yes they can have illuminated signs.

Commissioner Douglas asked, what occupied this space previously?

Senior Planner Fischer replied, a salon occupied this space.

Commissioner Marsh asked, being zoned a C2 is there an option for a conditional use permit instead of changing to a C3.

Director Urban replied, no, conditional use is for other reasons that are specifically stated.

Commissioner Winters asked, how long has the building been vacant?

Director Urban replied, will need to ask the applicant this question.

Commissioner Winters asked, is this property in the City of Orchard Grass?

Senior Planner Fischer replied, it is in the City of Orchard Grass.

Commissioner Douglas asked, has the City of Orchard Grass delegated to Oldham County Fiscal Court?

Director Urban replied, that they have not delegated but they are not part of the joint planning commission so the fiscal court will ultimately have this recommendation from the planning commission.

Commissioner Jones asked, this plan is to have a max of 15 cars, what keeps them from packing in 50 cars?

Director Urban replied, our Code Enforcement Officer.

Commissioner Falvey asked, does Orchard Grass have zoning capability?

Director Urban replied, no.

2. Presentation by the applicant or representative and others in support of the application:

Chelsey Brammell, Brammell Law Office, 401 W Jefferson Street, La Grange was present and representing the applicant.

- One residential property is adjacent to this property.
- The property has been vacant since last year.
- Changing the zoning from C2 to C3 would allow the applicant to provide auto sales.
- Not a high-volume operation, see less than five customers a day.
- No plan to change structures on the property.
- Non summer hours will be Monday-Saturday 10 am to 6 pm; summer hours will be Monday – Saturday 10 am to 7 pm; and year round Sunday hours will be 12 pm to 4 pm.
- The applicant will install a landscape buffer between the residential property at 9301 Applewood.
- Applicant agrees to direct test drivers onto Highway 22 and not through the Orchard Grass Hills neighborhood.
- Applicant agrees to install a post and cable to rope off the rear entrance and direct customers through the entrance near the gas station.

3. Questioning of the applicant or representative and others in support of the application by the Commission: None.

4. Testimony and questions by those opposing the application:

Mark Adams, City of Orchard Grass Hills Engineer, 4314 Hampton Creek, Louisville, was present and sworn in prior to presenting.

- Need to remove the back entrance that is connected to the Orchard Grass Hills neighborhood.
- This is out of character for the neighborhood.
- Do not want test drivers coming through the neighborhood.

Amber Vaughn, 7434 E. Orchard Grass Blvd, Crestwood, was present and sworn in prior to presenting.

- So far the commercial businesses that have been there have fit well into the needs of this community.
- A used auto lot does not fit within the community's needs.

- The rear entrance needs to be removed, not just cabled off.

Carl Windhorst, 9301 Applewood Rd., Crestwood, was present and sworn in prior to presenting.

- My residence is right behind the proposed car lot.
- It is 22 feet from his property line to mine and 50 feet from his property line to my front door.
- Do not want to look at a car lot right out my front door.
- This will decrease my home value.
- Concerned for the kids' safety with the traffic that this car lot will bring.

Patty Windhorst, 9301 Applewood Rd., Crestwood, was present and sworn in prior to presenting.

- The back entrance is directly across from my driveway.
- Concerned with customers parking along the road at the back entrance.
- This is a bad fit for our neighborhood.

David Meredith, 7442 E. Orchard Grass, Crestwood, was present and sworn in prior to presenting.

- Concerned with the increase in traffic.
- He lives at a stop sign that is about one half mile from the back entrance and people do not stop at the stop sign.
- Concerned for the safety of the neighborhood kids who walk or ride their bikes.
- Concerned with the future of this property with it being zoned as a C3.

Jeremy Edens, 7202 Applewood, Crestwood, was present and sworn in prior to presenting.

- This is a bad fit for the neighborhood.
- Already in need of a traffic study without this business.
- With 15 vehicles parked on the property, the property will look overcrowded.

5. Questioning of the applicant and those opposed to the application by the Commission:

Commissioner Marsh asked, could we apply a binding element that states once this used car lot vacates the property then the zoning of the property goes back to C2?

Attorney Baxter replied, the zoning will stay with the property until it comes back to this Commission to be changed.

Director Urban replied, this Commission has in the past put a binding element that this property could be used for a specific use in with the recommendation of a zoning map amendment. This would eliminate all the other uses.

Commissioner Finney asked, will this be a second location for this business?

Attorney Brammell replied, yes this is a pre-existing business. And the business will move to this location.

Commissioner Douglas asked, how long has the applicant owned this business?

Attorney Brammell replied since January 2020.

Alex Nakad, 6330 Highway 393, Crestwood, was present and sworn in prior to replying, he started the business in 2020.

Commissioner Douglas asked, have you owned this property since 2021?

Mr. Nakad replied, the property was purchased this year.

Commissioner Douglas asked, what intentions did you have for use of this property?

Mr. Nakad replied, with the same intentions. To convert to a used car lot.

Commissioner Douglas asked, can you explain what has changed in the area in the last few years to justify this zoning change?

Attorney Brammell replied that this property has been vacant for a while and there has been no interest from an insurance agent or a retail shop wanting to rent this space.

Commissioner Douglas asked, did your client purchase this property knowing it was zoned C2?

Attorney Brammell replied, yes, his preference is to execute the plan that we've presented.

Commissioner Winters asked, is there enough space to drive a car between this building and the church?

Bill Knizner, Median Surveying and Design Services, 2249 Commerce Pkwy., La Grange, was present and sworn in prior to replying, yes there is an option to get a vehicle around the building. However, they would not use the church side.

Commissioner Falvey asked, from testimony today was there a couple of vehicles sold from this site?

Attorney Brammell replied, no, they were parked there and were not sold from this site.

Mr. Nakad replied, that those vehicles were parked there after they were sold because of the space issue at my current location and the customer picks them up from this location.

Commissioner Davis asked, can we put a binding element that states they cannot test drive cars through the Orchard Grass Hills Subdivision?

Director Urban replied, the applicant testified that they would encourage the test drivers to not go through the subdivision but how would we enforce this if it is a binding element?

Commissioner Finney asked, how long has the building been vacant?

Mr. Edens replied, the building was vacant for four months before the applicant bought the property.

Commissioner Douglas asked, will there be maintenance on the vehicles?

Mr. Nakad replied, no work or cleaning on the vehicles at this location.

Director Urban asked, why does Troutman Law Office have an objection to selling electric cars?

Mr. Adams replied, I am not sure. I wish Mr. Troutman was here to answer this.

6. Rebuttal evidence and Cross Examination by the Applicant:

Attorney Brammell's rebuttal statement.

- We can communicate with the customers to not test drive through the Orchard Grass Hills neighborhood.
- This property is commercial property, and it was designed with a back entrance, but completely removing the back entrance could affect this property in the future as it is designed for two entrances.

7. Rebuttal evidence and Cross Examination by the Opposition:

Amber Vaughn's rebuttal statement.

- Mr. Nakad bought this property knowing it was a C2 and thinking the county would change it to a C3.
- It is zoned C2 because it is a community business that fits into our neighborhood.

Mark Adams' rebuttal statement.

- We understand that they will not be able to keep their customers from driving through the Orchard Grass Hills neighborhood.
- It's going to be hard to control the number of cars.
- The back entrance should be removed, and a landscape buffer should be in place to help with the neighbor's view.

Carl Windhorst's rebuttal statement.

- I watched the applicant sell the trucks and watched people kick the tires and check the trucks.

8. Final statement of the Opposition: None

9. Final statement of the Applicant:

Attorney Brammell's final statement.

- This location is already zoned commercial and has many uses under the current zoning, the only one we are asking to change is for auto sales and use.
- We have shown that there are issues keeping tenants in this building.

END OF PUBLIC HEARING

Director Urban summarized the motion for the application.

Chairman King called for a five-minute break at 10:35 a.m.

Chairman King called board members back in session at 10:40 a.m.

FINDINGS AND DECISIONS
Docket PZ-23-019
Zoning Map Amendment
7600 E. Orchard Grass Blvd, Crestwood

Motion was made by Commissioner Finney and seconded by Commissioner Falvey to deny the recommended zoning map amendment from a C2 to C3 to the Oldham County Fiscal Court at 7600 E. Orchard Grass Blvd., Crestwood, because there have not been major changes of an economic, physical or social nature within the area involved which were not anticipated in the adopted Comprehensive Plan and which have substantially altered the basic character of such area.

The vote was as follows:

YES: Commissioners Falvey, Finney, Fox, Hampton, Jones, Klingenfus, and Winters.

NO: Commissioners Davis, Douglas, Elder, Ender and Marsh.

ABSTAIN: None.

ABSENT: Commissioners Nasser and Walser.

Motion to recommend denial of the zoning map amendment passed on a vote of 7-5.

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Chairman King called for a 10-minute recess at 11:00 a.m.

Chairman King called the board members back in session at 11:10 a.m.

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Commissioner Finney left the board meeting at the break.

Secretary Christy Edgar called and read Docket:

DOCKET PZ-23-020 – Application has been filed by Verizon Wireless & Vertical Bridge for approval to construct a 155-foot Telecommunications Tower & related ground facilities and Waivers from the landscape buffering & minimum lot area requirements on property located at 7801 West Highway 22, Crestwood.

1. Introduction of the new information by staff and questions by the Commission:

Assistant Director, Brian Fogle, presented the following:

- Summary of the application.
- Case History (see Exhibit A, Staff Report dated, September 26, 2023).
- Site history.
- Aerial Photos of the site.
- Photos of property.

Attorney Baxter asked, will there be a plat that subdivides off into a separate property to lease from the owner of the property?

Director Urban replied, the applicant needs to answer this question.

Commissioner Douglas asked, is this the first time we have had minimum lot size and buffers on cell towers?

Assistant Director Fogle replied, yes.

Director Urban stated, we did have one where the applicant leased the required size.

Commissioner Douglas asked, what effect if any would the landscape buffer have on the widening of Hwy 22 in the future?

Director Urban replied, the only recommendation for widening would be a continuous left turn lane it would not be two lanes in each direction.

Commissioner Davis asked, is there an access easement?

Chairman King replied, that is a question for the applicant.

2. Presentation by the applicant or representative and others in support of the application:

Russell Brown, Clark Quinn Attorney, 320 N Meridian Street, Indianapolis, was present and representing the applicant.

- A monopole telecommunications tower of 150 feet with a five foot lightning arrestor for a total of 155 feet in height.
- The overall property is 55 acres and half of it is being used as agricultural. The proposed leased lot area is 5,625 square feet (0.13 acre).
- Will use the existing drive from Hwy 22.
- The Verizon will have ground space and tower space and the tower will have future co-locators with three additional antennas and two microwave transmitters.
- Verizon is the carrier and Vertical Bridge will be the constructor and tower owner.
- The lights would be located at the top and middle of the tower if FAA requires it.
- The tower that is a mile away is not meeting the coverage objectives of Verizon Wireless.
- Will build an eight-foot wood privacy fence for a buffer in lieu of the landscaping buffer.

3. Questioning of the applicant or representative and others in support of the application by the Commission:

4. Testimony and questions by those opposing the application:

Willam Lunsford, 7703 W Hwy 22, Crestwood, was present and sworn in prior to presenting.

- Live next door to the proposed tower.
- Will my property value go down?
- The tower will be an eyesore.

- And there is not much of a tree buffer between my property and the farm and this time of year the trees lose their leaves, and I will be looking at the tower until springtime.

Mary Ann Stoess, 7712 W Hwy 22, Crestwood, was present and sworn in prior to presenting.

- I live within 200 feet across the road from this tower.
- My view from my front door will be this tower.
- Concerned about my property value decreasing.

Tonya Lunsford, 7703 W Hwy 22, Crestwood, was present and sworn in prior to presenting.

- It is within 500 feet of my home.
- Concern with the radiation.
- Concerned with my property value decreasing.

Carl Slesser, 8000 W Hwy 22, Crestwood, was present and sworn in prior to presenting.

- I live two driveways away from this property.
- This will be a huge eyesore.
- Property value will go down.
- Could they move the tower farther back on the farm, so it is not so close to the road?
- Would like to see trees and the eight-foot privacy fence as a buffer.

Joe Hamilton, 7607 W Hwy 22, Crestwood, was present and sworn in prior to presenting.

- We do not have cell coverage issues in our area.
- Will the tower produce any noise?
- Will the tower have lightning rods and if it does will it draw lightning to this area?
- Why couldn't this be placed in a commercial-zoned area?

5. Questioning of the applicant and those opposed to the application by the Commission:

Commissioner Falvey asked, will this cause property values to decrease?

Attorney Brown replied, a recent appraiser has indicated that the absence of high-speed internet is a detriment to the marketability of a piece of property. People are using their phones for Zoom meetings and streaming movies. Studies have shown that there is no substantial significant difference based on proximity to a tower.

Commissioner Falvey asked, is there radiation that will come from the tower and will there be any noise of any kind coming from the tower?

Attorney Brown replied, that the American Cancer Society has long had on their website a study indicating that they've not found a causal connection between proximity to cell towers and increased cancer activity in surrounding those. If the tower is functioning

correctly there will not be any noise coming from the tower, except when the emergency generators are tested once a month and if the emergency generators are running in those emergencies. Unless it is required there will be no lighting on the tower and/or on the ground.

Commissioner Falvey asked, who is in control of the tree buffer on Highway 22?

Attorney Brown replied, the applicant does not control that but the landowner is the one who is in control of the tree buffer on Highway 22. But we and the landowner have agreed to make it a binding element that no trees are to be taken down along Highway 22.

Attorney Baxter explained, the landowner had to sign the agreement to be bound by whatever conditions were imposed here.

Commissioner Davis asked, is the access that has been included in this 5,625 square feet?

Attorney Brown replied, No.

Commissioner Davis asked, who maintains that?

Attorney Brown replied, we have an agreement to repair and replace the damaged grounds if we tore it up.

Commissioner Douglas asked, do you have a diagram that shows all the towers in this area?

Attorney Brown replied, the diagram I presented shows the towers that Verizon has.

Commissioner Douglas asked, are there any studies done on the impact of the animals in the area?

Attorney Brown replied, no there is no impact to the endangered species in the area.

Commissioner Douglas asked, will there be a lot of heavy equipment going to the site?

Attorney Brown replied, it would be stacked on site which will be done by a crane.

Commissioner Marsh asked, in the event that the minimum leased lot area Waiver was not granted and you had to go to one acre is there anything that compels you to relocate and your thoughts of where that would be?

Attorney Brown replied, if there was a change in the lot size in the lease area my guess is that would be lines on a piece of paper and there be no apparent change to a passerby.

Commissioner Jones asked, what is the reason why you cannot put this more into the middle of the property?

Attorney Brown replied, this location is the best place to utilize the trees. If moved further north we would have to remove some trees.

Commissioner Klingenfus asked, what is the provisions if towers are abandoned in 10 or 20 years for cleanup?

Attorney Brown replied, most of the leases have a requirement for the tower to be removed by the tenant.

Director Urban stated, in our regulations they would bond the removal cost into perpetuity.

6. Rebuttal evidence and Cross Examination by the applicant:

Attorney Brown rebuttal statement:

- The landscape buffer Waiver is immediately adjacent to the tower equipment and asking to not have to put 20-foot evergreens that will eventually get 20 feet tall; a property owner that is 500 feet away would receive minimum relief from a 20-foot tall tree.
- There is not a significant amount of commercial property nearby, which is the reason why we cannot move to a commercial area.
- As for an eyesore, this has become our society, to have mobile devices connected to the internet.

7. Rebuttal evidence and Cross Examination by the Opposition:

Mr. Slessor rebuttal statement:

- I understand the applicant will not be taking down any trees along Hwy 22 however, trees can fall down, state can come through and remove the trees during the widening project and or the trees can die out and that would open up the view of this 155 foot tower.
- The whole project needs a buffer around it.

Ms. Stoess rebuttal statement:

- I worked for Post Office and I have never had a spot that my cell phone did not work.
- AT&T just put new fiber internet along Hwy 22 so the residence are covered for the internet.

Mrs. Lunsford rebuttal statement:

- The coverage map does not show much of a difference in the coverage to justify placing a tower in that location.
- Believe there is a less invasive location on that property.
- I have done research and cell towers has been denied around schools because of the radiation that they put out.

Mr. Hamilton rebuttal statement:

- Not always new is always good.
- I believe this tower should be placed in a commercial area.

Mr. Lunsford rebuttal statement:

- If this is approved I would rather look at trees vs a wood fence that will eventually rot and fall apart.

8. Final statement of the Opposition: None

9. Final statement of the Opposition:

Attorney Brown final statement:

- The applicant is in compliance with the ordinance as provided with those two Waivers.
- The applicant believes that the justification for the two Waivers is appropriate and asking for the approval of the Waivers as well as the telecommunications tower.

Director Urban asked, if the landscape Waiver was denied what would your plan be?

Attorney Brown replied, then we would do the chain link fence and the landscaping.

Director Urban asked, would you consider doing the plank fence and the landscape buffer?

Attorney Brown replied, no, the applicant would need the cost differential to pay for the landscape buffer. And would have to renegotiate the lease because there is no space for the landscape buffer.

Director Urban asked, do you have evidence of the cost difference between the two different fences?

Attorney Brown replied, no, we do not have evidence of the cost difference.

END OF PUBLIC HEARING

Attorney Baxter stated, he needs to make the commissioners aware that there is a separate part of KRS chapter 100 that deals with the regulation of cellular antenna towers. I believe this was enacted because of state law and federal law and issues by local communities to regulate cellular towers into extinction was the plan. Seeing the conflict and recognizing the need for cellular tower the state enacted the statute that governs this.

Director Urban summarized the motion.

FINDINGS AND DECISIONS

Docket PZ-23-020

Landscape Buffer Waiver

7801 W Hwy 22

Motion was made by Commissioner Ender and seconded by Commissioner Winters to deny the landscape buffer Waiver at 7801 W. Hwy 22, Crestwood, because section 340-080, number 2 that a landscape buffer of 20 feet in height and width that should contain a continuous evergreen screen that would achieve a minimum of 20 feet in width and height is appropriate in this case.

Attorney Baxter stated, the ordinance only requires height not width, and the trees are to grow to 20 feet.

Director Urban stated, they will have to comply with the standards of the landscaping ordinance.

The vote was as follows:

YES: Commissioners Davis, Douglas, Ender, Fox, Hampton, Jones, Klingenfus, and Winters.

NO: Commissioners Elder, Falvey, and Marsh.

ABSTAIN: None

ABSENT: Commissioners Finney, Nasser and Walser.

Motion to deny the Landscape Buffer Waiver passed on a vote of 8-3.

Director Urban summarized the motion.

FINDINGS AND DECISIONS

Docket PZ-23-020

Minimum Lot Area Waiver

7801 W Hwy 22

Motion was made by Commissioner Douglas and seconded by Commissioner Marsh to approve the minimum lot leased area Waiver at 7801 W. Hwy 22, Crestwood, to allow a leased lot area of not less than 5,625 square feet (0.13 acre) based on the testimony that was provided and the ownership of the property utilizing the area as agriculture use for the specific area around the tower. This motion includes the Conditions of Approval.

Conditions of Approval

1. The minimum lot area waiver shall only apply to the application considered at the September 26, 2023, Oldham County Planning Commission public hearing.

The vote was as follows:

YES: Commissioners Davis, Douglas, Elder, Ender, Falvey, Fox, Hampton, Klingenfus, Marsh, and Winters.

NO: Commissioners Jones.

ABSTAIN: None

ABSENT: Commissioners Finney, Nasser and Walser.

Motion to approve the Minimum Lot Leased Area Waiver passed on a vote of 10-1.

Director Urban summarized the motion.

FINDINGS AND DECISIONS
Docket PZ-23-020
Telecommunications Tower
7801 W Hwy 22

Motion was made by Commissioner Douglas and seconded by Commissioner Hampton to approve the telecommunications tower at 7801 W. Hwy 22, Crestwood, because the tower request complies with Oldham County Comprehensive Plan and it complies with the requirements of the Oldham County Zoning Ordinance based on the approval of the Minimum Lease Lot Area Waiver that was already approved by the commission. The binding elements are included in this motion.

Binding Elements

1. There shall be no changes to the requested Telecommunications Plan & Application as presented at the September 26, 2023, Oldham County Planning Commission public hearing without review and approval of the Commission.
2. The telecommunications tower shall comply with applicable local, state, and federal regulations.

The vote was as follows:

YES: Commissioners Davis, Douglas, Elder, Ender, Falvey, Fox, Hampton, Jones, Klingenfus, Marsh, and Winters.

NO: None

ABSTAIN: None

ABSENT: Commissioners Finney, Nasser and Walser.

Motion to approve the Telecommunications Tower passed on a vote of 11-0.

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Other Business

Senior Planner Fischer stated, that Commissioner Davis is asking the board to approve 7 hours of National USPAP training that she attended, to count for her required Oldham County training requirements. The 7 hours were approved by voice vote.

Senior Planner Fischer stated, that Commissioner Jones is asking the board to approve 6 hours of AIA AICP training that she attended, to count for her required Oldham County training requirements. The 6 hours were approved by voice vote.

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There being no further business, the Planning Commission meeting adjourned at 12:45 pm.

The next regular meeting will be Tuesday, October 24, 2023, at 9:00 a.m. and will be held in the Oldham County Fiscal Court courtroom at 100 W Jefferson Street, La Grange, 40031.

Approved:

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Greg King', written over a horizontal line.

Greg King, Chairman

A handwritten signature in blue ink, appearing to read 'Christy Edgar', written over a horizontal line.

Christy Edgar, Secretary