

TERM OF COMMISSION: August Session of the August Adjourned Term

PLACE OF MEETING: Roger B. Wilson Boone County Government Center  
Commission Chambers

PRESENT WERE: Presiding Commissioner Don Stamper  
District I Commissioner Karen M. Miller  
District II Commissioner Skip Elkin  
Planning and Zoning Director Stan Shawver  
County Counselor John Patton  
Deputy County Clerk Shawna Victor

The meeting was called to order at 7:00 p.m.

**Subject: Sheriff's Department – First Reading of Contract with Curators of the University of Missouri (Football Security)**

Major O.J. Stone was present on behalf of this item.

Major Stone stated this is an annual contract with the University. This allows for Sheriff's Deputies to help with security at home football games.

There was no discussion on this issue.

Commissioner Stamper stated this is a first reading and requested the Deputy County Clerk to schedule this item for a second reading at the next available meeting with an appropriate order for approval.

**Subject: Planning and Zoning**

Commissioner Stamper noted that during Planning and Zoning issues, the Commission will receive a report from staff and then the Commission will have the opportunity to ask staff any questions. The Commission will then move to a presentation from the applicant or agent of the applicant on behalf of their request. After that, the Commission will convene a public hearing where any testimony in favor of or in opposition to will be welcome. Following the public hearing, the Commission will discuss the issue and then vote on the issue.

Stan Shawver, Director of the Planning and Building Inspection Department, stated that the Boone County Zoning Regulations and the Subdivision Regulations are entered into the record. (note - the file copy is retained in the Planning and Building Inspection Department).

**A. Request by William S. Regan, Jr. for an Agri-business on 2.78 acres located at 7201 S. Nursery Road, Columbia (SW Corner of Nursery Road and Route K)**

Stan Shawver, Planning and Zoning Director stated this property is located south of Columbia at the intersection of State Highway K and Nursery Road. The property is zoned A-2 (Agriculture), as is all the surrounding property. The property is currently vacant, but has been used for agricultural purposes in the past. The applicant is requesting a conditional use permit for an agri-business. The applicant operates a wholesale greenhouse on Nursery Road. If approved, he would open a retail garden center that would retail plants grown in the greenhouses, as well as accessory items related to gardening. This property is located in the Columbia Public School District. Boone Electric and Consolidated Public Water District No. 1 would provide utility services to the property. This tract was originally part of a larger tract of land, and was platted as Grassland Hills subdivision in 1999 when Boone County relocated Nursery Road. The master plan designates this area as being suitable for residential land uses and the proposed use is consistent with the Master Plan. Staff notified 7 property owners about this request.

Staff sees the proposed use as compatible with the surrounding area and recommends approval with the following conditions:

- The driveway and required parking area be dust free with a minimum of a chip and seal surface.
- Permit is restricted to the sale of agriculture and horticultural related items.

The Planning and Zoning Commission held a public hearing on this issue on August 15, 2002 and all members were present. There was no opposition to the request. The Planning and Zoning Commission made a recommendation for approval with the staff recommended conditions and comes forward with this recommendation.

Pictures of the property were submitted to the Public Record.

William S. Regan Sr., 7466 S. Nursery Road, and William S. Regan Jr., 1101 E. Nifong, were present on behalf of this item.

William S. Regan Sr. stated he believes this would be a good business for the community and that area. There is no retail outlet that is servicing that area currently. Since they do grow quality products, he believes it would be a good situation for the consumer to get products from their greenhouse. They have been involved in the horticultural industry at this location since 1960. He noted William S. Regan Jr. has come into the business which will allow Mr. Regan Sr. to retire.

Commissioner Stamper opened the floor for a public hearing.

There was no one wishing to speak.

Commissioner Stamper closed the public hearing.

Commissioner Miller stated she believes this is proper land use in this area and will serve south Columbia well.

There were no additional comments.

Commissioner Stamper moved to approve the request by William S. Regan Jr. for an Agri-business on 2.78 acres located at 7201 S. Nursery Road, Columbia, with the following conditions:

- The driveway and required parking area be dust free with a minimum of a chip and seal surface.
- The Conditional Use Permit is restricted to the sale of agriculture and horticultural related items.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 376-2002**

**B. Petition on behalf of Leroy and Lucille Dickinson and Gerald and Regina Morin to vacate and re-plat lot 20 of The Woodlands Plat 2 and vacate and re-plat lot 22A of The Woodlands Plat 2**

Mr. Shawver stated the Department received two petitions to vacate and re-plat lots 20 and 22A of The Woodlands Plat 2. The petition to vacate and re-plat lot 22A was submitted by Melba Rhodes, trustee of the Melba R. Rhodes Trust. The petition to vacate and re-plat lot 20 was submitted by Leroy and Lucille Dickinson and Gerald and Regina Morin.

The Boone County Subdivision Regulations provide that when a subdivision plat does not provide a mechanism to accomplish a re-plat, they are required to submit a vacation and re-plat request to the County Commission. Section 1.8.1.3 of the Subdivision Regulations provides that the County Commission will conduct a public hearing on those matters. Before the County Commission can grant a plat vacation and subsequent re-plat, the County Commission will take into consideration the following criteria:

- Character of the neighborhood
- Traffic conditions, circulation, the proper location, alignment and

- improvement of streets and roads within and adjacent to the subdivision
- Property values within the subdivision
- Public utility facilities and services
- Will not generally adversely affect the health, welfare or safety of persons owning or possessing real estate within the subdivision to be vacated or surrounding real estate

Mr. Shawver noted lot 22A is located at the south end of Tract 3, just east of Lot 22.

Mr. Shawver stated the Department received a proposed re-plat on Monday, August 26, 2002, of the two lots of what the applicants are proposing to do. These two plats incorporate those areas into a large tract which was not part of the original Woodlands subdivision. The additional tract of land is an 8 acre tract, where the Marvin and Melba Rhodes home is located. What the applicants have suggested would be to split the 8 acre tract up. In doing so, they would incorporate lot 22A into lot 1 on the proposed Big Timber Subdivision Plat 1. A portion of lot 20 would be paired off. The existing house on the current lot 20 would be on lot 2 of the proposed Big Timber Subdivision Plat 1. Plat 2 would be lots 3, 4, and 5.

Commissioner Stamper stated lot 21 of The Woodlands Plat 2 is not included in this petition to vacate and re-plat. Mr. Shawver stated that was correct.

Mr. Shawver stated the zoning is A-R (Agriculture Residential).

Commissioner Stamper asked if the zoning was A-R on the 8 acre tract. Mr. Shawver stated that was correct.

Commissioner Stamper asked Mr. Shawver to discuss the utilities in the area.

Mr. Shawver stated Boone Electric Cooperative provides the electric. Public Water District #9 provides water. This area is served by the Boone County Regional Sewer District. This is a step system. The house that is currently on lot 20 is connected to the step system. To his understanding, there is a stub for the Rhodes house but was never connected.

Commissioner Stamper asked if lot 20 was not connected to the system. Mr. Shawver stated lot 20 is connected to the system. The old Rhodes house is not connected to the system but there is a service drop there; there is service available but was never connected. To his understanding, that is the capacity of the treatment facility.

Commissioner Stamper asked if there was two drops available but the request is for three lots. Mr. Shawver stated there are only two lots on plat 1 in which one would use the service drop. The other would use the on-site wastewater system.

Commissioner Elkin asked the size of the lot. Mr. Shawver stated as it has been proposed, there is an 8 acre tract that will have approximately 2.2 acres cut out, which leave approximately 6 acres. At a later date, as submitted, the remaining 6 acres would be split if there is sewer available. This could not be done until additional sewer capacity is available.

There were no additional comments from the Commission or staff.

Jerry Morin, 3200 Big Timber Road, was present on behalf of this item.

Jerry Morin stated his home is across from lot 22A.

Commissioner Stamper asked Mr. Morin if he owned lot 22A. Mr. Morin stated he is currently under a contract with the Melba Rhodes Trust to purchase the Melba Rhodes Trust of 8 acres, which includes lot 22A. He is also the legal owner of lot 20, which he also had to purchase for purposes of making this request happen. This would not be able to happen if he had not purchased lot 20.

Commissioner Stamper asked if Mr. Morin lived on lot 24. Mr. Morin stated that was correct.

Commissioner Stamper asked if Mr. Morin owned lot 20. Mr. Morin stated he does now own lot 20.

Mr. Morin stated he has lived in The Woodlands for approximately two years. He has done a similar development that was successful, in Indianola, Iowa. He believes the residents of The Woodlands should understand this. He and his family moved to Columbia because of a job opportunity that his wife received.

Mr. Morin stated Mr. Rhodes was the original developer of The Woodlands. The 8 acre tract was Mr. Rhodes personal property that was set aside from The Woodlands. Mr. Rhodes passed away last fall. The Morin's got to know Melba Rhodes, Mr. Rhodes' widow, by strange circumstances. The opportunity to purchase the Rhodes property was brought to Mr. Morin by the listing broker. No one else, he does not believe, has been given the opportunity to purchase the property. Mr. Morin knew the listing broker. During a conversation with Melba Rhodes around Christmas, she found out that Mr. Morin is a builder and a commercial broker. He did have interest in the Rhodes property because Mrs. Rhodes has asked if he was interested. He never pursued the issue any further.

In July, the listing broker contacted Mr. Morin while he was out of town to inform him that the property has been listed and that Mrs. Rhodes had requested the broker contact him. The Morin's made an offer on the property while out of town and Mrs. Rhodes accepted the offer.

Mr. Morin stated he and his wife discussed moving into the house currently on the property, however this house needs renovations. Mr. Morin stated he also does house renovations. He and his wife debated whether they would move into that house while they were building their home on what would be lot 1 of the proposed plat.

Mr. Morin stated the purpose for this proposed subdivision and dividing is they see this as a long-term family stay for his family on the proposed lot 1. They would be establishing themselves with a building permit as soon as possible. This is the purpose for vacating lot 22A so they could get their personal building permit so their drive could go through lot 22A.

Mr. Morin stated he found out a lot of information in this process. He had to negotiate the sale of lot 20 to purchase that property. He realized if there was any chance the owner of that property did not want to sell him the corner that was needed to come in there. This person is a pastor of a church north of town. This person called him to his house and told him that they did not want to sell the corner of the property but wanted to sell him the house. Mr. Morin did not want to do that. In his discussions with the owner of lot 20, Mr. Morin realized he could not that the owner could not sell the corner piece because the lot 20 owner had a verbal agreement with the owner of lot 19 that if he sold any of lot 20, the lot 19 owner would be notified first. This is why the owner of lot 20 would not sell a piece of the property but would sell the whole property. Mr. Morin stated this is a tremendous risk to purchase this property to make this happen. He believes this is the right use for this property to be divided.

Mr. Morin stated The Woodlands is basically a two-acre subdivision of primarily two-acre lots. He made sure this criteria was met for The Woodlands subdivision. He wants this land to be in The Woodlands subdivision.

Mr. Morin believes this is a good use of this land. There is University of Missouri property located to the west of The Woodlands. The ingress/egress from the back side of this was critical. He believes Mr. Rhodes was trying to accomplish this because Mr. Rhodes went to both property owners in the back and asked to buy a portion of their property so there could be an ingress/egress. Mr. Rhodes was denied by both property owners. This is probably one of the only times this will ever be able to happen, for this to have the right ingress/egress on the back side. All the utilities are present. This conforms with The Woodlands.

Mr. Morin stated he is anticipating opposition to this request. He noted there was a neighborhood meeting last week but he was not invited to this meeting. He requested to come to the meeting so he could discuss this issue with the neighbors and was denied the request. He believed he should still give the neighbors some information for their discussion. He was concerned he was not invited to the neighborhood meeting.

When Mr. Morin held an open house for lot 20, which he would now have to resell as a broker, one of the neighbors came to the open house. This neighbor told Mr. Morin that if he was concerned about The Woodlands, he would sell 40 feet of frontage to Bill Burnett. Mr. Morin believed this was an inappropriate comment. He realized where the opposition would be coming from and why there would be opposition.

Commissioner Stamper cautioned Mr. Morin about third party discussion and they are of no interest to the Commissioners.

Mr. Morin stated he sees no reason why this would not be approved. This is a personal development, it is not like a developer coming into town and putting in 10 half-acre lots and leaving town. This is his home and where he plans to keep his family for a long time. He does not want to move again unless he is forced to.

Mr. Morin stated they have consulted with Brush and Associates Engineering firm. Mr. Brush was the original engineer and platted the original plats for The Woodlands. Mr. Brush had more knowledge of this property than anyone. Mr. Morin believes that Mr. Rhodes' dream of eventually having this property divided is in his hands.

Commissioner Miller asked Mr. Morin if his ultimate goal is to place five lots with lot 20 and the 8 acre tract. Mr. Morin stated lot 20 is not part of the 8 acre tract but they have proposed to reconfigure lot 20 to maintain the acreage and size. By doing this reconfiguration, this is a beautiful building site next to lot 20.

Mr. Morin stated he has also heard concerns about the devaluation of property in the area. He currently lives in a \$300,000 home and why would he want to devalue the neighborhood he lives in. He also plans to build another \$300,000 home on the proposed lot 1.

Commissioner Miller asked if the 8 acre tract would be broken down into four lots. Mr. Morin stated that was correct. The Rhodes property, as it exists, is two acres. It has its own septic system currently. The proposed lot 1 already has the access to a source stub and they could obtain a building permit immediately. Their intent on the Rhodes home is to renovate the property then hook the property to the sewer system as soon as possible.

Mr. Morin stated he was given some information that he could have septic systems on the two lots in the back. He had soil test done yesterday and he received the results today. Those results from the soil sample tests were adequate for a septic system to be placed there now.

Commissioner Stamper asked Mr. Morin if he was submitting this into the Public Record. Mr. Morin stated that was correct and submitted the soil evaluations for lots 4 and 5 Big Timer Road to the Public Record.

Mr. Morin stated they are in no hurry to sell lots. This is a controlled environment that is in their hands and they want to be able to control because they want this to be in unison with The Woodlands subdivision. The neighbors should be concerned because there are covenants that have been placed on this property that requires the minimum square footage to be less than the minimum for The Woodlands. Someone could build 1,300 square foot ranches on this property and not even care about The Woodlands. The Woodlands calls for 1,500 square foot minimum ranches and 1,800 square foot minimum on a two story home. The covenants that are placed on this property right now do not meet the minimum and would be a great disaster as it exists to the people in the area. Mr. Morin stated he wants to change this and wants to bring the covenants up to The Woodlands covenants if the opportunity is given to him. He has spoken with the partner in this and hopes to achieve this for the neighborhood. Once he owns the property, today this is not his to control. These are covenants that have been placed on this property and he want to bring these into harmony with all the neighbors.

Mr. Morin submitted the Restrict Covenants for the 8 acre tract, which is owned by Rhodes-Payne Properties, Inc., that is in question to the Public Record.

Commissioner Miller asked if the two lots in the back were a minimum of 2.5 acres. Mr. Morin stated that was correct. Commissioner Stamper stated they are not.

Commissioner Miller stated for a septic system the lots have to be 2.5 acres. Commissioner Stamper stated that was correct. Since Mr. Morin is proposing to re-plat these lots, when a re-plat is done, the land would be under another condition and would require 2.5 acres minimum for septic systems.

Mr. Morin stated their intent was to hold these lots until such time the capacity issue was resolved by the Sewer District. They know what is going on with the El Chaparral subdivision and realize there is a lagoon there that needs to be enlarged. He has exhausted himself in learning all the issues. It comes down to the fact that they own this land and are in no hurry to do anything with the other land. They are anxious to begin building a new home.

Commissioner Stamper asked if Mr. Morin is aware of any preexisting conditions that the Rhodes property placed on this property relative to an agreement or another format that would restrict the use of this property. Mr. Morin stated he is familiar with covenants that have been placed on the property.

There were no further questions of the applicant.

Commissioner Stamper opened the floor for a public hearing on this issue.

Pete Bakutes, 2921 Big Timber Drive, and Ernie Erbschloe, 2950 Big Timber Drive, were present on behalf of this item.

Pete Bakutes and Ernie Erbschloe submitted a copy of The Woodlands Plat 2, neighborhood concerns regarding the Vacation of Lots 20 and 22A and Re-Plats of Lots 20 and 22A to the Public Record.

Mr. Erbschloe read the following concerns regarding the petition to vacate lots 20 and 22A from The Woodlands Plat 2 as shown by plat recorded in Plat Book 25, page 37, Deed Records of Boone County, Missouri:

What is the effect of Vacating Lots 20 and 22A?

1. Does vacating lots 20 and 22A from the Woodlands Plat 2 (Plat Book 25, page 37) removed said lots from The Woodlands subdivision?
2. Are the existing Restrictive Covenants from The Woodlands Plat 1 and 2 (recorded in Book 831, page 425 Deed of Records of Boone County and modified as recorded in Book 855, page 953 and Book 927, page 261) still a legal and binding instrument enforceable by owner of any of the lots subject to the covenants against future owners of lots 20 and 22A? Does the Commission know of an example in Boone County of a similar situation?
3. What precedent does this set for VACATION of other properties from The Woodlands? (i.e. someone else may decide to vacate the property to subdivide.)

**OPPOSE:**

The majority of the property owners **OPPOSE** the petition to vacate lots 20 and 22A from The Woodlands Plat 2 for the following reasons:

1. Current property owners bought property with the knowledge that the existing Restrictive Covenants protected said owners not only for improvement requirements but also the physical layout of the property boundaries as recorded in Plat Book 25, page 37. For example, the owners knew exactly the number of lots and driveway's accessing Big Timber Drive. We also bought in reliance on enforceability of the Restrictive Covenants.
2. Vacation of said Lots could make null and void the right of enforcement of the Restrictive Covenants that are afforded the property owners of The Woodlands Plat 1 and 2.
3. Approving the petition to Vacate would adversely affect the traffic conditions and circulation of traffic. The addition of the new driveways will require new residents to traverse the entire length of Big Timber Drive. This is a safety concern for children.
4. The proposed location and connections to Big Timber Drive would compromise the existing safety of Big Timber Drive. There is a large elevation difference between the street and the proposed driveway entrance, approximately 6' change in elevation and

approximately 12' change of horizontal distance. This would create a very steep driveway. The concern would be in being able to stop a vehicle in poor weather prior to entering the street. Since the County does not maintain driveways, we feel this could adversely affect the health, welfare or safety of persons owning real estate within the subdivision and their children.

5. Removing lot 20 and 22A from The Woodlands and the platting of additional properties would adversely affect the character of the neighborhood by allowing parcels not included in The Woodlands Restrictive Covenants to be in the neighborhood. After this change people would consider the properties as part of The Woodlands. Not only at present but also for all years to come.

6. Property values would be adversely affected with the removal of wooded areas for access to the northern section of the Melba Rhodes trust property; tract 3 of survey recorded in Book 814 page 587 Deed of Records of Boone County, Missouri. This would be especially true for The Woodlands lots 19 and 20.

7. Water shed from new driveways would run onto neighborhood lots and contribute to an already at capacity drainage ditch. Boone County Planning and Building Inspection or whomever would need to evaluate an approve improvements.

8. At a minimum, the requested petition to vacate lots 20 and 22A from The Woodlands Plat 2 must be approved in writing by the owners of 2/3 of the lots subject to the Restrictive Covenants. The vacation of lot 20 and 22A would be considered a modification to the Restrictive Covenants as recorded in Book 831 page 425 paragraph 19.

Mr. Erbschloe read the following concerns regarding the re-plat to vacate lots 20 and 22A form The Woodlands Plat 2 and the adjoining Melba Rhodes Trust property as described as tract 3 of survey recorded in Book 814 page 587, Deed Records of Boone County, Missouri:

What is the effect of re-plat?

1. Do lots 20 and 22A revert back to the current standing Restrictive Covenants for The Woodlands Plats 1 and 2?
2. Does the adjoining 8 acre Rhodes property or subsequent lots fall under The Woodlands Restrictive Covenants?

**OPPOSE**

The majority of The Woodlands Plat 2 property owners **OPPOSE** the request to re-plat lots 20 and 22A of The Woodlands for reasons given on opposition to vacate. We also **OPPOSE** the re-plat and development of the adjoining Melba Rhodes Trust property until such time as the following concerns are addressed:

**PUBLIC HEALTH AND SAFETY CONCERNS:**

1. The former Rhodes residence on S. Big Timber Drive should be required to connect to the County sewage collection system via lot 22A. This should be done prior to any person occupying the residence. The residence is within 225 feet of a County collection system. Per conversations with Mr. Jerry Worley, City/County Health Department, and Mr. Tom Ratermann, Boone County Regional Sewer District, the connection at 22A was intended for the Rhodes property.
2. The current Restrictive Covenants for the said Rhodes property (Book 815 page 681) should be modified to require connection The Woodlands sewage collection system in accordance with current standing Woodlands Restrictive Covenants. The neighborhood has a concern with wastewater run off onto adjacent properties.
3. The developer should complete an Engineering evaluation of the sewer system (i.e. Hydraulic Analysis) and make improvements required to add 2 or 3 new connections to the existing Woodlands sewage collection system. Please **DO NOT** approve any on-site wastewater system. The soil in this local does not pass a perk test as verified by every homeowner whom initially tried to build the Woodlands. Any run off from an on-site system will discharge onto adjacent property or to the pond the property and ultimately into Grindstone Creek.
5. Per conversations with Mr. Tom Ratermann of the Boone County Regional Sewer District, the El Chaparral treatment plant is already fully burdened. There is no available capacity for even one more lot let alone three more residences.

**DEVELOPMENT AND IMPROVEMENT CONCERNS:**

1. The Restrictive Covenants for the Rhodes property as recorded in Book 815 page 681 be modified so said property is included into The Woodlands development plan with mutually enforceable Restrictive Covenants for the protection of all parties. The Woodlands residents should be able to enforce Restrictive Covenants against new parcels and new parcel owners should have mutual protection.
2. A paragraph should be added to the Restrictive Covenants for the Rhodes property similar to The Woodlands Plat 1 and 2 Restrictive Covenants paragraph 15. This paragraph pertains to the requirement to connect to the Boone County Regional Sewer District collection system. No on-site wastewater system.
3. Paragraph 2 of the Restrictive Covenants for the Rhodes property be modified to be in agreement with the requirements of the latest Woodlands (Plats 4 and 5) Restrictive Covenants. This is required to protect the existing property values of owners in Plat 2 of the Woodlands. For example, the Rhodes Restrictive Covenants for dwelling square

footage is too small (1,300 sq ft finished). The smallest home in Plat 2 of The Woodlands has 1,800 sq ft finished. This home is on lot 20. This would afford current and future owners in The Woodlands protection of property values.

4. The development of the Rhodes property should be in concert with the subdivision. For example, a paved road should be constructed to access the additional lots created by the subdivision of the Rhodes property.
5. This road should be maintained by Boone County, as the other roads in the subdivision.
6. The connection location of the new road should be where lot 22A is located on Big Timber Drive. This would minimize traffic flow and circulation. That geographic location would be on a more level terrain and would help with the safety concerns for pedestrians and children.
7. The remaining Rhodes Covenants appear to be in agreement with The Woodlands development plan but we request a review prior to the modification. It does appear that the late Mr. Rhodes intent was to protect the value of The Woodlands property owners.

Mr. Bakules stated it should be clarified that the minimum square footage per the Restrictive Covenants of the Rhodes property should be 1,300 sq ft. Also, the Restrictive Covenants currently on the Rhodes property requires, they believe, a minimum 2.5 acre lot. They are not sure how the 8 acres can be split into four parcels and satisfy the 2.5 acre restriction.

Commissioner Stamper asked if this information is in a document that can be submitted to the Public Record and wanted to clarify there is a covenant on the Rhodes' 8 acre that states the land will not be subdivided any less than 2.5 acres. Mr. Bakules stated that the covenant restriction states the land will not be split into any more than three lots with no lots smaller than 2.5 acres.

Mr. Bakules stated if the Rhodes property were subdivided into three lots, for example, and the road for these lots came in through the current lot 22A, only 3 properties in The Woodlands would be affected by the traffic. The current proposal to bring the driveway in at the edge of lot 20 would affect nine additional lots.

Mr. Erbschloe requested the Commission to ask Mr. Morin if he will be joining his property with The Woodlands formally and subjected to The Woodlands owners Restrictive Covenants. The neighbors believe the petitioned property of the 8 acres was part of the Rhodes-Payne property and should be subject to the same Restrictive Covenants as The Woodlands. Also, they are under the understanding that Mr. John Payne had a previous petition to access Rhodes property via lot 20 and was denied by the Commission.

Mr. Erbschloe stated there was a similar request in the Midway Heights neighborhood for vacation of a lot to allow adjoining lots ingress/egress into a subdivision and was denied by the Commission.

There was no one else wishing to speak on this issue.

Commissioner Stamper closed the Public Hearing.

Mr. Morin stated this is an 8 acre prime parcel of land that is subject to be divided sooner or later. The proposed plats do show separate parcels. The Restrictive Covenants did not come to his attention until last week. They interpret the covenants as allowing for the land to be divided and this is not a question of whether or not the land can be divided but whether Mr. Morin would be allowed three or four tracts of land. Mr. Morin stated he and his wife have agreed if the land will be divided into three tracts, they have no problem accepting that. From his discussions with County officials and other entities, it seems that he would have been allowed four tracts because that is consistent with The Woodlands subdivision.

Many of the comments that were made and he does agree with many of the comments he heard during the public hearing especially when the separate Restrictive Covenants were brought up. The question was asked if he would bring the 8 acre tract under The Woodlands Restrictive Covenants, and Mr. Morin stated he would do this. He has had two meetings with Mr. Payne but has not had a response to those questions. He is still waiting to get answers to these questions so there can be peace in The Woodlands.

Mr. Morin stated this is a cul-de-sac neighborhood and there is not a lot of traffic in this neighborhood. The traffic on Big Timber Drive is very little compared to another portion of The Woodlands subdivision and the neighbors who do live on Big Timber have chosen to live there for the safety of their families due to the small traffic flow. To have lot 22A vacated and a driveway placed on that lot, affects no one except him and Joe Hibbel, who lives next door to Mr. Morin and has not given an opposition to this request.

Commissioner Stamper cautioned Mr. Morin about third party discussion and they are of no interest to the Commissioners.

Mr. Morin stated they are familiar with the two acre subdivision of The Woodlands and this is the reason they wanted to divide the subject land into two acre tracts. He believes it is a more attractive division of the land because lot 20 will have a portion of the pond in the reconfiguration of lot 20.

The Woodlands Restrictive Covenants does not have a committee except John Payne. The neighbors do not have a vote in anything because they do not have a voice in that subdivision. Nothing has been set up in The Woodlands and John Payne has total control of anything that happens there and has control of Mr. Morin's land. The only control that

Mr. Payne does not have is the 2/3 majority vote of the owners of Tract 3 in order to have the authority to amend any covenants on that land. Mr. Morin met with Mr. Payne last week hoping this would happen.

The driveway would be no steeper than Lot 20, which Mr. Morin just purchased. He believes this is the same, if not less, of a grade. He does not consider Lot 20 driveway steep at all.

Mr. Morin stated he would join with The Woodlands and would do everything in his power to join and have everything consistent.

Mr. Morin stated anything he would do to the property would have to conform to all regulations and restrictions according to the Engineering firm. The Engineering firm is familiar with all of these regulations and restrictions.

Mr. Morin noted lot 22A is not even a legitimate lot in The Woodlands. This lot could not be built on and no one knows why this lot was even done in the first place. Lot 22A has no reason to be there other than the fact that the Rhodes would have had a voice in The Woodlands subdivision by virtue of having property that was on the road.

Mr. Morin stated that he has had many conversations with Mr. Ratermann. Mr. Morin has never been told that there would not be a possibility of tying into the sewer system. They do not have an answer to the capacity issue with the Missouri Department of Natural Resources. Mr. Morin stated the comment about "Mr. Ratermann confirming that there was no capacity nor ever would be any additional capacity," was untrue.

Paul Minor did the soil sample per the recommendation of Jerry Worley of the Health Department. Mr. Morin stated he has tried to follow all steps and rules to abide with everyone.

Commissioner Stamper asked if the vacation of lots 20 and 22A of The Woodlands Plat 2 remove said lots from The Woodlands subdivision and scrutiny of the covenants. John Patton, County Counsel stated he has not researched this specific question to see if there have been cases addressing this issue. He believes that the re-platting would not affect the covenants as long they are defined geographically and have a procedure for modifying the covenants. If they want specific advice on this issue, they will need to speak with someone who has researched this issue.

Commissioner Stamper stated during a normal hearing, the Commission does not concern itself with covenants; those are civil matters between neighbors. However, this vacation request of two lots that are currently covered by Restrictive Covenants and would allow for the use of adjacent land in a way that seems to be outside the subdivision covenants and additional covenants on the adjacent property that restrict the subdivision as it has been proposed by the developer. The Commission does not like to make decisions that

contradict to existing covenants.

Mr. Morin stated in terms of the covenants, as mentioned earlier, he is willing to abide by The Woodlands covenants. Mr. Morin submitted the Restrictive Covenants for the 8 acre tract, which is owned by Rhodes-Payne Properties, Inc., that is in question to the Public Record. He noted paragraph 19 of these covenants state these covenants can be amended by a 2/3 vote.

Commissioner Stamper noted Mr. Morin has not brought forward an amended version of the covenants. Mr. Morin stated that was correct.

Commissioner Stamper stated the owners of this covenant are shown as John Payne and John Payne. Mr. Morin stated this is for Rhodes-Payne Properties, Inc., which is John Payne.

Commissioner Stamper asked if this type of precedent has ever been set by the Commission by setting a precedent of the vacation of other properties within a plat. Mr. Shawver stated each vacation request stands on its own.

Commissioner Stamper asked John Payne to explain his intent with the covenants on Tract 3, which is the 8 acre tract in question. John Payne stated when The Woodlands was originally purchased, Marvin and Melba Rhodes wanted to purchase a house and that was set up on an 8 acre tract and platted Plat 2 around that 8 acres. Two parcels of land were sold, one house on the 8 acres and an adjoining piece of land to the neighbors who live on New Haven Road. They decided to place the restrictions and covenants to protect the rest of the development. At that time, the original covenants were placed on the 8 acres and the adjoining property that was sold. The Woodlands went through a change after the Sewer District approached them to do a forced main sewer system; the covenants were modified for Plat 2. They did not attempt to modify the covenants on the two parcels of land that were sold originally. He believes it was the intent, at that time, that the 8 acres could never be divided into more than three tracts.

Commissioner Miller asked Mr. Payne to explain the modifications to the covenants for Plat 2. Mr. Payne stated the two modifications on Plat 2 were to allow for a forced sewer system and dropped the stone front house requirement.

Commissioner Stamper stated Mr. Morin is here with a request that is in opposition to a known covenant on the 8 acres and he asked why Mr. Morin would do this. Mr. Morin stated from the beginning of this process, he was told this was a non-discretionary matter.

Commissioner Stamper asked who told him this. Mr. Morin stated Planning Staff told him.

Commissioner Miller asked if the conditions are not observed. Mr. Morin stated he has

met all of the requirements for subdividing and vacating. Everything he has done has been based on this being a non-discretionary matter.

Commissioner Stamper stated that was not true because he has to convince the Commissioners that what he is proposing is right and that is discretionary.

Commissioner Elkin stated he respects the covenants for the subdivision but is unsure if the Commission has a role when it comes to the covenants. The Commission's job is to make sure that it meets the conditions as set forth in the ordinances.

Commissioner Elkin asked as far as the covenants are concerned, if Mr. Morin stated that he would adopt the existing Woodlands covenants. Mr. Morin stated that was correct.

Commissioner Elkin asked if Mr. Morin would connect all lots to the sewer if there was capacity. Mr. Morin stated that was correct.

Commissioner Elkin noted that he is the Vice Chairperson of the Boone County Regional Sewer District and he assured Mr. Morin that there is no capacity at this time. Mr. Morin stated he is aware of this.

Commissioner Elkin stated the covenants for the Rhodes property require a minimum 1,300 sq ft minimum home and asked Mr. Morin if he would abide by The Woodlands 1,800 sq ft minimum. Mr. Morin stated that was correct.

Commissioner Elkin asked Mr. Morin if he would abide by the covenants set on the Rhodes property and only have three lots. Mr. Morin stated he would do that if that is what the requirement is going to eventually be. He is only requesting to have four lots.

Commissioner Elkin asked Mr. Morin if he would pave any street if it was required. Mr. Morin stated he does not intend on placing a street through this land because it would ruin the neighborhood. The engineers told him that three parcels could not be there with a street.

Commissioner Elkin asked if Mr. Morin would abide by the County's Driveway Inspections and correct any site deviations or site distance problems. Mr. Morin stated he would make the corrections.

Commissioner Elkin asked Mr. Erbschloe if the applicant abided by everything he just asked Mr. Morin about, would the neighborhood still oppose this request. Mr. Erbschloe stated he could not speak for everyone in the neighborhood. He would like to see the covenants upgraded and be in concert with the later developments (Plat 4 and 5) of The Woodlands. No one on Big Timber Drive came close to building the minimum structures. If Mr. Morin built to the minimum covenants to The Woodlands Plat 2 would decrease property values. He would like to have the new properties hook on to a sewer collection

system, no on-site wastewater treatments.

Also, being the owner of lot 16 of The Woodlands Plat 2, Mr. Erbschloe stated he is opposed to the re-platting of lot 20 for a driveway. He bought with the knowledge that The Woodlands Plat 2 is as deeded by the deeded plat.

He believes they would be in agreement with a street being put through the current lot 22A of The Woodlands Plat 2 and to be constructed and maintained by Boone County. As far as if there were mutually enforceable Restrictive Covenants, that would be able to be amended by 2/3 vote, as delineated in The Woodlands Restrictive Covenants, he believes this would be the right thing to do.

Commissioner Miller stated if this vacation is approved and Mr. Morin has stated he will agree to specific issues and asked what type of enforcement the Commission has to make sure those items that have been agreed upon will be done properly. Mr. Patton stated the Commission cannot impose conditions on vacation but conditions could be placed on the re-plat. Commissioner Miller noted the vacation does not take place until the re-plat is approved.

Mr. Patton stated the basic criteria the Commission will operate are under the Subdivision Regulations as they exist and not the neighborhood covenants. If this is a concern to the Commission, maybe this issue should be tabled so the neighbors can work on the issues. If the Commission is to look at the criteria of the Subdivision Regulations, the 8 acres has a specific zoning with a permissible density and is subject to whatever sewer service that can be provided. In previous discussions with Mr. Shawver, it would probably have to be connected to a public sewer no matter how it will be subdivided because it is within 225 feet of a force main.

Commissioner Miller stated this would not apply to the original Rhodes property unless the sewer system is not functioning because there is authority to stay on the on-site system. Mr. Patton stated that was correct.

Commissioner Stamper stated this would be true as long as the land is platted as an 8 acre tract. There would be changes when and if it was re-platted as 2 acre tracts.

Commissioner Miller stated as long as the land is 2.5 acre tracts. Commissioner Stamper stated there has not been a proposal for the land to be divided into 2.5 acre tracts.

Commissioner Miller stated she understands this and that there was a 6 acre tract on the proposed Plat 1.

Mr. Patton stated the Rhodes house is not on its own lot. Mr. Shawver stated it is, that was incorrect.

Mr. Patton stated the house was on its own sewer system but not on its own lot, it is on 8 acres.

Commissioner Miller stated even in platting Plat 1 leaves the Rhodes house on a 6 acre tract until such time that sewer capacity is available then the tract is divided into 2 acre lots and then the house would have to be connected to a system.

Commissioner Stamper stated the way this is proposed is in two phases; Plat 1 would leave the Rhodes property on approximately 6 acres of land. Commissioner Miller stated this is still okay for an on-site sewer system. Mr. Shawver stated that was correct.

Commissioner Stamper stated Plat 2 would bring the 6 acres down to two acre tracts.

Commissioner Miller asked if this was when the house would have to be connected to a sewer system. Mr. Patton stated that was correct.

Commissioner Stamper stated there are only two known connecting points available in the subdivision.

Mr. Patton stated he does not see how this can be done by looking at the way Mr. Morin explained this issue. This is an access issue. The only existing access is on the south end of the property and to further develop the property under the existing plat, a cul-de-sac would have to be built. There is enough room to have one access into the interior of the proposed development.

Commissioner Miller asked if a portion of Lot 20 could not be used for an access. Mr. Shawver stated Lot 20 is not vacated.

Commissioner Miller asked if lot 20 was vacated, could it not be used for an access. Mr. Shawver stated if it is vacated then it could be used for an access. Mr. Shawver stated the proposed development of the 8 acres and providing access from two directions. If this were to be developed with the existing access, which is adjacent to Lot 22A, there is existing frontage there, would essentially require the construction of a county maintained road. This would cause a higher density than what is being proposed because of the current A-R zoning on the Rhodes property.

Commissioner Miller asked where the access to the Rhodes property is currently. Commissioner Stamper stated it is noted on Plat 2, near the current Lot 22A.

Commissioner Miller asked if this 8 acre tract was developed in three tracts, one could have access through Lot 22A, the Rhodes could maintain their current access, and the other could have access through Lot 20, if this request for vacation was approved. This would only be adding two additional driveways. Mr. Shawver stated that was correct.

Commissioner Stamper moved the discussion to a discussion between the Commissioners. He asked what their preference was for the petition to vacate Lots 20 and 22A of The Woodlands Plat 2. He noted there has been proposed plats submitted that are of a greater density than what is allowed for the Covenants on the property.

Commissioner Elkin stated he agrees with Mr. Patton about Mr. Morin modifying his plans to address the concerns that the neighbors have brought forward and try to work on agreement then bring the issue back to the Commission as a modified plan.

Commissioner Miller stated the modifications would be three lots instead of four and the adoption of The Woodlands Restrictive Covenants.

Commissioner Stamper asked if Lot 20 is currently sewerred or not. Mr. Shawver stated it is currently sewerred.

Commissioner Stamper asked where the two available taps were located. Mr. Shawver stated Lot 20 is currently served and is not available for any other use because it is serving a house. There is one current physical drop, which is intended for the Rhodes house.

Commissioner Miller stated even though something is platted does not mean that it can be developed. Currently, only one house can be built and if the Morin's were to build a house of their own, that would take the one sewer connection. Mr. Shawver stated that was correct.

Commissioner Miller stated that one house is all that could happen at this time until there is sewer capacity.

Commissioner Stamper asked if Mr. Morin could achieve 2.5 acres by doing three lots. Mr. Shawver stated that was correct.

Commissioner Stamper stated there is 8 acres to work with. Mr. Shawver stated 2.5 acres for three lots would only be 7.5 acres. Commissioner Stamper stated that would leave 0.5 acres to spare.

Commissioner Stamper noted there is only one sewer tap available and all that could be developed at this time is one property. Commissioner Miller stated that was correct.

Commissioner Stamper asked where the location of the on-site wastewater system is for the Rhodes house. Commissioner Elkin stated it is located almost due north of the garage.

Commissioner Stamper asked if there was enough room for the set backs and if the set backs are 75' or 100' from a house. Mr. Shawver stated the requirement is 100' from a house.

Commissioner Elkin stated there was not enough room on Plat 2 for this.

Commissioner Stamper stated if there was only three lots proposed there could possibly be enough room.

Commissioner Stamper noted the only reason this issue has been brought forward to the Commission is because Mr. Morin wants access to the land. If the applicant had been able to achieve access to the site then this hearing would not be taking place because of the A-R zoning and this could be developed to the density of the sewer capacity. There is a risk with this of sorts. This has qualified for a public hearing because Mr. Morin has been unable to obtain that access and has been through painful exercises to get this accomplished.

Commissioner Stamper stated he believes that anyone who would come forward with a proposal to develop at a greater density than what the Restrictive Covenants allows is sorely mistaken and if any redevelopment or re-platting of the area should be done with consistent to the existing Woodlands subdivision and he has not seen a draft plat in this regard. He is opposed to vacation until such a time that he could see a proposal that could be sustainable. The vacation is not effective until an acceptable re-plat is submitted. There is some protection in this. He does not like the idea of this proposal to use this land in a way that is different than the surrounding land or different than what is proposed on the subdivision's covenants. He recognizes the Commission is not supposed to have the covenants enter in to the discussion except they are of a precedent setting nature.

Commissioner Miller stated many times the Commission does not see a re-plat until the next month. Usually a vacation is done first then the re-plat and since the re-plat has been brought forward, this has confused the issue.

Commissioner Stamper stated there is a limit of the sewer capacity and he does not know how this problem will be solved. Commissioner Miller stated this would be Mr. Morin's problem not the Commissions.

Commissioner Stamper stated it would be Mr. Morin's problem and asked if the Commission should be in the middle of creating lots that cannot be built on. Commissioner Miller stated it will happen eventually.

Commissioner Miller stated she agrees with Commissioner Elkin on tabling this issue. She would support this issue because she does not believe it is unreasonable to have three lots on this 8 acres.

Mr. Shawver stated there are two separate petitions; one to vacate Lot 22A and the other to vacate Lot 20.

Commissioner Stamper noted Mr. Shawver is stating these issues can be addressed

separately.

Mr. Shawver noted the plat that has been submitted does not comply with Lot 22A, just Lot 20.

Commissioner Miller stated there would have to be a re-plat done anyway.

Commissioner Elkin asked if the Commission denies this petition, is there a time limit to resubmitting another petition? Mr. Shawver stated there are no time limits. He noted if the Commission decided to table the petitions then it would be up to the applicant to bring the petition back.

Commissioner Elkin stated he is concerned the applicant would bring something forward that would be in contrast with some of the existing covenants and he would not support that in any fashion. He would like to allow the applicant the opportunity to try to work out those questions and concerns the neighbors have and give the applicant the opportunity to bring this forward at a later date.

Mr. Patton stated this could be tabled to a specific meeting.

Commissioner Elkin asked if the applicant made modification to the plat, would he have to go through the process again and the Commission would not be addressing the same vacation and re-plat. Mr. Shawver stated the vacation would be the same unless he were to change that in some fashion but the question is there are already details on the proposed re-plat. Based on what Commissioner Elkin was saying, that does have to change.

Commissioner Miller stated she agrees.

Commissioner Elkin moved to table the request by Melba Rhodes, Leroy and Lucille Dickinson, and Gerald and Regina Morin to vacate and re-plat lots 20 and 22A of The Woodlands Plat 2, until such time that the applicant and the neighbors can come to terms in relation to Restrictive Covenants.

Commissioner Miller seconded the motion.

Commissioner Miller moved to amend the motion on the table to include a specific number of lots as described in the Restrictive Covenants.

Commissioner Elkin seconded the amendment.

Commissioner Stamper asked where this places Lot 20 because by the motion on the re-plat if the intent is still to vacate a portion of Lot 20, it does not go away as a lot. If the Rhodes house and Lot 20 are taken away, this only leaves one lot for the request. He asked if this was the intent of the motion.

Commissioner Miller stated the three lots of the 8 acre tract that is proposed to be replatted.

Commissioner Stamper stated the issues before the Commission are two vacations. The Commission is giving the applicant direction and the direction that is being given is the applicant can only come back with three lots. Either Lot 20 has to be dropped from the petition.

Commissioner Miller stated that this was not her intention. Commissioner Stamper requested Commissioner Miller to clarify her intention.

Commissioner Miller stated her intention is to have no more than three lots on the 8 acre tract as described in the covenants that are currently placed on the Rhodes property.

Commissioner Stamper asked if this would include the possibility of vacating a portion of Lot 20 in order to achieve this. Commissioner Miller stated that was correct.

Commissioner Elkin stated that was his understanding.

There was no further discussion on the amendment.

The motion passed 2-1 as follows: Commissioner Stamper – NO, Commissioners Miller and Elkin – YES.

Commissioner Stamper noted the motion on the floor is to table the request by Melba Rhodes, Leroy and Lucille Dickinson, and Gerald and Regina Morin to vacate and re-plat lots 20 and 22A of The Woodlands Plat 2, until such time that the applicant and the neighbors can come to terms in relation to Restrictive Covenants and number of lots.

Commissioner Stamper stated he is concerned with the Rhodes property and its on-site treatment system with one available sewer site. With the 225' rule and the re-plat, that property should come under interconnection requirements. Yet the Commission is proposing, by their intent or discussion, to allow the sewer site to go to an existing lot and leave the original Rhodes house on its own on-site treatment system. This is a concern to him. This would also place, as has been discussed this evening, that house as the only lot in the subdivision that is not on a collection system.

Commissioner Miller stated the County's regulations do not require that connection unless there is a problem with the on-site system.

Commissioner Stamper asked if it would be logical, if one was to do this, one would require the one existing facility to interconnect if the other two were required to interconnect. Does this mean that the applicant could achieve on-site systems for the other

two lots as well? Commissioner Miller stated no that is not what was said.

Commissioner Stamper asked why the Rhodes house could do this but the other two cannot. Commissioner Miller stated because the Rhodes house is on an existing system and the applicant knew the others would have to be connected to the sewer system.

There was no further discussion on this issue.

The motion passed 2-1 as follows: Commissioner Stamper – NO, Commissioners Miller and Elkin – YES. **Order 376-2002**

Commissioner Stamper noted this petition has been tabled and requires the applicant to work in the confines that the Commission has set forth this evening. If any clarity is needed, he suggested that the applicant work directly with Staff. He encourages the neighbors to watch the Commission Agendas as this could be brought back when the applicant believes all issues have been satisfied.

Mr. Morin asked about the timing of this issue because he is under a time restriction because of the purchase agreement. Commissioner Stamper stated no time frame was specified in the motion. The timing on which this comes forward depends on his work to satisfy the intent of the Commission as expressed in the motion.

Mr. Morin asked what if the re-plat cannot be accomplished without the vacation. Commissioner Stamper stated when the issue is brought forward again, that is the time it will be debated. It is possible that if the issues are not resolved, the vacations may not be approved.

Commissioner Miller stated the Commission was clear on the resolution needed to resolve the issues.

Commissioner Stamper noted there will be no technical notification. The Commission will agree that at least 10 days notice will be given on the next hearing.

Commissioner Miller asked if the 10 days would meet any time restrictions Mr. Morin has. Mr. Morin stated that does not meet the time restrictions.

Commissioner Miller requested the meeting on August 29, 2002 be cancelled so the Commissioners could attend a funeral at 2:00 p.m. There was no objection to this request.

There was no public comment.

The meeting was adjourned at 8:27 p.m.

Attest:

\_\_\_\_\_  
Don Stamper  
Presiding Commissioner

\_\_\_\_\_  
Wendy S. Noren  
Clerk of the County Commission

\_\_\_\_\_  
Karen M. Miller  
District I Commissioner

\_\_\_\_\_  
Skip Elkin  
District II Commissioner