

TERM OF COMMISSION: September 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 8:03 p.m.

Subject: Public hearing for the purpose of taking comment on a petition to vacate Lots 20 and 22A of The Woodlands Plat 2, as requested by Melba Rhodes and Gerald and Regina Morin. Said petition was tabled by the Boone County Commission at the August 27, 2002 regularly scheduled meeting

Stan Shawver stated a petition was received to vacate Lots 20 and 22A of The Woodlands Plat 2. A Public Hearing was held by the County Commission on August 27, 2002 on this issue to determine whether this request would adversely affect the following:

- 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

At the August 27, 2002 Public Hearing, a number of issues were brought forward and the Commission tabled action on the petitions requesting the petitioners and neighborhood try to resolve some of the concerns that were raised. To his understanding, there has been a lot of activity in this regard and this issue has been brought back forward this evening.

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

Mr. Morin stated regarding the vacates and re-plats of lots 20 and 22A:
Lot 22A is a nonconforming lot platted in the Woodlands Plat 2. This lot 22A is owned by the Melba Rhodes Trust along with Tract 3 which is neighboring and contiguous to 22A. The proposal to vacate 22A is primarily to make 22A incorporated into a Lot 1 of a 2 parcel subdivision of Tract 3 identifying these parcels as Lot 1 and 2. Lot one would

incorporate existing lot 22A and serve as the frontage and ingress egress for Lot 1. Lot 2 is identified as the already existing Rhodes house of 3191 Big Timber Drive and would comprise 2.5 acres whereas Lot 1 in its present configuration would comprise 5.82 acres and have the potential to be divided one time into 2 parcels. Each of which would comprise at least 2.5 acres.

The vacation of Lot 20 is being proposed as a result of the purchase by the Morins of the property and home belonging to the Leroy and Lucille Dickinson. The sole reason for the purchase was to provide an access to the North side of the Rhodes property so that the north side of the Rhodes property would not be landlocked and would provide a future consideration of division of Lot 1. This was unable to be accomplished by Mr. Rhodes in the past for reasons which the commission may or may not be interested in. If so I can further explain.

According to the existing covenants on Tract 3, Tract 3 could not be divided into more than 3 parcels with each parcel being at least 2.5 acres. By vacating lot 20 we are able to achieve the potential 3-parcel division of tract 3 by virtue of an ingress/egress at the northeast corner.

In consideration of these vacates the following are taken into consideration by the Boone County commissioners:

1. The Character of the neighborhood- The woodlands plat 2 is comprised of rural residential single family homes. The individual lots range in size from 2 to approximately 3 acres in size. Each property has an individual driveway, some paved, some unpaved. The proposed vacates are designed for the division of the Rhodes Tract of land that we believe compliments in every way the type and size parcels of the Woodlands Plat 2.
2. Traffic condition: Big Timber Drive is a dead end cul-de-sac and probably the least traveled road of any road in the Woodlands subdivisions. The proposed plats add one new proposed parcel and a future ingress/egress that would support a second new parcel to the north as a result of a potential future subdivision of Lot 1. We believe there is negligible impact on traffic conditions for the neighborhood. Also lot 22a is at the far south end of tract 3 and potentially affects only two of the Woodlands Plat 2 parcels. Approaches to both ingresses and egresses have large sight distances. The driveway distances between driveways between lots 25 and lots 15 are as follows 66', 80', 156', 67', 209', 120'. The distance from lot 20 drive to the proposed ingress egress of the northeast corner is approximately 180' from lot 20 drive and approximately 200' from lot 19 drive. Therefore creating a natural drive location for the access to Rhodes north property.
3. Circulation is a 2 way single county maintained road which dead ends at a cul-de-sac.
4. Big Timber Drive is the main road accessing the Rhodes Property at the south and at the north. One could deduct by simple observation that the Rhodes property is already part of the Woodlands Plat 2.
5. We believe property values should be positively impacted by this proposed division.

Density is low and the proposed new home on lot 1 is believed to meet or exceed some of the highest value homes in the neighborhood. The range of value of homes in this particular neighborhood range from \$160,000 to approximately \$350,000

6. Public utility and services consist of Boone public sewer, water, natural gas, telephone, cable. Virtually all public utilities exist at Big Timber or close by. A public sewer tap exists in 22A which according to a letter provided by Boone Public Sewer would accommodate 1 new home on Lot 1. 3191 has always maintained its own on-site septic system with no complaints during its history.

7. We see no adverse effect to health, safety or welfare of any of the surrounding real estate and further believe that any new construction will result at an equal or higher standards than the covenants of the woodlands plat 2 already dictate.

We believe the added potential lot and drive offers no adverse effect on the safety of children. At present it is our understanding that children reside on a permanent basis at only 3 dwellings out of a potential 16 homes comprising a total of six children, 2 of which are our children. Our children are rarely allowed on big Timber Road without our supervision and escort. We believe the same exists for the other families.

The Woodlands covenants and Tract 3 covenants became a central issue at the last hearing. At the request of Boone County Commissioners, my wife and I have made a good faith effort to meet with every neighbor individually on Big Timber Dr., along with a neighborhood meeting held on September 3rd at the New Haven Elementary School. With this revised plat and with certain promises been made to our neighbors in the proposed agreement now handed to you, we believe little or no concern exist for the proposed vacates and plat to be accepted. For example we have agreed:

- to mitigate as much as possible the removal of trees for any future proposed driveway
- To have only one division of Lot 1 resulting in only 1 future home site and one drive at the northeast corner.
- To ensure that our ownership or any future ownership of a north parcel by virtue of dividing lot 1 would utilize the existing County Public Sewer system upon notification.
- To have the existing 3191 home connect into the existing County Public Sewer system upon future notification by the Public Sewer district.
- To make every effort of correlating or incorporating the covenants of the tract 3 with the covenants of the Woodlands.
- A promise to not further subdivide Lot 1 or create any drive from the northeast corner for a period of no less than five years.
- To grant Bill Barnett of lot 19 first right of refusal on any decision to sell any future north parcel as a result of any further division of Lot 1.

We believe in good faith we have made concessions over and above what would normally be required for this proposal and have made them for the sake of harmony and good of the neighborhood.

We wish to have some form of written agreement for the neighbors, and we are diligently working on an agreement that we believe will satisfy the majority of neighbors and us. Integration of this proposed subdivision into the Woodlands covenants poses unique challenges that all of us desire to change for the long term good of the neighborhood. We are ready, willing and able to sign an agreement with all of the Woodlands Plat 2 owners, so long as such agreement does not undermine or interfere with County government or civil rules, regulations and statutes that all of our properties are subject to.

Therefore we believe the plan is a very good proposal and a very compatible use of the property with that of the neighboring Woodlands Plat 2. We believe for all of the above mentioned reasons that a strong case is presented for accepting the proposed vacates and

Mr. Morin stated The Woodlands covenants and Tract 3 (the Rhodes' property) covenants became a central issue at the last hearing. At the request of the Boone County Commissioners, he and his wife have made a good faith effort to meet with each and every neighbor individually on Big Timber Drive, along with a neighborhood meeting, which was held on September 3, 2002 at New Haven Elementary School.

Mr. Morin read the following draft agreement:

This agreement is entered into between Gerard B. Morin and Regina M. Morin (hereafter "Morin") and owners of properties in Woodlands Plat 2, Plat Book 25, Page 37, Deed Records of Boone county, Missouri (hereafter, "Owners").

Morin have a contract to purchase property identified as Tract 3 of the survey recorded in Book 814, Page 587, Deed Records of Boone County, Missouri (hereafter, "the Rhodes Property"). Morin have filed a petition to vacate lots 20 and 22A of the Woodlands Plat 2 as well as a request to re-plat lot 20, lot 22A and the Rhodes property.

A hearing was held on August 27, 2002, before the Boone County Commission on the petition to vacate and the request to re-plat. At the hearing, Owners expressed concerns over the petition and request to re-plat submitted by Morin. At the suggestion of the Boone County Commission, Morin met individually with owners and subsequent neighborhood meeting and have revised their request to re-plat to address concern raised by Owners.

In consideration of (1) the revisions made by Morin, (2) the agreement of Owners to no longer oppose the petition to vacate and request to re-plat and (3) other mutual considerations, Morin and Owners hereby agree as follows:

1. Owners agree to the vacating of lot 20, the Woodlands, with new property lines for lot 20 as per the Brush & Associates plat map entered at the second public hearing of September 10, 2002
2. Owners agree to the vacating of lot 22A, the Woodlands, with lot 22A to be joined

- to the Rhodes property.
3. The Rhodes property shall be approved for re-plat into two lots, one consisting of the existing Rhodes residence with approximately 2.5 acres (“Lot 2) and the other consisting of the remaining approximate 5.8 acres (“Lot 1”).
 4. Lot 2 shall be connected to Boone County public sewer within 90 days of notice that sewer capacity is sufficient to accommodate such connection.
 5. Lot 1 shall be connected to Boone County public sewer via the sewer hook-up presently available at Woodlands Lot 22A, such hook up to occur prior to occupancy of any residence on Lot 1.
 6. Lot 1 may be re-platted no more than one additional time, subject to the following terms and conditions:
 - a. The two resulting parcels shall each contain at least 2.5 acres
 - b. The new parcel (“Lot 3”) shall be the only parcel on the Rhodes property which may connect to Big Timber Drive via a driveway north of the current lot 20 of the woodlands.
 - c. Lot 3 shall be connected to Boone County Public Sewer prior to occupancy of any residence constructed on that lot.
 - d. All owners of Woodlands Plat 2 by majority vote shall designate a three-person Review Committee (hereafter, “the Review Committee”) to work with Morin on acceptable locations for the driveway to Lot 3 and utility (including sewer) connections to Lot 3 provided that any resulting decision by owners does not conflict in any way with Boone County authority, regulations or any public or governmental regulations or authority or the public utilities companies that all such property would be subject to.
 - e. Morin commits to the best of their ability to removing and/or disturbing as few trees as possible in locating the driveway for Lot 3.
 - f. Morin shall not place a driveway on Lot 3 unless and until he has received the approval of Boone County Planning and Engineering and approval by the Review Committee, which approval shall not be unreasonably withheld.
 - g. None of the events in this paragraph 6 may occur until the latest to occur of the following:
 - i) The Morin family shall no longer live in the residence on Lot 1; and

- ii) Five years shall have passed from the date Morin closed on their purchase of the Rhodes property

Mr. Morin noted this commitment means they be willing not to divide Lot 1 any further for at least a five year period. Commissioner Stamper stated or until the Morin's move. Mr. Morin stated the it would be the later of the last condition. Mr. Morin continued with the draft agreement.

- 7. As of the date of the agreement it is the intent of Morin to build their personal residence on Lot 1, however such intent may be subject to change without prior notification.

The reason this condition is worded like this is because someone could die tomorrow or another tragedy could happen.

- 8. All three resulting parcels on the Rhodes property shall have access to and an ownership interest in a common pond. All three parcels shall be subject to rules, restriction and easements for such pond.
- 9. The provisions of paragraph 3 through 6, 8 and 10 through 13 shall be applied by Morin to all future owners of Lot 1,2 and 3, (i.e., shall run with the land).
- 10. Morin will make their best efforts to modify covenants and restrictions applicable to Rhodes property to conform to covenants and restriction of the Woodlands Plat 2, however, owners understand that Rhodes-Payne Properties, Inc. also must approve any changes to Rhodes properties Covenants, which approval may or may not be granted.
- 11. Owners shall have standing to enforce all covenants and restrictions applicable to properties in the woodlands, Plat 2 against each and all parcels in the Rhodes property, subject to successful integration of the Rhodes Property Covenants with that of the Woodlands Plat 2 covenants.
- 12. Upon successful integration of the Rhodes property covenants into the Woodlands, Plat 2, owners of Lots 1,2 and 3 of the Rhodes property shall have standing to enforce all covenants and restrictions applicable to properties in the Woodlands, Plat 2 against Owners Woodlands, Plat 2 covenants.
- 13. The parties to this agreement specifically agree that upon any breach of the promises and commitments in this document by Morin, that upon approval of a majority of the owners of Woodlands Plat 2, that such owners shall have the right to enforce any and all of the provisions of this Agreement against Morin. This includes standing to bring actions in law and equity against Morin, including but

- not limited to petitions for restraining orders and/or injunctions.
14. Prior to offering Lot 3 for public sale, Bill Burnett shall have a 72-hour first right of refusal to purchase Lot 3. The 72 hour period shall commence at such time as Morin had delivered a notice to Mr. Burnett advising of the sale price and conditions for sale (i.e., closing date, payment terms, etc.) In the event Morin reach agreement for sale of Lot 3 with a party other than Mr. Burnett and the terms are not identical to those offered to Mr. Burnett, Mr. Burnett shall have a second 72-hour first right of refusal to purchase at such revised price and terms. Mr. Burnett may bring an action in law or equity to prevent Sale of Lot 3 if the terms of this paragraph have not been satisfied. The right of first refusal for any Morin decision to sell Lot 3 shall be extended to Mr. Burnett only as long as he or Marilyn Burnett resides at Woodlands Lot 19.

Commissioner Stamper stated this is a non-executed document and it is only a draft. Mr. Morin stated that was correct.

Commissioner Stamper stated there is no such an agreement with the neighbors. Mr. Morin stated that was correct.

Mr. Morin stated with the revised plat and with certain promises made to the neighbors in the proposed agreement, the Morin's believe little or no concern exists for the proposed vacates and plat to be accepted. For example, the Morin's have agreed to mitigate as much as possible the removal of trees for any future proposed driveway, to have only one division of Lot 1 resulting in one future home site and one drive at the northeast corner, to ensure the ownership or any future ownership of a north parcel by virtue of dividing Lot 1 would utilize existing County public sewer system upon notification, to have the existing 3191 Big Timber Drive home connect into the existing into the County public sewer system upon future notification by the Public Sewer District.

Commissioner Stamper asked which house is located at 3191 Big Timber Drive. Mr. Morin stated it is the existing Rhodes residence.

Mr. Morin stated they have promised not to further subdivide Lot 1 or create any drive from the northeast corner for a period of no less than five years, to grant Bill Burnett of Lot 19 First Right of Refusal on any decision to sell any future north parcel as a result of any further division of Lot 1.

Mr. Morin stated he and his wife believe in good faith that they have made concessions over and above what would normally be required for this proposal. He has made them for the sake of harmony and the good of the neighborhood. The Morin's wish to have some form of written agreement for the neighbors and are diligently working on an agreement that they believe will satisfy the vast majority of the neighbors and themselves. The integration of the proposed subdivision into The Woodlands covenants poses unique

challenges that all desire to change for the long-term good of the neighborhood. The Morin's are ready, willing, and able to have an agreement with all Woodlands Plat 2 lot owners so long as such agreement does not undermine or interfere with County government, civil rules, regulations, rules, or statutes that all properties are subject to. Therefore, the Morin's believe the plan is a good proposal, a compatible use of the property with that of the neighboring Woodlands Plat 2. They believe for all the above mentioned reasons that a strong case has been presented for accepting the proposed vacates and proposed re-plats.

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

Joe Deibel, 3211 S. Big Timber Drive, stated he lives on Lot 22; he has no objection to this request and would have no objection no matter who brought the request forward.

Jim Brush, 506 Nichols Street, Engineer and Surveyor, discussed the proposed subject lots and their location on the proposed plat. He noted Lot 20 has been reconfigured to the same square footage when it was originally platted on the proposed plat.

Commissioner Stamper asked what the size of the proposed Lot 3 would be. Mr. Brush stated the lots would be divided into approximately 2.5 acres from the original 5.8 acres sometime in the future. To his understanding, Mr. Morin is placing a self-imposed limitation of doing nothing for five years.

Ernie Erbschloe, 2950 S. Big Timber Drive, asked where the location of the septic system is on the existing Rhodes' property and if the lateral fields sufficient distance from the property lines that meets the current County standards for on-site sewer systems. He is concerned that if a family of four to six moves into that property will there be problem of on-site sewer runoff onto neighbors land. He believes the existing Rhodes' property should be connected to the tap that it was intended to be on Lot 22A. Any new homes should be required to connect to the sewer system that is available. Everyone who built on those properties had to connect to the installed County sewer system and had no option at that time. Everyone helped foot the bill to put the sewer system in.

Mr. Erbschloe stated he is not opposed to the vacating of Lot 22A because he believes this lot was meant for the Rhodes' sewer connection. He is in opposition to vacating Lot 20. He believes the homeowners bought properties along Big Timber Drive with the knowledge of the number of driveways and homes there would be available as platted. He believes the additional driveway on the current Lot 20 will take out a wooded area that would affect the nature of the neighborhood and the placement of any utilities will damage neighboring yards.

Pete Bakutes, 2921 S. Big Timber Drive, stated a few of the neighbors negotiated an agreement to try to have something for the whole neighborhood to review. In the spirit of negotiations one will concede some things to gain some things. There are items that were

put into the agreement that are not agreed upon now but there is a hope of getting this issue resolved. Mr. Bakutes received a proposal to amend a number of items to the agreement earlier this evening. There was no possibility of considering these amendments because of the short timing. Although much of the wording in the agreement was written by Mr. Bakutes, an agreement has not been reached between any of the parties.

Mr. Bakutes stated because there is no agreement he is in opposition to the proposed vacate and re-plat of Lot 20. He believes the existing Rhodes residence to hook up through Lot 22A to the sewer as a condition to approval of this request. They do not believe there should be septic tanks in the neighborhood with a sewer so close and a hook up available. He does not believe lots should be created until sewer hook ups are available. He believes allowing a subdivision at this time is improper because there is only a sewer hook up for one house and the existing house should hook up to the sewer.

Another reason for his opposition is because when he bought his property in reliance that all lots in Plat 2 being and remaining in The Woodlands and subject to the covenants and restrictions of The Woodlands. He believes it is a terrible precedent to breach this contractual relationship between parties. The trees on the north end of Lot 20 must not be cut down or threatened. The way the proposed re-plat is drawn up, he is concerned that putting in utilities will cut through the trees and the trees will either die if not have to be cut down. A driveway also has to be put in. He believes this could have been resolved by increasing the frontage on Big Timber Drive for the potential Lot 3 by another 25 to 50' so the driveway and utilities could go through the field and not bother the trees. It is a beautiful stand of trees and it would change the character of the neighborhood to have some of the trees cut down.

Mr. Bakutes stated because there is no agreement as to what will be going on the property, there is no knowledge of what the character of the neighborhood will be after construction of one residence, let alone two residences. One of the changes in the negotiations that have been brought forward is that there is no promise that the Morins will definitely build their home there. He knows the Morins intend to build and the house they would build would add to the neighborhood. The house someone else might build may very well not add to the neighborhood. This was the importance of the agreement, to have issues like this worked out.

He believes the neighbors have to have input on where the driveway will be placed on the north end of Lot 20 and where the utilities will be placed. The proposed agreement would have given the neighborhood a review committee to work with Mr. Morin to make sure the location of the driveway would work for the County and the neighborhood.

Lisa Patterson, 3070 Big Timber Drive, stated if she had met with the Morin's before the last hearing she would not have been at the last hearing in opposition. Since that time, she believes the Morins have satisfied every concern she has had. She noted she is one of the original owners of the subdivision.

She is not concerned with the addition of one driveway and the safety of her children. At the beginning she was concerned about the safety of her children. She plans on living in this neighborhood for a long time and wishes this situation had started in a different way. Since that time, she has met with the Morins, listening to them, and reviewing the rights that both sides have, she believes that all of her concerns have been satisfied.

Mrs. Patterson stated she like Big Timber because it is quiet. It is not connected to the main part of The Woodlands and there is very little traffic. She is retired from the City and is home the majority of the day. She walks the street everyday and the only concern she has had recently is a gentleman who has moved in with a neighbor and drives very fast down the road.

She noted the proposed draft agreement was received by her last night when she returned from an out of town trip. The deadline for responding with concerns was 6:00 p.m. yesterday evening. She did not have any time to review the proposed agreement. She is opposed to a review committee. She does not believe the neighborhood has a right to do this. There is an architectural committee for the neighborhood. Mr. Morin gave the Patterson's his proposed agreement and they had no concerns with Mr. Morin's proposal. The neighbors drafted an agreement, possibly sometime over the weekend and distributed. Mr. Morin dropped of an amended agreement which was very similar to the agreement the neighbors drafted. She believes that Mr. Morin has bent over backwards, far more than she believes he should. She believes that Mr. Morin has given up some right she does not believe he should have given up. If John Payne had bought the subject property, he would not be building his own residence on it and would not have had to go through what Mr. Morin has.

Mrs. Patterson stated no one told her where to put her driveway and does not believe this is a matter the Commission should be concerned with. When the Patterson's built their home, they gave their plans to Mr. Payne and he approved them and no one has complained about their home.

Mrs. Patterson stated things in the neighborhood have really gotten out of hand and Mr. Morin should not be treated any differently than they wish to be treated. The Patterson's are in favor of Mr. Morin's request to vacate and re-plat.

Tony Sloan, 3150 S. Big Timber Drive, stated the Morins have bent over backwards to comply with everything that has been asked of them. He believes it is time to move on. If the Morins do not do this and they do not build there, then someone else will.

Mr. Sloan stated when he built his home in the neighborhood in 1993, he was told that within one year of putting in the septic tank, which they had two, that they would be connected to the sewer line. The sewer line on his property goes from the back of his home, circles around the front, then around to the back of his home. This sewer line was

open for approximately six years and it was only two to three years ago that he was connected to the sewer system.

He believes the Morins have done everything the neighborhood has asked them to and believes they are in better spirits than he would be if he was in the situation. He would be upset if someone told him where to place his driveway. The utility companies told him where to put the utilities. He believes it is time to move on.

Greg Roseberry, 3111 Big Timber Drive, stated he is opposed to the vacate without an agreement between the Morins and the neighborhood. He has been threatened with Mr. Morin placing the drive on the current Lot 20 right along the length of his property line. He believes any driveway should come through Lot 22A and not disturb anything around Lot 20.

He also is concerned with sewer hook up. The Rhodes' residence is on the sewer system but if Lot 22A is not used for a sewer hook up, like it was intended, and if there is a problem with the septic system then what will happen. Does the septic system get expanded? Also, if the north end of the property, around Lot 20, is left undisturbed, it would leave the trees as is.

Mike Hemme, 3100 Big Timber Drive, stated he attended the last meeting and believes Mr. Morin has tried to comply with the subdivision's concerns. Mr. Hemme has eight year old twins and does have a concern about traffic in the neighborhood but does not believe one additional drive will have a negative impact. He is concerned about the trees but believes that Mr. Morin, as stated in the proposed draft agreement, would be sensitive to that issue. He believes Mr. Morin's intent is honorable to try to comply with the covenants, increase the property values, and connect to a sewer system when it is available. He supports Mr. Morin's request and that is consistent with what the neighborhood is hoping to see.

John Payne, 10951 I-70 Drive NE, stated he and the late Mr. Rhodes were the original developers of The Woodlands and Lot 22A was set aside for a sewer hook up for Mr. Rhodes. Mr. Rhodes was supposed to hook up with the sewer system. It was never accomplished, it was over looked. Mr. Payne understands it is the Boone County Health Department's requirement that any house within 225' of a public sewer system is required to hook up to that system. It is his intention to enforce this requirement on two owners on New Haven Road to eliminate an illegal lagoon now. If this has to be taken to court, Mr. Payne will do that because it is Boone County Health Department and to his understanding, a State law. It was the original intention of Lot 22A to have a sewer hook up for Mr. Rhodes.

Mr. Payne is against the re-platting of Lot 20.

Calvin Patterson, 3070 S. Big Timber Drive, stated when he first heard about his, they did

not know who was planning this and what type of development it would be. Many thought it would be high-rise apartments. This was his motivation for becoming involved as soon as he could with this issue. The only concern he has is will Lot 20 be pulled from The Woodlands Plat 2. They want to ensure that after a re-plat that the lot will have the same standards as the remaining homes. He would also like to know if the Rhodes' property will be included in the neighborhood covenants since, to many, it looks like that parcel is already a portion of The Woodlands Plat 2.

He believes the Morins have gone beyond what they are required to do and what is expected of the him. He agrees with Mr. Roseberry and would not want to have a driveway running right along the edge of his property line. He agrees the Burnett's view of the trees is a big issues. He believes the Morins have met the requirement for the re-plat. They have bent over backwards to make this issue work by giving five years before dividing the parcel, and the first right of refusal.

Commissioner Stamper asked if Mr. Patterson understood that this agreement does not exist, it is not an executed document. Mr. Patterson stated he does understand that but watching the Morins respond to every concern of the neighbors and it appears to him that the Morins are trying to satisfy all concerns.

Mr. Patterson stated he would not appreciate it if his neighbors removed the trees along his property line but does not believe this is a decision for the Commission. He does not believe the extra driveway will have an impact. The neighborhood does have concerns but the Morins have met and exceeded what is expected of them.

Randy Gibbs, 3000 S. Big Timber Drive, stated his lot would be directly affected by the proposed vacation of Lot 20. He is not opposed to the proposal to vacate Lot 22A. He believes the Morins have done a good job of trying to reach a compromise with the neighborhood. He is opposed to the proposed vacating of Lot 20 because of a driveway directly across from his front yard and he is concerned with the lack sewer hook ups. The neighborhood has to deal with the University hog farm now and he would prefer not to pour salt in the wound.

There was no one else wishing to speak.

Commissioner Stamper closed the public hearing.

Mr. Morin stated he would not want any of this to be accepted this evening unless all aspects of the request are accepted.

Commissioner Stamper asked Mr. Morin if the Commission is not willing to vacate both areas then he does not want any of it approved. Mr. Morin stated that was correct.

Mr. Morin stated if he is not able to build on the proposed Lot 1 that is another concern of

his then he wants the Commission to deny the request. If the request that has been put in writing for the proposal is accepted as they are, then that is what the Commission will be accepting. The Morins be allowed to build on Lot 1, Lots 20 and 22A are vacated, otherwise he would ask the Commission to deny the request.

Mr. Morin stated the opportunity of visiting with each and every neighbor and based on our concessions presented in my introductory statements, it is our discernment, contention and belief that those who continue to oppose the proposed vacates and re-plat have no legitimate basis for opposition and are opposing purely for the sake of opposition, or are in collaboration with an adjacent property owner or another interested party for their own personal gain or edification in purchasing the Rhodes property.

Commissioner Stamper asked Mr. Morin to focus on the merits of his proposals.

Mr. Morin stated he had nothing further.

Commissioner Stamper stated he wants everyone to understand that the agreements that have been discussed tonight do not exist. They may not ever exist. The Commission, with the lack of a ratified document that has been recorded, cannot really give consideration to the items that are proposed in the document. It is an expression of an intent but it really is a civil matter.

He noted this is a bizarre deal because there is a continuous mix of covenants and intentions with land use. The Commission's focus and discussion this evening is about the vacation request of this property. That is the first step. There is a second phase to this, which is the platting process. The Planning and Zoning Commission and ultimately the County Commission might or might not agree with the plat. It is two separate decisions. One is not completely ratified until the other has been completed. The vacation does not become effective until such time a successful re-plat has occurred. Any action that is taken by the Commission this evening in the affirmative is only an initial step to say that the Commission is willing to do one but only so long as a satisfactory re-plat can be accomplished through the Planning and Zoning Commission, the Planning staff, and the County Commission in the future. This is a staged process and the focus this evening is the vacation. It however relates to the intended future use but not necessarily a commitment to the re-plat.

Commissioner Stamper asked Mr. Shawver if he had any knowledge if there has been verification of laterals on the sewer on what is proposed as Lot 2. Mr. Shawver stated Staff has not done this.

Commissioner Stamper asked if the current Rhodes' property is zoned A-R. Mr. Shawver stated that was correct.

Commissioner Stamper asked Mr. Morin if he at any time had the intention of going with

a higher density than what is being discussed. The four lots that were proposed at the last meeting were reduced based on the covenants and he asked Mr. Morin if at any time there was a discussion that he would do eight parcels. Mr. Morin stated no.

Commissioner Stamper asked if anyone knew the length of the cul-de-sac known as Big Timber Drive. Mr. Payne stated he believes it is approximately 2,290' in length.

Commissioner Stamper stated this is longer than the County's cul-de-sac regulations and had to have a variance to be built.

Commissioner Stamper asked how The Woodlands Plat 2 was zoned. Mr. Shawver stated it is zoned A-R. Commissioner Stamper asked if it was platted as A-R. Mr. Shawver stated that was correct.

Commissioner Stamper asked if it struck anyone in the way this situation is unfolding, if the Commission alleviates this as Mr. Morin has requested and allow Lot 2 to have on-site sewer treatment that the Commission is setting themselves up for a precedence that, if in the future, Mr. Morin is unable to strike an agreement with the neighbors, that if Mr. Morin can prove that the future Lot 3 will perk that he could come back to the Commission and ask for an on-site treatment system since it is 2.5 acres. Mr. Shawver stated when a sewer system is available; the County has required developers to make improvements if the system is at capacity, in order to expand capacity if necessary. When a sewer system is available, they are required to connect to the system. This could be costly to the developer.

Commissioner Stamper asked if the Commission allows Mr. Morin to do as he has requested and leave Lot 2 under on-site treatment and Mr. Morin develops Lot 1 with the connection on Lot 22A, when it is vacated, is the Commission putting themselves in a position that if Mr. Morin can prove that what would be Lot 3 would perk in that configuration, that the Commission would not be in a position to deny Mr. Morin an on-site treatment of that lot? Mr. Shawver stated he does not believe Mr. Morin could put in an on-site wastewater system.

Commissioner Stamper stated this would not be the same site as Lot 2. Mr. Shawver stated that is an existing system and there has been no indication that the system is in failure in any way.

Commissioner Stamper stated when Mr. Morin comes back and shows hardship and that there is a potential lot, there will not be sewer treatment for a number of years but it passes a perk test. Mr. Shawver stated this would be a requirement that Mr. Morin would have to prove to the Zoning Board of Adjustment to get a variance.

Commissioner Stamper asked what is the nature of the topography on what would become Lot 1 and which way does the drainage flow? Mr. Brush stated where the Rhodes house

sits is at the top of the slope and the slope is towards the pond.

Commissioner Stamper asked someone to elaborate about the Sewer District's requirement and State Law on the 225' proximity of a home to a sewer system. John Patton, County Counsel, stated the regulations state if one is within 225' of a public sewer system then one is supposed to connect to the system if there is capacity. Mr. Patton asked if there was any additional capacity. Commissioner Elkin stated there is only one tap. Mr. Patton stated if the Sewer District told Mr. Morin they would not be able to serve him then Mr. Morin might be able to have an on-site system, assuming there were no issues with the subdivision covenants.

Commissioner Stamper stated Mr. Morin has suggested to the Commission that it would be his preference that if the Commission is unable to grant all of his requests that none of the requests be granted and asked if that places the Commission in an uncomfortable legal position. Mr. Patton stated no. He cannot predict if this issue was litigated what would go. He believes the Commission is at liberty to do what they want; they could grant the vacation of Lot 22A if they wanted and not Lot 20. He does not see anything that would prohibit this. If Mr. Morin is requesting the "all or nothing" approval then he believes the Commission could do this also.

Commissioner Stamper stated he does not want see this turn up in a civil process against the Commission at a later time. Mr. Patton stated Mr. Morin would probably not have a very firm basis to challenge that kind of decision if the Commission did an "all or nothing" approval. Other adjacent neighbors would have standing to participate in the litigation and he does not know what posture they would take. Fundamentally, whatever the Commission does needs to be reasonable.

Commissioner Miller asked about the 225' rule is required for the sewer hook up if there is a problem with the sewer but if the sewer is not having any problem then it is not required. Mr. Patton stated the 225' rule that was drafted in the County's Subdivision Regulations that said that if there is a new development and are within 225' of a public sewer, the developer must connect to the sewer if the capacity is available.

Commissioner Miller stated she wants to know what the requirements are for the existing on-site sewer system and if this existing system is not required to hook up to the public system even if it is within 225' unless it is failing. Mr. Patton stated that was correct.

Mr. Patton stated this was written in the County's Health Regulations On-Site Wastewater Ordinance that existing systems that are not failing do not have to connect.

Commissioner Miller asked Mr. Shawver if the Commission approves this request this evening, both the vacates and the re-plat would come back as it is presented this evening, in order for Lot 3 to ever be created would it have to go through another vacate and re-plat hearing. Mr. Shawver stated the reason for this procedure this evening is because The

Woodlands does not have a procedure on the plat that allows a vacation. A re-plat filed now; generally the developer and surveyor add a re-plat provision exempting them from having to go through a process like this in the future. They would have to re-plat but would not have to go through a vacation procedure. He noted the re-plat would have to comply with the given regulations that are in effect at that time.

Commissioner Stamper asked if the driveways could be configured in a way off Lot 22A that could serve the entire tract of land with one driveway. Mr. Shawver stated he does not believe this could be done because they cannot have a stem lot.

Commissioner Stamper asked if this was a stem lot. Mr. Shawver stated it is not a stem lot because it exceeds the regulations for a stem lot at this time with the proposed dividing of the 5.8 acre parcel into two lots. Each lot would have to be 5 plus acres to share an easement and be considered a stem lot.

Commissioner Miller asked if the driveway could be built without the re-plat. Mr. Shawver stated that was correct.

Commissioner Elkin stated Commissioner Miller asked the majority of the questions that he had.

Commissioner Stamper moved to a discussion of the Commission and asked what the pleasure of the Commission on this matter is.

Commissioner Miller asked if the big stand of trees next to the cul-de-sac belong to lot 20. Mr. Morin stated that was correct.

Commissioner Miller asked Mr. Morin if he included any area outside those trees that could accommodate a driveway on the re-plat so the trees would not have to be cut. Mr. Morin stated the natural driveway is on the Lot 19 side of that vacate. However that is right next to Lot 19's property. The Morins have examined the trees with the neighbors and saw that the drive could go in the middle of the timber, which is mainly scrub trees, and would leave a timbered buffer on both sides for that drive. The natural drive is on the Lot 19 side where there are very few trees but out of respect for Lot 19 they were trying to avoid that.

Commissioner Miller asked if there was no room on the other side of the trees, next to Mr. Dickinson's home. Mr. Morin stated that was correct. Mr. Morin and Mr. Brush showed where the tree line is on the re-plat in relation to where a driveway could be placed.

Commissioner Miller asked if the reconfiguration of Lot 20 would be done with the re-plat.

Commissioner Stamper stated no because this would have to be done as part of the

vacation because an additional portion of Lot 20 to reconfigure that lot. Mr. Shawver stated the request is to vacate the entire Lot 20 and the re-plat will reconfigure the boundaries of Lot 20.

Mr. Brush stated they are committing to re-platting Lot 20 in the same size and area, just a different configuration.

Commissioner Elkin stated this is a unique situation. The purposed for the vacation of Lot 20 is for the potential development of Lot 3. It is presumed that there will be a Lot 3 in the future. On that presumption, this is based on availability of sewer capacity. If the Commission were to go by the subdivision plat regulations, presuming Lot 3 will be developed, the Commission must find there will be no effect on certain parameters. Presuming that Lot 3 would be available, which is the reason Mr. Morin wants to vacate Lot 20 to begin with, there cannot be an affect on public utilities, facilities, and services. Currently, there is no sewer capacity, other than one tap out there and there may never be sewer availability. No one has any idea if there will be sewer availability.

Commissioner Elkin stated based on that, he cannot; in good conscience support the vacation of Lot 20 because there may never be sewer availability there. He applauds Mr. Morin's efforts to make agreements with the neighborhood and trying to reach an agreement. He stated at the last meeting that he wanted to table this request so Mr. Morin could reach an agreement with the neighborhood and this has not happened. In his opinion, he does not have a problem with the vacation of Lot 22A. He believes it was set up in a way for a home to be built there. Whether or not the tap was to be intended for Lot 1, he is unsure of that. He believes the vacation of Lot 20 at this time is questionable and he cannot support that request.

Commissioner Miller stated she could support both requests. She believes there is no reason to develop the driveway until there is a lot, which may never happen, even if this did happen, as long as the re-plat did not go through those trees. She would not want those trees on that lot to be taken out either.

Commissioner Stamper asked Mr. Shawver if this re-plat occurs, would there be anything to restrict the landowner from using both points of ingress/egress to get to his property for his own purposes, short of a driveway permit. Mr. Shawver stated the regulations require justifications for a double frontage lot and this configuration could be considered a double frontage lot. Access could be restricted to one point of access.

Commissioner Stamper stated Mr. Morin presented a challenge when he said he wanted an "all or none" approval because he was prepared to vacate Lot 22A. He does have some discomfort that an on-site treatment system will be left to create another lot and use the tap. He would prefer this to be done a different way but understands why Mr. Morin has gone about this in this way. He would prefer Lot 22A be addressed but recognizes that is in contrast with Mr. Morin's wishes. He asked Mr. Morin if the vacation of Lot 22A is

satisfactory to him. Mr. Morin stated it is not.

Commissioner Stamper asked what the pleasure of the Commission on this issue is.

Commissioner Elkin moved to deny the petition to vacate Lots 20 and 22A of The Woodlands Plat 2, as requested by Melba Rhodes and Gerald and Regina Morin based on Mr. Morin's request of an "all or none" approval.

Commissioner Stamper asked for legal guidance relative to the motion. He noted the Commissioners job is to act upon the applicant's request. Mr. Patton stated since Mr. Morin has expressed explicitly his request, he does not see how Mr. Morin he would come back with a challenge on the denial of the request for Lot 22A.

Commissioner Stamper seconded the motion.

Commissioner Stamper stated there have been requests like this periodically brought before the Commission. Anytime a request is brought forward for the further development of a subdivision, it is controversial. It is controversial between neighbors and it just exists because people care about where they live and the conditions they live in. People have a tendency to come forward with the "not in my backyard" perspective. It is always a very delicate set of circumstances. He noted Mr. Payne had an issue like this a few years ago.

Mr. Patton noted the motion should include subject to adoption of the findings of fact and conclusions of law.

Commissioners Stamper and Elkin agreed to the modification of the motion.

There was no further discussion on the motion.

The motion now reads as follows:

Now on this day the County Commission of the County of Boone does hereby deny the 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 the petition on behalf of Melba R. Rhodes to vacate and re-plat Lot 22A of The Woodlands Plat 2 per Mr. Morin's request of an "all or none" approval in accordance with the findings of fact and conclusion of law.

The motion passed 2-1 as follows: Commissioner Stamper – Yes, Commissioner Elkin – Yes, Commissioner Miller – No. **Order 395-2002**

Commissioner Stamper noted the findings of fact and conclusion of law will be brought forward within the next few weeks.

The meeting was adjourned 9:37 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