

agreement submitted by Mr. Craig Van Matre, dated June 18, 1997, with the additional stipulation that the covenants for the buffer area be duly recorded.

Commissioner Vogt seconded. Motion passed unanimously. **Order 268-97.**

Commissioner Miller moved that the County Commission of the County of Boone approve a request by Richardson & Bass Construction to operate an asphalt plant in accordance with the agreement dated June 12, 1997.

Commissioner Vogt seconded. Motion passed unanimously. **Order 269-97.**

Commissioner Miller thanked the quarry and its associates for taking care of the odor from the asphalt plant, especially since it was the only thing not included in the agreement with the Boone County Quality of Life Association.

Commissioner Stamper reminded Bill Eckhoff, that the County would be approaching him to discuss the recreational area across the street from the new subdivision.

**SUBJECT: Petition to vacate and request to replat lots 201 and 202 of Barnhart subdivision, and all of Lakeland Acres Plat 6, except for lot 2. Submitted by Danieal H. Miller**

Mr. Shawver reported that the Lakeland Acres Subdivision was platted in 1980, the 6th and final plat in an area east of the Columbia city limits. The property is located on the east side of Lake of the Woods Road, north of the Pin Oak Subdivision. The property is currently zoned R-S. Lakeland Acres Subdivision was developed about 1970 and the subsequent five plats were recorded in 1970 and 1978, with the final plat submitted in 1980. All of the area has been developed, except for this particular plat north of the lake and behind the smaller lake. The original plat showed 34 lots in a 27.4 acre area.

The Barnhart Subdivision, he said, is a three lot subdivision platted in 1996. Mr. Miller, the owner, has submitted a petition to vacate those lots and in conjunction, has requested a replat of the 34 lots in Lakeland Acres and to create 61 lots in the same area.

Commissioner Vogt clarified that a replat would require Mr. Miller to follow current standards and regulations.

Danieal Miller, 309 South Providence, Columbia, owner of the property in question, said that the genesis of the project, the driving force, is the fact that it did not meet the current subdivision regulations. The Barnhart Subdivision was included in the plan because the original plat did not allow for enough traffic flow for entry or egress. There is nothing, he said, in the request that would adversely impact the property values of any property owner and that many of the new homes slated to be built will be in excess of the value of the homes that are currently there.

Mr. Miller said that he owned the lake and it was his intention to create a home owner's association and to invite existing property owners to join without requesting compensation and to allow them to share the amenities.

Mr. Shawver said that the existing, recorded subdivision plat could be developed with the existing road conditions in Lakeland Acres. However, if the plat is vacated and then replatted, the developer will be held to a higher standard and will be regulated to build wider streets, curb and gutter, sidewalks, sewer, erosion control and storm water designs will need to be submitted and approved. There were certainly a lot of plusses, he said, and the replat would create the subdivision as if the land was being platted for the first time.

Commissioner Stamper said that the question tonight is to vacate an existing plat and if the Commission should choose not to do that, then Mr. Miller would be free to develop the existing plat. If the Commission chooses to vacate, then the developer would have to start the platting process again under the 1997 restrictions and covenants that are far more stringent than the original ones.

Commissioner Vogt clarified that the subdivision totaled 26 acres, including the lake, which is about 2 acres. She asked if the lake needed any repair.

Mr. Miller replied no and said that the dam is stable.

Commissioner Stamper convened a public hearing.

John Esterly, 2211 North Lakeland Dr., Columbia, said that he was not aware of a resident in favor of increased development that the rezoning and replat would encourage. He identified two reasons for his objection: current property owners do not want the increased traffic that such a development would bring. Mr. Miller said he plans to put in another street, said Mr. Esterly, but there would only be increased traffic on Molly Lane. Mr. Esterly said people live in that subdivision because it is away from traffic and outside the city limits. His second concern was for storm water run off created by the development. He said that his property borders Hominy Creek, which absorbs run off from the Welch Lake dam. That lake, he said, is currently very strained and the flow through the creek is eroding his property. Mr. Miller, he said, has not done anything to maintain Welch Lake or it's dam. Mr. Esterly said that last week there was a big wash out that threatened his property and the crossing at Lake of the Woods Road. He asked that the Commission keep in mind that nothing has been done to control flash flooding or the condition of the dam or Hominy Creek. Increased housing, streets, driveways and yards, he said, will only create more rapid run off of storm water that will compound the current situation.

Commissioner Vogt asked if he had experienced water in his home or over the roads caused by heavy rains over the past few weeks.

Mr. Esterly said that last Thursday the neighborhood had 1 inch of rain, producing a great deal of spill over the earthen dam because both spillways and the drain in the dam is clogged. There was no damage to his home, but the run off is eroding his property.

Commissioner Vogt asked Mr. Esterly if any of his neighbors' yards or basements floods regularly.

Mr. Esterly said that his back yard floods and said that if there was flood control at the dam he didn't think it would happen. He has owned this property for the past 12 years, but said that the flash flood problem did not exist during the floods of 1993 and that the problem began four years ago.

Commissioner Stamper asked Mr. Esterly if he understood that Mr. Miller could develop the plat tomorrow and the County would have no storm water control. He asked if it wouldn't be more acceptable if the County had the ability to gain control.

Mr. Esterly said that he understood that the replatting would make more dense population, more streets, driveways, yards and faster run off.

Commissioner Vogt clarified that he was asking for storm water control.

Mr. Esterly said that his personal and main concern was for storm water control, while the people who lived in the northern part of the subdivision were more concerned about density and traffic.

In response to questions from Commissioner Stamper, Mr. Miller said that he did own Welch Lake. He said that the lake has some silting and the dam is not in horribly good shape. He said it was a chicken and egg issue, until there is money for him to develop the lots he can't pay for improvements on the dam.

Robert Solzano, 6201 East Molly, said he was concerned about the increased traffic and lower property values brought on by the increased density. He said he spoke to the Commission a number of years ago when Bill Crockett spoke about taking care of the dam issue. Nothing, he said, has been done in those four years. He said he was against the replatting because of the increased density and Mr. Miller's lack of credibility. Mr. Solzano said that Mr. Miller had said

the dam was in good shape, and it isn't. He said the other dam isn't in good shape, either and asked the Commissioners to investigate it.

Mr. Shawver reported that four years ago there were a series of requests for a preliminary plat south east of this evening's requested location. The area was called Breezewood Harbor and one of the conditions placed on the final plat was improvements on the dam at Welch Lake. The final plat was never submitted. Eight years prior to that request there was a plat submitted for Breezewood Harbor that carried the same condition. Mr. Shawver said he felt that one of the reasons the land had never been platted was due to the costs that would be incurred in improving the dam.

Bob Guthrie, 2750 North Lake, Columbia, said he lives directly north of the Barnhart Subdivision. He explained that when he and his wife moved to that location nine years ago, they tried to be informed buyers and looked at the vacant land to the north and east, where the request is tonight. Looking at those lots, he said, while there was no development, they understood what they were moving into. The lots were the same size as theirs, or were comparable and were not something that would be developed or undesirable. In looking at the original plat, he said, they looked to be homogeneous. He did, at the time, question one of the small lakes, which turned out to be a silt pond. At the time they purchased the lot they also purchased title insurance and added a little extra to that policy to ensure that the lot had been surveyed properly and there was a consensus of the property line so they would be able to maintain the existing tree line.

Mr. Guthrie said he was telling the Commissioners this to show that as shoppers, looking for a new home, they looked around to see where they were going. He said they looked for an area where the houses were similar, the lots were similar. He said they depended on that because if things begin to get strange, then realtors can't do accurate property comparisons. Mr. Guthrie said that was his reason for opposing the requested vacation of the plat. He also said that there were restrictions in the deed that the land will be used for residential uses only, putting a road through is not a residential use. Also in his deed are restrictions on obnoxious activity. Considering, he said, that the neighboring lot has been vacant and was originally platted for residential use, it is his opinion that putting a road through that lot would be obnoxious activity.

Commissioner Stamper asked the audience to open their minds and to understand that the current plat on the table offers the Commission little or no control and if the developer should choose to build 1,000 square foot homes that are less than consistent with the nature of the current neighborhood, he could do so. He explained that if the developer wanted to get ticklish, conditions could get a whole lot worse than they could with the potential vacation and a replat. Commissioner Stamper said that the request was to erase lines on a map, but if the developer wanted to develop the location tomorrow in an unfriendly way, the Commission would not have any options. The potential for a vacation, he said, gives the Commission the opportunity to place contingencies and requirements on the land and to gain control.

Kevin Plackmeyer, 2700 Lakeland Dr., Columbia, said he lived adjacent to Mr. Guthrie and purchased his home on October 1, 1996. He was not objecting to the development, they understood that possibility when they purchased the land, but he was opposed to the creation of a road next to his house. He said he lives on an isolated lot and there should be a house next to it. Mr. Plackmeyer asked if Mr. Miller would be required to provide tree barriers between his home and the road.

Commissioner Stamper replied that the owner might be held to certain conditions during the replatting process, but in the instance of tree barriers, that would be up to the owner.

Mr. Plackmeyer said the roads are currently in excellent condition and increased traffic will worsen them. He reiterated that he was not happy with a road next door to his home.

Brian Turner, 2701 Lakeland Dr., Columbia, said that his property is across from the proposed road. He said it would be a definite annoyance to have an intersection next to his home and when they bought the property, they never dreamed there would be an intersection there. He felt his property values would be adversely affected with the addition of a road. His biggest concern was for his five year old son's safety.

Commissioner Vogt asked Mr. Turner if his house joined a street now.

Mr. Turner replied there is currently a street in front of his house, but the road is parallel to his home and there aren't headlights directed at his house. The new road will form a T and will be toward his house.

Ken Jones, 2621 North Lakeland Dr., said he did not think any of the residents had a problem with new homes being built, but he was concerned with the density and the fact that there are three outlets to the subdivision while the number of homes would double. It was his concern that only two of the roads, Molly and North Lakeland will be used. Mr. Jones was also concerned with the amount of run off and the condition of the dams. He said there was a lot of work to be done before anyone developed 61 new homes.

Gary Anderson, 10802 Bozarth Lane, said that his son lives at 6311 Molly, and that he was approaching the Commission on his son's behalf. His son lives directly behind the dam at Welch Lake. His concern was with the dense character of the proposed replat that he feels will lower values and change his lifestyle. Mr. Anderson's son has two young children and the new development will double the amount of traffic going by his house. His other concern was with the dam itself. Last week it was overflowing across the top of the dam and an area of the dam had washed out. There is a definite concern that the area could flood.

Bob Sky, 2300 North Linda Lane, said he has lived near Welch Lake since 1969 in one of the first homes built in the subdivision. His concern was with the silt accumulating in the lake and said that the water line has gotten higher and higher over the past 28 years. Water comes within a foot of his patio and has flooded his garden.

Commissioner Stamper reiterated that a replat would allow the Commission to require adjustments to Welch Lake.

Allen Ridenbaum, said that he didn't mind progress, but he felt the density was too much and that Mr. Miller needed to find another way for traffic to come in and out, that the replat would create a bottleneck on a bad curve. A road, he said, would change the whole complex of the property and there shouldn't be a new road to begin with.

Charles Lasley, 6202 East Molly, said that when they bought the property five years ago, they were aware there would be development, that development was inevitable. On Molly Lane, he said there were people who thought the road was a through road and they try to cut across and occasionally speed. He didn't want to see that increase and growth when he had a two-year-old.

Commissioner Stamper called a ten-minute recess.

John Sullivan, 2664 Lake Woods Road, said he has lived in the development for 11 years and has seen an increase in traffic due to more development. The number of houses on Lake of the Woods Road has doubled. He said there are a lot of kids playing in an area where there are no sidewalks and he is concerned that an additional 100 cars should be traveling that road. He stated that he was opposed to the request unless Mr. Miller could find a different exit from the subdivision than what was proposed.

Mr. Esterly said that Mr. Miller had stated he needed income from the development to make repairs to the dam and asked the Commissioners to consider the rationality of that statement. Do we let the existing subdivision suffer the flooding and the damage to his own property and then get income from new development to make repairs after we've been flooded out, he asked. He said that his main concern was that Mr. Miller maintain the property he owns in a safe manner.

Commissioner Stamper asked how an individual could repair dams and drainage if there were no resources and asked Mr. Esterly if he had a solution.

Mr. Esterly said that previous owners had maintained the lake and its dam.

Commissioner Stamper said that he was trying to track Mr. Esterly's logic and to put himself in his spot. He said that if things were left as they are, the Commission would never gain control and circumstances would not get any better.

Mr. Esterly said again that increased density will create a greater potential for flash flooding.

Mr. Jones asked Mr. Miller if he owned property around the area in question.

Mr. Miller replied that he owns the remainder of the Old Welch tract, 111 acres in its entirety. It is his intent to develop that area as Breezewood Harbor. The delay in the development had to do with the inability to gain a second access site. He said he owned the land, paid interest and has done nothing with it until it could be developed in a reasonable and responsible manner. The remaining acreage is a bridge he has not yet crossed and he has focused in on the area of his request and will deal with the remainder at a later date.

Commissioner Stamper closed the public hearing.

Mr. Bill Crockett, engineer, showed the Commissioners maps of the subdivisions and the locations of Penny Lake and Welch Lake. Mr. Crockett said there had been no work done on either of the dams.

In response to questions from Commissioner Stamper, Mr. Shawver said that a replat would require extensive traffic and storm water studies by Public Works. Public Works has already participated in the concept review and were appreciative of the second entrance. Erosion control plans, he said, would also be submitted along with the final plat.

Commissioner Stamper also clarified that while Mr. Miller had submitted a conceptual plan, it has not been agreed to in regards to density or configuration.

Mr. Shawver said that a concept review will be held for staff, utilities and the developer in an attempt to put all of the people involved in the final development in one place to discuss requirements, needs and expectations. In that meeting, the developer provides a thumbnail sketch of what he envisions and the others provide a minimum threshold for development standards and zoning. In that meeting, Planning and Building Inspections staff identified a need to vacate and replat.

Commissioner Vogt asked if the Department of Natural Resources issued permits on dams or lakes.

Mr. Shawver said that the DNR does issue permits and inspects lakes with a dam of 35 feet or five acres of surface area. This particular dam was identified as part of a grant program the DNR had in 1980. At that time it was inspected and deemed substandard and potentially dangerous.

Mr. Shawver said he was appointed in 1982 and worked with Judge Roberts, identifying dams in Boone County and notifying property owners. A letter was sent to Dewey Welch, owner of Welch Lake at that time. The property has been proposed for a preliminary plat twice and each time conditions have been placed on the dam. Mr. Shawver said that the dam's problems are 17 years old, it was identified 17 years ago as being substandard and there has been no repair to the dam or the spillway or the road easement across the dam that serves the homes on the east side of the lake.

Commissioner Vogt clarified that the Commission has no authority to make a property owner repair or maintain a dam or lake.

Commissioner Stamper said they faced a perplexing question. He said the Commission had the opportunity to eliminate a weak or marginal plan, one that does not meet current development standards. On the other hand, he said, there are a group of land owners asking the Commission to leave the property in its existing condition. He said that line of thinking was a struggle with him. That he was being asked to vote in good conscious for something that's not adequate - the streets are narrow, there are no sidewalks and there is no storm water control. He said it was an opportunity to gain control of something that was lost years ago. From this side of the table, he

said, he has faith in the process. Faith that if a replat occurred, it would go through due process and the density issues would be addressed. The risk, he said, lies with Mr. Miller. If the vacation is approved, the land goes back to farm land until a plat is agreed to. Commissioner Stamper said he saw this as an opportunity, while it might cause higher density, would allow control over the problems he'd heard during the testimony.

Mr. Miller said it was his understanding that the condition for the request for a vacation is contingent upon the approval of a replat. There is no vacation, unless and until, the approval and acceptance of a replat.

Mr. Shawver said that was the way they had proceeded in the past. The vacation is contingent upon the submission and acceptance of a replat.

Commissioner Miller said she was concerned about the dams and wanted to be sure that conditions would be in place that would require improvements.

Mr. Shawver said that, in theory, the Commission could attach conditions to the vacation, only if there was an adverse impact to a neighborhood. Mr. Shawver also said that the testimony presented this evening is unsubstantiated. It's opinion, he said. He said it was physically impossible to keep water from leaving a site, but there could be conditions that storm water run off be reduced or designed above the standard 10-year storm design.

Commissioner Vogt moved that the County Commission of the County of Boone approve a petition to vacate lots 201 and 202 of Barnhart subdivision and all of Lakeland Acres Plat 6, except for lot 2; with the condition that the vacation will not be in effect until the replat is approved.

Commissioner Miller seconded. Motion passed unanimously. **Order 270-97.**

Commissioner Stamper said that no matter what the decision, he had a lot of faith that Planning and Zoning would look heavily at the comments and concerns. The worst scenario, he said, would be to go through months and months of discussion only to end up with the original 1980s plat with no storm water control and no thought to traffic or utilities. The opportunity to vacate allows the Commission to study those issues. He said this was not an effort by the Commission to shove something down the neighborhood's throat, but he believed that through the efforts of the County, the neighborhood would be better off with a replat that can be agreed to.

Commissioner Vogt said she heard three issues during the testimony: storm water, traffic and density. Knowing, she said, current regulations and how they differ from the 1980s, she believes it is best for everyone to take the opportunity to replat in order to control the storm water and traffic flow. The property is going to be developed, she said, the best the Commission could do was to put some controls in place so everyone could live together in a unified way. Replatting, she said, is the appropriate thing to do and she believed that it would help the neighborhood, not hurt it.

Commissioner Vogt moved that the County Commission of the County of Boone authorize the replatting of lots 201 and 202 of Barnhart subdivision and Lakeland Acres Plat 6, except for lot 2; with the condition that development not increase storm water run-off and that the development be designed to a 25-year flood plan.

Commissioner Miller seconded. Motion passed unanimously. **Order 271-97.**

**SUBJECT: Request by Philip and Cathy Jose to rezone form A-1 (Agriculture) to R-S (Single Family Residential) of 2.65 acres, more or less, located at 4825 E. Bonne Femme Church Road, Columbia**

Mr. Shawver reported that the property is located on Bonne Femme Church Road approximately 1 1/2 miles south of Columbia and 1/2 mile west of Highway 63. The property is zoned A-1 (Agriculture), as is the land to the east, south and north. Land to the west is zoned R-S (Single Family Residential). This 2.65 acre parcel is part of a 5.70 acre tract being platted as Kings Land