

REQUEST FOR LEGISLATIVE ACTION

Completed by County Counselor's Office:

Res/Ord No.: 4576

Sponsor(s): XXXXXXX

Date: October 7, 2013

SUBJECT	Action Requested <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Ordinance Project/Title: <u>Roger & Suzanne Plihal Case No. RZ-2013-500</u>											
BUDGET INFORMATION <i>To be completed By Requesting Department and Finance</i>	<table border="1" data-bbox="345 510 1214 825"> <tr> <td>Amount authorized by this legislation this fiscal year:</td> <td>\$</td> </tr> <tr> <td>Amount previously authorized this fiscal year:</td> <td>\$</td> </tr> <tr> <td>Total amount authorized after this legislative action:</td> <td>\$</td> </tr> <tr> <td>Amount budgeted for this item * (including transfers):</td> <td>\$</td> </tr> <tr> <td>Source of funding (name of fund) and account code number; FROM / TO</td> <td>FROM ACCT TO ACCT</td> </tr> </table> <p>* If account includes additional funds for other expenses, total budgeted in the account is: \$</p> <p>OTHER FINANCIAL INFORMATION:</p> <p><input checked="" type="checkbox"/> No budget impact (no fiscal note required) <input type="checkbox"/> Term and Supply Contract (funds approved in the annual budget); estimated value and use of contract: Department: _____ Estimated Use: \$ _____</p> <p>Prior Year Budget (if applicable): _____ Prior Year Actual Amount Spent (if applicable): _____</p>		Amount authorized by this legislation this fiscal year:	\$	Amount previously authorized this fiscal year:	\$	Total amount authorized after this legislative action:	\$	Amount budgeted for this item * (including transfers):	\$	Source of funding (name of fund) and account code number; FROM / TO	FROM ACCT TO ACCT
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PRIOR LEGISLATION	Prior ordinances and (date): _____ Prior resolutions and (date): _____											
CONTACT INFORMATION	RLA drafted by Randy Diehl, Planning and Zoning Coordinator, 881-4577											
REQUEST SUMMARY	Requesting a change of zoning from District AG (Agricultural) to District RE (Residential Estates) on 2.00 ± acres. The 2.00 ± acres is legally described as Lot 24, Timber Meadows -7 th Plat, a subdivision in Jackson County, Missouri lying in Section 36, Township 48, Range 31, aka 25307 E 103 rd Street and specifically described on Attachment to RLA-1. Staff recommends approval because the change in zoning is consistent with the intent and purpose of the County Plan and complies with the Unified Development Code requirements. The Jackson County Plan Commission voted 6 to 0 (1 abstain) to recommend <u>APPROVAL</u> to the County Legislature.											
CLEARANCE	<input type="checkbox"/> Tax Clearance Completed (Purchasing & Department) <input type="checkbox"/> Business License Verified (Purchasing & Department) <input type="checkbox"/> Chapter 6 Compliance - Affirmative Action/Prevailing Wage (County Auditor's Office)											
ATTACHMENTS	See Attachment to RLA-2											
REVIEW	Department Director: <u>Earl Newill</u> Earl Newill, Acting Director Finance (Budget Approval): <i>If applicable</i> Division Manager: <u>[Signature]</u> County Counselor's Office:	Date: 10/01/2013 Date: Date: <u>10/1/13</u> Date:										

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Fiscal Information (to be verified by Budget Office in Finance Department)

- This expenditure was included in the annual budget.
- Funds for this were encumbered from the _____ Fund in _____.
- There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.
- Funds sufficient for this expenditure will be/were appropriated by Ordinance # _____
- Funds sufficient for this appropriation are available from the source indicated below.

Account Number:	Account Title:	Amount Not to Exceed:

- This award is made on a need basis and does not obligate Jackson County to pay any specific amount. The availability of funds for specific purchases will, of necessity, be determined as each using agency places its order.
- This legislative action does not impact the County financially and does not require Finance/Budget approval.

Jackson County Plan Commission Summary of Public Hearing

Date:	September 19, 2013
Place:	Independence City Hall 111 E. Maple, Independence, MO
Attendance:	Larry Antey Denny Gibler W.L. Pointer Bill Tarpley Tom Haley Jack Crawford Janet Mershon
Staff:	Randy Diehl Jay Haden Joan Dickey Kristen Geary Linda Malone

Call to Order/Roll Call

At 8:30 am Chairman Antey called to order the September 19, 2013, meeting of the Plan Commission and asked that the roll call be taken. Mr. Akins and Mrs. Query were absent.

Approval of Record

Chairman Antey asked for a motion to approve the record of July 18, 2013. Mr. Pointer made a motion to approve. Mr. Haley seconded the motion. Voice vote.

Minutes of the July 18, 2013 Plan Commission meeting approved, 8-0.

Public Hearings

Chairman Antey swore in all persons present who would like to give testimony at the public hearings.

RE: RZ-2013-500

Applicant: Roger and Suzanne Plihal

Location: 25307 E. 103rd Street, lying in Section 36, Township 48, Range 31, Jackson County, Missouri, legally described as Lot 24, Timber Meadows, 7th Plat.

Area: 2.00 ± acres

Exhibits: 12 exhibits entered into record. 11 prepared by staff and an email sent to Mr. Diehl by one neighbor who was not able to attend the hearing.

Jackson County Plan Commission Summary of Public Hearing

Request: Change of zoning from District AG (Agricultural) to District RE (Residential Estates)
Purpose: Applicant wishes to construct a detached garage on the east side of the current residence.

Current Land Use and Zoning in the Area:

Timber Meadows subdivision was created by various plats starting in the 1970's and into the late 1980's. The applicant's lot was platted within Timber Meadows, 7th Plat in 1988. Prior to the Unified Development Code's adaption in 1995, lots could be created by plat. The UDC requires any division of land less than 10 acres to be rezoned and platted into a subdivision plat.

Comments: The change in zoning would allow for a side yard setback of 15' instead of the 30' as required by the Unified Development Code for District AG. The applicant's wishes to place the proposed structure 23', from the East property line.

County Plan: The County Plan Development Diagram illustrates this area within the Urban Development Tier (UDT). The RE (Residential Estates) District is appropriate in the Urban Development Tier.

Recommendation:

This request for rezoning is consistent with the intent and purpose of the county plan. Staff recommends APPROVAL of RZ-2013-500

General Discussion:

Chairman Antey:	Are there any questions for Randy? (There were no questions)
Chairman Antey:	Is the applicant present today?
Roger & Suzanne Plihal:	Yes
Chairman Antey:	Will you please come forward? State your name and address for the record.
Roger & Suzanne Plihal:	Roger & Suzanne Plihal.
Chairman Antey:	Do you have anything to add to Randy's report?
Roger Plihal:	No, I think he covered it well.
Chairman Antey:	Are there any questions for the applicants?
Mr. Tarpley:	Is it just a residential garage for cars?
Suzanne Plihal:	Yes, the intended use is to park our vehicles and have some tools in it. And to compliment our house, it's not just a steel structure. Just for storage, you're not going set up a business or anything?
Mr. Pointer:	No, it's just for parking of our vehicles and just normal tools, mowers, that sort of thing.
Suzanne Plihal:	I have one question. The total acreage including your house is how much? Did you cover that?
Mr. Pointer:	They actually calculate it at 2.06± acres.
Mr. Diehl:	

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Chairman Antey: Is there anyone else that is present today that would like to speak in favor of this application? (no one came forward) Is there anyone that is present who would like to speak that is opposed to or has questions concerning this application? Would you please come forward and state your name and address.

Mary Kelly: My name is Mary Kelly, 25402 E 103rd Street. We are across the street and just east of the property. I have some prepared remarks that I'd like to address to the commission here. The first point that I want to put into consideration for your review is the fact that to our knowledge only one of the property owners on our block received the required written notice of this hearing by certified mail. The neighbor adjacent and ourselves across the street from the property never received that communication. We don't know that they were actually sent. We never got any notice in our mail box of their return, or what. We don't know what impact this has on the hearing, but I wanted to bring that to your attention because we did not receive that notice.

Mr. Pointer: How did you hear about it?

Mary Kelly: There was a sign in the front yard, but I know that according to the code there is a requirement that there be written communication by certified mail. And we've all received certified mail before from our letter carrier and it's just one of those things that makes you pause in the fact that only one person received it and two other did not get anything and the person who did receive it at a different mailing address on record than we did. We get everything else in our mail and it was just a point to bring out.

Kristen Geary: Back at the office you are more than welcome to come by and see that I have the returned, signed for on all but maybe 2 of them that have not come back to us yet. It can sometimes take 3 or 4 weeks for them to come back to us, most of them have been signed for. You are more than welcome to come by the office and I can show you.

Mary Kelly: I'll be happy to do that, it's just that we did not even get a notice in our mail box that you have a certified letter to go pick up is what I'm saying. That was just a point that I wanted to bring out. I have made copies of the document here that I wanted to give to each of the members of the commission.

Chairman Antey: Put that as exhibit 13.

Mary Kelly: And I have an original of that document to go into the record. We are presenting to you for your consideration on this case a signed petition of protest against the rezoning application. The petition is signed all buy one of the resident property owners on East 103rd Street. The one property owner who did not sign is traveling out of town, and was not able to sign a notarized copy. But he did send an email response which I believe has been

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entered into the records. The points in our petition are... It is our understanding that the sole purpose for this application for change in zoning is to obtain a more favorable side setback for the building of this garage. Per county code section, as it's currently zoned, the minimum setback is 30'. As Mr. Diehl mentioned, the proposed garage is at 23' on the side property line. Subsequent, after this, this is when the application for change in zoning was submitted. It appears to be nothing more than a request for a spot zoning so that he can build a garage in this particular location on the property. It should be noted that our subdivision has a declaration of covenants, conditions, and restrictions. I've attached a copy of that in your package. Our restrictions require a side set-back of not less than 25'. As it mentioned in the county code, the provisions of the Unified Development Code take precedence when they impose a higher standard than any private restrictions or covenants do, and our covenants would have precedence over the county if they can be enforced by the person having the legal right to do so. Within our covenants, they are in effect under the provisions of Article 12, and enforcement may be made by the developer or a private owner under the provisions of Article 13, Section 1. Pending the outcome of this hearing and the decision of the commission, we as owners would stand ready to enforce our covenants and impose a 25' side set-back. The last point is... We as property owners are deeply concerned of the effects of construction of this building, if the zoning change is granted, will have on our property. All owners on East 103rd, who have built an outbuilding or garage, have complied with the building set-backs as outlined by the county for our property. The adjacent neighbor to the East will have an obstructed view from their home and a diminished buffer zone between the properties. This has the potential to reduce the value of their property, if and when they should decide to sell. In addition the overall aesthetics of the block could be negatively impacted which may result in a diminished value for the rest of us on the street. Included with our petition are the following exhibits for your consideration. We have a copy of the plat for our block, the lot dimension on each lot. There is an aerial overview of E. 103rd Street. The third item is the representation of a proposed location of the garage and a rendering of the building size as it's been communicated to us. The next graphic you have is an aerial overview that shows the existing outbuildings or garages, which are in compliance with building homes or properties zoned as agricultural. As you can see we have several other homeowners who have built outbuildings in compliance with the terms. The final exhibit shows that on the property in question there is more than adequate

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space to locate this garage and be in compliance with the building codes and the covenants as they currently exist for this property. There are no elevation issues that I'm aware of, the lot is fairly flat, so it's not as if there is not another location on the lot for this structure to be built. In conclusion we are asking that you hear our voices and listen to our concerns and give an equal value when making your final decision on this application. All of the home owners, who've signed this petition, have resided here for more than 10 years, most more than 20 years. In fact, most of the original owners who have built their homes on these lots and we have all continued to maintain the integrity of this neighborhood so that we can enjoy the lifestyle in force. We respectfully request that this commission deny this rezoning application as there is no justifiable reason, in our minds, for granting it. From appearances it appears to be spot zoning that can negatively impact the area and there is ample space on the subject property to locate the structure and be in compliance with the current building codes. Thank You.

Chairman Antey:

Questions, You stated in there that you're, all the neighbors are in compliance with the AG setbacks, but the lots there are what is considered legal non-conforming, and so they are requesting to bring their lot into compliance of the Unified Development Code. Another thing, they county is, does not take on the enforcement of private deed restrictions. So that would be, you guys would have to, should the rezoning go forward, you're talking about two', rather than 7'. They said in their deed restrictions they have 25', so that would be two. But AG is 30, but also, AG is 10 Acres, plus. But, my comment goes back to the other homeowners on the block. We've all built outbuildings. My husband and I built one, ten years ago, and we complied with the 30' side set-back, ours is 35' from the side set-back line. When we went to apply for the building permit and do everything like that and I don't think it was ever even mentioned to us that, how we were zoned, as Agricultural. It was just, 'here's your side set-back lines'. We said 'ok, we'll have to comply with that'.

Mr. Pointer:

Counselor, does the homeowners association have authority to enforce their deal, regardless of what we do?

Mr. Haden:

Sure, through the legal system. This thing happens all the time Mr. Pointer. There are very good lawyers who make their living handling, representing subdivision restrictions.

Mr. Pointer:

So if we approve or disapprove, it really has no effect on it Well, if it's disapproved they wouldn't have to hire a lawyer

Mr. Haden:

because he'd have to comply with the 30' AG set-back. The applicant would, but as the chairman stated the code encourages property owners to come into compliance with the code and that is

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- what's happening here. They would have a right, in my view to have their lawyer contact the applicant to enforce their subdivision restriction and if he didn't comply voluntarily to get some court ordered compliance. It looks like they would be entitled to that, in my view.
- Mr. Tarpley: How many outbuildings are in the neighborhood at this time?
Mary Kelly: There are 4 other properties that have outbuildings and there are only 6 lots on our street. 4 of them have outbuildings and one is an undeveloped lot, right now.
- Mr. Tarpley: Did you have complaints from your neighbors when you built an outbuilding?
Mary Kelly: No, we did not. We went to each of them, told them what we were doing, and then built it, adhering to the county building lines and requirements. At that point, that was 2012, it wasn't even addressed to us, about maybe you should consider bringing this lot, which is zoned Agricultural, into compliance with the current development code. It was never mentioned at the time we made our application or applied for the building permit. We were just told we had a 30' set-back and we have to comply with that, and that is what we did.
- Mr. Pointer: Did I understand you correctly that they can build a building and come into compliance? Is there room there to do that?
Mary Kelly: In my opinion, there is, because...
Mr. Pointer: No, not in your opinion. Is there or isn't there?
Mary Kelly: There is room, if you look at the aerial survey of the street, you can see that there is quite a bit of property at the lot behind the house. There is no other structure on the property, there is the lagoon that we all have, since we are all on septic there. And they have a garden spot in the back yard. The very last page shows an aerial view of the lots. You can see the amount of space that is there behind the house and behind the swimming pool that is on the property.
- Mr. Tarpley: Question. If the applicant moved, if it's possible for him to move it the two' to be in compliance with your building regulations, would you have a problem with it at that time?
Mary Kelly: Our objection is not the building itself, it's the location, and being in compliance.
- Mr. Tarpley: All right, let me re-ask the question, if I might, in a different way. Would you be here today if it had a 25' set-back?
Mary Kelly: We would still be here because of our zoning that we have. The building, as he has it proposed, would not be in compliance.
- Mr. Pointer: What makes it not in compliance?
Mary Kelly: Because of the current zoning, it is agricultural. Right now it's AG and requires 30'.

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Mr. Pointer: What he's saying, if he does set it so that it is a 30' set-back, it is accepted then?

Mr. Tarpley: 25'.
Chairman Antey: It's 23, as proposed.
Mr. Pointer: I understand, but if the applicant sets it at 30 where it does come into compliance, if he could do that...

Chairman Antey: What she is saying is, even if it was set back per their deed restrictions, which we have nothing to do with, which is an additional 2', that they still would want to be here because it doesn't meet the AG set-backs.

Mr. Crawford: Explain to me again why you would be here if it was 25'.
Mary Kelly: The nature of discussion is that, from us, as the rest of the homeowners on the block, it's a question of wanting to locate this particular structure in that particular spot on this 2 acre tract. The only reason for the application in zoning is because he can't, where he wants to put it initially, he can't put it there because it's in violation of the building set-back for the lot to be zoned agricultural. Frankly, most of us on the street were surprised to find out that we were even zoned agricultural. We just thought that was the building set-back.

Chairman Antey: And so by him realizing that 'this is AG, I've got to be 30'', he is coming through the prescribed channels to bring it into compliance with the UDC.

Mary Kelly: But I don't think that is the true intention. The true intention is the get a favorable set-back that he can build this structure.

Chairman Antey: Right, through the right channels, as I see it.
Mary Kelly: I understand, but I also look at...the charge of the zoning is set up so that you can maintain the integrity of the areas and you don't have something that is going to be not matching or maintain the aesthetics of the neighborhood as we have.

Chairman Antey: So that is also the deed restrictions job as well. So you are citing your deed restrictions, you are trying to pick and choose which ones really we don't want AG, but if we do, we have deed restrictions, which is all between you guys.

Mr. Crawford: So Mrs. Kelly, if I might ask, I mean, right now it's AG, so that being said, the only reason there is probably night livestock on this property is because of the deed restrictions. It could be, if there weren't any deed restrictions, there could be livestock on there. But if does look residential aesthetics, that takes out the livestock equation. All of the sudden the county would enforce the livestock issue, if I understand it right. So, it's kind of a, what would you rather have?

Mrs. Kelly: We have no objection to it being zoned as agricultural. No one on the block has any objection.

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- Mr. Pointer: You want to be careful; He can fence it off and put a bunch of hogs in there.
- Mr. Haden: There is a restriction on that too Mr. Pointer. There is a livestock restriction on the deed.
- Mr. Pointer: But that isn't a deed restriction, so that becomes.
- Mr. Crawford: But that is a deed restriction that could be enforced. If you wish to enforce this other 2', that would be your prerogative. If you would have wished it to have been a 30' set-back, the deed restrictions probably should have said 30'.
- Mary Kelly: Well, unfortunately, those were written at the time the property was platted. I understand...
- Chairman Antey: They were also written at the time you bought them, I'm assuming, correct?
- Mr. Crawford: The only question I have is this is a subdivision, this Timer Meadows, this is one plat. Is there any other, it's a big subdivision, is there any other lots that are Residential Estates?
- Mr. Diehl: I mention in my staff report there was, about 8 years ago, off of Timber Meadows Court, there was an individual that rezoned and was approved.
- Mr. Tarpley: Purpose of the rezoning?
- Mr. Diehl: I don't remember that, it may have been for an outbuilding, I'm not sure.
- Chairman Antey: Usually when in the past, whether it be this subdivision or another one, that has been zoned AG, and they are rezoning to come into compliance, it's usually due to set-back issues.
- Mr. Pointer: Will they keep it at AG until they rezone so they don't have to pay as much taxes, we all know why.
- Chairman Antey: The taxes are based on the usage of the property; it's not even based on the zoning.
- Mr. Pointer: Well, that's true But AG zoning is cheaper than.
- Chairman Antey: Sir, we've got her on the floor. Are there any more questions for her?
- Mr. Haley: Have you tried to work anything out with your neighbor or is this the first time you all have confronted one another?
- Mary Kelly: Well, it brought to our attention and I know that I won't speak to it, because I personally have not had a conversation with them about it. Nor have they made a lot of conversations with us on the street to say 'we are looking to do this, this is the size that we are looking for this structure to be', so it's unfortunate, but, we like where we live, we like the aesthetics of our neighborhood, we would like for it to be maintained that way. That's why we chose to live where we do.
- Mr. Pointer: What if they came along and set it back to 30' instead of the 23', would you all have any objection then?

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Mary Kelly: We have no objection if they meet the zoning requirements. As I said, zoning requirements as the currently...

Mr. Pointer: Zoning requirements for this group or zoning for your deed restrictions.

Mr. Tarpley: I would understand your concerns if this was the first outbuilding in your neighborhood, but since there is existing structures I really can't understand why you are objecting.

Mary Kelly: All the other existing structures are in compliance with the 30' setback. They meet the requirements that were in effect on the property.

Chairman Antey: Do you have any other questions for Ms. Kelly?
Mrs. Mershon: Can you show me on the map where you live?
Mary Kelly: Sure. (points to property on projected map)
Mrs. Mershon: Show me, if you can, where the building is going to be, that they are wanting to build.

Mary Kelly: (Points to map) My understanding is that it is right in here at the end of the driveway. It's coming in at the end of this driveway. On the last slide (page), of the packet I provided, there is another exhibit on that. It's right in here. All of the other existing outbuildings that are on the properties are all, meet or exceed the 30' side set-back.

Chairman Antey: Do you have any other comments to make?
Mary Kelly: No, sir.
Chairman Antey: Thank You. Is there anyone else who would like to speak that has questions or is opposed to this? (Mr. Kelly raises his hand, he was not sworn in at the beginning of the meeting)

Chairman Antey swears in Mr. Kelly.

Chairman Antey: Please come forward and state your name and address.
Gary Kelly: My name is Gary Kelly. I live at 25402 E 103rd Street, Lee's Summit, MO. In no way, shape, form, or fashion do any of us want to make this any type of a hostile relationship with Roger & Suzanne. Nobody could ask for better neighbors. The only thing that is in question here is the fact that our subdivision, as we have found out, is zoned agricultural. As we have previously stated and provided to you in graphical representation of aerial shots of our street that everyone that has been stated, that build outbuildings, have complied with the agricultural zoning set-backs. The location that has been proposed by Roger & Suzanne for a 36 x 40, because that is what was shared with me, building, encroaches that 30' set-back to a 23' distance from the side property line. The question, as in conversations with the adjacent neighbor, has been had, as to why he didn't locate the building of that size, behind his pool area, which, on the very last graphic page that

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we've provided you shows there is more than adequate space to build this building. As you all have astutely pointed out, yes, if he were to reduce the size of his building that meets the agricultural 30' set-back, we would not be here today. The only reason he is trying to come into compliance with the UDC is so that he can get a more favorable set-back for the building that he proposes to build. Yes, to answer your question, if he goes forward with the 23' set-back, we have retained the advice of an attorney and we will pursue enforcing our deed restrictions. The reason that we are here today is so that we put into you all's hands that we don't have to do that. Keep their zoning agricultural, it complies with the thing, every one of us who have built an outbuilding has had to comply with. We don't have to make it personal, we don't have to retain an attorney, we don't have to enforce our deed restrictions because of a compliance issue. So that is why we are here today. If you all maintain our agricultural, and I understand the UDC came into effect when?

Mr. Diehl:
Gary Kelly:

'95

In 1995 this subdivision was done in 1988. This section of the subdivision was done in 1988. At the time that this was platted, there was no residential. This was all rural and the only option for it was to be zoned agricultural. In answering your questions about livestock, our deed restrictions clearly and succinctly say that can have 2 cats, 2 dogs, or a horse. So yes, we understand that we can have livestock on there and that what the county might allow is not the same as what our deed restrictions would allow, at that point in time we would fall to our deed restrictions to say that we have addressed the agricultural issue in our neighborhood. Unfortunately, I've read through this stuff way too many times, and I hope that I'm answering the questions that you all seem to have. Like I said, the graphical overviews that I have provided, that we have provided, show where the proposed location of the building is. I'm going off of direct conversation with Roger as to what he indicated the size would be. As to the sizing next to the house, on our block, in our street, we have an aesthetic that runs throughout, that we have maintained. What we are mainly concerned about is that a building of the size and structure that has been discussed, 36' x 40', that encroaches beyond the agricultural set-back, is now going to throw the balance out of the street. Because when you drive down the street and you're going 'oh, oh, wow that garage looks awfully close to that next house'. It may not truly be close to that next house, but it's going to look out of place because no other structure abuts, or gets close to, that 25' set-back by the deed restrictions, because we have the 30' set-back. That gives us a 60' buffer between homes. You diminish that buffer between

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homes and it's going to stand out. Now it's going to be like "wow, that looks different". So, the statement that was made that the house East of this property, if they should come up to sell, put a for sale sign on their house, people go 'wow, that's a nice house, but it seems awfully close to that garage right there'. As opposed to the house to the left of it, to the left of it, to the left of it, to the left of it, because we all have a 60' buffer.

Mr. Pointer: Is the owner here that owns the house on the East side of this?
Gary Kelly: Yes.
Chairman Antey: He hasn't been sworn in though.
Gary Kelly: If you have any questions...
Mr. Haley: You still haven't talked to your neighbor.
Gary Kelly: Hey Roger & Suzanne.
Mr. Tarpley: I have a question. If, since your restrictions say 25', if he moved it 2' would you still be...?
Chairman Antey: They said they would be here, is what they...
Mr. Pointer: All he has to do is build a 34' wide building instead of a 36' wide building and he's in compliance, with everybody.
Chairman Antey: Once again, we are not here to do that.
Gary Kelly: What we are here, yes, we've tried to get you all a full picture of what's going on and what our course of action here today would be to request respectfully that we maintain under the 1988 formation of this plat, this subdivision, historic grandfathered in, prior to the UDC ever being made, maintain the agricultural zoning that it has historically had. I understand that as been, you know, code restrictions, code violations, zoning, etc. Anything new, from the UDC inception forward has to be residential if it's under 10 acres. We get that. That's not how we were formed. The only reason this is before you today, to bring it into compliance, is so that we can circumvent the 30' set-back.
Chairman Antey: Yes, we understand that.
Gary Kelly: Like I said, our concerns.
Mr. Tarpley: I have one question. Do you have concerns about the size of the garage, as far as the appearance, or just the location itself?
Gary Kelly: Location.
Mr. Tarpley: The size of the building doesn't bother you?
Gary Kelly: If he wanted to, if he, ok, we own, you know. Yes, that is correct. If it was a 30' set-back and he wanted to build a 36' x 40' building and it went behind his house and which would go into his pool area, that's fine. We still have that 60' buffer between homes.
Mr. Tarpley: Ok, thank you.
Gary Kelly: One last... The last graphic, the last aerial, in front of you, shows that he could build that garage 6 times over behind his pool area, based on the ground that he has. Thank you very much.

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- Mr. Pointer: All I see they have to do is build a 34' wide building instead of a 36' wide building.
- Mrs. Mershon: I'd like to ask Randy a question. Could he get a building permit if he didn't bring this into compliance?
- Mr. Diehl: With a 25' set-back, then it wouldn't meet the agricultural zoning districts of the UDC, which is a 30'.
- Mrs. Mershon: Say Mr. Kelly decided he wanted to build another building on his property. Does he have to bring it in, does he have to bring his piece of property into the compliance then?
- Mr. Diehl: If they meet the 30' set-backs or the rear set-backs. As long as those are met, then we, no, there would be no trigger. What happened in this case is when they submitted their application for their building; we noticed it had a 23' set-back. We talked to them, said look, you're zoned AG, it needs to be 30'. I said there are 2 ways of doing it. We could go through the variance process, but usually before we even address going before the Board of Zoning Adjustment we look at whether or not we can take care of this with a rezoning, which allows the entire property to come into compliance and drop those set-backs from 30' to 15', and that's the route that was chosen.
- Chairman Antey: Is there anyone else who would like to speak that is opposed to or has questions that, or has points that have not already previously been made.
- Chairman Antey: Please stand, restate your name & address.
Gary Kelly: Gary Kelly, 25402 E 103rd Street, Lee's Summit, MO. The one last comment that I would like to make, and I appreciate y'all's consideration on all this. We keep referring to the East 103rd Block, and the reason that we do this is because it is a section of Timber Meadows. The covenants and restrictions that we have referred to specifically apply, only to the lots on our street, as outlined in front of you. It says for lots 24-30, and that is what is represented here. Everybody from the lots 24-30 with the exception of the vacant lot, which is held by a trust, and the gentleman who is currently out of town and has responded to Randy via email, that is in front of you, for record. We're 90% represented here. We have the homeowner directly adjacent to the one that's next to that.
- Chairman Antey: I understand the representation, but we could have a room full of people and we don't do this by the numbers, we do this by what's right and what we are charged to do.
- Gary Kelly: Absolutely.
- Chairman Antey: So, and we take that charge seriously. If you have anything new to add I would love to hear it.
- Gary Kelly: No, that it. I'm just... Thank you.

Jackson County Plan Commission Summary of Public Hearing

Chairman Antey: Is there anyone else that has questions concerning or is opposed to this application? (no one came forward)

Chairman Antey: If the applicant would please come forward, again.

Mr. Pointer: I have a question. Do you have any objections to reducing the width of your garage by 2'.

Suzanne Plihal: No.

Roger Plihal: I've listen to all this, and first of all I didn't know there was so much opposition. The reason I picked 23' in the first place is, my driveway, I have a 12' concrete driveway that goes up. It's 23' from the lot line, so building this garage on the 23' made a lot of sense, to me anyway, at the time. I'm afraid that if I would comply with the 25', got you guys to give me, what's it called, a variance? It wouldn't be a variance. It'd be rezoned, and you'd basically could go 15'.

Chairman Antey: Right, here is what I'm afraid, if we do get rezoned to residential and we adhere to the 25' that the covenants say, we are still going to have some people that aren't happy with us.

Roger Plihal: Right.

Chairman Antey: I don't think it's the 25' that they are really stating here that's bothering them. I think it's more where we are putting the garage. We are putting the garage real close to our house because that is what we are going to use it for. We are going to use our daily drivers, park in the garage. We want it as close to the house as possible so can dash into the house if it's raining or snowing. All the other garages on the street are basically sheds, where people store their stuff. They don't park in them daily, with their daily driver cars. I'm, I don't know if we can make everybody happy, because we would like the garage where we've specified it on the map.

Roger Plihal: Are there any other questions for the applicant?

Chairman Antey: Is it possible to move it 2'?

Mr. Tarpley: Oh, yeah. I can come into compliance with the 25'.

Roger Plihal: What about 7'? Would that be a problem?

Mr. Tarpley: Yes, right now I'm proposing a 3 stall garage. If I had to go the 7' then I'd probably reduce it to 2 stall, because my swimming pool is right there.

Roger Plihal: Ok, that is what I was questioning. I didn't know how close the pool would be to the garage. If you built the garage today, how much space would you have between you and the pool area?

Mr. Tarpley: Right now I'm only leaving about 8', the way it is.

Roger Plihal: Ok.

Mr. Tarpley: That answers that question.

Mr. Pointer: Honestly, and this is my opinion, it's not based on fact, but this is my opinion. As these guys have stated their outbuilding has been located where it was at that time, because they have been at that

Suzanne Plihal:

Jackson County Plan Commission Summary of Public Hearing

location for way longer than us, and given that they could have built maybe closer to their house. Possibly they would have, possibly they wouldn't have, you know, I don't know. But I think what they want more than anything is to be like them, you know, because they put their building where they put it, then they would like for us to mirror that. I don't think that that detracts from any of our values and I don't think it will detract from the appearance. I think that's again, all opinion. cause each of us has our own opinion about what looks good. We're just trying to base it off of usage and what works well for us, and I think whoever were to purchase our property in the future would appreciate a structure that is more closely located. Yes, sir?

Mr. Pointer: Is it going to architecturally fit in with your house?
Suzanne Plihal: Yes.
Mr. Pointer: Or is that going to be a metal shed?
Mr. Tarpley: Is that a butler building?
Suzanne Plihal: We want it to be pleasing, right. And the overall size, you know, we are willing to work with that a little bit, but again, we want to achieve our goals with the finances that we're putting into it as well. To park our vehicles and to use for storage. You know, we're, we don't to fight with everyone. We really don't. We love our neighborhood, and just like them, we work very hard to keep the presence of our property in standing with everybody else, because we do care. We really do.

Chairman Antey: Are there any questions for the applicant?
Mr. Tarpley: Well, it makes sense to put the garage where it's at, it's close to the driveway. It's going to cost you a lot of money for concrete to extend it. It would cost you quite a bit to move it back on the lot.

Mr. Pointer: The drive already violates it. Cause the drive is on 23' line, already, now.

Chairman Antey: Do you guys have anything else? (directed at applicants)
Suzanne Plihal: No, but if you guys have any more questions.
Chairman Antey: Thank you. Is there anyone else that would like to speak concerning this application? We have one. Are there any new comments that you would like to make?

Gary Kelly: Yes.
Chairman Antey: Please stand up, state your name and address, and let me hear all of your new comments that you got.

Gary Kelly: Just 2. Gary L Kelly, 25402 E 103rd, Lee's Summit, MO. They have a garage that is attached to the house where they can park their vehicles, where they can pull in, get out of their car and go directly into their home. The statement made earlier was that they were going to use it for storage. They are now saying that they are going to park their vehicles there, close to the house, to get into the house, when it's raining. They have a garage. To answer your

Jackson County Plan Commission Summary of Public Hearing

statement as far as the driveway is in violation. If you will talk to Mr. Diehl, no sir, it is not. You can have your driveway within 5', 5' of the side property line as long as it's not....
Driveways are not subject to building set-backs.
Mr. Diehl: Exactly.
Gary Kelly: Is there anyone else that would like to speak concerning this
Chairman Antey: application? Seeing none, I would entertain a motion to go under advisement.

Mr. Pointer made a motion to take RZ-2013-500 under advisement. Mr. Haley seconded. Voice Vote. Approved 7-0.

RZ-2013-500 was taken under advisement.

Mr. Haden: Mr. Chairman, can I address a couple of legal issues, really quickly that were raised?
Chairman Antey: Please.
Mr. Haden: One of the witnesses testified in the witnesses opinion that this was a spot zoning, which is not favored under Missouri law. In my view it really isn't. A spot zoning is typically, the cases typically hold, that's the case where a residential or AG use is rezoned to a much more intensive commercial or industrial use. Those are really scrutinized by the court, when that use is not consistant. In my view this really doesn't come into that scenario.
Chairman Antey: And the use isn't changing.
Mr. Haden: Exactly. So I don't think that this would be in any danger of being held to be an illegal spot zoning by a court if it was reviewed. I don't know if anyone was concerned about that or not, but that is one of the things I look at when I'm paying attention here. And then the notice issue that was raised. As a practical matter, it appears that everyone concerned received actual notice. The petition, signed by everyone who would have been entitled to that mail notice, we may or may not need to prove up at some point that the certified mail notice was mailed, but as a practical matter, if everybody received actual notice, it doesn't matter what happened to the mail.
Chairman Antey: Right, because they are all aware and we've got (tape inaudible)
Mr. Haden: I wouldn't be concerned about that either, Mr. Chairman.
Chairman Antey: Comments?
Mr. Tarpley: I would hope that the neighbors could work it out, because, to me it's going to add value to the neighborhood, not detract from it. The adjacent property, it will increase the property value of their place. It should bring the properties of the adjacent properties

Jackson County Plan Commission Summary of Public Hearing

around them. Personally I hope they can work their differences out.

Chairman Antey: I think bringing the property into compliance when it's legal, non-conforming now, is something that we strive to bring all of the properties into compliance.

Mr. Crawford: Mr. Chairman, also we are talking about 60' vs. 53'. I can tell the difference between 60' and 15' like that (snaps his fingers), but I don't know if I can tell the difference between 60' and 53'. As far as traveling down the road and noticing it.

Chairman Antey: And as far as their own covenants that they've got, you're talking 2'.

Mr. Crawford: Now we're talking 55', correct me if I'm wrong, vs. 53' so we are talking 2' difference and I know I can't tell the difference between those two. With that being said, it's, I heard the people object, and I feel for them, but as far as what the county is concerned, I think we are giving them, in the long run, we're giving them more restrictions as far as livestock and other uses of the land. We narrow it down to bring it basically, into more compliance with the county wishes it to be, so I've got to be in favor of this.

Chairman Antey: Any other comments? (there were none)

Chairman Antey: I would entertain a motion to approve.

Mr. Tarpley made motion to approve RZ-2013-500, seconded by Mr. Haley.

Roll Call vote taken.

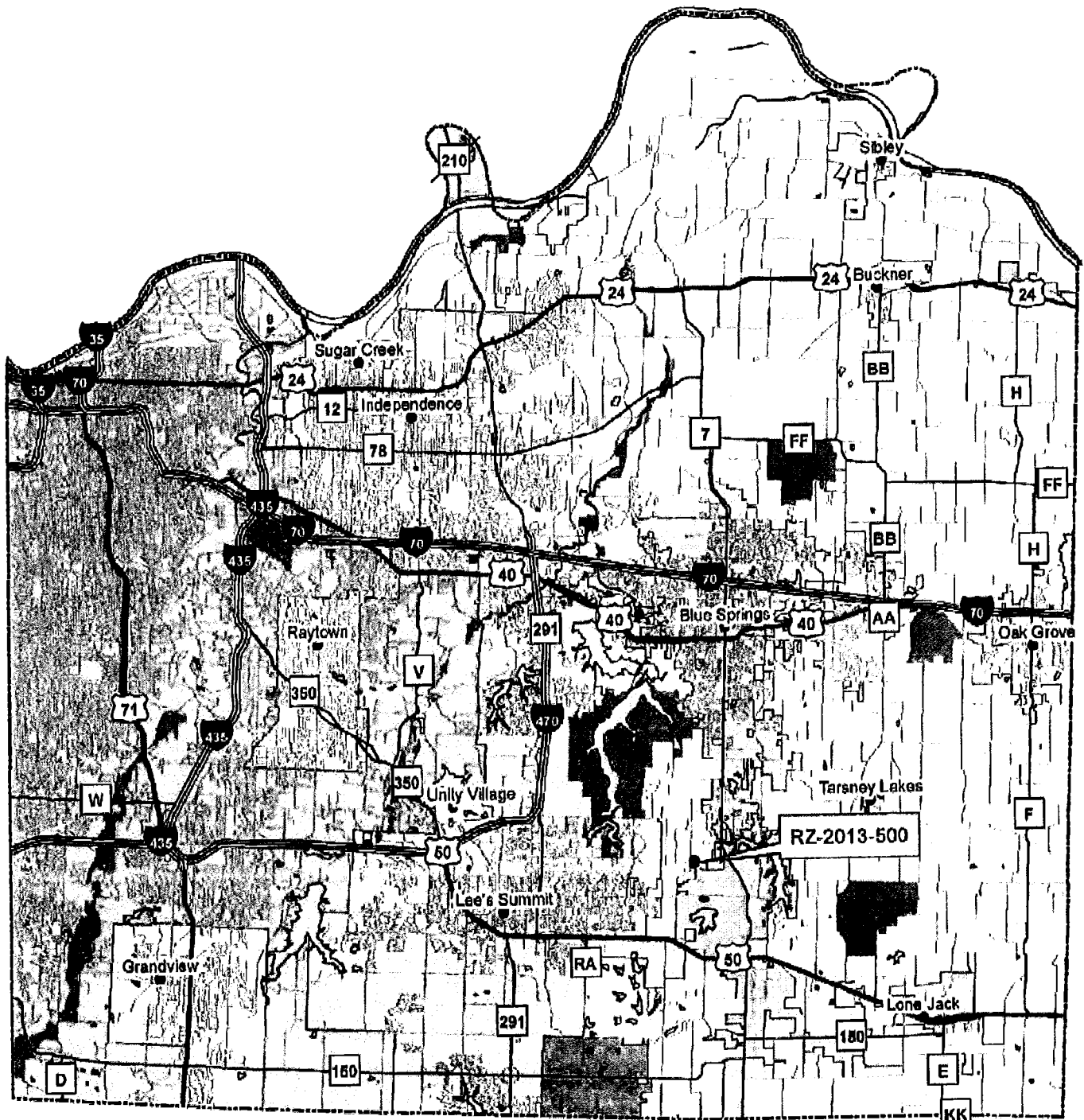
Mr. Gibler	Approve	Mr. Crawford	Approve
Mr. Pointer	Approve	Mrs. Mershon	Abstain
Mr. Tarpley	Approve	Chairman. Antey	Approve
Mr. Haley	Approve		

RZ-2013-500 APPROVED (6 Approve – 0 Disapprove – 1 Abstain)

Mr. Diehl announced that there are no cases and therefore there will be no meeting of the Plan Commission in October.

Meeting Adjourned 9:24 am.

Jackson County Plan Commission
September 19, 2013
Agenda Location Map



STAFF REPORT

PLAN COMMISSION

September 19, 2013

RE: RZ-2013-500

Applicant: Roger and Suzanne Plihal

Location: 25307 E. 103rd Street, lying in Section 36, Township 48, Range 31, Jackson County, Missouri, legally described as Lot 24, Timber Meadows, 7th Plat.

Area: 2.00 ± acres

Request: Change of zoning from District AG (Agricultural) to District RE (Residential Estates)

Purpose: Applicant wishes to construct a detached garage on the east side of the current residence.

Current Land Use and Zoning in the Area:

Timber Meadows subdivision was created by various plats starting in the 1970's and into the late 1980's. The applicant's lot was platted within Timber Meadows, 7th Plat in 1988. Prior to the Unified Development Code's adaption in 1995, lots could be created by plat. The UDC requires any division of land less than 10 acres to be rezoned and platted into a subdivision plat.

Comments:

The change in zoning would allow for a side yard setback of 15 feet instead of the 30 feet as required by the Unified Development Code for District AG. The applicant's wishes to place the proposed structure 23 feet from the East property line.

County Plan:

The County Plan Development Diagram illustrates this area within the Urban Development Tier (UDT). The RE (Residential Estates) District is appropriate in the Urban Development Tier.

Recommendation:

This request for rezoning is consistent with the intent and purpose of the County Plan.

Staff recommends APPROVAL of RZ-2013-500

Respectfully submitted,
Planning and Environmental Health Division

Randy Diehl
Planning and Zoning Coordinator

Plan Commission
September 19, 2013
RZ-2013-500

Applicants / Property Owners: Roger E & Suzanne M Plihal
35307 E 103rd St
Lee's Summit MO 64086

Parcel No: 53-700-05-07

Certified Mail – Return Receipt
Property Owners within 185 feet

53-700-04-33-00-0-00-000
BARBER ROSS S
25400 MILTON THOMPSON RD
LEE'S SUMMIT MO 64086

53-700-04-36-00-0-00-000
BARBER ROSS S

53-700-04-383-00-0-00-000
BARBER ROSS S

53-700-04-39-00-0-00-000
BARBER STEVE A & JENNA LYNN
25400 MILTON THOMPSON RD
LEE'S SUMMIT MO 64086

53-700-04-26-00-0-00-000
BRAKE JAMES R & ANITA R
10305 S HOWARD RD
LEE'S SUMMIT MO 64086

53-700-04-27-00-0-00-000
COLEMAN GINGER R &
KASSIEN DEBORAH A
10309 HOWARD RD
LEE'S SUMMIT MO 64086

53-700-05-05-00-0-00-000
DRIENIK ARDITH M
202 NW SHAMROCK AVE
LEE'S SUMMIT MO 64081

53-700-05-06-00-0-00-000
FARRIS JAMES C & NANCY L
25401 E 103RD ST
LEE'S SUMMIT MO 64086

53-700-05-03-00-0-00-000
KELLY GARY L & MARY S
25402 E 103RD ST
LEE'S SUMMIT MO 64086

53-700-01-45-00-0-00-000
OGLESBY MELVIN & MARGARET J
10223 HOWARD RD
LEE'S SUMMIT MO 64086



Jackson County Zoning Map

Legend

- 185' Notification Area
- <all other values>

Rezoning

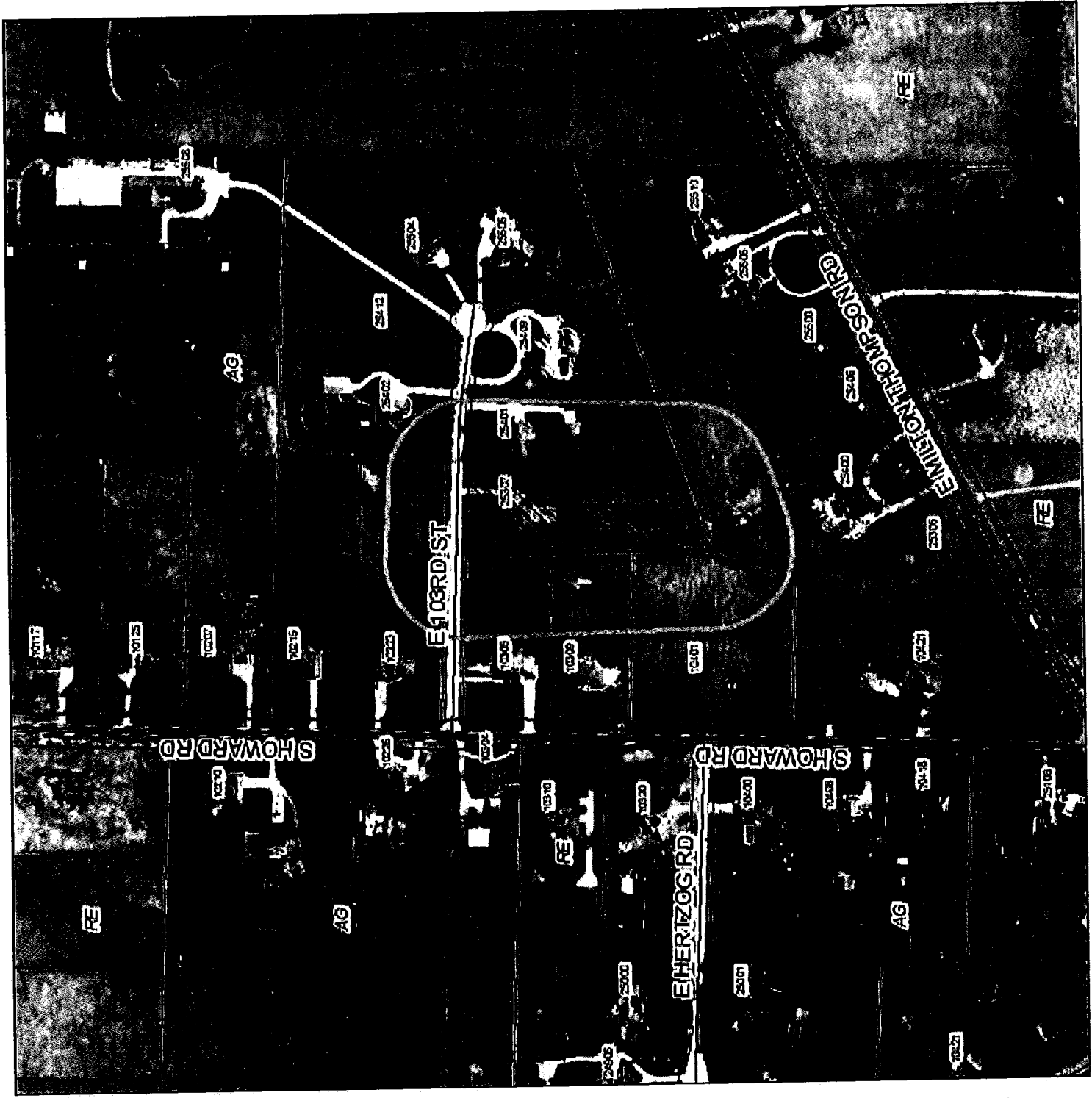
Zoning

- RR-Residential Ranchette
- Residential Ranchette-Planned
- RE-Residential Estates
- RS-Residential Suburban
- RU-Residential Urban
- A(r)-Single-Family
- B(r)-Two-Family
- C(r)-Multi-Family
- A1-Mobile Homes District
- ROP-Residential Office-Planned
- LB-Local Business
- LBP-Local Business-Planned
- GB-General Business
- GBp-General Business-Planned
- LI-Light Industrial
- LIp-Light Industrial-Planned
- HI-Heavy Industrial

EX. 5

RZ-2013-500
Ord

1 inch = 300 feet



**JACKSON COUNTY, MISSOURI
APPLICATION FOR CHANGE OF ZONING**

APPLICANT INFORMATION:

1. Application must be filed with the Jackson County Planning and Development Division, 303 W. Walnut, Independence, Missouri 64050 by the date on the Plan Commission Calendar.
 2. Application must be typed or printed in a legible manner.
 3. All applicable sections must be completed. If you need more space to provide information, please use separate 8 1/2"x11" paper, reference the application number and attach it to the application. Incomplete applications will not be accepted and will be returned to the applicant.
 4. Attach application for subdivision approval, consistent with the requirements of UDC Section 24003.10, as may be required.
 5. The filing fee (non-refundable) must accompany application.
(Check payable to: Manager of Finance)
\$350.00 – Change of Zoning to Residential
\$500.00 – Change of Zoning to Commercial or Industrial
-

TO BE COMPLETED BY OFFICE PERSONNEL ONLY:

Rezoning Case Number RZ- 2013- 500
Date filed 8-22-13 Date of hearing 9-19-13
Date advertised 9-4-13 Date property owners notified 9-4-13
Date signs posted 9-4-13
Hearings: Heard by PC Date 9-19-13 Decision _____
Heard by LU Date _____ Decision _____
Heard by _____ Date _____ Decision _____

BEGIN APPLICATION HERE:

1. Data on Applicant(s) and Owner(s):
 - a. Applicant(s) Name: Roger and Suzanne Plihal
Address: 25307 E 103rd St
Lees Summit, MO 64086
Phone: 816 305 4666
 - b. Owner(s) Name: Roger and Suzanne Plihal
Address: 25307 E 103rd St
Phone: Lees Summit, MO 64086
 - c. Agent(s) Name: Roger and Suzanne Plihal

Address: 25307 E 103rd St, LS MO 64086

Phone: 816 305 4666

- d. Applicant's interest in Property: Owner
2. General location (Road Name) 200 feet East of
Howard E 103rd St intersection, LS MO
3. Present Zoning AG Requested Zoning Residential ESTATES
4. AREA (sq. ft. / acres) Approx 2.5 acres
5. Legal Description of Property: (Write Below or Attached ⁹) Parcel No 53-100-05-07-
Lot 24, Timber Meadows 7th Plat, a subdivision
of Lees Summit, Jackson County, Missouri
00-0-00-000
6. Present Use of Property: Residence
7. Proposed Use of Property: Residence
8. Proposed Time Schedule for Development: As soon as building
permit is issued
9. What effect will your proposed development have on the surrounding properties?
None. Detached garage addition.
10. Is any portion of the property within the established flood plain as shown on the FEMA Flood Boundary Map? No
If so, will any improvements be made to the property which will increase or decrease the elevation? not applicable
11. Describe the source/method which provides the following services, and what effect the development will have on same:
- a. Water not applicable
- b. Sewage disposal not applicable
- c. Electricity KCPL - new/add-on service
- d. Fire and Police protection Prairie Township
12. Describe existing road width and condition: Asphalt and approx 30 ft wide

13. What effect will proposed development have on existing road and traffic conditions? None.

14. Are any state, federal, or other public agencies approvals or permits required for the proposed development? None

If so, describe giving dates of application and status (include permit numbers and copies of same, if issued): _____

Verification: I (We) hereby certify that all of the foregoing statements contained in any papers and/or plans submitted herewith are true to the best of my (our) knowledge and belief.

Signature

Date

Property Owner(s)

Roger E Plihal
Suzanne M Plihal

8-22-13

8-22-2013

Applicant(s):

Roger E Plihal
Suzanne M Plihal

8-22-13

8-22-2013

Contract Purchaser(s):

STATE OF Missouri
COUNTY OF Jackson

On this 22nd day of August, in the year of 2013, before me the undersigned notary public, personally appeared Roger & Suzanne Plihal

known to me to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

Kristen R. Geary

Commission Expires

Dec. 27, 2014

Kristen R. Geary
Notary Public - Notary Seal
State of Missouri
Lafayette County
Commission # 10128032
My Commission Expires December 27, 2014

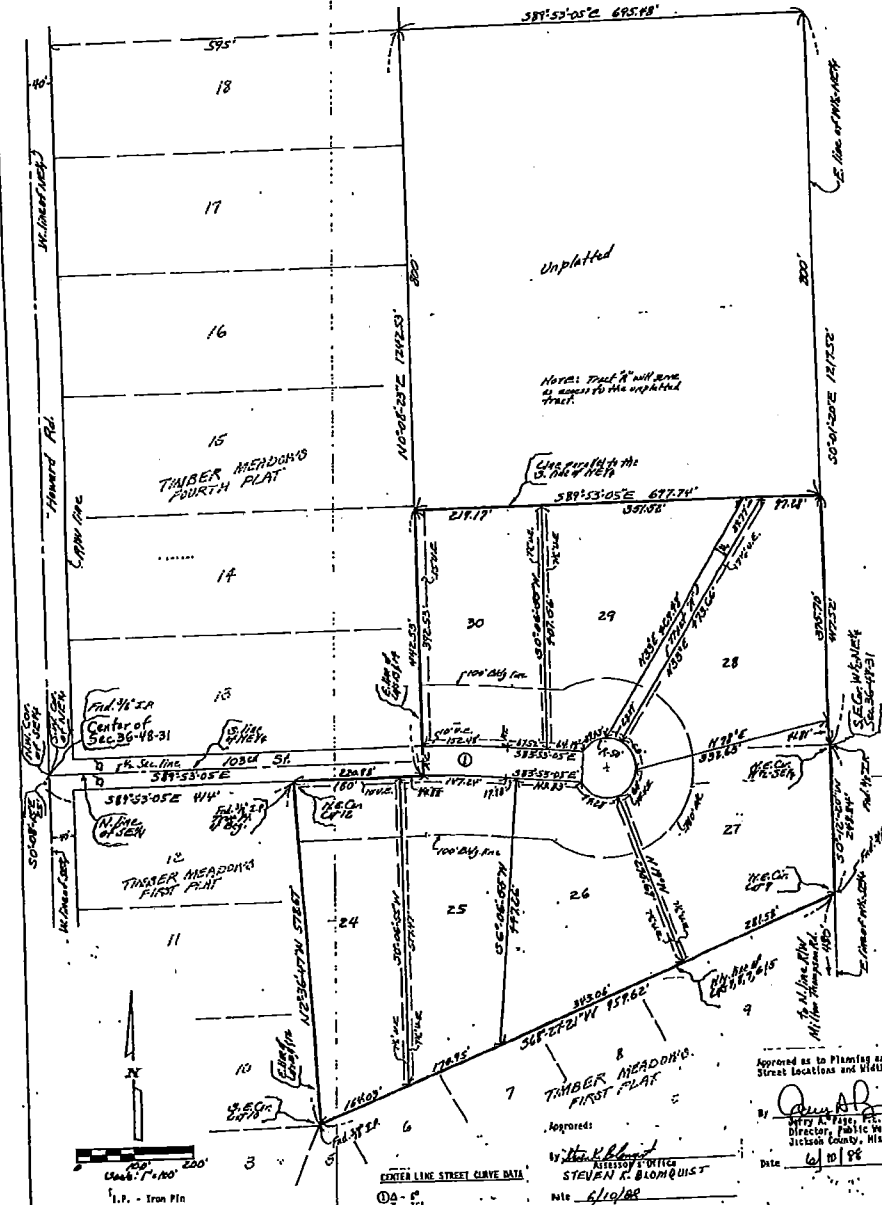
COPY

I 849666

TIMBER MEADOWS SEVENTH PLAT LOTS 24 thru 30 TRACT A JACKSON COUNTY, MO.

DATE 11/10/88
BY J. J. Jones
SJD
532
530

08-4239



This is a subdivision in all that part of the NW of the SE4 and that part of the NE of the NW of Section 36, Twp. 46, Rng. 23 in Jackson County, Mo., more particularly described as follows: Commencing at the N.E. corner of the SW of said Section 36, said point being the West line of said section South 0 degrees 00 minutes 15 seconds East 25 ft. thence parallel to and 25 ft. South of the North line of said section South 09 degrees 05 minutes East 414 ft. to the true point of beginning of this tract, said point being the N.E. corner of Lot 11, 1976, as Document No. J-31072; thence along the North line of said section North 0 degrees 00 minutes East 220.88 ft.; thence along the East line of Lot 13 and 14, Timber Meadows, Fourth Plat, and its prolongation North 0 degrees 00 minutes East 220.88 ft.; thence along the South line of said section North 09 degrees 05 minutes East 414 ft. to the true point of beginning of this tract, said point being the N.E. corner of the NW of a section, said point being also the second East 417.52 ft. to the S.E. corner of said 1/4 of a section, said point being also the N.E. corner of the NW of the SE4; thence along the East line of said NW of said SE4 South 0 degrees 12 minutes 20 seconds West 248.68 ft. to the N.E. corner of Lot 9, Timber Meadows, First Plat; thence along the North line of Lot 9, Timber Meadows, First Plat, South 48 degrees 27 minutes 21 seconds West 252.66 ft. to the S.E. corner of Lot 10 in said subdivision; thence along the East line of Lot 10, 11, and 12, Timber Meadows, First Plat, North 2 degrees 36 minutes 47 seconds West 578.67 ft. to the true point of beginning.

The undersigned proprietor of the above described tract has caused the same to be subdivided in the manner shown on the accompanying plat, which subdivision and plat shall hereinafter be known as

"TIMBER MEADOWS"

All thoroughfares shown on this plat and not heretofore dedicated to public use are hereby so dedicated. An easement or license is hereby granted to Jackson County, Missouri to locate, construct and maintain, or to authorize the location, construction and maintenance of conduits, water, gas and sewer mains, poles, wires and anchors and all or any part of them upon those areas outlined on this plat and designated by the words "Utilities Easement" or abbreviated "U.E."

In testimony whereof DANCLIFFE DEVELOPMENT CO., INC. has caused these presents to be signed by its President and attested by its Secretary this 23rd day of June, 1988.

DANCLIFFE DEVELOPMENT CO., INC.
By: *[Signature]*
Date: June 23, 1988
Attest: *[Signature]*
Secretary

State of Missouri)
County of Jackson)
On this 23rd day of June, 1988 before me, the undersigned Notary Public, personally appeared DAN L. ZANDER, known to me to be the person described in and who by me being duly sworn, did say that he is the President of DANCLIFFE DEVELOPMENT CO., INC., a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and the same DAN L. ZANDER acknowledged the execution of said instrument to be the free act and deed of said corporation.

In testimony whereof I have hereunto set my hand and affixed my notarial seal at my office in Jackson City, MO. the day and year last above written.

[Signature]
Notary Public in and for Jackson County, Missouri

My commission expires _____

I hereby certify that the within plat of "TIMBER MEADOWS" subdivision is based on an actual survey made by me or under my direct supervision and that said survey meets or exceeds the current Minimum Standards for Property Boundary Surveys as established by the Department of Natural Resources, Division of Geology and Land Survey of the State of Missouri. I further certify that the bearings shown on this plat are based on Assumed North-south. I further certify that the bearings shown on this plat are based on Assumed North-south. I further certify that the bearings shown on this plat are based on Assumed North-south.

APPROVED AS TO PLANNING AND ZONING, STREET LOCATIONS AND WIDTHS:
By: *[Signature]*
Director, Public Works Dept.
Jackson County, Missouri
Date: 6/23/88

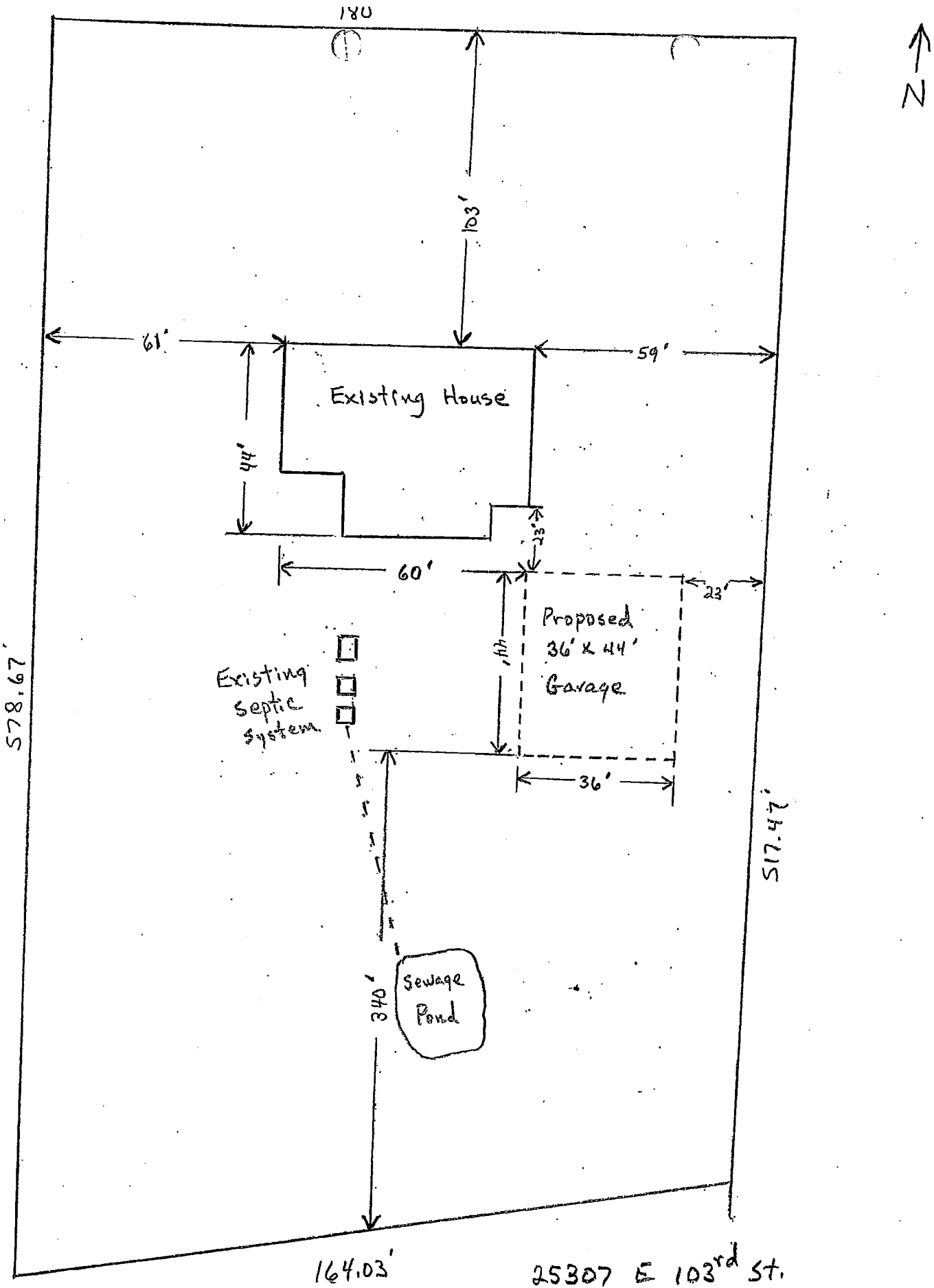
Surveyed and Platted by:
WILEY A. JONES ENGINEERING CO., INC.
206 North Olive
Independence, Missouri 64050
(816) 834-1220

By: *[Signature]*
Date: 6/23/1988

NOTE: 1/4" = 100'
1" = Iron Pin
NOTE: 1/4" = 100'
1" = Iron Pin
NOTE: 1/4" = 100'
1" = Iron Pin

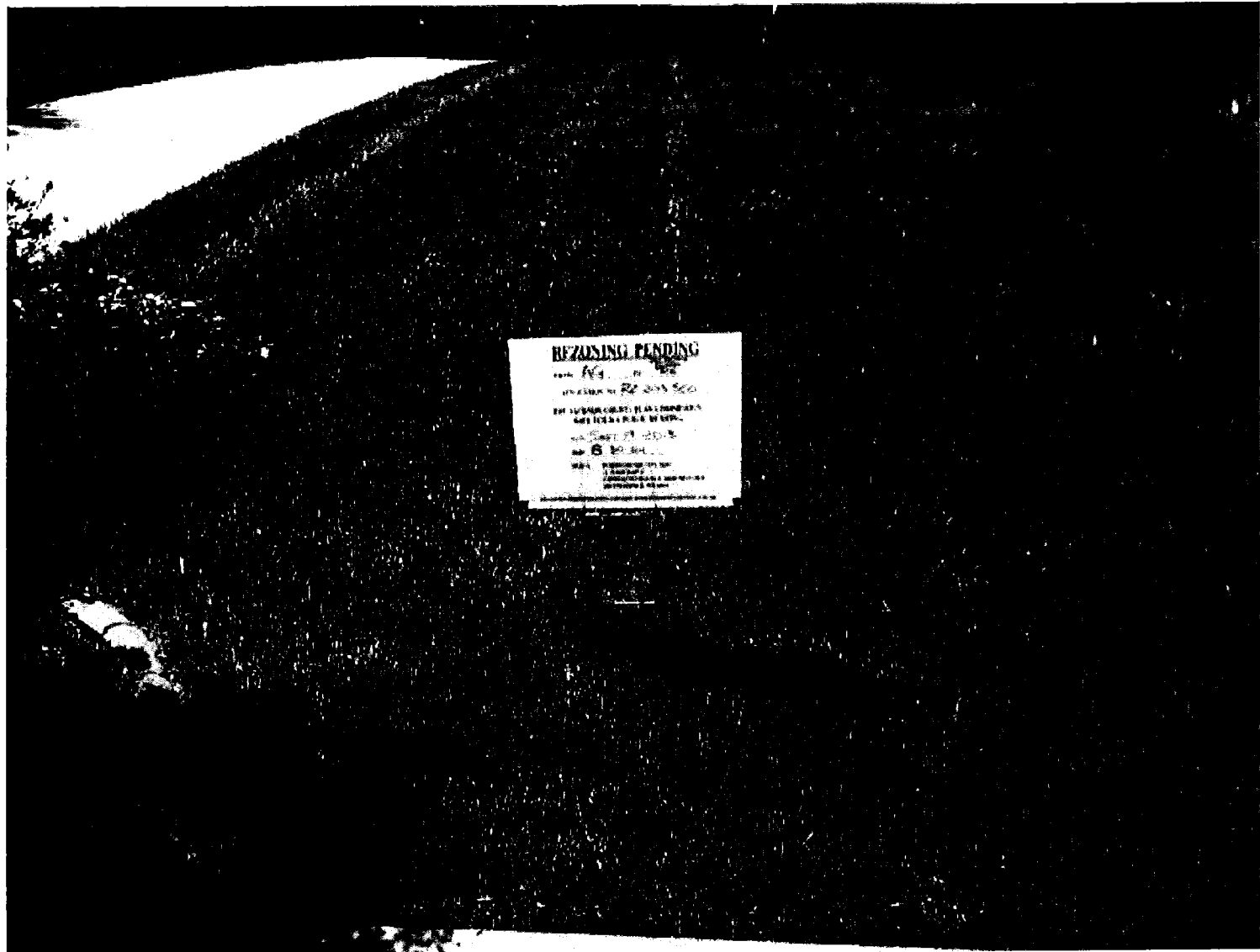
ENTER LINE STREET CURVE DATA

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②	R = 100.00'
③	R = 100.00'
④	R = 100.00'

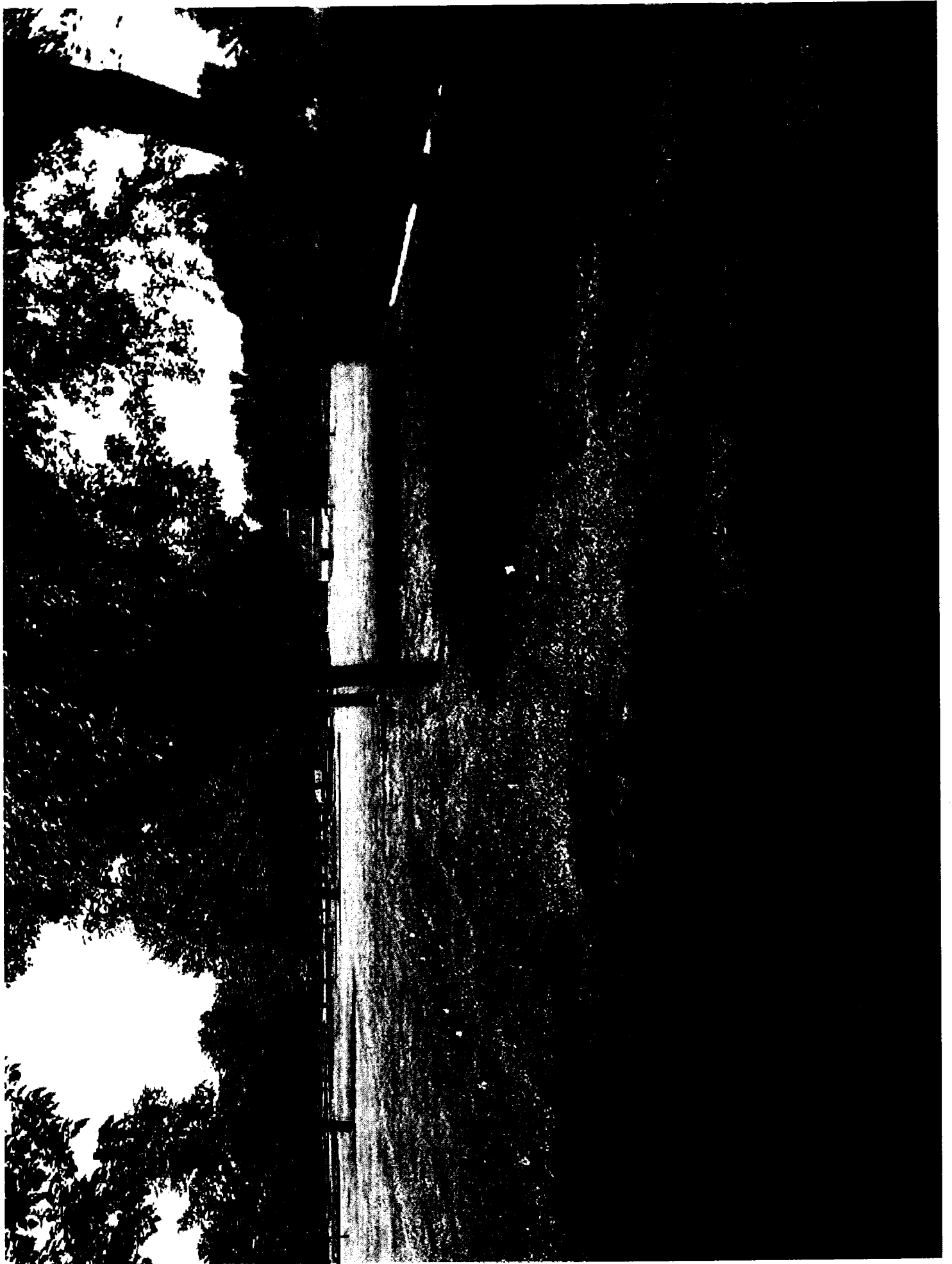


164.03'

25307 E 103rd St.
 Lees Summit, MO 64086



REZARING PENDING
 FROM THE
 COLLECTION OF THE
 THE UNIVERSITY OF CALIFORNIA
 AND THE UNIVERSITY OF
 CALIFORNIA LIBRARY
 AND THE UNIVERSITY OF
 CALIFORNIA LIBRARY
 UNIVERSITY OF CALIFORNIA
 LIBRARY



Randy D. Diehl

From: Clarence [zugelter@yahoo.com]
Sent: Wednesday, September 18, 2013 5:52 AM
To: Randy D. Diehl
Cc: gary@kelleykc.com
Subject: R22013-500

We live in the Timber Meadows subdivision that is the subject of a reclassification hearing this morning. Please be advised that we do not support the reclassification of the property in question. Thank you. Clarence and Margo Zugelster, 25505 E 103 Street. Lees Summit, Missouri

Sent from my iPhone

COPY

PETITION OF PROTEST AGAINST REZONING APPLICATION

To: Honorable Members of the Jackson County Plan Commission

Subject: Rezoning Case before the Jackson County Plan Commission

Property Location: 25307 E. 103rd Street
Lee's Summit MO 64086

Application No.: RZ-2013-500

Rezoning Request: From: Agricultural District To: Residential District

We, the undersigned, and each of us, as deeded owners of property located within 185 feet from the boundaries of the above described property proposed to be rezoned, do hereby legally protest, pursuant to the provisions of Missouri Law, especially RSMo 89.060, said proposed rezoning and respectfully request that the Jackson County Plan Commission deny said rezoning application for the following reasons:

1. It is our understanding from the home owner that this request is being made solely to obtain a more favorable side building setback versus the setbacks outlined for a property zoned as agricultural. All other homeowners on the block of E. 103rd who have built an outbuilding/garage have complied with the terms and conditions outlined by the county for their property as it is zoned agricultural. The county requires a setback of 30 feet of the side property line. The proposed location of the garage would place the building less than 23 feet of the side property line which is in violation of the agricultural zoning requirements. Hence, the request for a zoning adjustment.
2. In addition, there are Covenants in place and in effect for our subdivision that outline the building setbacks that are to be followed for the construction of an outbuilding/garage. The side setback is 25 feet from the property line. "No outbuilding shall be located nearer than twenty-five (25) feet from the side lot line, or twenty-five (25) feet from the rear lot line." Again, the proposed location of the building is projected to be less than 25 feet from the side property line, which would be in violation of the Timber Meadows Covenants. As owners of property in the subdivision we have the authority to enforce these Covenants and stand ready to do so. A copy of the Covenants is attached to this Protest Petition.
3. The adjacent property owner to the east will have an obstructed view from their home due to the proposed location of the garage. The proximity of the garage to their property will change the aesthetic appearance of their property by diminishing the buffer zone, as defined in our Covenants, between their property and the adjacent property. This also has the potential to diminish the value of their property if and when they should decide to sell their home. In addition, the proposed location could have a negative affect based on the aesthetics of the block, which may result in a diminution of the surrounding property values.

IN WITNESS WHEREOF, I, the undersigned, as a deeded owner of real property located within 1000 feet from the boundaries of the above described property proposed to be rezoned, have duly signed my name to this Petition of Protest against the above described rezoning application; have shown my address; and my signature has been duly acknowledged before a notary public as set out hereunder.

Name of Protesting Property Owner:

Gary L Kelly

Address of Protesting Property Owner:

25402 E 103rd Street, Lees Summit MO. 64086

STATE OF MISSOURI)

COUNTY OF ~~CASS~~ Jackson)

On this 16th day of September, 2013, before me personally appeared Gary L Kelly to me known to be the person described in and who executed the within Petition of Protest against the rezoning and acknowledged to me that he/she executed the same for the purposes therein stated.

Erika Hopkins
Notary Public, State of Missouri

My Commission expires:

July 24, 2017



ERIKA HOPKINS
My Commission Expires
July 24, 2017
Jackson County
Commission #13403163

IN WITNESS WHEREOF, I, the undersigned, as a deeded owner of real property located within 1000 feet from the boundaries of the above described property proposed to be rezoned, have duly signed my name to this Petition of Protest against the above described rezoning application; have shown my address; and my signature has been duly acknowledged before a notary public as set out hereunder.

Name of Protesting Property Owner:

Mary P. Kelly

Address of Protesting Property Owner:

25402 E. 103rd St. Lee's Summit MO 64086

STATE OF MISSOURI

COUNTY OF ~~CASS~~ Jackson

On this 16th day of September, 2013, before me personally appeared Mary S. Kelly to me known to be the person described in and who executed the within Petition of Protest against the rezoning and acknowledged to me that he/she executed the same for the purposes therein stated.

Erika Hopkins
Notary Public, State of Missouri

My Commission expires:

July 24, 2017



ERIKA HOPKINS
My Commission Expires
July 24, 2017
Jackson County
Commission #13403163

IN WITNESS WHEREOF, I, the undersigned, as a deeded owner of real property located within 1000 feet from the boundaries of the above described property proposed to be rezoned, have duly signed my name to this Petition of Protest against the above described rezoning application; have shown my address; and my signature has been duly acknowledged before a notary public as set out hereunder.

Name of Protesting Property Owner:

Danny Coggins

Address of Protesting Property Owner:

25504 E. 103rd St. Lees Summit, Mo. 64086

STATE OF MISSOURI)

COUNTY OF ~~CASS~~ Jackson)

On this 16th day of September, 2013, before me personally appeared Danny Coggins to me known to be the person described in and who executed the within Petition of Protest against the rezoning and acknowledged to me that he/she executed the same for the purposes therein stated.

Erika Hopkins
Notary Public, State of Missouri

My Commission expires:

July 24, 2017



ERIKA HOPKINS
My Commission Expires
July 24, 2017
Jackson County
Commission #13403163

IN WITNESS WHEREOF, I, the undersigned, as a deeded owner of real property located within 1000 feet from the boundaries of the above described property proposed to be rezoned, have duly signed my name to this Petition of Protest against the above described rezoning application; have shown my address; and my signature has been duly acknowledged before a notary public as set out hereunder.

Name of Protesting Property Owner:

Tina R. Coggins

Address of Protesting Property Owner:

25504 E. 103rd St. Lees Summit MO 64086

STATE OF MISSOURI)

COUNTY OF ~~CASS~~ Jackson)

On this 16th day of September, 2013, before me personally appeared Tina R. Coggins to me known to be the person described in and who executed the within Petition of Protest against the rezoning and acknowledged to me that he/she executed the same for the purposes therein stated.

Erika Hopkins
Notary Public, State of Missouri

My Commission expires:

July 24, 2017



ERIKA HOPKINS
My Commission Expires
July 24, 2017
Jackson County
Commission #13403183

IN WITNESS WHEREOF, I, the undersigned, as a deeded owner of real property located within 1000 feet from the boundaries of the above described property proposed to be rezoned, have duly signed my name to this Petition of Protest against the above described rezoning application; have shown my address; and my signature has been duly acknowledged before a notary public as set out hereunder.

Name of Protesting Property Owner:

Ardith Drienik

Address of Protesting Property Owner:

25409 East 103rd Street Lee's Summit, MO 64086

STATE OF MISSOURI)

COUNTY OF ~~CASS~~ Jackson)

On this 16th day of September, 2013, before me personally appeared Ardith Drienik to me known to be the person described in and who executed the within Petition of Protest against the rezoning and acknowledged to me that he/she executed the same for the purposes therein stated.

Erika Hopkins
Notary Public, State of Missouri

My Commission expires:

July 24, 2017



ERIKA HOPKINS
My Commission Expires
July 24, 2017
Jackson County
Commission #13403163

IN WITNESS WHEREOF, I, the undersigned, as a deeded owner of real property located within 1000 feet from the boundaries of the above described property proposed to be rezoned, have duly signed my name to this Petition of Protest against the above described rezoning application; have shown my address; and my signature has been duly acknowledged before a notary public as set out hereunder.

Name of Protesting Property Owner:

James C Farris

Address of Protesting Property Owner:

25401 E 103 St, Lees Summit 64086

STATE OF MISSOURI)
COUNTY OF ~~CASS~~ Jackson)

On this 16th day of September, 2013, before me personally appeared James C. Farris to me known to be the person described in and who executed the within Petition of Protest against the rezoning and acknowledged to me that he/she executed the same for the purposes therein stated.

Erika Hopkins
Notary Public, State of Missouri

My Commission expires:

July 24, 2017



ERIKA HOPKINS
My Commission Expires
July 24, 2017
Jackson County
Commission #13403163

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11810P '899

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION made this 9th day of June 1988, by Dancliffe Development Co., Inc., referred to as "Developer".

WHEREAS, Developer is the owner of real property legally described as follows:

08-42.38
Lots 24 through 30 and Tract A, TIMBER MEADOWS, a subdivision in Jackson County, Missouri.

referred to as "property" or "lot" or "lots."

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values, and fixtures improvements, amenities, values and opportunities in the area to be developed, and for the maintenance of the property and improvements on the property, and desires to subject the property and improvements to the covenants, conditions, restrictions, and liens referred to as "declarations" contained in this declaration which are for the benefit of the property and the owners of the property.

WHEREAS, Developer desires to void any and all previous covenants, conditions, and restrictions filed in the Office of the Recorder of Deeds of Jackson County, Missouri.

NOW, THEREFORE, the Developer declares the property, fixtures, improvements, and amenities shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, and restrictions, and liens contained in this declaration.

ARTICLE I

ARCHITECTURAL CONTROL

1. The Developer shall act as the Architectural Control Committee, referred to as "the Committee." The Committee shall be composed of the Developer and may include one (1) or more persons but no more than three (3) persons who are owners of land in the property at the sole discretion of the Developer.

2. The purpose of the Architectural Control Committee shall be to regulate the external design, appearance, use, location and maintenance of the property and fixtures, im-

provements, and amenities on the property, to preserve and enhance the values of the property and improvements on the property and maintain a harmonious relationship among structures, nature, and topography.

3. The Committee shall have the power to approve, disapprove, or modify plans for all structures and alter the exterior dimensions or appearance of any structure on the property. This power shall include but not be limited to the right to approve, disapprove, or reject plans for all fixtures, improvements, amenities, landscaping, structures, fences, walls, animal enclosures, play yards, swimming pools, decks, solar collectors, windmills, satellite receiving disks, radio antennas, play houses, storage facilities, outbuildings, stables, barns and driveways. No construction, erection, or exterior addition or alteration to any structure on the property, nor any changes or additions to fences or other structures shall be commenced until the plans and specifications showing the nature, kind, shape, length, width, height, materials and location, together with a landscaping plan and paint or stain color plan, shall have been submitted to and approved by the Committee. Plans and specifications shall include a surveyed plot plan and a certified blueprint or scale drawing showing all elevations of the structure. In considering plans and specifications the Committee will consider the harmony of the external design, appearance, and location in relation to surrounding structures, nature, and topography.

4. If the Committee fails to approve, disapprove, or modify plans and specifications which have been submitted in the proper form within thirty (30) days, approval will not be required. All plans and specifications submitted to the Committee shall be in writing and drawn to scale and shall be retained by the Developer. All approvals, disapprovals, or

2. Space requirements for residences are as follows:

(a) Two story residence. Any dwelling of two floors above ground with four vertical section sidewalls shall have 2,000 square feet minimum.

(b) Split-level residence. Any dwelling with a four foot elevation separation between living areas and shall have 1,800 square feet minimum on the two main living levels.

(c) One story or ranch residence. Any dwelling with all the living area on one main living level and shall have 1,700 square feet minimum on the main living level.

(d) One and one-half story residence. Any one story dwelling with an additional living space on the upper level or second floor and shall have 1,800 square feet minimum on the main living level.

(e) Split entry or bi-level residence. Any dwelling with an entry four feet lower than the upper main floor and shall have 1,700 square feet minimum on the main living level.

3. Any dwelling shall be at least fifty-five (55) feet long from side to side on the front elevation.

4. The minimum square foot requirements are exclusive of garage area, basement area, attic area, open decks, open porches, open breezeways, plant rooms, or any area not used exclusively and year round for living area.

5. All front exterior walls of residential dwellings or outbuildings shall be constructed and maintained of wood, brick, stone, or stucco. No composition board, prefabricated wall, artificial siding, sticcati board, or false stucco is permitted on the front of any residential dwelling or outbuilding. All exterior paint or stain shall be of an earthtone color.

6. All swimming pools and spas shall be located behind the rear line of the residential dwelling at least fifty (50) feet from the side lot line and fifty (50) feet from the rear lot line. All swimming pools shall be of in ground construction and no above ground swimming pools shall be permitted.

I1810P 906

2. All outbuildings on the property shall conform to the design and style of the residential dwelling on the property. All outbuildings shall have substantial wood construction roofs covered with wood shingles of the same design and of the same pitch as the residential dwelling on the property. No outbuilding shall be used as a residential dwelling on the property. No outbuilding shall be used for residential dwelling, rental housing, business purposes, or in any manner which could detract from the residential nature of the property or harmonious relationship among structures, nature, and topography. All outbuilding plans and specification including the proposed location of outbuildings shall be submitted to the Architectural Control Committee for approval, disapproval, or modification, prior to the commencement of construction. No outbuilding shall exceed 1,500 square feet in floor area and no outbuilding shall be constructed more than one (1) story above ground level. Outbuildings shall be setback behind the rear line of the residential dwelling and not less than ~~twenty-five~~ (25) feet from the side property lines and not less than ~~twenty-five~~ (25) feet from the rear property lines. The exterior walls including materials, paints, and stains of all outbuildings shall be constructed in conformity and color with the residential dwelling on the property.

ARTICLE VIII

VEHICLES

1. No vehicles shall be parked off a paved driveway or parking area on the property. No tractors, motorcycles, or boats shall be parked outside on the property. No vehicles including motorhomes, campers, trailers, or horse trailers shall be parked in front of the rear line of the residential dwelling. All disabled vehicles shall be stored in the garage of the residential dwelling or in an outbuilding on the property. There shall be no mechanical work or body work on vehicles outside the garage of the residential dwelling or outside an outbuilding on the property. No business vehicles shall be parked for a period

the construction on the lot. All trees and brush cleared from the lot shall be removed from the lot within (10) days of clearing the lot. No debris, trees, or brush, or debris piles, or brush piles may be burned on the lot an any time.

5. No signs of any kind shall be displayed on the property, except one (1) sign of not more than six (6) square feet indicating the name of the building contractor or indicating the offering for sale of the property.

ARTICLE X

ANIMALS, LIVESTOCK, POULTRY, AND PETS

1. No animals, livestock, or poultry shall be raised, bred, or kept on the lot, except that horses, dogs, and cats may be kept as provided in this declaration. A maximum of two (2) horses or two (2) ponies may be kept on the lot provided they are not kept for any commercial purposes, provided they are kept properly fenced, and provided any barn, stable, or outbuilding where they are kept is located behind the rear line of the residential dwelling on the property. The foal of a horse or pony will not be counted as a horse or a pony until it attains the age of six (6) months. A maximum of two (2) dogs and two (2) cats may be kept on each lot provided they are not kept for any commercial purposes. The offspring of dogs and cats shall not be counted as dogs or cats until they attain the age of five (5) months. Dogs and cats shall be kept in compliance with the laws and ordinances of Jackson County, Missouri. Dangerous or vicious dogs or cats such as guard dogs with a propensity to attack persons or cause persons to fear for their safety may not be kept on the property.

ARTICLE XI

EASEMENTS

1. Easements for installation and maintenance of utilities, drainage facilities, roadways, and bridal paths are reserved on the recorded plat of the property. These easements

property, the owners of the property shall not have the right to amend this declaration. Any amendment must be properly recorded with the Jackson County, Missouri Recorder of Deeds.

2. Invalidation of any one of these covenants, conditions, and restrictions by law, statute, ordinance, case, judgment, court order, or administrative order shall in no way affect any other provisions which shall remain in full force and effect.

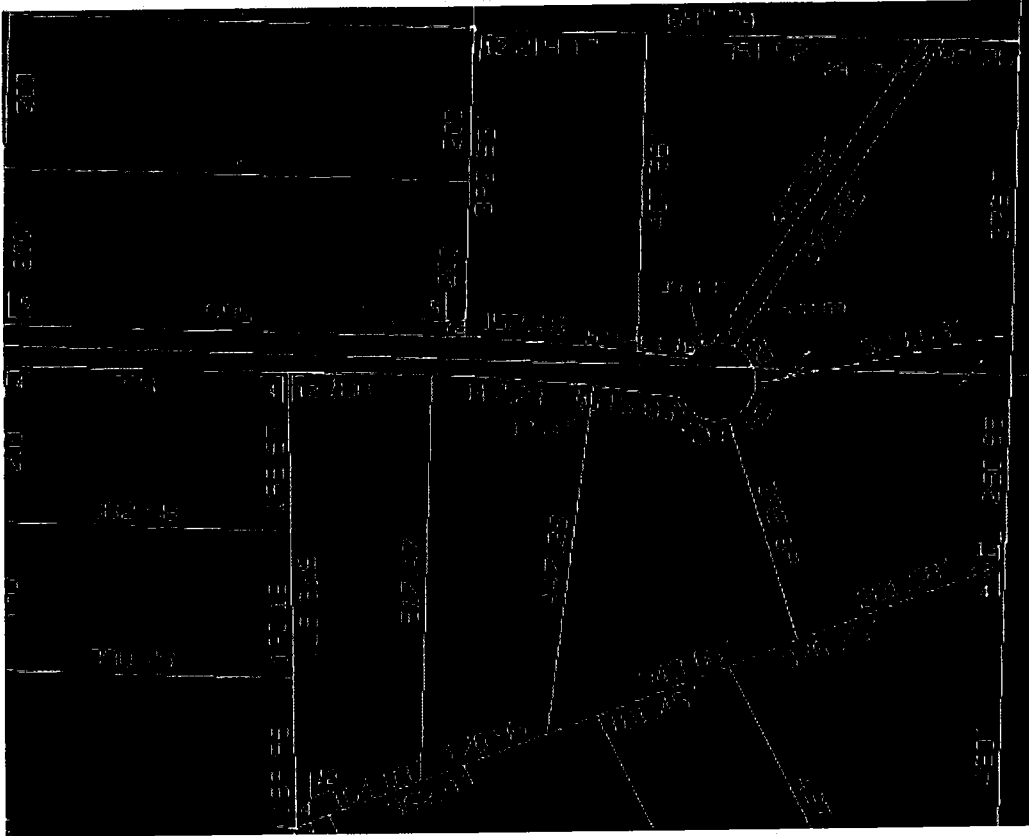
ARTICLE XIII

ENFORCEMENT

1. The Developer or the owner shall have the right to enforce these covenants, conditions, and restrictions by any proceeding in law or in equity including but not limited to a lawsuit for injunction or damages. Failure of the Developer or the owner to enforce these declarations shall not be deemed a waiver of the right to do so at a later time or by any other owner. The Developer shall have the right to enforce these declarations for a period of ten (10) years after the Developer no longer is the owner of the property from the date that the deed to the lot held by the Developer is recorded with the Jackson County, Missouri Recorder of Deeds.

2. If it is necessary to retain an attorney at law to enforce this declaration, then the Developer or owner may request the court in law or equity to award reasonable attorney's fees to be paid by the owner of the property or any other person in violation of these declarations as determined by the judgment of the court.

3. If it is necessary to retain an attorney at law to defend a lawsuit or counter-claim in law or equity concerning these declarations then the Developer or owner may request the court to award reasonable attorney's fees to be paid by the owner of the property or any other person bringing the lawsuit or counter-claim as determined by the judgment of the court.



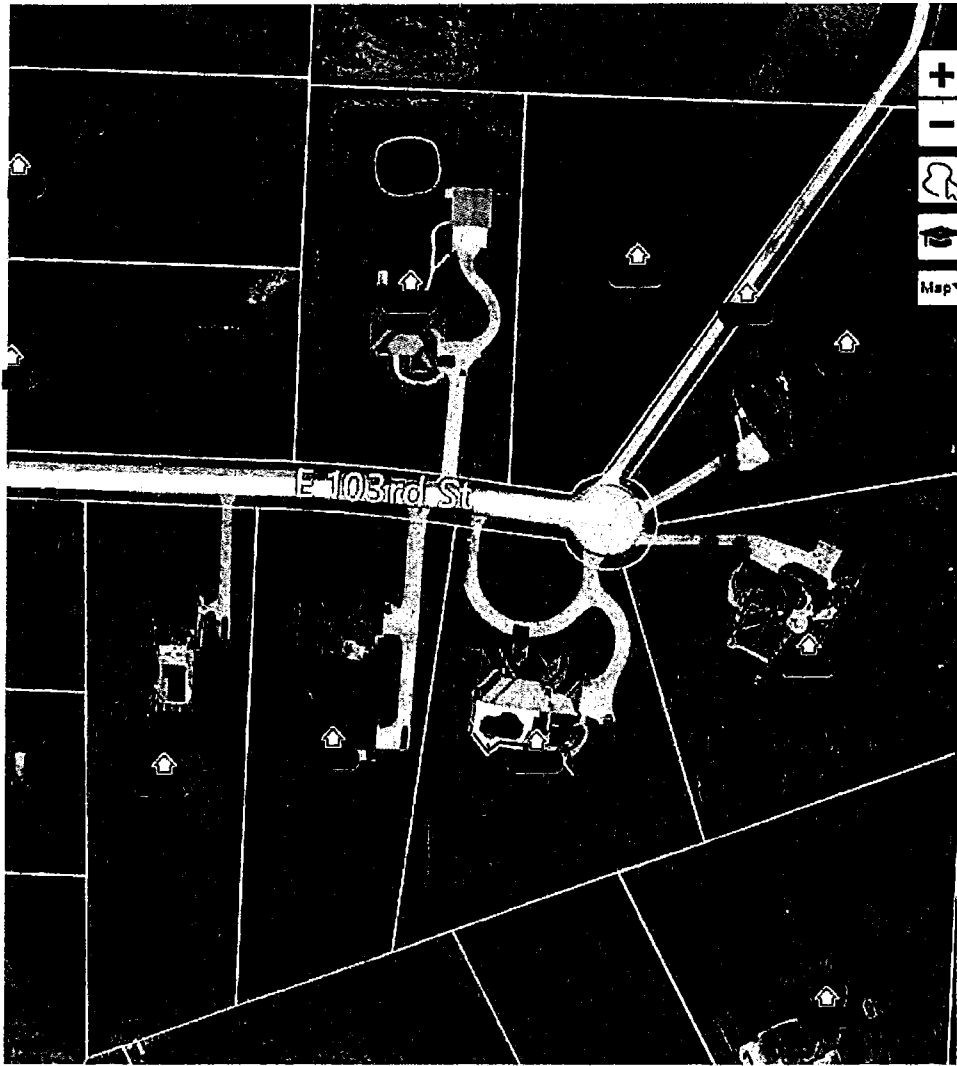
Lot dimensions for E 103rd Street

Lee's Summit, MO 64086

Lots 24 through 30

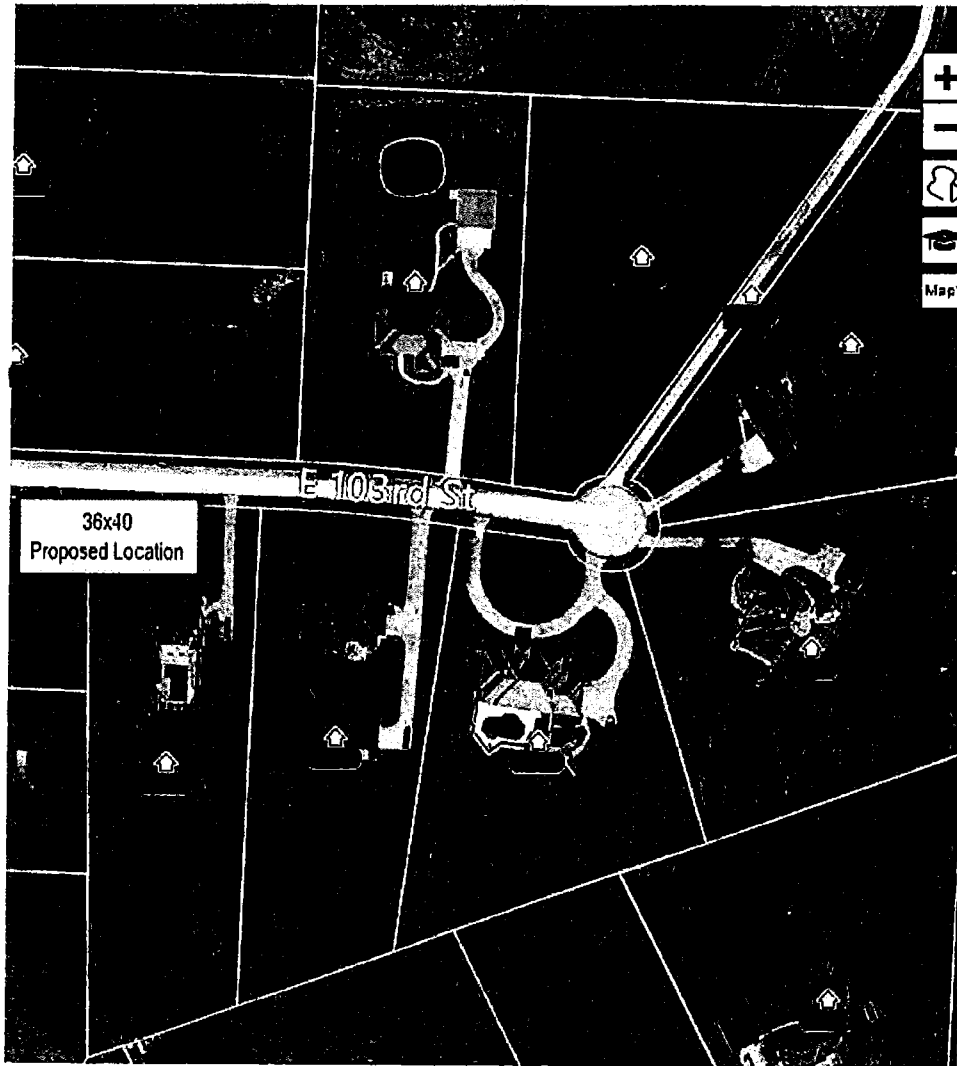
Timber Meadows

A subdivision in Jackson County, Missouri



Overview of E 103rd Street

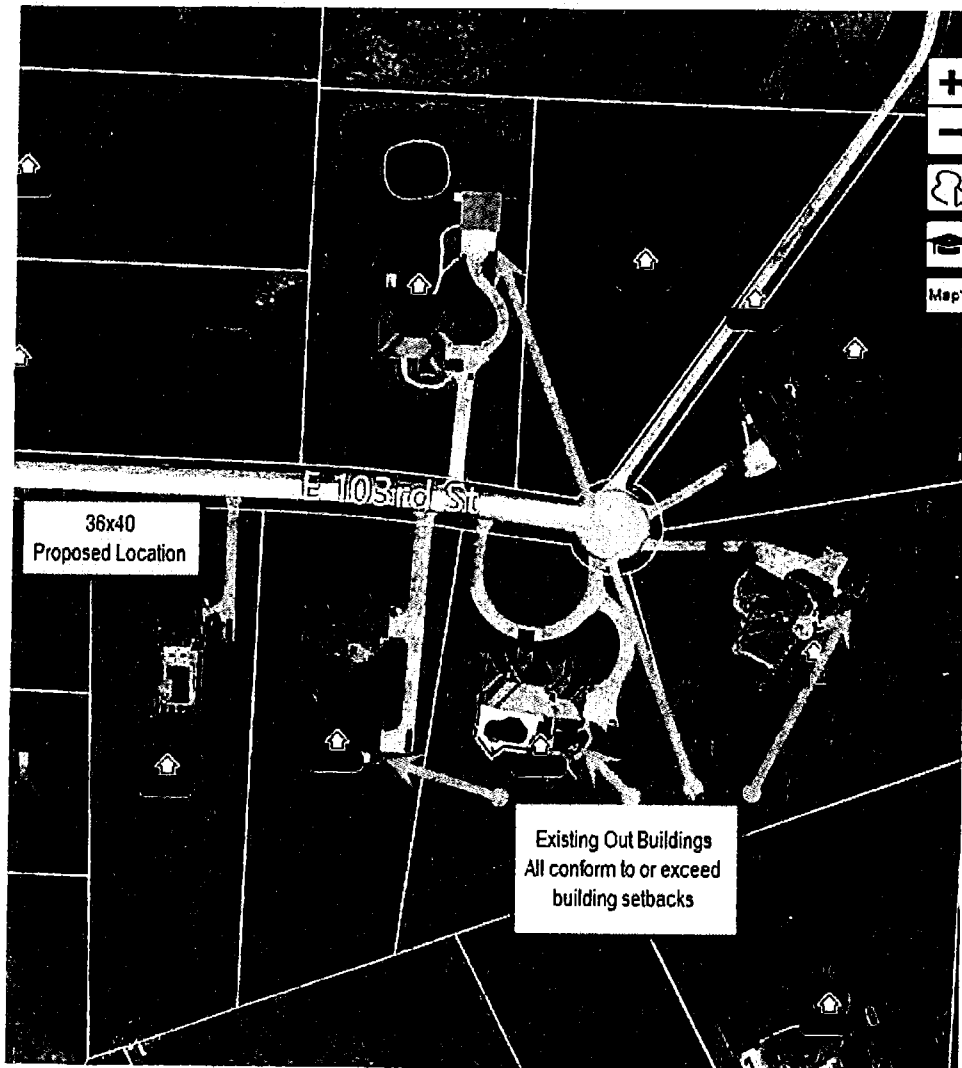
Lee's Summit, MO 64086



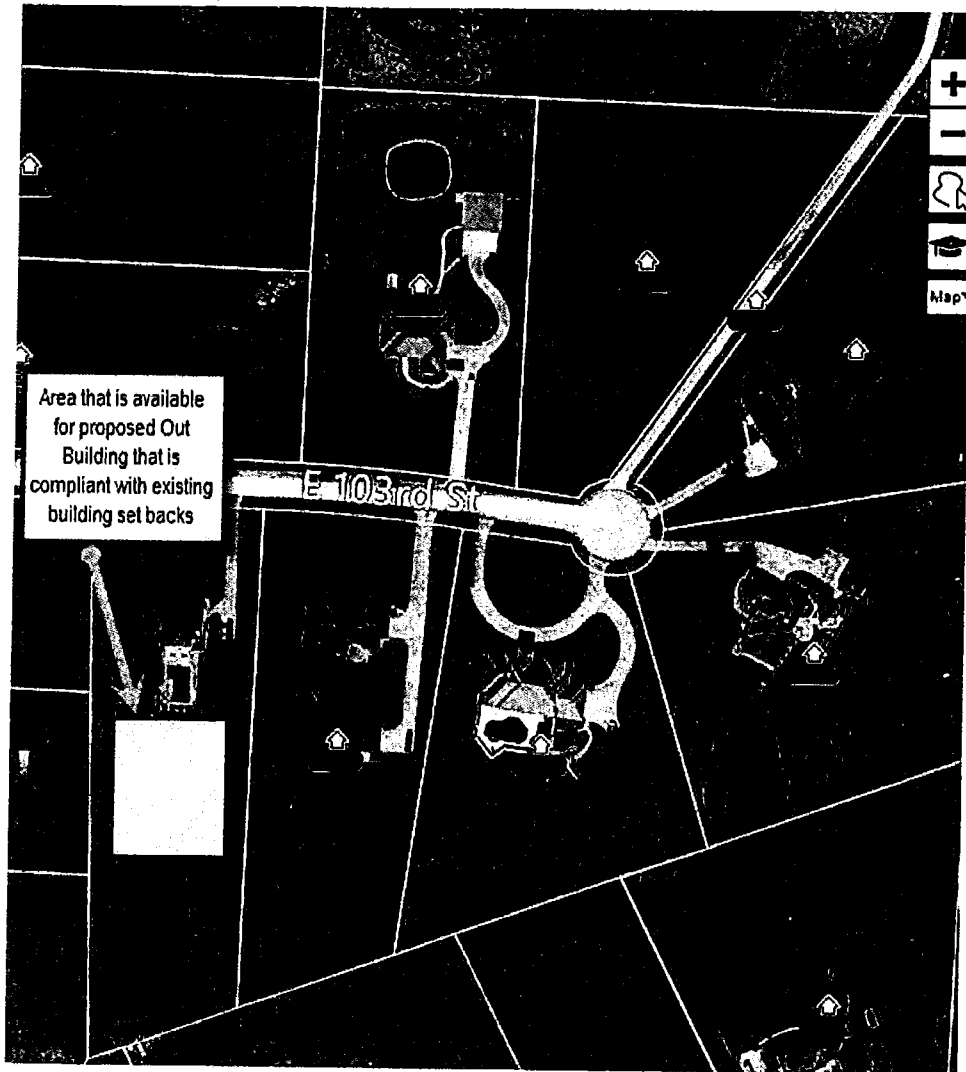
Proposed location of the new construction at:

25307 E. 103rd Street

We have been told that the building size is 36'x40'



These are the existing outbuildings/garages that currently exist on the block of 103rd Street that conform to or exceed the building setback lines as outlined by the County



There is more than adequate space available for the construction of an outbuilding or garage that would conform to the existing agricultural zoning regulations as set forth by the County

ATTACHMENT TO RLA-2:

Attachments

Plan Commission Public Hearing Summary from September 19, 2013
Staff report
Names/Addresses of surrounding property owners
Map showing current zoning districts in area
Application
Timber Meadows Subdivision Plat
Pictures of area to rezoned
Email from adjacent property owner requesting denial
Petition of Protest and additional information submitted by adjacent property owner

RZ-2013-500

ATTACHMENT TO RLA 1:

Description: Lot 24, Timber Meadows (7th Plat), a subdivision in Jackson County, Missouri