

TERM OF COMMISSION: December Session of the November Adjourned Term

PLACE OF MEETING: Boone County Government Center Commission Chambers

PRESENT WERE: Presiding Commissioner Don Stamper  
District I Commissioner Karen M. Miller  
District II Commissioner Linda Vogt  
Deputy County Clerk Ashley Williams

The regular meeting of the County Commission was called to order at 7:02 p.m.

**SUBJECT: Petition to vacate and replat lots 61 and 62 of Trails West Subdivision, Plat 6, submitted by Rhodes-Payne Properties, Inc.**

Planning and Building Inspections Director Stan Shawver reported that Trails West Subdivision was originally platted in 1982 and that the County Commission had heard a request to vacate these two lots in 1996. Mr. Shawver read section 1.8.1.3 of the Boone County Subdivision Regulations: Except as otherwise provided in section 1.8.1 or 1.8.2, no subdivision plat may be vacated in whole or part unless the owner of the land for which vacation is sought petitions the County Commission for the vacation in writing and the County Commission finds after public hearing that vacation will not adversely affect the character of the neighborhood, traffic conditions, circulation, the proper location, alignment and improvement of streets and roads within and adjacent to the subdivision, property values within the subdivision, public utility facilities and services, and will not generally adversely affect the health, welfare, or safety of persons owning or possessing real estate within the subdivision to be vacated or surrounding real estate. He stated that any motion to authorize the vacation is contingent on the approval of an appropriate replat. Mr. Shawver submitted an aerial photograph of the area and a copy of the original plat for Trails West with Lots 61 and 62 indicated. The proposed replat, he said, is to create a street that will access the property on the subdivision.

Commissioner Stamper asked if this was a proposal for the subdivision in question.

Mr. Shawver responded there was also a preliminary plat for Brennen's Ridge, zoned R-S (Single Family Residential), that contains about 320 lots.

Mr. Rogers, attorney for Rhodes-Payne Properties, Inc. asked that in the interest of time that agenda items one and two be considered together. They are both, he explained, requests to vacate and replat.

Commissioner Stamper submitted correspondence received by the County Commission from Paul Brooks, Kent and Dorothy Shelton, John Rawlings and Stacy and Scott Murphy.

Mr. Shawver reported on the petition to vacate and replat lot 12 of Rollingwood Subdivision, Plat 3, submitted by Rhodes-Payne Properties, Inc. and said the subdivision was south east of the Trails West Subdivision. He explained there was some intervening land between this area and the Trails West Subdivision, directly east of Brennen's Ridge Subdivision. All of the Boone County Subdivision Regulations were applicable to this situation as well, he said.

David Rogers, 813 E. Walnut, attorney for the applicant Rhodes-Payne Properties, Inc. said that two years ago they appeared before the County Commission with the same purpose of trying to vacate the two lots, giving an access from that direction to allow for the logical development of the new subdivision on the acreage immediately adjacent to those lots. He said it was the exact same situation with the lots in Rollingwood. He noted that relatively little had changed, except that by vacating the lot in Rollingwood, whatever problems this might create for Trails West, and there is always an intrusion when new development occurs, this is part of the urbanization of the County. Whatever problems there were in the past, he said, there were half as many now. Mr. Rogers explained that this access would allow them to access the 95-acre parcel from all four directions. The one existing County road to the south is a pretty sad situation, he said, but at least we will have roads through three existing subdivisions coming into this tract. This is the way it should be, he said. Boone County regulations require the developer of Trails West and Rollingwood to stub streets into undeveloped tracts that are immediately adjacent. Mr. Rogers

said that the burden has been put upon the developer to buy lots in those two existing subdivisions to do what the Commissioners predecessors should have done for good planning - to allow existing subdivisions to feed into one another.

Mr. Rogers said the County did not want to create a bulkanization off major roads where subdivision entrances are all one-entrance peninsulas. Even the Sheriff, he said, would not consider that a very desirable situation of always having to go back to the main road. Mr. Rogers said that concerning the specific criteria on which the Commission had to make a finding, he said that he did not think that any of the seven criteria would be directly or adversely impact the existing subdivisions.

Mr. Rogers argued that the character of the neighborhood would not become any less residential; traffic conditions are as desirable as they can be by dividing the traffic in four different directions; circulation is improved with the added entrances to Rollingwood and Trails West and their proper location will align and improve the current streets; Mr. Rogers said he could not see how property values would be affected; no public utilities would be affected; and Mr. Rogers said that the eighth requirement was simply a catch-all clause that would give the Commission the opportunity to deny the vacations and replats. Mr. Rogers said that short of the County purchasing the property and making a park out of it, this was the only solution and that the developer had fulfilled all the requirements and even done more by actually buying lots in another subdivision, thereby giving him another access to the proposed subdivision.

Commissioner Stamper asked if the applicant had done a traffic study for the proposal.

Mr. Rogers said not to his recollection.

Mr. Shawver reported that the Public Works Department had prepared a traffic study two years ago that was fairly hastily put together.

Mr. Rogers said that study had been presented as part of the public record at their last hearing.

Commissioner Stamper said the proposal had been rejected on the basis of the traffic study and he was wondering if they had had a formal study done this time to support their case.

Mr. Rogers said they were proposing three entrances as opposed to one.

Commissioner Stamper said that was one perspective and commented this could conceivably be the third largest subdivision in the County.

Mr. Rogers replied that he would anticipate, with a subdivision of this size, a twenty year absorption rate.

Commissioner Stamper asked about the street width in Rollingwood and Trails West.

Mr. Shawver said he did not know their widths. He clarified that the densities for Trails West and Rollingwood would be 80 and 71 respectively. Mr. Shawver reported the original zoning for Brennen's Ridge was R-S done in 1973. The property is still zoned R-S and the preliminary plat, approved in April of 1995 contains 325 lots.

Commissioner Vogt asked if the previous request was for the same lots.

Mr. Shawver said yes, but request to vacate and replat lot 12 in Rollingwood was new to the request.

Commissioner Stamper convened a public hearing on the petition to vacate and replat lots 61 and 62 of Trails West Subdivision, Plat 6, submitted by Rhodes-Payne Properties, Inc. and the petition to vacate and replat lot 12 of Rollingwood Subdivision, Plat 3, submitted by Rhodes-Payne Properties, Inc.

John Rawlings said he sold real estate and since 1979 had served as the Plat 3 homeowners president. Plat 3 is a two cul-de-sac, 49 1/2 acre tract divided into 16 lots. All but lot 12 have

homes. The homeowners are concerned the new owner of lot 12 is attempting to change the subdivision. They are unanimously opposed to the petition request to vacate lot 12 which would result in the Rollingwood West Drive cul-de-sac being connected to the Brennen's Ridge property because it violates recorded covenants and restrictions of the subdivision regarding lot vacation and cul-de-sac retention; they are opposed because it would change the character of the neighborhood by making the cul-de-sac a through road; they are opposed because it will significantly change traffic and safety issues. A peak day on this cul-de-sac is currently around 12 vehicles; they are opposed because it impacts property negatively: appraiser John Kirby advises it "has been my experience that changes of this type produce variances in value of 10% to 30% to the affected properties. In this case the effect would be negative." My own experience indicates such a change will negatively impact location uniqueness one of the four home buying elements, price, terms, location and condition, a buyer considers when prioritizing and evaluating the quality of life x, y or z location offers them. For example, he said, a seller can reduce their price, provide terms that work for the buyer, fix a condition to make a fireplace meet code, but a seller cannot replace location if a cul-de-sac becomes a through road. Take away the cul-de-sac and you take away the unique location and the seller's ability to obtain a higher price from a willing and ready buyer when his or her property is up for sale.

Over the years, he said, realtors, grocers, educators, volunteers, public servants, builders and retirees have been among those to choose Rollingwood Plat 3 for their home. We chose this location based on the principle of public trust, built on honesty and integrity, communication between buyer, seller, realtor, builder, developer and the County that something is the way we say it is. A public trust that Rollingwood Plat 3 offers a special character, quality of life, low traffic cul-de-sacs, a recorded plat, property value and a great place to live. To compromise this public trust in the name of progress is not necessary. We defend Mr. Paynes right to develop Brennen's Ridge, but changing our culture, our quality of life, our unique location, our property values in Rollingwood Plat 3 is not necessary. The petition to make lot 12 a connecting road to the Brennen's Ridge property should be denied whereby, Rollingwood West Drive should remain as platted, a cul-de-sac.

Mr. Rawlings submitted the cover letter he read, and supporting information which includes recorded covenants and restrictions, a color photo of the impact to the area, a two-page commentary from appraiser John Kirby and a three page commentary from Mr. Rawlings, himself.

Bj Powers, Lot 11 Rollingwood Plat 3, read the following letter: "The safety and character of our neighborhood in plat 3 will suffer adverse effects from a continuation of the cul-de-sac into a through fare road.

Rollingwood West Drive is now a quiet narrow gravel road ending in a cul-de-sac. The vehicular traffic is usually limited to residents and postal delivery.

Currently all 15 home owners make use of Rollingwood West Drive as an entrance onto Rollingwood Blvd. With 2 cars per household and postal and UPS deliveries, this makes an average of 34 round trips per day. If the proposed through fare is allowed with the expected 326 homes this would allow a possible 652 round trips over the same road.

Safety is important to everyone in the Midway area. We have a fine volunteer fire department. We know on the average the fire truck will be on he road within 2 1/2 minutes from a call. We know that with volunteers they will come from home or work depending on the time of day the alarm is received. We know that the shortest distance for the fire engine may not be the shortest distance for the volunteers. We know they will do their best to save property and to save lives. We know that risk insurance for properties within 5 miles of the fire station will receive a favorable insurance rate. Brennen's Ridge is within the 5 mile range. Does Brennen's Ridge need another access? We don't believe it is necessary.

Our decision on safety can impact another decision on safety. We know that if a cul-de-sac is changed to a through road there will be significant change in traffic. The traffic safety issues will be 365 days a year. Plat 3 has experienced 1 house fire in 20 years. Unfortunately closeness to the fire station did not save the home. We do not believe another access to Brennan's Ridge is necessary because it creates a 365 day traffic safety issue while possibly improving the issue of

fire safety. Additional entrances into and out of subdivisions are nice but changing one safety issue to enhance another safety issue is not necessary.

The pictures show a narrow gravel road with a blind curve as you approach down hill or up hill. the photos show two cars just barely visible (these photos were taken as the autos were stationary at different distances from each other). The blue auto was moved about 20 feet between photos and the camera held consistent with the height of the windshield. The last photo will show both cars parked side by side in an effort to show the possible act of both cars passing in each direction.

The next photo shows the view from the cul-de-sac up the hill. Followed by a photo of the cul-de-sac showing where the proposed road would be built.

Of the 15 homes accessed by Rollingwood West Dr., seven families have children that walk and bike and generally use the roadway to go to school and visit each other in the neighborhood.

The character of plat 3 Rollingwood is consistent with a village of extended families. We visit, celebrate birthdays, holidays, babysit each other's children and pets, watch the house and have keys and phone numbers in the event of emergencies when on vacation.

When each family made a decision to make this area their home it was based on the facts that a low traffic road provided access to their driveway. An existing number of homes would be connected to that road and they could expect it to remain that way forever.

We have an abundance of wild life in the area: deer, turkeys, fox, coyotes, rabbits, squirrels, turtles, snakes, frogs, owls, even wood ducks on the creek in my backyard. What happens to them? Who compensates for the loss of these wild visitors?

The access through our cul-de-sac is only necessary as an added selling point to the new subdivision, at the cost of detrimental safety and character changes to our subdivision.

The safety of our neighborhood must come first in my mind and in the mind of most reasonable people.

Progress at the cost of safety and character is not practical, insightful progress."

Julie Shiebany, 7802 Rollingwood West Court, read the following letter on behalf of her husband Ali and her daughter Sara: "We are home owners of Rollingwood Plat 3, lot 2, specifically known as 7802 Rollingwood West Court. We welcome Mr. Payne as a new owner and resident of lot 12 in our subdivision, but strongly oppose his proposal to vacate said lot for the purpose of creating an access road that will benefit Rhodes/Payne's Development property known as Brennen's Ridge. WE have come tonight to share our concerns with you that this access road is not necessary and creates a public traffic hazard that is unacceptable.

Should this proposal be approved, we, like our fellow neighbors, are extremely concerned about the inevitable decrease in our property value and the extinction of our current peaceful cul-de-sac setting and the enjoyment it brings to our personal property and neighborhood.

It is from a safety perspective that we would like to focus your attention on now. Our property line and particularly our driveway, along with the Sheltons, is adjacent to the intersection of Rollingwood West Court and Circle. From our unique vantage point, we see on a daily basis how this intersection is a visual traffic hazard and dangerous for all of the current residents. The view is obscured by a blind curve that is made worse by Rollingwood West Court that then steeply descends to lot 12. We have met several times as neighbors, formally and informally, to remind each other of the extra caution we need to take in safely negotiating the multitude of blind spots that exist at this intersection. Residents from Rhodes/Payne's proposed high density neighborhood would surely find in this route through Rollingwood West the access-of-choice in and out of Brennen's Ridge, not mention the constant traffic of construction vehicles and workers that new housing development brings. The hazards that exist with this intersection and steep grade coupled with the increased traffic will most assuredly result in an unacceptable number of unnecessary accidents, damage to our properties that line the street, and the unthinkable: bodily injury and

fatalities to us and especially our children who currently enjoy the safety our cul-de-sac ensures. The existence of a cul-de-sac as a safety feature was a prime reason we purchased land to build a home in Rollingwood West. It surely is not fit or safe for traffic beyond the residents it serves and the few delivery vehicles that need to deliver to us.

Although the proposed access road might provide a quicker access for emergency personnel to respond to calls originating in Brennen's Ridge a handful of times a year, the increase in traffic accidents and injuries that we will have to bear on a daily basis, is unacceptable. It would be ironic indeed to base passage of this proposal on the need to provide emergency access to Brennen's Ridge when in reality it will increase emergency calls due to traffic accidents in our neighborhood. We hope you agree the larger safety issue here involves traffic accidents on a small street that by design cannot safely handle any increase in traffic. Speaking as a mother, I know my fellow neighbors who are also mothers and fathers, would find it impossible to explain one injury or death of a child because an unnecessary access road was granted.

We welcome Mr. Payne as a new resident, but must strongly oppose any plans he has beyond being a responsible home owner in our quiet neighborhood and supporter of our covenants that serve and protect the safety and character of the neighborhood as it currently exists.

We thank you for your time and consideration. We ask that you deny MR. Payne's request to vacate lot 12 to create an access road for Rhodes/Payne development property as unnecessary for the arguments presented to you tonight, as well as, from the perspective that future residents of Brennen's Ridge, who cannot be here tonight, deserve a safer access road that will bring them safely in and out of the neighborhood than is possible for Rollingwood West to provide."

Olen Blanton, 1603 Rollingwood West Court read the following: "I am the newest resident in Rollingwood Subdivision Plat 3. In my family's search for a new home we looked at a large variety of homes and vacant lots, before making our decision. One of the lots we looked at was Lot 9 in Brennen's Wood. At first we thought the subdivision was a one street in and out two cul-de-sac subdivision. When I met with John Payne at his office I learned that Lot 9 was not a 6+ acres more or less lot, but in fact it had been reduced to 5+ acres to allow for an entrance into Brennen's Ridge property to be developed later. When I asked Mr. Payne about the proposed subdivision he took me back in his office and showed me the plat of the subdivision. He seemed very certain that Brennen's Ridge would be started in the future using the access through Brennen's Wood. After learning of this I was no longer interested in purchasing lot 9 or any lot that was going to be near such a heavily traveled street. We purchased our home at a price above the new 1997 Boone County Appraisal. It offered the unique, quiet, peaceful, country setting we were looking for. In a two cul-de-sac subdivision. It is not necessary to grant the petition request to vacate Lot 12 which would result in the Rollingwood West Drive cul-de-sac being connected to Brennen's Ridge. We will lose the unique features our subdivision has now, increasing traffic. Negatively impacting: safety, setting, character, value, and resale It is not necessary to grant this petition...to benefit one's property value while reducing others."

Jim Hoffman, 7901 Rollingwood West Dr. Lot 14, read the following: "I have been the Platt 3 Vice President since 1979 and lived at this address for 19 years. We plan to make this the only home we buy, because we enjoy the character of the area, the wild life; turkeys and deer in our front yard and no street traffic.

In summary, you have heard from John Rawlings, how this will affect the property owners value of their property. You have also heard from B.J. Powers, how the character of our neighborhood would be affected, 10-12 cars daily to possibly 100's daily. In our subdivision, property owners like Randy Coil; construction, Scott Murphy, banker, John Rawlings, realtor, myself, supermarket manager, along with other property owners, all believe in public trust. This is also why we bought homes in Rollingwood Plat 3, public trust. Public trust between the buyer, seller, builder, realtor, developer and County, that our subdivision will remain the same as it is today. a trust that Rollingwood Plat 3 character and property values will not change. A change of our living standards, which we do not wish to change 67%, or 2/3's of the roads in our plat 3 will be affected, along with other roads in plat 2 will also be impacted. Mr. Payne knew when he bought his property, he only had the one road into his development. He now wants to disrupt 2 subdivisions so he can make his property more marketable at the expense of us.

We ask you, to vote against his request to vacate lot #12, so he can put a road on the property, thus changing our quiet subdivision. Rollingwood West Drive should remain a cul-de-sac as it was originally platted. In view of public interest, we feel this request to vacate lot #12 is not necessary.”

Sheriff Ted Boehm said that two years ago they discussed lots 61 and 62 of Trails West. Sheriff Boehm said he had the opportunity to revisit the subdivision, to drive through it, watch the buses go through and load and unload children. He said he had the same safety issues today as he did two years ago. He said that road widths in Trails West varied from 22 feet to 23 feet. Some of them, he said, are curb and gutter, some are not. None of them have shoulders. Parking is allowed on all the streets in the subdivision on both sides of the road so that the width between two parked vehicles is 15 feet. If two cars meet on any of the streets where two cars are legally parked, it is unlikely they can pass at the same time. Sheriff Boehm said that nobody can pass a school bus. Kids, he said, play in their yards and on the streets. In July of 1996 the Sheriff's department conducted an informal traffic study and between 8 a.m. and 2 p.m. on July 1, 1996 222 cars traveled Trails West Drive. Sheriff Boehm noted that did not include morning or evening traffic. He said he believed if the request was approved, the new road would become a secondary entrance to the new subdivision developed by Mr. Payne. Secondary, he said, because from the intersection of U.S. 40 to Trails West Drive to the entrance of Mr. Payne's subdivision is 1.5 miles. However, if you turn at U.S. 40 onto Trails West, you drive .7 miles, right through the heart of the subdivision. He said he thought it would have a tremendous impact, as far as traffic is concerned, through the heart of the subdivision.

Sheriff Boehm addressed lot 12 in Rollingwood by saying the intersection of U.S. 40 and Rollingwood Drive to the entrance of Mr. Payne's development is 2.3 miles, so an individual would have to drive an additional 2.3 miles to get to the entrance if you stay on Highway 40. If a driver would turn left onto Rollingwood, they would travel .8 of a mile, making that the primary drive for the new development.

The issues here, he argued, are safety issues for Trails West. Rollingwood, he said, would be turned into a main thoroughfare by folks taking advantage of saving 1.5 miles one way. Traffic will increase, he said, because only two of the three entrances will be used, going right through the heart of a 15 year old and a 21 year old established community. If this request were to be approved, he said, the residents would pay for something that should have been looked at harder by the developer. He asked the Commission to once again deny the requests to vacate lots 61 and 62 in Trails West and lot 12 in Rollingwood.

Pamela Thomas, 8302 West South Trails Drive, said she appeared two years ago when Mr. Payne and his representatives made this same request. She reminded the Commission that a lot of evidence was presented two years and very little has changed, with the exception that now there would be multiple entrances. With all due respect to Mr. Payne, she said, she questioned how many of the entrances would even be completed. Regarding Trails West, she said again, nothing has changed. There are serious safety issues, roads have not gotten any wider and clearly the character of the neighborhood would be changed. It has to change, she said, when 300 houses appear behind an existing neighborhood. She asked the Commission to please take the welfare and safety of the residents of the Trails West subdivision into consideration and to ask Mr. Payne to find an alternative route for that kind of traffic.

Linda Morton, 1900 South Trails Terrace, said the only thing she could add to the discussion was the experience of having a child who was hit by a car on a street that was wider and more open, but with blind corners. That child, she said, is now 26, but she is in a wheelchair, cannot speak and after multiple surgeries can use one hand to sign with. She begged the Commission to not let this action take place. Ms. Morton said she had seen the agony of a bright five year old who will never be married because she was brain damaged by a car going 25 miles an hour. She said she drove down their street every day and the street was dark, cars were parked close, trees overhang and it's difficult to see a child. She asked the Commission, from her own personal experience, to not put any of their children at risk.

Mike Holle, 1910 South East Trails Drive, said he had lived in his home for 13 years and had bought the house based on plats that the subdivision would be closed. Now they were looking at 320 houses being built on the 98 acres behind them. He said their roads were hills and curves that

offered no line of sight with parking on both sides. Mr. Holle said there were a few four way stops to slow people down. The entrances to Trails West and Rollingwood both are downhill to Highway 40 and in the winter, he said, stopping at the highway is not easy. To put another 600 cars on those roads he wondered where they will go, how would they access Highway 40. The streets, he said, are not up to current specs and now there was the possibility of increased traffic. He said the neighborhood currently spent \$800 for snow removal. Mr. Holle said they bought their house after reviewing the covenants which read that plats cannot be changed without a vote of the people He said he was opposed to the vacation and replat.

Paul Brooks, 8507 South Trails Drive, said he was opposed to the vacation and replat of lots 61 and 62. He said he was a professional engineer and submitted documents that supported his opposition. At the request of Commissioner Stamper, Mr. Brooks highlighted his concerns.

Mr. Brooks said that people will take the shortest distance between two points and that Mr. Payne needs only two accesses to his subdivision. He questioned why Mr. Payne wanted the additional expense of a third access. Mr. Brooks submitted photographs of the creek and bluff on Rollingwood West and said that Mr. Payne would have a significant and prohibitive expense to build a road there.

He concluded by saying Trails West could experience 487 cars per hour of peak traffic resulting of a Level of Service D, which is unacceptable. Mr. Brooks said that even if Rollingwood was considered the best access, that would only reduce the peak hourly traffic by about 61 vehicles per hour, leaving 426 vehicles per hour peak traffic, still a Level of Service D, which is unacceptable.

Edie Brennan, 8211 West Trails West said that on July 3 she acquired a new dog and three weeks later became a street walker.

Commissioner Stamper suggested Ms. Brennan use a different description than "street walker."

Ms. Brennan said she has tried walking her dog at every time of the day, trying to find a time when the streets aren't busy. She said she can't find that time of day. Ms. Brennan said she had threatened to track the number of cars that pass her during her 45 minute walk. Traffic is unbelievable, she said, especially from the entrance at Highway 40. It is not getting any better, she said.

Marty Brennan, 8503 Trails West Drive, said they live on the northwest end of the subdivision and have owned their home there for a year and a half. Right now, he said, he can stand halfway down the driveway and have his six year old daughter get the mail. But, he said, if the traffic picks up to more than 320 cars, he won't be able to do that. The road was not made for an excess amount of traffic. Mr. Brennan said he had never experienced anything like Halloween night when they took their children trick or treating. He said there were no cars anywhere and people were walking and you could talk to your neighbors without worrying about traffic. Mr. Brennan said he did not want to lose that.

Jim Young, 8430 West Shady Oak Lane, said he owns property to the south of the proposed subdivision and he asked that Mr. Payne and MR. Rhodes consider reducing the size of their subdivision so it could be livable for all the people in the Midway area.

Mark Martin, 8613 Trails West, said he has lived in the subdivision for 12 years and his mother has lived there for seven. He said he grew up in the neighborhood and moved back because he loved the character of the area and the people and it was where he wanted to raise his family. Today, he said he has three children and they roam with as much abandon as he did when he was their age. He said he did not want to see that change. Mr. Martin said he had been a construction worker for 12 years and had seen a lot of neighborhoods through this same thing. He said they would take two to three years of heavy construction work going through their neighborhood and that a lot of construction workers don't have a lot of respect for neighborhoods. It would cause a lot of road damage, he argued. Mr. Martin said he would be the last one to stand in the way of his own livelihood, but he did not want to see anyone's neighborhood destroyed. Mr. Martin said he was opposed to the vacations and the replats.

Albert West, 8405 Trails West Drive, said he had lived in his home for seven years. There is a landscaping firm that has left dirt in the roadway and this winter time there's not going to be enough room to drive down the road with the trash people, plowers and school buses.

Karla Braudis, 1807 North Southeast Trails Drive, asked the Commissioners to remember the Midway School located at the turnoff of Highway 40.

Commissioner Stamper closed the public hearing.

Mr. Rogers said he had no particular quarrel with the neighborhood's position of "I've got mine and the rest can look out for themselves." He also said he knew why he voted for Sheriff Ted Boehm, who had concluded that the roads through Trails West or Rollingwoods were the two worst roads in the County. Mr. Rogers said he didn't find them that way. He said Sheriff Boehm had concluded that the two worst roads in the County would attract all the traffic. Mr. Rogers argued that it tends to be the good roads that get drivers around quickly and easily that are the most traveled. A perfect example, he said, was the southern half of town in George Town Subdivision. He said that 90% of the traffic follow TT and Broadway and don't take the shorter route through the subdivision. He said that most of the traffic would travel Highway 40.

Mr. Rogers said that he did not understand how Mr. Brooks determined that Rollingwood would take only 15% of the traffic. He said the traffic will be divided evenly. Mr. Rogers said they had done the most the possibly could and what the Commission would have required of a developer in 1995. He said Boone County requires existing subdivision to provide access to adjacent ground. Mr. Rogers said it would be just plain wrong to tell Rhodes-Payne that their ground could not be developed. Mr. Rogers said all they were asking was what other developers were required to do and they had done it at their own expense. He said both of the requests should be approved.

Commissioner Stamper asked Mr. Rawlings to elaborate on the covenants of the subdivision and where the violations occurred.

Mr. Rawlings referred to Addendum to Restrictive Covenants and read: In accordance with section 1.8, replatting and plat restrictions and 1.8.1.2 subdivision plats with vacation procedures (both of the Boone County, Missouri Land Use Regulations book) the following vacation procedures are established for Rollingwood Subdivision Plat 3. Any homeowner wishing to vacate their lot or reduce the lot size shall be required to obtain 100% acceptance of the remaining lot owners. The vacation request shall be submitted by the lot owner(s) in writing to the current Rollingwood Plat 3 Secretary who will contact the acting President or Vice-President who will contact the owners of all lots, whereby, a vote can be taken to approve or deny the vacation request. The secretary will advise the lot owner(s) making the vacation request of the acceptance or rejection within 14 calendar days of the request. 100% approval is required rather than the usual 2/3 majority as such a request to vacate a lot or reduce lot size could negatively impact lot and home values...The existing plat shall run with the land and all future owners forever and the existing cul-de-sacs (Section 1.4.9 of the Boone County, Missouri Land Use Regulation book), Rollingwood West Court and Rollingwood West Drive, shall not be converted, linked, connected, extended, shortened or temporarily modified into through streets (Section 1.4.39) but will remain cul-de-sacs as previously platted and recorded. He told Commissioner Stamper that no request for a replat was submitted to them.

Mr. Rogers wondered if lot 12 of Rollingwood could be included. He said you could not impose a restriction on someone else's lot and clarified that the addendum to restrictive covenants for Rollingwood were recorded a week or so ago.

Commissioner Stamper said that through the debate and hashing through this issue they had encountered a deal that is urban density and the requirement that had been placed on the developer to gain two points of access. The developer had appeared before the Commission once before asking for a vacation and replat of lots 61 and 62 in Trails West and were denied. There was ensuing litigation and Commissioner Stamper said it seemed they were in no place different than they were the last time they appeared before the Commission. He asked if it wouldn't have been smarter to come back with a traffic study to support their request.

Mr. Rogers said it was his understanding they had done as much or more than what the Commission had requested. He said two years ago they listened to the same litany of horrors regarding increased traffic, so they doubled the number of additional accesses. Adding additional accesses, he said, solves the problem. Getting a traffic study done solves making a record and Mr. Rogers said he suspected you could get a traffic study that would prove anything you wanted. He said the developer was solving this problem by reducing the amount of additional traffic that goes through Trails West by diverting some of it through Rollingwood.

Commissioner Stamper said it was his perspective that this was a way for the developer to avoid participating in the improvement of Boothe Lane and Shady Oak Lanes. In other words, he said, this is the cheapest way to go.

Mr. Rogers said the Commission could approve the subdivision and put conditions on it so that the developer would have something to shoot for.

Commissioner Stamper said they had rules and if the developer wanted to develop urban density they would have to follow the rules. He said they never anticipated they would want to go through streets that were unimproved and reiterated that the Commission had found the last proposal unacceptable.

John Payne said they had agreed to pay a County engineer for estimates for improvements on Boothe Lane and that offer was turned down by the Commissioners.

Commissioner Stamper said it wasn't quite that simple.

Mr. Payne said, yes, it was that simple.

Marvin Rhodes said the only reason the request was turned down last time was the issue of children playing in the streets.

Commissioner Stamper said it looked like the developer had a solution, but they made the decision not to exercise that option. He said they went with the cheaper solution and acquired some lots in order to stub streets instead of improving Boothe Lane and Shady Oak Lane. Commissioner Stamper repeated that this is urban development in a place where the infrastructure does not exist. The subdivision could be the size of Hallsville. He asked the developers if it wouldn't be in their best interest to do this right and that the goal was not to develop the cheapest way, but the right way.

Mr. Rhodes said they had done everything the Commission requested. He said they were against a wall. He said that if Commissioner Stamper's grandfather or father had to put up with the little stuff they had had to put up with, then Columbia would be from Broadway to Garth to College Avenue.

Commissioner Stamper said that's not what they were up against. He said they needed progress that was done right.

Mr. Rhodes replied that in his opinion, they had done everything that had been asked of them.

Commissioner Stamper said they could achieve approval of the plat today if the developer showed adequate access to adequate streets like Boothe Lane and Shady Oak and if they would agree to improvements on those two streets.

Mr. Shawver said the project could be done in its entirety or in phases. Typically they are done in a sequential order. He said they had never sat down to determine what outside improvements would be. The only final plat, he said, was geared towards the Trails West entrance at the north end of the property. Boone County regulations do not require two entrances until 100 lots are exceeded. The developer could develop with one entrance until 100 lots were exceeded.

Mr. Rhodes said another reason they purchased the other lot was because the fire department also had to approve the plans and they wanted an entrance to Trails West.

Commissioner Miller said she did not see any difference from the request of two years ago. She said she personally could not support it.

Commissioner Vogt asked if they had had this similar discussion regarding offsite improvements at the last public hearing.

Mr. Shawver said that during a previous request from Mr. Payne and Mr. Rhodes on Brennen's Wood Property, they offered improvements to Boothe Lane. There was no mechanism at that time for off site improvements. He said they work with Public Works and they determine what the development will necessitate and try to figure what a proportionate share is for the development or particular property owner.

Commissioner Vogt asked if they had pursued any of those alternatives.

Mr. Shawver said that no, although a bit of work had been done on the wastewater system, but it had not been updated in two years. He said this was subject to the matter of litigation and have not received new submissions of final plats. He clarified that the developer was not required to create a second entrance until more than 100 lots had been developed. Mr. Shawver explained that the original preliminary plat approval went back to Planning and Zoning where they placed the condition of approval saying that no final plats could be presented without an access through the Trails West Subdivision, which requires the vacation and replatting. The developers presented that petition and it was rejected. Ultimately, he said, the staff made a trip back to Planning and zoning, presenting that the developers had tried to achieve the second entrance required by County Commission. They were denied that through the public hearing process and that condition was struck from the approval. Mr. Shawver said the developer has not sent anything back through Planning and Zoning.

Mr. Patton clarified that a formal traffic study was an option for the decision making process, but could not be required of the developer.

Commissioner Vogt asked Mr. Rawlings about the 100% approval required of all lot owners to vacate a plat.

Mr. Rawlings said they had never had a vacation request and that during the last 21 years, lot 12 has had 5 owners and has remained vacant. He said they had 100% descent of the vacation request.

Mr. Patton clarified that the covenants did not have any bearing on the decision process. Whether or not they are enforceable is not the County's concern, he said.

Commissioner Miller said that if the subdivision had been built today, the County would require those streets be stubbed out. She said that she sees a huge difference now when people bought with the understanding they were living on a cul-de-sac. She said it was a very desirable place to live and asked Mr. Rogers if he didn't consider that to be a problem.

Mr. Rogers said he did. If they have their way, he said, there will be no development west of Trails West. He said they were living in an ever-urbanizing area and it seemed the Commission would need to make accommodation to the adjacent landowners. The strategical error his client made, he said, was that they should have made their requests in phases.

Commissioner Vogt said she found the decision harder this time than last and that she would like to be able to vote both ways. She said the people in Trails West had purchased their property with the understanding of what their neighborhood would look like and were now faced with their government telling them it might look like something else. She said she had some compassion for that. She said she also had compassion for a developer trying to comply with regulations and her whole vision two years ago was that people in the existing subdivisions would become friends and family with those in the proposed subdivision.

Commissioner Miller said that as a society we need a sense of community and neighborhood. She said Trails West had that and that by opening up a through fare, they would eliminate that camaraderie.

Commissioner Stamper said this was a classic battle between what exists and what's proposed. He said he would have been happier if the applicant would have submitted a traffic study or if they had pursued another option, but what they brought was the same debate in another location. He said the quality solution involves Shady Oak and Boothe Lane as a partnership between the developer, the County and the citizens. Commissioner Stamper said he wanted a traffic study and that his impression was the recommendation would come back to improve Boothe Lane and Shake Oak. Commissioner Stamper said they were not denying the developer access to their property, that they could start tomorrow with a plan based on 100 lots. Above and beyond that, he said, would trigger the need for another point of access.

Commissioner Miller moved that the County Commission of the County of Boone deny the request to vacate and replat lots 61 and 62 of Trails West Subdivision, Plat 6, submitted by Rhodes-Payne Properties, Inc. with the Conclusions, Facts and Findings of Law to be submitted at a later date.

Commissioner Stamper seconded. Commissioners Stamper and Miller voted in favor; Commissioner Vogt voted in opposition. Motion passed. **Order 483-97.**

Commissioner Miller moved that the County Commission of the County of Boone deny the petition to vacate and replat lot 12 of Rollingwood Subdivision, Plat 3, submitted by Rhodes-Payne Properties, Inc. with the Conclusions, Findings and Facts of Law to be submitted at a later date.

Commissioner Stamper seconded. Commissioners Stamper and Miller voted in favor; Commissioner Vogt voted in opposition. Motion passed. **Order 484-97.**

**SUBJECT: Country Boy Estates No. 2 (Block I), replat of lots 25 and 26. A-2. S15-T50N-R13W. Roy and Christina Knapp, owners. James W. Brush, surveyor.**

Commissioner Vogt moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign the Country Boy Estates No. 2 (Block I), replat of lots 25 and 26. A-2. S15-T50N-R13W. Roy and Christina Knapp, owners. James W. Brush, surveyor.

Commissioner Miller seconded. Motion passed unanimously. **Order 485-97.**

**SUBJECT: Ashland Estates. A-2. S9-T46N-R12W. Ralph and Jo LaFoy, owners. C. Stephen Heying, surveyor.**

Commissioner Miller moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign the plat for Ashland Estates. A-2. S9-T46N-R12W. Ralph and Jo LaFoy, owners. C. Stephen Heying, surveyor.

Commissioner Vogt seconded. Motion passed unanimously. **Order 486-97.**

**SUBJECT: Pop's Place. A-2. S-11-T46N-R12W. Mitchell and Doris Martin, owners. C. Stephen Heying, surveyor.**

Commissioner Miller moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign the plat for Pop's Place. A-2. S-11-T46N-R12W. Mitchell and Doris Martin, owners. C. Stephen Heying, surveyor.

Commissioner Vogt seconded. Motion passed unanimously. **Order 487-97.**

**SUBJECT: Valley Creek Plat 8 PRD, replat of lot 79. S3-T48N-R12W. R-M. Alan Lynch Construction, Co., owner. James V. Patchett, surveyor.**

Commissioner Vogt moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign Valley Creek Plat 8 PRD, replat of lot 79. S3-T48N-R12W. R-M. Alan Lynch Construction, Co., owner. James V. Patchett, surveyor.

Commissioner Miller seconded. Motion passed unanimously. **Order 488-97.**

**SUBJECT: Country Squire Subdivision. R-M. S26-T49N-R13W. Gene and Yoko Smith, owners. James V. Patchett, surveyor.**

Commissioner Vogt moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign the plat for Country Squire Subdivision. R-M. S26-T49N-R13W. Gene and Yoko Smith, owners. James V. Patchett, surveyor.

Commissioner Miller seconded. Motion passed unanimously. **Order 489-97.**

**SUBJECT: Bill Wilson Subdivision. A-R. S5-T51N-R12W. William and Myrna Wilson, owners. Donald E. Bormann, surveyor.**

Commissioner Vogt moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign the plat for Bill Wilson Subdivision. A-R. S5-T51N-R12W. William and Myrna Wilson, owners. Donald E. Bormann, surveyor.

Commissioner Miller seconded. Motion passed unanimously. **Order 490-97.**

**SUBJECT: Callaway County Agreement**

Commissioner Miller moved that the County Commission of the County of Boone approve the Bridge Renovation Cooperative Agreement with Callaway County for repairs to the Burnett School Road Bridge.

Commissioner Vogt seconded. Motion passed unanimously. **Order 491-97.**

**SUBJECT: Vote to Hold a Closed Meeting Pursuant RSMo. 610.021 (1, 2, 3)**

Commissioner Miller moved that the County Commission of the County hold a closed meeting pursuant RSMo. 610.021(1) RSMo. to discuss legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys; and as authorized by 610.021 (2) RSMo. to discuss leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefore; and discussion of the hiring, firing, disciplining or promoting of an employee of a public governmental body pursuant to Section 610.021 (3) RSMo.

Commissioner Vogt seconded. Motion passed unanimously. **Order 492-97.**

**SUBJECT: Reports from Commissioners**

Commissioner Stamper moved that the County Commission of the County of Boone approve the custodial agreement between First National Bank and Boone County; pending the approval of County Counselor John Patton, and authorize the Presiding Commissioner to sign the agreement.

Commissioner Miller seconded. Motion passed unanimously. **Order 493-97.**

Commissioner Stamper moved that the County Commission of the County of Boone correct Commission Order 472-97 regarding the award to the Ashland Track and Field of Dreams project. The correct award was \$211,503 or 75% of their requested \$282,004.

Commissioner Miller seconded. Commissioners Miller and Stamper voted in favor; Commissioner Vogt voted in opposition. Motion passed. **Order 494-97.**

Commissioner Miller reported that when they closed Driskell Road it was her intention that the road would be closed to all traffic. Because the road is not posted for no trespassing people are running ATVs on the closed portion of the road. Commissioner Miller checked with County

Counselor John Patton who said the County has the authority to post the road with a no trespassing sign. The Commissioners agreed to post the road.

Commissioner Stamper reported that John G. Clark and Pat Brown had been appointed to the Boone County University of Missouri Extension Council.

Commissioner Stamper also reported on a request to lease the other portion of Pod D. The Commissioners agreed to do no further leasing of Pod D, particularly when inmates are being housed out of county.

The meeting adjourned at 9:12 p.m.

Attest:

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Wendy S. Noren  
Clerk of the County Commission

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Don Stamper  
Presiding Commissioner

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Karen M. Miller  
District I Commissioner

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Linda Vogt  
District II Commissioner