

**AGENDA ITEM # 6**

**August 18, 1998**

\*

Hear report on Rocky Hollow Cemetery and consider authorizing Unified Rd. & Bridge to remove fencing on County property.

Lester Fisher advised a portion of property located outside the cemetery chain link fence has been fenced off and he requested the county remove the fence.

In his research Williamson County Road and Bridge Dennis Allman advised the cemetery is a small triangle shaped piece of property located along Farm-to-Market 2338. Approximately an acre was donated as a burial site in 1906 along County Road 247, which has now been fenced with barbed wire. Another survey was accomplished in 1995 describing the questioned property as 1 acre.

Mr. Allman advised the Stratton family from Fort Worth, Texas, installed the fence believing they own the property.

Commissioner Hays suggested a Trespass to Try Title suit might be necessary to clear ownership to the fenced tract.

County Attorney Gene Taylor suggested he could find an attorney who could donate his time to the project if the Rocky Hollow Cemetery Association could pay the court costs and filing fees.

After further discussion the decision was made to take no action on this agenda item.

**AGENDA ITEM # 7**

**August 18, 1998**

Consider granting final plat approval to West Ridge Subdivision, Section 2.

Attorney Steven Ross addressed the court distributing a letter from Chisholm Trail Special Utility District advising the District will provide retail water service to West Ridge Subdivision Sections 2, 3 and 4.

Mr. Ross reviewed the Local Government Code Section 232.002 and .003 regarding subdivision requirements.

Ethel Barnes Association members George Gregory and Ms. Pat Miller expressed their opposition to the approval of sections 2 and 3.

County Engineer Joe England stated the plat fully complied with all county subdivision regulations. He also indicated the letter from Chisholm Trail Water Supply far exceeded the standard letter required for water supply to a subdivision.

First Assistant County Attorney Dale Rye stated West Ridge Subdivision, Sections 2 and 3 should be approved because of full compliance with Local Government Code 232.002 and 232.003.

**COMMISSIONERS COURT ADJOURNED TO EXECUTIVE SESSION AT 11 O'CLOCK A.M. ON TUESDAY, AUGUST 18, 1998 AT THE REQUEST OF COUNTY ATTORNEY GENE TAYLOR TO CONSULT WITH ATTORNEYS.**

**COMMISSIONERS COURT RECONVENED AT 11:32 O'CLOCK A.M. ON TUESDAY, AUGUST 18, 1998.**

Judge Doerfler announced no action had been taken in executive session.

Moved: Commissioner Mehevec

Seconded: Commissioner Boatright

Motion: To take no action until we get a ruling from the Health District Board on the OSSF (On site sewage facility) appeal.

Vote: Motion failed 1 - 3 with Judge Doerfler and Commissioners Boatright and Hays voting against the motion.

Commissioner Mehevec expressed his concern with the health and safety issue for the surrounding property owners.

Moved: Judge Doerfler

Seconded: Commissioner Boatright

Motion: To grant final plat approval to West Ridge Subdivision, Section Two.

Vote: Motion passed 3 - 1 with Commissioner Mehevec voting against the motion.

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**CHISHOLM-TRAIL**  
SPECIAL UTILITY DISTRICT

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P. O. Box 249 • Florence, Texas 76527 • (254) 793-3103

August 18, 1998

Peter Kehle, President  
THLM, Inc.  
11652 Jollyville Road  
Austin, Texas 78759

**RE: WEST RIDGE SUBDIVISION SECTION NOS. TWO THROUGH FOUR**

Dear Mr. Kehle:

In response to your recent request for Chisholm Trail S.U.D. water service to the proposed West Ridge Subdivision Phase Nos. Two (39 lots), Three (24 lots) and Four (75 lots), these phases are in the District's Certificate of Convenience and Necessity water service area. The District will provide retail service, subject to Board of Directors' approval and contingent, at a minimum, upon the following conditions:

1. You or future owners of the West Ridge Subdivision shall pay 100 percent of the cost for the construction (including easements) of a minimum 8-inch diameter "loop" pipeline extending from the District's 15-inch diameter water main on CR 248 to the District's 2-1/2-inch diameter water line located along FM 2338. The loop pipeline, to be constructed along West Ridge Lane and the proposed Quail Run and Rawhide Lane, shall be completed by prior to the completion of construction of road and drainage improvements in Phase Three West Ridge Subdivision;
2. You or future owners of the West Ridge Subdivision shall plat and assign, if an exception is not granted by the District, an exclusive 15-foot wide easements in the name of Chisholm Trail Special Utility District within all future subdivision phases (i.e., Phase Nos. Two, Three, and Four) for the construction by the developer of all internal water transmission and distribution lines;
3. Water service to the proposed West Ridge Subdivision Phase Nos. Two, Three and Four will be provided upon Board of Director's approval, in accordance with District policies and procedures; and

Page 2

Letter to Mr. Shipman

August 18, 1998

4. Commencing with Phase Two West Ridge Subdivision and for all subsequent subdivision phases, you or future owners of the West Ridge Subdivision may be required, as a condition of water service, by the District to participate in off-site water system improvements required to enhance water service to the West Ridge Subdivision .

If the above water service conditions are acceptable to you, please provide me with a written response. Upon receiving your response, I will direct the District's attorney, Phil Haag, to prepare a Non-Standard Water Service Extension Agreement for your review. If we receive your written response after September 30, 1998, circumstances may change, and the terms for water service presented above may have to be modified.

I look forward to working with you on this important matter.

Sincerely,



Patty Rodgers, General Manager  
CTSUD

cc: Don Rauschuber, P.E.  
Phil Haag, Attorney at Law  
Bert Mansfield, President, CTSUD

Section	
232.029.	Connection of Utilities.
232.030.	Subdivision Regulation; County Authority.
232.031.	Requirements Prior to Sale or Lease.
232.032.	Services Provided by Subdivider.
232.033.	Advertising Standards and Other Requirements Before Sale; Offense.
232.034.	Conflict of Interest; Penalty.
232.035.	Civil Penalties.
232.036.	Criminal Penalties.
232.037.	Enforcement.
232.038.	Suit by Private Person in Economically Distressed Area.
232.039.	Cancellation of Subdivision.
232.040.	Replatting.
232.041.	Revision of Plat.
232.042.	Variances.

**SUBCHAPTER C. ALTERNATE SUBDIVISION PLATTING REQUIREMENTS IN CERTAIN OTHER ECONOMICALLY DISTRESSED COUNTIES**

232.071.	Applicability.
232.072.	Plat Required.
232.073.	Approval by County Required.
232.074.	Bond Requirements.
232.075.	Water and Sewer Service Extension.
232.076.	Certification Regarding Compliance With Plat Requirements.
232.077.	Connection of Utilities in Certain Counties.
232.078.	Conflict of Interest; Penalty.
232.079.	Civil Penalties.
232.080.	Enforcement.

**SUBCHAPTER A. SUBDIVISION PLATTING REQUIREMENTS IN GENERAL**

*Acts 1995, 74th Leg., ch. 979, § 2, designated the subchapter and added the heading.*

**§ 232.001. Plat Required**

(a) The owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to lay out a subdivision of the tract, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

(b) To be recorded, the plat must:

- (1) describe the subdivision by metes and bounds;

(2) locate the subdivision with respect to an original corner of the original survey of which it is a part; and

(3) state the dimensions of the subdivision and of each lot, street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part.

(c) The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds.

(d) The plat must be filed and recorded with the county clerk of the county in which the tract is located.

(e) The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

(f) Repealed by Acts 1995, 74th Leg., ch. 979, § 29, eff. June 16, 1995.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987; Amended by Acts 1989, 71st Leg., ch. 624, § 3.05, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 422, § 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 979, § 29, eff. June 16, 1995.

Section 4.02 of the 1989 amendatory act provides:

"The changes in law made by this Act to Chapters 212 and 232, Local Government Code, and to Section 12.002, Property Code, apply only to a subdivision of a tract of land and to an owner of the tract if the tract is subdivided on or after September 1, 1989."

**§ 232.0015. Exceptions to Plat Requirement**

(a) To determine whether specific divisions of land are required to be platted, a county may define and classify the divisions. A county need not require platting for every division of land otherwise within the scope of this subchapter.

(b) This subchapter does not apply to a subdivision of land to which Subchapter B<sup>1</sup> applies.

Added by Acts 1989, 71st Leg., ch. 624, § 3.04, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 979, § 3, eff. June 16, 1995.

<sup>1</sup> V.T.C.A., Local Government Code § 232.021 et seq.

**§ 232.002. Approval by County Required**

(a) The commissioners court of the county in which the land is located must approve, by an order entered in the minutes of the court, a plat required by Section 232.001. The commissioners court may refuse to approve a plat if it does not meet the requirements prescribed by or under this chapter or if any bond required under this chapter is not filed with the county.

RECORDERS MEMORANDUM

All or parts of the text on this page was not clearly legible for satisfactory recordation.

(b) The commissioners court may not approve a plat unless the plat and other documents have been prepared as required by Section 232.0035, if applicable.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, § 3.04, eff. Sept. 1, 1989.

#### § 232.003. Subdivision Requirements

By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the county, the commissioners court may:

(1) require a right-of-way on a street or road that functions as a main artery in a subdivision, of a width of not less than 50 feet or more than 100 feet;

(2) require a right-of-way on any other street or road in a subdivision of not less than 40 feet or more than 70 feet;

(3) require that the shoulder-to-shoulder width on collectors or main arteries within the right-of-way be not less than 32 feet or more than 56 feet, and that the shoulder-to-shoulder width on any other street or road be not less than 25 feet or more than 35 feet;

(4) adopt, based on the amount and kind of travel over each street or road in a subdivision, reasonable specifications relating to the construction of each street or road;

(5) adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices;

(6) require that each purchase contract made between a subdivider and a purchaser of land in the subdivision contain a statement describing the extent to which water will be made available to the subdivision and, if it will be made available, how and when; and

(7) require that the owner of the tract to be subdivided execute a good and sufficient bond in the manner provided by Section 232.004.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 54(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, § 3.04, eff. Sept. 1, 1989.

§§ 232.0035, 232.0036. Repealed by Acts 1995, 74th Leg., ch. 979, § 29, eff. June 16, 1995

#### § 232.004. Bond Requirements

If the commissioners court requires the owner of the tract to execute a bond, the owner must do so before subdividing the tract unless an alternative fi-

nancial guarantee is provided under Section 232.0045. The bond must:

(1) be payable to the county judge of the county in which the subdivision will be located or to the judge's successors in office;

(2) be in an amount determined by the commissioners court to be adequate to ensure proper construction of the roads and streets in the subdivision, but not to exceed the estimated cost of construction of the roads and streets;

(3) be executed with sureties as may be approved by the court;

(4) be executed by a company authorized to do business as a surety in this state if the court requires a surety bond executed by a corporate surety; and

(5) be conditioned that the roads and streets will be constructed:

(A) in accordance with the specifications adopted by the court; and

(B) within a reasonable time set by the court.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 54(b), eff. Aug. 28, 1989.

#### § 232.0045. Financial Guarantee in Lieu of Bond

(a) In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee.

(b) If a letter of credit is used, it must:

(1) list as the sole beneficiary the county judge of the county in which the subdivision is located; and

(2) be conditioned that the owner of the tract of land to be subdivided will construct any roads or streets in the subdivision:

(A) in accordance with the specifications adopted by the commissioners court; and

(B) within a reasonable time set by the court.

Added by Acts 1989, 71st Leg., ch. 1, § 54(b), eff. Aug. 28, 1989.

§§ 232.0046, 232.0047. Repealed by Acts 1995, 74th Leg., ch. 979, § 29, eff. June 16, 1995

#### § 232.0048. Conflict of Interest; Penalty

(a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

GREIF & ROSS, P.C.  
Attorneys at Law

Steven D. Ross  
Gary W. Greif

Paul C. Enos  
Lori B. Tuggle

August 7, 1998

*Via Facsimile. 930-3262 and Via Certified Mail, RRR No. P 287 933 367*

The Hon. John C. Doerfler, County Judge  
Williamson County Courthouse, 2nd floor  
710 Main St.  
Georgetown, Texas 78626

**Re: Demand for final plats approval by the Williamson County  
Commissioner's Court for West Ridge Subdivision Phases 2, 3 and 4 plats**

Dear Judge Doerfler:

As you know this firm represents Peter Kehle, the developer of the West Ridge subdivision, Phases 2 and 3, located in Williamson County, Texas. On Tuesday, August 4, 1998, final plat approval for Phases 2 and 3 of the West Ridge subdivision was on the agenda for consideration by the Commissioner's Court. The plats before the Commissioners met all prerequisites of Chapter 232 of the Local Government Code for final plat approval. The plats had also received all approvals necessary under the existing Williamson County Subdivision Regulations and under existing Williamson County Health District OSSF regulations. Moreover, the developer has gone out of his way to demonstrate that individual lots will not be developed without available water, as shown on the notes on the plat. Notwithstanding full compliance with all applicable laws and regulations and all requests of county and health district staff, the Court tabled its vote on final plat approval for Phases 2 and 3 of the West Ridge subdivision, over the objections of the developer's representative, Nelson Shipman.

Since you referred to it in opposing the motion to table, I know you are aware that Chapter 232 provides the exclusive authority upon which the Commissioners give final approval to a subdivision plat. Section 232.003 of this Code *only* provides for authority of the Court to require reasonable development provisions with respect to roads, drainage and bonds; and Section 232.002 says a County Commissioners' Court *must* approve a plat meeting the requirements of this Chapter. Attorney General Opinion JM 789 (September 1987), citing *Commissioners' Court v. Frank Jester Development Co.*, 199 S.W.2d 1004 (Tex. Civ. App.--Dallas 1947, writ ref'd n.r.e.), states: "The Commissioners Court has the authority to refuse to approve a subdivision plat only for a failure to meet the specific requirements of

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August 7, 1998  
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section 232.003." Once these specific requirements are met, the Attorney General Opinion holds that Final Plat Approval is a ministerial act.

Accordingly, this past Tuesday's tabling of final plat approval for West Ridge Subdivision, Phases 2 and 3, violates state law. While it is probably an exercise in futility, given the size of the vote in favor of the motion to table and given that the stated purpose for tabling was to afford the Williamson County Health District the chance to approve new regulations for OSSF systems, we are hereby making demand upon the Commissioner's Court to place final plat approval for the West Ridge Subdivision's phases 2 and 3 on the agenda of the Court on or before Wednesday, August 12, 1998, and at that time vote to approve both the final plat for phase 2 and that for phase 3, so that each of these plats can be filed of record in the County Clerk's Office. We also request that the Commissioner's Court do the same with respect to the plat for Phase 4 of the Subdivision by August 18, 1998.

*If the Court fails to give final plat approval for phases 2, 3 and 4 as demanded in this letter, then our client will have no choice but to file a mandamus action and to seek all of the relief allowed by law. While it would be a shame if matters came to this, we will pursue such remedies if the Commissioner's Court fails to faithfully execute its nondiscretionary duties under state law.*

Sincerely yours,  
GREIF & ROSS, P.C.

  
STEVEN D. ROSS  
Attorney at Law

ccs:

*Via Facsimile 943-1120 and Via First Class Mail*  
The Hon. Gene Taylor, Williamson County Attorney  
Courthouse Annex, Second Floor  
405 Martin Luther King, Box 7  
Georgetown, Texas 78626

*Via Facsimile 248-3243 and Via Certified Mail, RRR no. P 287 933 368*  
The Hon. Mike Heiligstein, County Commissioner  
211 Commerce Cove 78664

Hon. J. Doerfler  
August 7, 1998  
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*Via Facsimile 258-1934 and Via Certified Mail, RRR no. P 287 933 369*  
The Hon. Greg Boatright, County Commissioner  
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*Via Facsimile 352-1536 and Via Certified Mail, RRR no. P 287 933 370*  
The Hon. Jerry L. McHevec, County Commissioner  
P.O. Box 1104  
Taylor, Texas 76574

*Via Facsimile 930-4462 and Via Certified Mail, RRR no. P 287 933 371*  
The Hon. David Hays, County Commissioner  
1900 Georgetown Inner Loop, suite C  
Georgetown, Texas 78626

Client

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August 14, 1998

The Hon. John C. Doerfler, County Judge  
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Georgetown, TX 78626      via facsimile 930-3262

Re: West Ridge Subdivision Phases 2, 3, and 4

Dear Judge Doerfler:

This letter is on behalf of the Ethel Barnes Association. The purpose of this letter is to review Williamson County Commissioners' authority to delay final plat approval for the West Ridge Subdivision phases 2, 3, and 4 until a final decision regarding compliance with septic regulations is made by the Williamson County Health Department.

As counsel for the subdivision has explained, the legislature has given the county the authority to require platting pursuant to specific parameters in the Local Government Code. The Code requires that a subdivision have adequate roads, drainage, and a bond when required. TEX. LOCAL GOVT. CODE § 232.003. The County may deny a plat when it does not meet platting requirements adopted pursuant to the local government code. TEX. LOCAL GOVT. CODE § 232.002.

County government has also been given the responsibility to ensure that septic systems comply with state and county regulations. See generally 30 TEX. ADMIN. CODE ch. 285. The septic system regulations provide varying standards for the approval of a septic system served by public water supply versus a system served by individual water supply well. Compare 30 TEX. ADMIN. CODE §§ 285.11(B) with 285.11(C). A subdivision that is "served by a public water supply" and using a septic system must have lots of at least ½ acre. 30 TEX. ADMIN. CODE § 285.11(B)(emphasis added). A lot to be served by individual well must be one acre and must meet more specific requirements, including (a) the plat must show the

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approved well location, and (b) the plat must show a 150-foot radius easement around the water well where no subsurface sewerage system may be constructed. 30 TEX. ADMIN. CODE § 285.11(C). The reason for differential treatment of lots is obvious. The purpose of the septic rules is to prevent migration of sewerage into drinking water supplies, be they individual well or public water system.

County health officials have been given specific responsibility to enforce the septic rules. 30 TEX. ADMIN. CODE 285.11(e)(3). In fact, Texas law requires public health officials as well as the county attorney to enforce nuisance laws to prohibit improper or inadequate disposal of human excrement. TEX. HEALTH & SAFETY CODE § 343.012(b) & (d). The mandatory nature of the statute is striking. Public health authorities are required by law to issue a notice to one in violation of the law and give a deadline for compliance. Further, county attorneys do not have prosecutorial discretion in this area; they are required to institute proceedings to abate the nuisance if the deadline has not been met.

Like many other counties in Texas, Williamson County requires compliance with its septic rules prior to approval of a plat. This sequence of approval is only rational. Since lot size finalization is required before plat approval (drainage and roads are both dependent on lot size), the lot size must be determined prior to plat approval. The lot size is determined by the type of water supply available, assuming a septic system is to be used.

In Mr. Ross' letter to you dated August 7, 1998, he threatens the Commissioners Court with a mandamus action. He argues that the County does not have the authority to require septic approval prior to plat approval. We believe Mr. Ross has incorrectly analyzed the law. We further believe that in a mandamus action, where Mr. Ross must prove that you have abused the discretion you have, that he would be unsuccessful. Mr. Ross is essentially challenging Williamson County's authority to require compliance with septic regulations prior to plat approval. This is a serious issue, and one that affects many counties in this state.

While the Local Government Code does not give explicit authority for a County to consider septic and water supply, Williamson County has legally adopted a requirement that septic approval precede platting in its subdivision regulations. It must be pointed out that Williamson County had not adopted septic regulations pursuant to the local government code, nor do the platting requirements make specific substantive requirements. The legal authority for the septic requirements is in the Texas Health and Safety Act.

The requirement of prior septic approval is legal for two independent reasons. First, before a plat can be finalized, lot size must be determined. Lot size is necessary to plan drainage and roads. If the County Health Department did not

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approve the septic system and the lot size had to be changed, the plat would not be valid. This means that determination of lot size is merely part of the requirements in current platting law. The subdivision regulations themselves do not regulate septic or lot size; the regulations simply require prior approval of the septic system prior to plat approval.

The second, and independent, basis for validity of the the County's requirement for septic approval is the implied authority of the county. The Texas Legislature has given counties specific authority to prevent nuisances from sewerage systems, and the Legislature has given counties the responsibility to require platting. The requirement for septic systems has not been adopted as a platting requirement since the requirements apply to platted and unplatted subdivisions alike. In addition to the express authority to regulate septic systems and the express authority to approve plats, Texas counties also have the implied authority to exercise necessary powers to accomplish duties expressly delegated, in this case to precondition plat approval on an approved septic system. See Anderson v. Wood, 152 S.W.2d 1084 (Tex. 1941). "Where a right is conferred or obligation imposed on said [county commissioners] court, it has implied authority to exercise a **broad discretion** to accomplish the purposes intended." Id. at 1085 (emphasis added). A summary of case law discussing the implied authority of counties is attached.

Counsel for Peter Kehle, the developer of the West Ridge subdivision, cites Attorney General Opinion JM 789 (Sept. 1987) and Commissioner's Court v. Frank Jester Development Co., 199 S.W. 2nd 1004 (Tex. Civ. App. -- Dallas 1947, writ re'f n.r.e.). Both the referenced Attorney General Opinion and the Dallas appellate case involved the requirement of a dedication of land to the public as a prerequisite to platting. While both cases do speak of the limitations of the local government code in approving plats, neither involved the specific facts at hand where the legislature, through separate legislation, required the County to regulate land use in a certain manner to protect public health. Neither case discussed the implied authority of a county to integrate its land use planning, which Williamson County, and other counties in this state have done.

The Williamson County Health Department has not finally approved the septic system for phases 2, 3 and 4 for the West Ridge Subdivision. The Health Department approved the septic system for phases 2 and 3, but that approval is currently under appeal pursuant to section 10 of the Health Department Rules, so that a final approval has not been submitted to the county. The Health Department has not finally approved phases 2 and 3. The Health Department has not approved phase 4 at all.

The Ethel Barnes Association believes that the Williamson County Health

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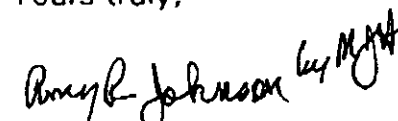
Department cannot approve the septic plan since a commitment for public water supply has not been made and since the plat relies on public water supply. At this point, the argument about public water supply is an issue that should be before the Williamson County Health Department. In fact, determination of compliance with septic regulations is an issue for the Williamson County Health Department.

Previously, when an appeal of a decision was pending, this Commission delayed a decision on the plat, pending final resolution of the appeal. That is appropriate in this situation.

Counsel for West Ridge Subdivision is trying to force the County Commissioners to approve this subdivision when such approval is not in compliance with County rules. Counsel argues that Williamson County does not have the authority to condition plat approval on septic regulation. He does not argue that prior septic approval is irrational or arbitrary. He does not address whether the County has implied authority to require septic approval.

Like many other counties in this state, Williamson County has adopted and enforces septic regulations to protect public health and drinking water supply. This County, like others, has the tools to prevent any "colonias" from being built in this region. The Ethel Barnes Association urges the County to resist legal bullying tactics to force the Commissioners to make a decision prior to a final decision by the County Health Department. We urge the Commissioners not to make a decision until a final recommendation comes from the County Health Department on phases 2, 3, and 4.

Yours truly,

  
Amy R. Johnson

cc:

The Hon. Gene Taylor, Williamson County Attorney  
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The Hon. Mike Heiligstein, County Commissioner  
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### **Implied Authority of Counties**

In a number of situations, Texas courts have implied authority for counties. Some of the cases are summarized below:

**1. Anderson v. Wood, 152 S.W.2d 1084, 1085 (Tex. 1941)**

The county sought to assert its right to hire and fire courthouse engineer, janitors and elevator operators. The express authority was provided in Revised Statutes, Article 2351, declaring it the county commissioners' duty to "provide and keep in repair court houses, jails and all necessary public buildings." The Court upheld the county's implied authority to hire and fire courthouse personnel.

**2. Zimmerman v. Harris County, 819 S.W.2d 178 (Tex.App. -- Houston [1st Dist] 1991)**

At issue was the county's authority to hire a private corporation to construct a county jail. The court held that the authority was implied in a variety of statutes including the constitutional and statutory authority of counties to build jails.

**3. C.N. Cosby v. County Commissioners of Randall County, 712 S.W.2d 246 (Tex.App. -- Amarillo 1986)**

At issue was county authority to demolish an old courthouse. Counties had expressly been delegated the authority to provide a courthouse and keep it in good repair. Further, the legislature had required notice to the Texas Historical Commission prior to demolishing a courthouse. The court held the county had the implied authority to demolish the courthouse.

**4. Dodson v. Marshall, 118 S.W.2d 621 (Tex.Civ. App. -- Waco 1938)**

The court reviewed whether the county had authority to grant a concession in the rotunda of courthouse. The court held there was implied authority pursuant to a number of statutes allowing counties to provide courthouses and keep them in repair.

**5. El Paso County v. Elam, 106 S.W.2d 393 (Tex. Civ. App. -- El Paso 1937).**

The county authority to construct a drainage ditch was challenged. The county had express authority to "exercise general control over all roads, highways, ferries and bridges in their counties." The court held that the county had implied authority to build a drainage ditch because the project was built to stop county roads from flooding.

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The only case we could find where a court held the county lacked the implied authority to undertake an action was in Canales v. Laughlin, 214 S.W.2d 451 (Tex. 1948). In that instance, the county sought to create the Office of County Road Unit Administrative Officer, fix the salaries of employees of the office, and give broad powers to the office. The county argued that it had implied authority to create the office because of a statute that authorized it to hire an agent for certain named purposes "or for any other purpose authorized by law." In this case, however, a number of statutes addressed exactly the authority of counties to hire personnel for road supervision and put specific limits on counties. The court held that the statutory requirements had not been followed and the action could not be upheld.

**AGENDA ITEM # 8****August 18, 1998**

\*

Consider granting final plat approval to West Ridge Subdivision, Section 3.

Moved: Judge Doerfler

Seconded: Commissioner Boatright

Motion: To grant final plat approval to West Ridge Subdivision, Section 3.

Vote: Motion carried 3 - 1 with Commissioner Mehevec voting against the motion.

**AGENDA ITEM # 9****August 18, 1998**

\*

Consider approving vacation of 0.026 acre portion of right-of-way along Block House Drive.

County Engineer Joe England advised in the 1980's proposed Block House Drive alignment right-of-way was dedicated to the county along with tangent intersections. Over the years these proposed intersections have been revised and the right-of-way is no longer needed. The requested vacation is required basically for drive way cuts.

Commissioner Boatright requested the vacation document be filed in the real property records of the Williamson County Clerk.

Moved: Commissioner Boatright

Seconded: Commissioner Hays

Motion: To approve vacation of 0.026 acre portion of right-of-way along Block House Drive.

Vote: Motion carried 4 - 0

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