

Cause No. **D-1-GN-16-001762**

GRAYSON COX, SABRINA BRADLEY,	§	IN THE DISTRICT COURT
DANIEL DE LA GARZA, PIMPORN MAYO,	§	
JEFFREY MAYO, RYDER JEANES,	§	
JOSEPHINE MACALUSO, AMITY	§	
COURTOIS, PHILIP COURTOIS, ANDREW	§	
BRADFORD, MATTHEW PERRY,	§	
TIMOTHY HAHN, GARY CULPEPPER,	§	
CHERIE HAVARD, ANDREW COULSON,	§	
LANITH DERRYBERRY, LINDA	§	<u>126th</u> JUDICIAL DISTRICT
DERRYBERRY, ROSEANNE GIORDANI,	§	
BETTY LITRELL, and BENNETT BRIER,	§	
	§	
Plaintiffs,	§	
v.	§	
	§	
CITY OF AUSTIN,	§	
	§	
Defendant.	§	TRAVIS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION FOR DECLARATORY JUDGMENT

Plaintiffs Grayson Cox, et al, file this petition for declaratory judgment, complaining of the City of Austin and seeking a declaratory judgment determining and confirming certain important rights guaranteed to them by state statute to protect the use and enjoyment of their property and homes.

A. SUMMARY OF THE CASE AND REQUESTED RELIEF

1. This case involves the interpretation of the Valid Petition Rights section of the Texas Zoning Enabling Act, Texas Local Government Code Section 211.006(d) (the “**Valid Petition Rights Statute**”). That statute requires a $\frac{3}{4}$ vote of a City Council to approve any change in zoning regulations that are protested by at least 20% of the landowners in the area.

The requisite 20% of the neighboring landowners have submitted valid petitions objecting to the approval of the proposed zoning regulation changes for the Grove at Shoal Creek Planned Unit Development (herein “**Grove PUD**”). That Grove PUD is proposed as a high-density mixed-use development on a 76 acre tract of land at 4205 Bull Creek Road in Austin, Texas, commonly called the “**Bull Creek Tract.**”

2. Approval of the Grove PUD will require the Austin City Council to adopt an ordinance amending Austin’s City Code, making numerous and substantial amendments, modifications, and other changes to the existing regulations and restrictions in Austin’s comprehensive zoning ordinance. The question in this case is whether approval of that ordinance will require a $\frac{3}{4}$ vote by the Austin City Council under the Valid Petition Rights statute, or whether the Grove PUD is exempt from that statute and can be approved by simple majority vote.

3. Plaintiffs are homeowners in the residential neighborhoods surrounding the Bull Creek Tract. Due to certain adverse impacts the proposed Grove PUD will have on their homes and neighborhoods, Plaintiffs and other neighbors have filed the requisite valid petitions to trigger $\frac{3}{4}$ voting under the Zoning Enabling Act. The City has rejected those petitions based on the contention that the Grove PUD is exempt from the mandatory application of the Valid Petition Rights Statute.

4. Under the Valid Petition Rights Statute, if 20% or more of the neighboring landowners object to an ordinance amendment that will change the regulations or restrictions in a city’s zoning ordinance, a $\frac{3}{4}$ supermajority vote is required to approve that amending ordinance. To protect the property rights of the existing landowners, the Legislature mandated that any ordinance changing the city’s land use regulations to allow objectionable new or different uses,

must receive at least a $\frac{3}{4}$ vote by the city council to be effective. The fundamental law granting cities zoning powers says ordinances in such cases are not to be determined by the politics of a simple majority vote of city council.

5. The ordinance amending Austin's comprehensive zoning ordinance to approve the Grove PUD has not been scheduled for a vote by the City council. Nevertheless, certain rights of Plaintiffs to participate meaningfully in the city review and approval process for this PUD are being adversely affected by the City's determination not to comply with the Valid Petition Rights statute. The proposed Grove PUD is currently under review by various city departments for staff approval and recommendation to the city council. Plaintiffs are attempting to participate in that process as is their right. In good faith, Plaintiffs are seeking modifications to certain objectionable aspects of the proposed Grove PUD that would be damaging to their homes and neighborhoods. The Zoning Enabling Act and the requirement of $\frac{3}{4}$ voting is supposed to make that involvement meaningful so as to facilitate one of two solutions to such objectionable land use changes: either the objectionable parts of the proposed changes can be modified during the review process so that the valid petition objections can be withdrawn; or, the objections of the adversely affected neighbors will be overridden by a $\frac{3}{4}$ vote of the city council under the Valid Petition Rights Statute.

6. Plaintiffs prefer the first solution of constructively working toward a compromise that will provide sufficient protections for the use and enjoyment of their homes and neighborhoods. The possibility of that solution has been substantially foreclosed by the City's refusal to recognize the required $\frac{3}{4}$ vote requirement. This lawsuit has become necessary to ensure that proper balancing of Plaintiffs' rights will be considered through $\frac{3}{4}$ city council voting under that second avenue of protection provided by Valid Petition Rights statute.

7. This suit seeks a declaratory judgment that the Valid Petition Rights section of the Texas Zoning Enabling Act requires a $\frac{3}{4}$ vote by the Austin City Council to legally approve the Grove PUD.

B. PARTIES

8. Plaintiffs are Grayson Cox, 2621 W. 45th Street; Sabrina Bradley, 1900 W. 40th Street; Daniel de la Garza, 2621 W. 45th Street; Pimporn Mayo, 2623 W. 45th Street; Jeffrey Mayo, 2623 W. 45th Street; Ryder Jeanes, 2629 W. 45th Street; Josephine Macaluso, 2641 W. 45th Street; Amity Courtois, 2643 W. 45th Street; Philip Courtois, 2643 W. 45th Street; Andrew Bradford, 2619 W. 45th Street; Matthew Perry, 4006 Bull Creek Road; Timothy Hahn, 1502 Bull Creek Road; Gary Culpepper, 3905 Idlewild Road; Cherie Havard, 4011 Idlewild Road; Andrew Coulson, 4011 Idlewild Road; Lanith Derryberry, 4100 Idlewild Road; Linda Derryberry, 4100 Idlewild Road; Roseanne Giordani, 4107 Idlewild Road; Betty Littrell, 4112 Idlewild Road; and Bennett Brier, 4112 Idlewild Road; all of Austin, Travis County, Texas 78731.

9. Defendant City of Austin is a home rule city with its City Hall located at 301 W. Second St., Austin, Travis County, Texas 78701. It may be served with process by serving its Mayor or its City Clerk at that address.

10. An additional party whose interest could be affected by the declaration of this action pursuant to Section 37.006 of the Declaratory Judgments Act, is ARG Bull Creek Ltd. (referred to herein as “**ARG**”), the owner of the properties included in the proposed Grove PUD. It may be served with process by serving its Registered Agent, Garrett Martin at its address, 9111 Jollyville Road, Suite 111, Austin, Texas 78759.

C. JURISDICTION

11. The Court has jurisdiction of this case under Section 37.003 of the Texas Declaratory Judgments Act.

D. VENUE

12. Venue is mandatory in Travis County, Texas, under § 15.011 of the Texas Civil Practice & Remedies Code because this case concerns real property located in Travis County, Texas.

13. Venue also is proper in Travis County, Texas, under § 15.002(a)(1) of the Texas Civil Practice & Remedies Code because all or a substantial part of the events or omissions giving rise to this case occurred in Travis County, Texas.

14. Venue is also proper in Travis County, Texas, under § 15.002(a)(3) of the Texas Civil Practice & Remedies Code because Defendant's principal offices are located in Travis County, Texas, as are those of ARG.

E. DISCOVERY CONTROL PLAN

15. Pursuant to Tex.R.Civ.P. 190.3, Plaintiffs intend for discovery in this case be conducted under Level 2.

F. FACTS AND CLAIMS

1. Plaintiffs' Properties and Homes

16. Plaintiffs are home owners in residential neighborhoods adjacent to the Bull Creek Tract. These neighborhoods were developed initially in the 1930's under Austin's comprehensive zoning ordinance regulations. Soon after the end of World War II, these

neighborhoods were built out with homes and have retained their residential use and character to this day.

17. Within these surrounding neighborhoods is the 76-acre Bull Creek Tract. It was owned by the State of Texas for well over 100 years, during which time it was used for certain defined governmental operations that were compatible with the surrounding residential neighborhoods. The history of the Bull Creek Tract is discussed further in the following section of this Petition.

18. The State determined that the Bull Creek Tract was no longer needed for state government operations after 2018 and should be sold. In 2014, the State offered the Bull Creek Tract for sale. Prior to offering the land for sale, the Legislature required the State to consult with the surrounding neighbors regarding their concerns about the future development of the land. The State did that and included the neighbors' input in the bidding information. In the bid package issued by the State, it stated that the best use for this tract was for single and multifamily residential.

19. In 2015, the Bull Creek Tract was sold to ARG, the developer who was the high bidder. Instead of pursuing residential development for this tract as recommended by the State and the neighbors, ARG filed an application with the City of Austin to put a high density, mixed use Planned Unit Development ("PUD") on this tract. That proposed development is called The Grove at Shoal Creek PUD (referred to herein as the "**Grove PUD**"). That application includes proposed residential units, but is dominated by hundreds of thousands of square feet of proposed high density commercial and retail development.

20. The magnitude of that proposed commercial and retail development, combined with the density of the proposed residential units, is not compatible with adjoining residential

neighborhoods and would cause certain harms and disruptions to the use and enjoyment of the existing homes in the area. The harms and disruptions include putting excessive traffic on Bull Creek Road, the already congested two-lane street adjacent to this tract. The Grove PUD is projected to generate more than 19,000 additional car and truck trips per day, causing transportation break-downs and spilling excessive traffic over onto other neighborhood streets.

21. The traffic harms will be compounded by the additional cars and trucks on neighborhood streets every evening and night going to and especially coming from the tens of thousands of square feet of late night restaurants and cocktail bars proposed for the Grove PUD.

22. Disturbingly, the City has used extraordinary means to conceal the magnitude of the harms from the increased traffic, and to otherwise circumvent the normal transportation review process for projects such as this. The City's traffic engineers were ordered not to complete their study of the traffic burdens coming from the proposed Grove PUD. Further, the City and ARG are operating together to conceal important underlying data detailing the harms that additional traffic will cause.

23. The Grove PUD's high density commercial and retail development not only will cause traffic and other environmental harms to adjacent neighborhoods, it is incompatible with the residential uses of those neighborhoods. The proposed development is not permitted under the current regulations of Austin's zoning ordinance and is very different from any past or current use of the Bull Creek Tract. See following Part 2.

24. There is no question that the Valid Petition Rights Statute was intended to apply to instances such as this and provide certain protections to established homeowners such as Plaintiffs. That statutory protection, which has existed since Texas cities were first given zoning authority, is the requirement that zoning regulation changes permitting new or different land uses

that are protested by at least 20 % of the landowners in the area, need a $\frac{3}{4}$ supermajority vote by the city council to be approved. The only question in this case is whether, as the City contends, there is a loophole in that otherwise mandatory statute for the Grove PUD.

25. Plaintiffs have fully complied with the statutory requirements to trigger the mandatory $\frac{3}{4}$ supermajority voting to approve an ordinance changing the zoning regulations to permit the Grove PUD. Plaintiffs and other landowners with homes within the statutorily defined 200 foot area of the proposed Grove PUD, filed petitions with the City protesting the zoning regulation changes sought by that PUD application.

26. On April 14, 2016, the City's Planning and Zoning Department confirmed that the landowners petitioning against the Grove PUD constituted 28.68% of the landowners within 200 feet of the proposed PUD as defined in the Valid Petition Rights Statute. While that percentage is above the statutory 20% threshold to trigger $\frac{3}{4}$ super majority voting, that Department reaffirmed that $\frac{3}{4}$ supermajority voting under the Valid Petition Rights would be denied in this case.

2. The Bull Creek Tract and Its Past and Current Uses

27. The proposed Grove PUD is to be located mainly on the Bull Creek Tract, a 76 acre (more precisely, 75.746 acres) tract of land at 4205 Bull Creek Road in Austin, Texas. A map showing this tract's location is attached as Exhibit A.

28. The Bull Creek Tract was owned by the State of Texas from 1887 until 2015, when it was sold to ARG (through an ARG affiliated entity). During the years of State ownership, this tract was used for legislatively defined governmental purposes, all of which have been compatible with the character and residential uses of the surrounding neighborhoods. The

buildings on this Bull Creek Tract continue to be occupied and used by the State for governmental operations under a lease agreement with ARG.

29. This 76-acre Bull Creek Tract was originally part of the 100-acre tract purchased by the State of Texas in 1887 for establishment of the “Deaf, Dumb, and Blind Asylum for Colored Youths” as the combined schools for the blind and the deaf “youth of the people of color in this State.” Acts 1887, 20th Leg., R.S., ch. 147. Dormitories, class rooms, dining hall, chapel and other buildings were constructed on the property to house the children, their teachers and other caregivers, and to provide education and training in various agricultural and vocational occupations in a campus-type setting. Annual Reports of the Texas State Board of Control.

30. In 1918, the City of Austin agreed to supply this property with city water and electricity even though at that time it was approximately one-half mile outside the city limits of Austin. The City has provided those and other city services continuously to this property since then.

31. In 1929, the State closed the African-American orphan school in Gilmer, Texas, and the children there were moved into the facility on this land, and it was renamed the “Texas Blind, Deaf, and Orphan School.”

32. By the early 1930’s, residential development in Austin expanded into the areas around the School on the Bull Creek tract. Land in the area was subdivided for that development in the 1920’s and 30’s.

33. In 1931, Austin adopted its first comprehensive zoning ordinance pursuant to the delegation of authority by the original 1927 Texas Zoning Enabling Act. That Act, discussed in part 4 below, is still the basis for city zoning powers today. The Valid Petition Rights Statute was part of that 1927 Act and continues in force today.

34. In 1935, the City of Austin annexed this Bull Creek Tract and the surrounding properties. Since then, this Bull Creek Tract has been served with all city services provided to other properties in the city limits.

35. In 1954, Austin's comprehensive zoning ordinance was revised and re-adopted. That has occurred several more times since the 1935 annexation of the Bull Creek Tract, including in 1988 when the comprehensive "Land Development Code" was adopted, and 1999 when that Code was recodified in its current form as Chapter 25 of the City Code.

36. This Bull Creek Tract was operated as the segregated school for African-American children until that school was moved to a location in East Austin in 1960. (In 1965, the State schools for the blind and the deaf were finally integrated and that East Austin facility was closed).

37. Beginning in 1960, this tract was used as a residential facility operated by the Texas Department of Mental Health and Mental Retardation ("MHMR") for mentally disabled adults, and was sometimes called the "State School Annex." The buildings and grounds included dormitories, dining facilities, staff office buildings, workshops and a plant nursery. That residential facility continued in operation until the late 1970's, when care for those citizens was transferred by the State to privately run facilities.

38. In 1963, the Legislature authorized the State Board of Control to study whether other state agencies might have use for this tract. Acts 1963, 58th Leg., R.S., ch. 346. As a result 24 acres on the east side of this tract was transferred for use by the State Library Commission. By 1972, the State Records Management Building was built on that 24 acres and continues in State operation today. By severing out that 24 acres, the Bull Creek Tract came to be the 76 acre tract that it is today.

39. In the mid-1980's, Texas was suffering through an economic recession caused by the Savings & Loan/real estate crises. By 1987, the Legislature was struggling with budget problems caused by declining state revenues. In its second special session of that year, the Legislature passed a budget-related bill requiring MHMR to "sell" the Bull Creek Tract to the State Department of Highways and Public Transportation. In exchange, MHMR received certain dedicated highway funds, which were placed in the State's general revenue account and in turn became available for other State spending. The effect was that the Legislature converted dedicated highway funds into general revenue for non-highway spending in order to balance the State budget. The bill making that transfer specified that this tract was to be used for "the construction of building to house the administrative offices and support facilities of the State Department of Highways and Public Transportation." Acts 1987, 70th Leg., 2nd C.S., ch. 2, sec. 1(c).

40. The Texas Department of Transportation ("TxDOT"), the successor to the State Department of Highways and Public Transportation, developed plans to use this tract as a campus-type facility for its administrative offices. Those development plans were never fully carried out. However, in 1988, TxDOT began using the buildings on this tract for those legislatively authorized purposes. TxDOT's use of the buildings of this Bull Creek Tract is still ongoing and will continue under a lease with ARG until 2018.

41. In 1995, at the urging of Lt. Governor Bob Bullock, the Legislature dedicated 44 acres of this tract for the future site of the State Cemetery under the control of the State Purchasing and General Services Commission (successor to the State Board of Control and now the Texas Facilities Commission). SB 21, Acts 1995, 74th Leg., R.S., ch. 264. That dedication

for cemetery use, commonly called **the Bullock Law**, was codified in Section 2165.256(b) of the Texas Government Code.

42. In 1997, the Legislature created the State Cemetery Committee as a separate division of the General Services Commission, to develop a state cemetery on these 44 acres, as well as to oversee the existing State Cemetery on Comal Street in Austin. SB 973, Acts 1997, 75th Leg., R.S., ch. 264.

43. In 1999, an additional two acres from the part of this tract used by TxDOT was moved to the State Cemetery portion, expanding that dedicated acreage to 46.19 acres. SB 1546, Acts 1999, 76th Leg., R.S., ch. 486.

44. The State Cemetery Committee developed a Master Plan for use of the Bull Creek Tract as a state cemetery. In furtherance of those plans, it funded the drilling of a water well to irrigate the grounds.

45. There was, however, resistance from state officials and other potential users of the State Cemetery. Generally, they preferred final resting places in the existing State Cemetery on Comal Street in Austin nearer to important past Texans. And in 1999, Bob Bullock passed away.

46. The Texas General Land Office Asset Management Division placed the Bull Creek Tract on its list of underused State assets in its 2002 Report to the Governor as State land that could be considered for sale. The Division's 2005 through 2011 Reports to the Governor listed only that portion of the Bull Creek Tract occupied by TxDOT as an underused asset. All of those Reports referenced the residential land uses of the surrounding neighborhood and stated that if sold, "the highest and best use of the tract ... is for single-family residential development."

47. In 2013, the Legislature put into motion steps to repeal the Bullock Law. It amended Section 2165.256(b) of the Government Code to say that the dedication of the Bull

Creek Tract for use as a state cemetery could be released and that this land could be sold if the State Cemetery Committee met certain conditions. Those conditions included affirmative findings that (1) the proceeds from any sale would “further the goals of the State Cemetery,” and that (2) “concerns expressed by residents of neighborhoods in the vicinity of the property have been considered and that efforts have been made to address those concerns.” SB 1871, Acts 2013, 83rd Leg., R.S., ch. 1243, sec. 1. That latter condition to address concerns of residents in nearby neighborhoods was added by amendment sponsored by Representative Elliott Naishtat of Austin.

48. In accordance with that statutory directive, the residents of neighborhoods surrounding the Bull Creek Tract engaged positively with the State Cemetery Committee to address the impacts the sale and development of that tract could have on them. The Bull Creek Road Coalition (“**BCRC**”) was formed by the surrounding landowners for the purpose of working with the State to ensure the sale and development of the Bull Creek Tract would be compatible with the existing neighborhoods. BCRC was organized as a coalition of seven neighborhood associations surrounding the Bull Creek Tract: Ridgelea, Rosedale, Oakmont Heights, Allandale, Bryker Woods, Highland Park West/Balcones Area and Westminster, which combined include over 7,500 households.

49. BCRC worked extensively with the State and developed an Information Packet addressing the concerns of the neighboring residents and the recommended best use of the Bull Creek Tract in accordance with the Legislature’s directive. A copy of that BCRC Information Packet is attached as Exhibit B.

50. In 2014, the State issued notice that the Bull Creek Tract was available for purchase and requested the submission of bids. The State provided a copy of the BCRC

Information Packet (Exhibit B) to each person or entity expressing interest in bidding. In its Request for Bids to potential bidders, the State discussed the established surrounding residential neighborhoods and stated its highest and best use was for residential development under Austin SF-3, SF-6 and MF-2 zoning.

51. Six bidders submitted bids. ARG was the winning bidder. In early 2015, the sale of the Bull Creek Tract to ARG was closed.

52. In its 2015 session, the Legislature finally removed the statutory dedication of the 46-acre portion of this tract for use as the State Cemetery. The Bullock Law was repealed and Section 2165.2565 was added to the Government Code to create the State Cemetery Preservation Trust Fund to receive certain funds earmarked from the sale of this property for preservation and expansion of the State Cemetery on Comal Street. Acts 2015, 84th Leg. R.S., ch. 932, sections 4 and 5.

53. While this tract was sold in 2015, it continues to be used for governmental purposes by TxDOT and the Texas Department of Transportation and the Department of Motor Vehicles (which was split off from TxDOT into a separate State agency in 2009) under a lease-back agreement with ARG that runs until 2018. There are currently between 125 and 150 State employees working for these two agencies on the campus of buildings on the Bull Creek Tract.

3. The Grove PUD Application and Its Impact on Surrounding Homes and Neighborhoods

54. In June of 2015, ARG filed an application with the City of Austin for a zoning change for this tract to develop it as a high density, mixed-use Planned Unit Development (“PUD”). ARG did not seek SF (single family) or MF (multi-family) zoning districts as recommended by State in its offering documents.

55. Under the Austin City Code, a PUD is a zoning district classification allowed on a case-by-case basis through an amendment to Austin's comprehensive zoning ordinance. The regulations and restrictions of that zoning ordinance are changed and modified substantially by each such amendment to permit the PUD's particular proposed land uses. The Grove PUD application is such a PUD application that seeks substantial changes to the zoning ordinance and rezoning the Bull Creek Tract into a unique PUD zoning district.

56. While the proposed Grove PUD includes residential units, it is dominated by hundreds of thousands of square feet of high density commercial and retail development that is not compatible with the residential zoning and uses of the surrounding neighborhoods.

57. The BCRC, including Plaintiffs and others in the area, were alarmed. They sought to become involved in the City's review and approval process to express their concerns about the excessive amount of proposed commercial and retail development, and to seek modifications to mitigate the certain adverse impacts that incompatible development would have on their homes and neighborhoods. It is important that the Valid Petition Rights Statute is specifically intended to give nearby landowners a meaningful voice in situations such as this, where a landowner seeks to change the zoning ordinance regulations to allow a new and different land use from the surrounding existing uses established under the current regulations. That right is especially important in cases such as this where the existing uses are homes. For homeowners such as Plaintiffs, their properties are not only their homes and residences; they are most often the only, or at least the main, real property assets that they own.

58. One of the ways the Valid Petition Rights Statute serves to accomplish balance between existing property owner rights and new proposed land uses, is to encourage compromise and consensus during the review process, before the necessary zoning ordinance changes are

finalized and submitted for a city council vote. As discussed in the following Parts, the City determined that it would not comply with the Valid Petition Rights Statute and severely limited the voice the Plaintiffs and their neighbors have in that process to protect the use and enjoyment of their homes.

59. In March 2016, it was made clear that ARG was including other land it owns in the Grove PUD in addition to the Bull Creek Tract. That land is lot 43, Section 2 of the Shoal Village Subdivision, 2627 45th Street, Austin, Texas (herein the “**45th Street lot**”). It is a 6,639 square foot residential lot that was purchased by ARG from a private landowner, not the State of Texas, for use as part of the Grove PUD. It is zoned single family “SF-2” with a single family house on it. ARG proposes to remove that house and change that lot into a non-standard street serving the Grove PUD. See Exhibit C .

60. As stated by the City, the 45th Street lot is “integral to the viability of [Grove PUD] development as proposed” and that “code modifications” related to use of that lot for a PUD street would be “incorporated into the final PUD Ordinance.” These facts were confirmed and agreed to by ARG in its written supplementation of its Grove PUD application.

61. On information and belief, the City interprets PUD applications involving both zoned and unzoned land, regardless of the amount of each, as involving “rezoning” under the definitional scheme of the Austin City Code. With that “rezoning” label, such PUD applications, including the Grove PUD, are subject to valid petition rights under the City’s interpretation of its City Code. See Part 5 below. Moreover, the inclusion of that zoned 45th Street lot in the Grove PUD further confirms valid petition rights directly under the Valid Petition Rights Statute itself.

4. The Valid Petition Rights Statute Requiring $\frac{3}{4}$ Supermajority Voting

62. The Valid Petition Rights Statute, now codified as Section 211.006(d) of the Texas Local Government Code (see paragraph 71 below), has been part of the Texas Zoning Enabling Act since that Act was enacted in 1927 to give cities zoning powers. One of the purposes of the valid petition rights statute is to provide stability and protection for property owners with land uses established in reliance on a city's zoning regulations. The statute does not give those landowners the right to veto objectionable zoning regulation changes; however, it does guarantee them the right to petition to have the threshold for approving those changes raised. That statutory protection is the requirement that any such changes to a regulation can only be approved by a $\frac{3}{4}$ majority vote of the city council instead of a simple majority. The Plaintiffs have complied with the statutory requirements to trigger $\frac{3}{4}$ majority voting in this case. That fact is not disputed. The City, however, is refusing to recognize the statutory requirement for $\frac{3}{4}$ voting because it says the valid petition rights statute does not apply in this case.

63. When Texas adopted the Zoning Enabling Act in 1927 (Acts 1927, 40th Leg., R.S., ch. 283), it was essentially a verbatim adoption of the 1926 Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations (referred to herein as the "Model Act"). The Model Act was prepared by the U.S. Department of Commerce Advisory Committee on Zoning, appointed by then Secretary of Commerce Herbert Hoover. The nine sections of that Act were all adopted by Texas. (The only change was the addition of a Section 8a exempting telephone companies). That Act was placed in the Texas Revised Civil Statutes as Articles 1011a through 1011i.

64. That Act set out the logical order of authorizing cities to adopt original zoning regulations with a comprehensive zoning ordinance. It then requires procedures for changing

those regulations and gives individual landowners certain protections from any of those changes that might impact their properties.

65. Section 1 of the Act grants cities the power to regulate land uses. Section 2 permits dividing cities into districts with regulations, which must be uniform across the city. Section 3 requires that the city's land use regulations apply "throughout such municipality" in accordance with a comprehensive plan.

66. Sections 4 and 5 follow and specify the procedures by which the regulations are to be adopted and changed, and provide important protections to existing landowners from particular changes that are objectionable to them:

"Sec. 4. **Method of Procedure.** The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.

"Sec. 5. **Changes.** Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 200 feet therefrom, or of those directly opposite thereto extending 200 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourth of all members of the legislative body of such municipality. The provisions of the previous

section relative to public hearing and official notice shall apply equally to all changes or amendments.”

67. A “change” for purposes of valid petition rights under Section 5, encompasses any “amendments, supplements, modifications and repeal” of comprehensive zoning ordinance authorized by the preceding sections of the Act. Confirming the comprehensive meaning of “changes” covered by that Section 5, the comments to the Model Act stated:

“This term, as used here, it is believed will be construed by the courts to include ‘amendments, supplements, modifications, and repeal,’ in view of the language which it follows. These words might be added after the word ‘change,’ but have been omitted for the sake of brevity. On the other hand, there must be stability for zoning ordinances if they are to be of value. For this reason the practice has been rather generally adopted of permitting ordinary routine changes to be adopted by a majority vote of the local legislative body but requiring a three-fourths vote in the event of a protest from a substantial proportion of property owners whose interests are affected. This has proved in practice to be a sound procedure and has tended to stabilize the ordinance.” (Footnote 31 comment to the Model Act).

68. Only one initial adoption of comprehensive city-wide zoning regulations is contemplated by the Act. There are no provisions in the Act allowing piecemeal initial zoning of land within the city after the comprehensive zoning ordinance is adopted. As stated by the drafters of the Model Act, one of the purposes of the Act is to avoid such “piecemeal zoning.” *See* Footnote 23 comment to the Model Act. After initial adoption of that comprehensive ordinance, its regulations can be changed only through the change procedures authorized by Section 4. All such changes are subject to the valid petition rights under the following Section 5,

the Valid Petition Rights Statute. *See, City of San Antonio v. Lanier*, 542 S.W.2d 232, 234-35 (Tex. App. – San Antonio 1976, writ ref’d, n.r.e.).

69. In summary, the logical order of the Act is for the adoption of a comprehensive zoning ordinance with comprehensive regulations for city-wide planning and development. After that ordinance is in place, the Act provides for changes to that ordinance that are typically sought by an individual property owner wanting a use not permitted by those regulations, as is the case with the Grove PUD. The Valid Petition Rights Statute covers any such change to zoning ordinance regulations sought by an individual landowner.

70. The Grove PUD application seeks city council passage of an amendment to Austin’s comprehensive zoning ordinance. That requested amendment will change many of the ordinance’s regulations and restrictions in order to allow otherwise prohibited new land uses for the Bull Creek Tract. In form and in substance, that application seeks changes to the Austin Land Development Code regulations clearly within the definitions of “changes” in the Valid Petition Rights Statute. However, in this particular case, the City believes there is an exception or loophole in the law that allows it to say the regulation changes sought by Grove PUD applications are not “changes” under the Valid Petition Rights Statute, and thereby deny Plaintiffs their rights under that statute. As discussed in the following Part 5, the City is incorrect in arguing that changes to regulations in this case are not changes to regulations under the law.

71. As part of the ongoing codification of Texas statutes, the Texas Zoning Enabling Act (Articles 1011a through 1011i) was moved into Chapter 211 of the Texas Local Government Code in 1987. The Legislature specifically stated that the codification of the Local Government Code was not intended to make any substantive change in the statutes moved into that Code.

Acts 1987, 70th Leg., R.S., ch. 149. The Valid Petition Rights Statute, Section 5 of that Act (article 1011e in the Texas Revised Civil Statutes), was moved to section 211.006(d) of the Texas Local Government Code. **Section 211.006(d)** provides today:

“(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

- (1) the area of the lots or land covered by the proposed change; or
- (2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.”

5. The City’s Rejection of Valid Petition Rights and $\frac{3}{4}$ Supermajority Voting Under the Austin City Code is in Conflict with the Valid Petition Rights Statute

72. The Grove PUD application in form and in substance seeks substantial “changes” in Austin’s applicable zoning and land use regulations and restrictions in Austin’s comprehensive zoning ordinance. See, for example Exhibit D from the Grove PUD Application listing some of the requested changes to zoning ordinance regulations. It also seeks a district boundary change by proposing to create a new PUD district with a new boundary for the 76-acre Bull Creek Tract, particularly with the boundary change for the inclusion of the 45th Street lot. See paragraphs 59-60 above. Without all of those changes, the Grove PUD cannot be approved. Such changes are explicitly the type of “changes” subject to valid petition rights under the Valid Petition Rights Statute.

73. Fundamentally, the approval of any PUD always requires changes in the zoning regulations through an ordinance adopted by city council amending Austin’s comprehensive zoning ordinance. Due to the unique mixed-use nature of PUDs, they are not allowed under any

traditional zoning district classification contemplated by the Zoning Enabling Act or defined in the City Code. The Grove PUD application is no different than any other PUD application in inherently seeking to change zoning regulations. As with any PUD in Austin, the Grove PUD application specifically details certain regulations and restrictions it seeks to change. See Exhibit D listing some of the requested specific changes.

74. Reflecting the reality of the zoning changes sought by the Grove PUD, the City staff originally advised Plaintiffs that valid petition rights would be available to them for this PUD application. On April 24, 2015, a meeting was held to discuss this PUD application and included city staff and representatives from BCRC and the surrounding neighborhoods. At that meeting, the City's Development Services Manager assured the group that this PUD application would be subject to valid petition rights and super majority $\frac{3}{4}$ voting.

75. However, the City's position on valid petition rights for this particular Grove PUD application later changed. The form and substance of the Grove PUD application notwithstanding, the City decided at some level that it would not recognize the statutory valid petition rights in this particular case.

76. Hearing that their valid petition rights were being questioned by some at the City, Plaintiffs requested a written determination by the City of those rights. The City's written response reversed the City's original position. By letter dated July 31, 2015, Greg Guernsey, Director of the Planning and Zoning Department, wrote that valid petition rights would not be recognized for this particular PUD application. (A copy of that letter is attached as Exhibit E). His letter did not address the language of the Valid Petition Rights Statute, but focused instead on the sections of the Austin City Code dealing with valid petition rights.

77. The Austin City Code deviates in a substantial way from the Valid Petition Rights Statute. Austin’s version of valid petition rights is contained in **Section 25-2-284(A)(3)** of the City Code which provides:

“§ 25-2-284 - REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.

(A) The affirmative vote of three-fourths of the members of council is required to approve:

- (1) rezoning property to a planned unit development if the Land Use Commission recommends denial of the application;
- (2) zoning previously unzoned property to a planned unit development if the Land Use Commission recommends denial of the application by a vote of at least three-fourths of the members of the Land Use Commission; or
- (3) a proposed rezoning that is protested in writing by the owners of not less than 20 percent of the area of land:
 - (a) included in the proposed change; or
 - (b) immediately adjoining the area included in the proposed rezoning and extending 200 feet from the area.”

78. Section 25-2-284(A) was adopted in this form in February 2016. Subpart (3) related to valid petition rights was not substantively changed. A copy of Section 25-2-284 as it existed previously is attached hereto as Exhibit F. Subparts (1) and (2) of Section 25-2-284(A) are separate from statutorily guaranteed valid petition rights. Those sections are adopted under a separate statutory provision for permissive $\frac{3}{4}$ majority voting by cities under a 1977 amendment to the Zoning Enabling Act (now in Section 211.006(f) of the Local Government Code).

79. The Austin City Code’s critical deviation from the Valid Petition Rights Statute stems from the use of the word “rezoning” instead of the statutory language of “change to a regulation or boundary” for triggering valid petition rights. And, it defines “rezoning” in a

different way than stated or intended by the statute. That term is defined in **Section 25-2-241** of the City Code, which states:

“§ 25-2-241 - DISTINCTION BETWEEN ZONING AND REZONING.

- (A) Zoning is the initial classification of property as a particular zoning base district. Zoning amends the zoning map to include property that was not previously in the zoning jurisdiction or that was not previously included in the boundaries of a base district.
- (B) Rezoning amends the zoning map to change the base district classification of property that was previously zoned.”

80. Relying on those City Code sections and determining the Grove PUD application was not “rezoning,” Mr. Guernsey’s letter (Exhibit E) concluded:

“In summation, the Austin City Code limits valid petition rights to rezoning requests. It does not grant valid petition rights for the first (initial) zoning of a property.”

Again, the City is creating a label outside of the statute, “first (initial) zoning,” in order to deny valid petition rights in this case.

81. The City has never denied that land uses proposed in the Grove PUD application will have adverse impacts on Plaintiffs’ use and enjoyment of their homes and on others in the surrounding neighborhoods. Nor is there any question that to approve the Grove PUD, the city council must adopt an amendment to the City’s zoning ordinance, which will change or modify many regulations and restrictions in that ordinance that currently prohibit this PUD. Instead, the City’s denial of valid petition rights is driven by the zoning label it decided to use for the Bull Creek Tract, during the period of the State’s past ownership. More accurately, it is the result of the City’s failure to assign a proper zoning classification corresponding to its public governmental use on the “official” zoning map as required by the City Code. In other words, the

City is using a unique, unauthorized zoning label of “UNZ” to ignore the form and substance of the Grove PUD application in order to deny the mandates of the Valid Petition Rights Statute.

82. As long as the Bull Creek Tract was owned by the State and was used for governmental purposes, it was exempt from mandatory compliance with city zoning and other land use regulations. (If State land is used for non-governmental purposes, it is required to comply with city zoning regulations. See Texas Natural Resources Code, sections 31.161-31.163). As stated, the classification “UNZ” is not defined or authorized by the Austin City Code and does not accurately reflect the Bull Creek Tract’s defined and controlled governmental uses. If the City had complied with the City Code provisions requiring all land to have a proper zoning classification, that tract should be labeled on the “official” map with the classification of “P” (for “Public”) as has been used on other city working and planning maps. Section 25-2-145 of the Austin City Code defines a Public (P) District as follows:

“Public (P) district is the designation for a governmental, civic, public service, or public institution use. A P district designation may be applied to a use located on property used or reserved for a civic or public institutional purpose or for a major public facility, regardless of ownership of the land on which the use is located. A P district designation may not be applied to government-owned property that is leased to a nongovernmental agency for a use other than a governmental service or for a use that supports a primary civic or public institutional use.”

83. Contrary to the position the City is taking in this case, it labeled a previous zoning change for a portion of the original Bull Creek Tract for private development as “rezoning.” In 1994, the State sold 3.6 acres on the east side of the Bull Creek Tract. To allow that private development, the City Council approved “AN ORDINANCE ORDERING A REZONING AND

CHANGING THE ZONING MAP” for that portion of this tract. A copy of that 1994 Ordinance is attached as Exhibit G. That Ordinance stated that it was “rezoning” when the zoning designation changed “from ‘UNZ’ Unzoned to ‘SF-2-CO’.”

84. Regardless of the labels used, the Bull Creek Tract is not without zoning regulations and restrictions as the City’s argument in this case necessarily presumes. There is a considerable set of applicable regulations and restrictions in the city’s comprehensive zoning ordinance that apply and control the land development uses of this tract. Moreover, this land is not without permitted land uses as shown by the continuing governmental operations under the lease between ARG and TxDOT. That use is legal and allowed under the State’s land use specifications for the Bull Creek Tract pursuant to its controlling authority over municipal zoning and the effective de facto “P” zoning by the City as discussed above. The Grove PUD application seeks to change that existing use through changes in the regulations of Austin’s zoning ordinance. Again, those “changes” are covered by the Valid Petition Rights Statute.

85. In April 2016, the City advised Plaintiffs of yet another labeling theory it would use in furtherance of its determination to deny Plaintiffs rights under the Valid Petition Rights Statute. Plaintiffs pointed out to the City that the incorporation of the 45th Street lot into the Grove PUD application made clear it was seeking both regulation changes and zoning district boundary changes for zoned land. Those facts removed any doubt that the application involved “rezoning” under the City Code definition and was subject to valid petition rights. See paragraphs 60-61 above. The City advised that based on unidentified staff discussions, it would treat the inclusion of ARG’s 45th Street lot in the Grove PUD as a completely separate matter from Grove PUD zoning application, notwithstanding the staff’s documented agreement with

ARG that such lot was “integral” to that PUD and will be “incorporated into the final PUD Ordinance.” See paragraphs 89-90 below.

6. Plaintiffs’ Exhaustion of Efforts and Remedies with the City

86. After receiving the Guernsey letter of July 31, 2015 (Exhibit E), Plaintiffs employed counsel and expended considerable efforts in meetings with City staff and officials and in providing research and briefings on the correct application of the Valid Petition Rights statute to the Grove PUD application. The City was unmoved in its position that valid petition rights would be denied in this case.

87. Believing the City was in error, Plaintiffs sought to appeal the City’s rejection of valid petition rights to the City’s Board of Adjustment as allowed under the provisions of the Zoning Enabling Act (Texas Local Government Code Section 211.009), and the Austin City Code as confirmed by *Hill Country Estates Homeowners Association v. Guernsey*, No. 13-13-00395, 2015 WL 2160510 (Tex. Ct. App.— Corpus Christi 2015, no pet.). A copy of Plaintiffs’ Appeal to the Board of Adjustment is attached as Exhibit H.

88. The City declined to follow those authorities and refused to allow Plaintiffs’ appeal to be filed with the Board of Adjustment. The City stated that there were no procedures available at the City for further review of its determination to deny Plaintiffs valid petition rights in this case.

89. Plaintiffs sought one last time to have their valid petition rights recognized by the City. In March 2016, Plaintiffs and other landowners formally filed petitions to the City objecting to the Grove PUD pursuant to the Valid Petition Rights Statute. Plaintiffs also requested confirmation that the inclusion of the 45th Street lot in the Grove PUD removed any doubt that valid petition rights applied in this case. Plaintiffs were advised that Mr. Greg

Guernsey, Director of the Planning and Zoning Department, would make the final determination whether the City staff's position would be confirmed or overruled.

90. On April 14, 2016, Plaintiffs received an email from the Planning and Zoning Department confirming that Plaintiffs' petitions satisfied the 20% threshold of the Valid Petition Rights Statute. That email did not address the issue of the 45th Street lot, but simply included a copy of Mr. Guernsey's earlier July 31, 2015 letter denying valid petition rights in this case. A copy of that email is attached as Exhibit I.

91. Having exhausted those efforts with the City, this declaratory judgment action became necessary and proper. It is timely and the question regarding the statutory guarantee of valid petition rights in this case is ripe for this court to consider. All conditions precedent necessary to the bringing of this lawsuit, the claims asserted therein, and to the relief sought have been performed or have occurred.

G. THE CITY HAS NO LEGAL BASIS FOR NOT COMPLYING WITH THE VALID PETITION RIGHTS STATUTE REQUIRING ¾ MAJOIRTY VOTE IN THIS CASE

92. The City's main argument is that it is entitled to apply its City Code to deny valid petition rights in this case, notwithstanding the fact that the Code materially deviates from the state's Valid Petition Rights Statute. That argument is fundamentally unsound. Cities cannot enact zoning ordinances or apply them in a way that is inconsistent with the Zoning Enabling Act.

93. The City's second argument for denying valid petition rights in this case is the exception to or loophole in the statute that it says was created by the 1972 case of *City of Garland v. Appolo Development Inc.*, 476 S.W.2d 365 (Tex. Civ. App. – Dallas 1972, no writ). The City reads that case to create a blanket exemption from the Valid Petition Rights Statute if

the land subject to the proposed zoning change has been labeled “unzoned” by the City. That interpretation, however, is not what that case held. That case was specifically dealing with “newly annexed property” for which the city had not complied with jurisdictional notice requirements of the Zoning Enabling Act, either when comprehensive zoning ordinance was adopted, or when that land was annexed. Those facts are not the facts here. No subsequent case supports the City’s expansive interpretation of that 1972 *Garland* case to create a blanket exemption from the valid petition rights statute for any land that is labeled “unzoned.”

94. There is no contention that there has been any failure by the City of Austin to comply with the notice requirements of the Zoning Enabling Act when the current 2011 comprehensive zoning ordinance was adopted, or when any of the previous zoning ordinances were adopted over the 80 years the Bull Creek Tract has been in the city.

95. Unlike the land in the 1972 *Garland* case, the Bull Creek Tract has decades of established land uses within the city that were established and controlled by state statutes and regulations, if not by regulatory authority delegated to the city. Those long existing regulated uses were integrated into the city and relied upon by the surrounding landowners as they purchased their homes and established residential neighborhoods over the years. The City effectively approved the State’s defined uses by providing this tract with all city services over the 80+ years this tract has been within the city limits. A request by the Grove PUD to change the city regulations to allow uses very different than this Tract’s previous regulated use, is precisely the type of change that is subject to valid petition rights under state law.

H. REQUEST FOR WRITS TO PROTECT THIS COURT'S JURISDICTION

96. As stated, the State's lease to continue using the Bull Creek Tract for governmental operations continues until 2018. Should efforts be made to rush a vote by the Austin City Council on any aspect of the Grove PUD before this Court has had a considered opportunity to exercise its jurisdiction over the issues and matters in this case, the Court should issue necessary writs to the appropriate city governmental officials to abate such action by the City until this case can be finally decided. *See* Tex.Gov. Code § 24.011.

I. COSTS AND ATTORNEY'S FEES

97. In the preparation and prosecution of this lawsuit, Plaintiffs retained the undersigned attorney to represent them in this action. Plaintiffs seek a judgment for attorney's fees as are equitable and just under § 37.009 of the Texas Civil Practice & Remedies Code.

J. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that Defendant and the ARG parties be cited to appear herein and answer, and that after notice and hearing, the Court render judgment for Plaintiffs with the following declaratory relief:

A. A declaratory judgment that no ordinance or other action by the Austin City Council approving any development of or facilitating the development of the Grove PUD, in whole or in part, in its current form or as amended or modified, shall be lawful and effective unless said ordinance shall receive a vote of approval by at least three-fourths (3/4) of the members of the Austin City Council;

B. A declaratory judgment that any ordinance or other action approved by the Austin City Council related directly or indirectly to the Grove PUD shall be null and void unless said ordinance or other action shall have received a vote of approval of at least three-fourths (3/4) of the members of the Austin City Council;

C. The issuance of such writs as may be necessary to protect this Court's jurisdiction;

D. That Plaintiffs be awarded attorney's fees and other costs; and

E. That Plaintiffs be awarded such other and further relief to which they may be entitled.

Respectfully submitted,

/s/ Jeffery L. Hart

Jeffery L. Hart
State Bar No. 09147300
1504 Hardouin Ave.
Austin, Texas 78703
jeffhart1@att.net
(512) 940-4444

EXHIBIT A. LOCATION MAP



Information Packet
Concerning
State Land Tracts
State Cemetery and TxDOT Property
Bull Creek Rd.
Austin, Texas

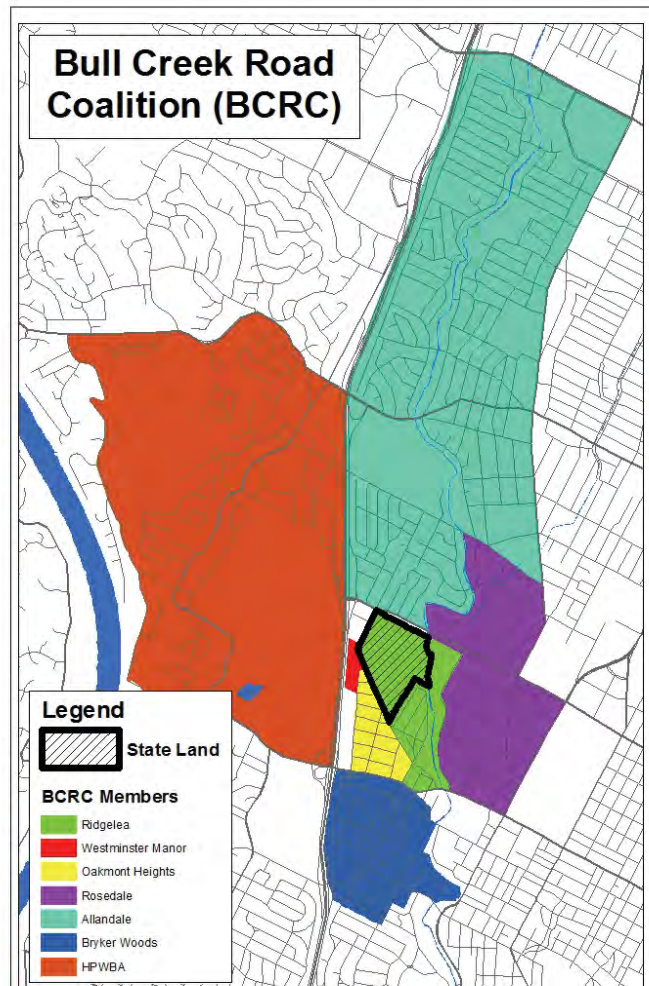
Prepared
By
Bull Creek Road Coalition

What is the Bull Creek Road Coalition (BCRC)?

The BCRC was formed in 2012 and is made up of the seven residential neighborhoods surrounding a 75-acre state-owned tract in Central Austin. Once it became clear that the state intended to sell or lease the tract for private development, the neighborhoods formed this coalition to work constructively with the state, the city and prospective developers to insure that

the tract is developed in a way that will be compatible with and enhance the existing neighborhoods, while meeting the state's need.

The neighborhoods represented in the coalition are Ridgelea, Rosedale, Oakmont Heights, Allandale, Bryker Woods, Highland Park West/Balcones Area and Westminster Manor, which together comprise more than 7,500 Central Austin households.



What land is involved?

The tract is adjacent to Bull Creek Road, with Shoal Creek on the east, and lies roughly between West 45th Street on the north and West 39th Street on the south. The only street access to the property is Bull Creek Road. Otherwise, the property is surrounded primarily by residential housing and the creek. (Map attached). The Texas Department of Transportation (TxDOT) owns 29.8 acres fronting on Bull Creek Road; the remaining 46.9

acres is dedicated to the Texas State Cemetery, but has never been used as a cemetery. Both state agencies have indicated a desire to sell their interests.

What are the unique characteristics of this property?

The land fronting on Bull Creek Road is flat and lends itself to development. However, the eastern side of the property, bounded by the creek, slopes downward significantly toward the creek. This area includes a grove of magnificent heritage oak trees, and a striking array of Texas wildflowers rugged enough to dazzle even in our drought conditions.

EXHIBIT B. BCRC INFORMATION PACKET

The main negative characteristic is the lack of automobile access needed for any significant commercial development. Except for Bull Creek Road, the land is completely surrounded by houses and the creek, so only this road—currently just two lanes--could be used for ingress and egress. But even if this road were widened, newly generated traffic would immediately hit the bottlenecks that already exist at 45th Street on the north, 35th Street on the south, and several residential streets in between.

What resources does BCRC bring to the table?

BCRC is fortunate to have among its residents outstanding professionals in many fields, including land planning, architecture and conservation, just to mention a few. As a result, we have developed the following:

- A sophisticated list of “design principles” that can be used by professionals to help design a sustainable development for modern urban living (attached).
- A detailed survey of neighborhood residents that required them to choose among realistic development options, to determine what their priorities are. More than 700 residents filled out the survey, and the results are attached. The greatest desire expressed is for some open-space to be maintained on the land closest to the creek. The greatest problem expressed is added traffic to the congestion already existing.
- BCRC has also been in consultation with the Shoal Creek Conservancy and the Lady Bird Johnson Wildflower Center, as well as the City of Austin, about how to best showcase the unique landscape of huge old oaks and wildflowers on the property.

What does BCRC recommend as the best use of the land?

- The two parcels of land should be sold together, not separately. Only planning and developing the whole 75 acres together will result in the most successful enterprise. Several architects, land planners and developers have said they also believe the property will bring a higher price if it is sold together.
- As clearly conveyed in the survey, some retail and commercial businesses, such as restaurants and specialty stores, would be appropriate with the majority of the developed land used for residential development. This could include high-density single-family, apartments, or other types of residential use. The advantage to this approach would be to keep newly generated traffic to a minimum.
- At least 30 acres along Shoal Creek should be maintained as an urban open-space or conservation area connected to the Shoal Creek Trail. These acres could include walking trails through the huge oaks and wildflowers. This would be a great added attraction for development closer to the road.

For more information: Sara Speights, President of BCRC, (512) 451-4618, or Grayson Cox, Vice President of BCRC, (832) 335-5180.

Bull Creek Road Coalition (BCRC) Neighborhood Survey

Austin, Texas

Spring, 2014

This survey was conducted in the seven neighborhoods surrounding the 75-acre state-owned tract of land contiguous to Bull Creek Road and between West 45th and West 39th Streets in Austin, Texas. The goal was to learn the opinions of the residents surrounding this property concerning utilization and development of the property.

EXHIBIT B. BCRC INFORMATION PACKET

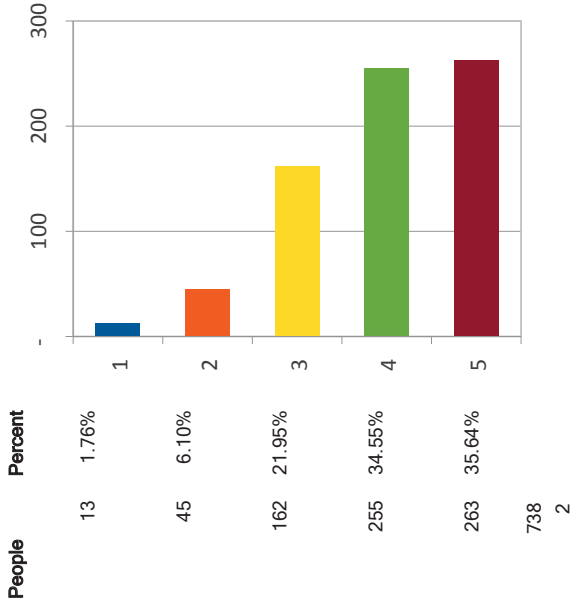
State Land Opinion Survey
Spring 2014 - Bull Creek Road Coalition

If the state land is to be developed, what type of development you would prefer:

Answer Options

- (High Density) Some 10+ story office and residential buildings and apartments.
Example: Area around 6th and Lamar with Whole Foods store and large apartments.
- Mix of 4-5 story apartments, hotels and dense mix of small, mid and large scale retail. Example: The Domain.
- (Medium Density) Mix of 4-5 story apartments, townhomes with moderate amount of small to mid sized retail. Example: The Triangle.
- Mostly houses with some small apartments, retail and offices. Examples: Area around 43rd and Duval (Hyde Park Grill) or Rosedale near Medical Parkway (Draught House).
- (Low Density) Large lot single family homes with no commercial or retail.
Example: Single family homes like those on Shoal Creek Boulevard.

answered question
skipped question



Traffic generated by development can range from high to low, and can create particular problems locally, such as cut-through traffic (traffic cutting through neighborhood streets to avoid busy thoroughfares). Please indicate how much you think traffic could affect you:

Answer Options

- A lot (examples: cut through traffic, unable to leave neighborhood)
- Some (example: streets you normally use would become busier)
- Little or none (examples: you would walk and vehicle congestion won't affect you, or you live far enough away, or you don't travel the 45th/Bull Creek Road area by car)

answered question
skipped question

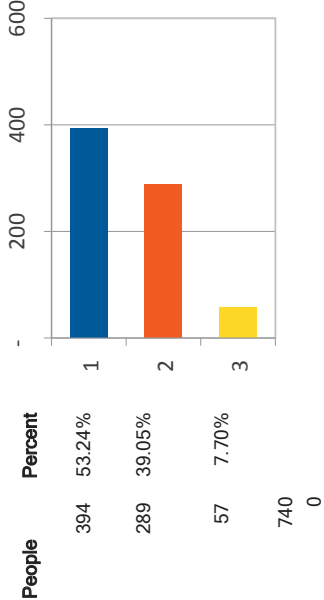


EXHIBIT B. BCRC INFORMATION PACKET

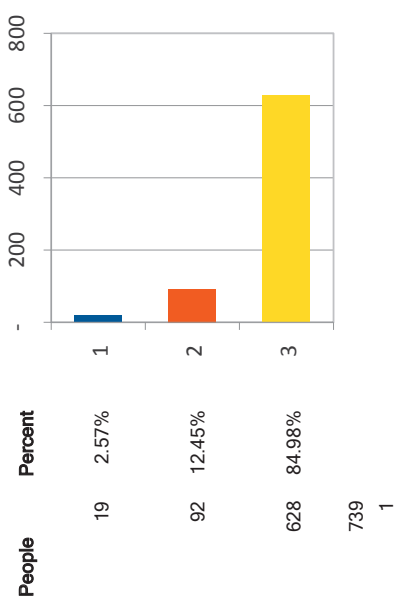
Considering your view of the potential effect of traffic on you and your area, if there is commercial development, what kind would prefer to see or could “live with”:

Answer Options

High traffic commercial development with businesses such as box stores like Home Depot and Target, grocery “superstores”, drive-throughs for gas stations, banks, Starbucks

Moderate-size businesses (like Randalls in Tarrytown)

Small businesses such as bakeries, restaurants, coffee shops, small to medium grocery stores (such as Russell’s Bakery on Balcones or Sprouts).



answered question
skipped question

739
1

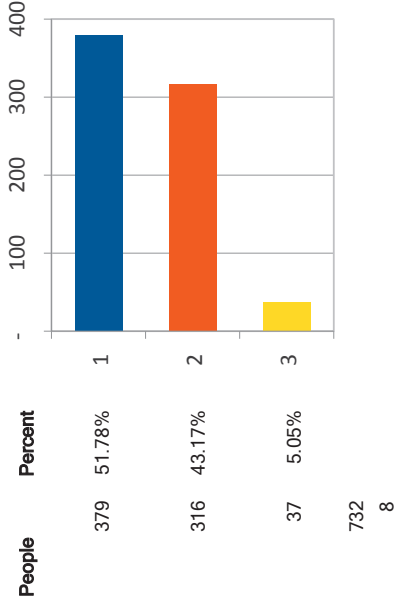
There are approximately 30 acres (about 40% of the total space) of potential high-quality greenspace, including the area along Shoal Creek, the grove of large live oaks, and a meadow that produces lots of wildflowers. Please indicate how strongly you prefer that urban greenspace be a part of the development plan.

Answer Options

The 30 acres mentioned will not be enough; more should be included in a development plan

The 30 acres mentioned should be preserved and will be enough

The 30 acres mentioned is more than needed and might interfere with development



answered question
skipped question

732
8

EXHIBIT B. BCRC INFORMATION PACKET

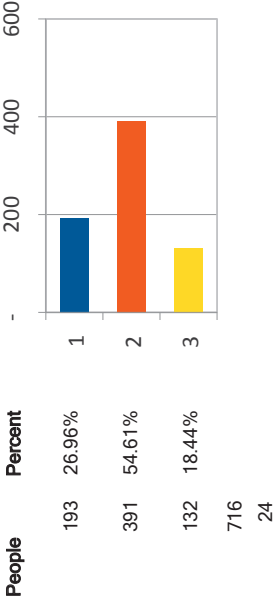
Are you in favor of a bridge being built across Shoal Creek to enable access from Shoal Creek Boulevard?

Answer Options

Vehicle and pedestrian

Pedestrian only

No bridge



What are or would be your preferred uses of the property (check all that apply)?

Answer Options

Shopping

Riding bikes

Hiking

Walking

Taking dogs for an off-leash romp near Shoal Creek

Other (please specify)

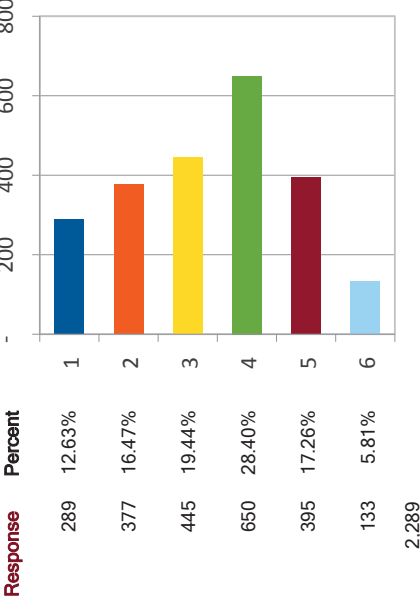


EXHIBIT B. BCRC INFORMATION PACKET

How long have you lived in your current residence? (optional)

Answer Options

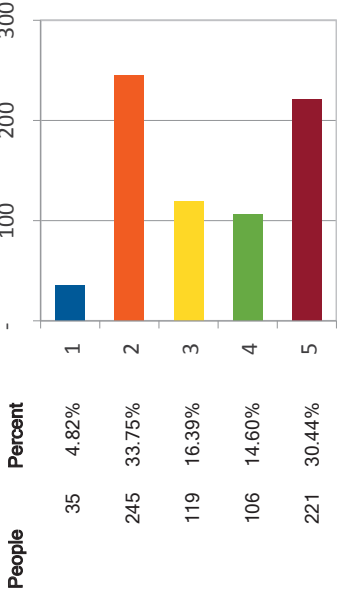
less than one year

1 - 5 years

6 - 10 years

10 - 15 years

more than 15 years



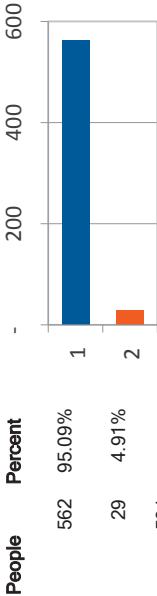
answered question
skipped question

Do you own or rent? (optional)

Answer Options

Own

Rent



answered question
skipped question

EXHIBIT B. BCRC INFORMATION PACKET



Design Principles for Shoal Creek Fields

The Bull Creek Road Coalition (Coalition) consists of seven Neighborhood Associations: Ridgelea, Rosedale, Oakmont Heights, Allandale, Bryker Woods, Highland Park West/Balcones Area and Westminster Manor, which together represent over 7,500 households.

The Coalition embraces and encourages responsible development of the State Land consistent with the Imagine Austin plan. The Coalition is committed to realizing the following Design Principles for any development on Shoal Creek Fields. We view this as a living document to be updated as appropriate.

A vision for integrated development

- The design and development team will work with all the stakeholders to create a uniquely Austin place that will be accepted by its neighbors while creating lasting value for the citizens of Texas.
- The design should incorporate a “Community Common” that creates identity, value and memorability
- The design acknowledges value of parks, plazas, landscaping, and natural areas and respects the natural elements found there.
- Innovative, high quality, and appropriately scaled design that respects the City’s standards for pedestrian, bicycle, and transit connectivity

Respect the site

- Recognize, preserve and enhance the natural elements on the site: the creek, fields, native plants and large trees
- Embrace Shoal Creek as it is a defining natural element and a major floodway; new development provides the opportunity to restore Shoal Creek to a live, flowing creek while controlling flooding potential with well-designed, appropriate flood controls, including in the plan the assurance that any structures are appropriate to the site, and will be maintained properly into the future.
- Historic site – in the 19th century, the Deaf Dumb & Blind School for Negro Orphans was located here. The archaeological survey required by State law should be early in the process and be used to inform any development plans.

Great urban design – focused on people

- Create a varied urban grid of boulevards, streets and alleys to encourage development for a wide range of uses including commercial, residential, and professional.
- Focus the grid and commercial uses on a “Community Common” the place that creates identity, value, and memorability.
- Create a vibrant pedestrian, bicycle, and transit-friendly streetscape along Bull Creek Road, composed of a physical frontage of buildings, minimal street-accessible parking, generous sidewalk space, thoughtfully integrated landscaping, street lighting, and street furniture
- Limit presence of cars in public area; the substantial part of parking for commercial and residential uses should be in parking garages or in alleys in less densely developed areas.

Design Principles for Shoal Creek Fields

Emphasis on creating walkable, bikeable streets and trails that integrate the community

- Design realizes ease of access by public transportation, walking & bicycling from surrounding neighborhoods is important. The same principle of pedestrian priority should apply within the site as well.
- Generous sidewalks, minimal street accessible parking
- Incorporate an extension of the Shoal Creek hike and bike trail all the way to 45th Street as an integral part of the transportation and recreational infrastructure.
- Include a pedestrian and bike connection across Shoal Creek

Traffic mitigation

- Increased traffic is the #1 concern expressed by surrounding residents; traffic is already a problem at the intersection of 45th and Bull Creek Road at peak hours.
- Work with surrounding neighborhoods – especially those immediately adjacent – to develop and implement coordinated pedestrian and traffic calming measures to both discourage and mitigate new cut through traffic.

A design that is compatible and integrated with the surrounding development patterns

- Connect and integrate in all possible ways with the city fabric on all sides – homes to north and south, creek to east – without high walls and with generous native landscaping, setbacks and view corridors
- Seek to do no harm to surrounding single family neighborhoods
- Respect the scale of the edges of the site
- Build four-sided architecture
- Use down lighting and other techniques to avoid light pollution
- Mitigate noise impacts with the goal of limiting noise levels

Sustainable design: meet or exceed recognized sustainable design standards, consistent with the Congress of New Urbanism charter

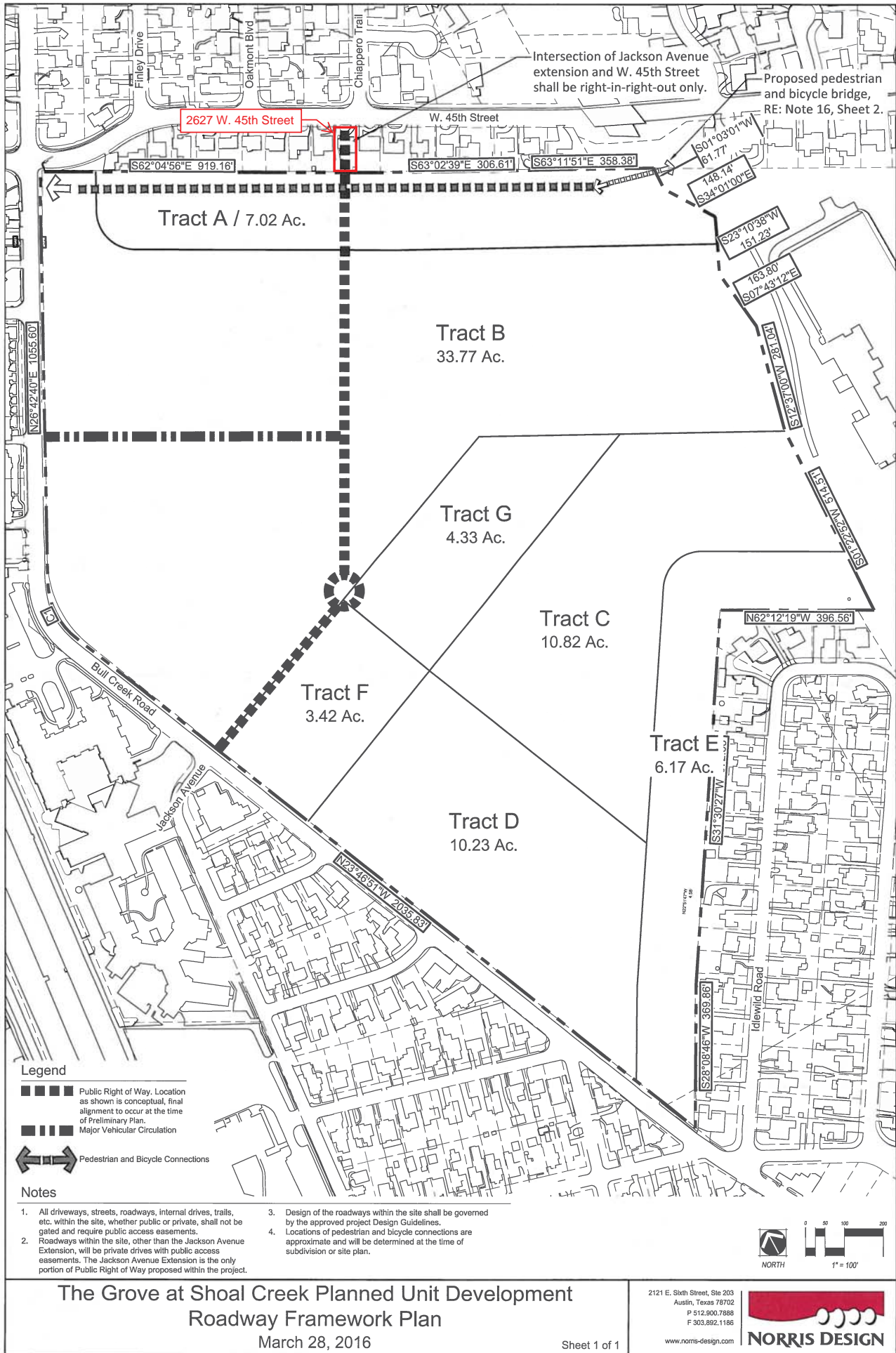
- LEED Silver certified for Neighborhood Design (LEED-ND) for the overall urban design
- SITES for landscape design, construction and maintenance
- LEED Silver certified or Austin Energy Green Building 4-5 Star rating for buildings

Public/community input during all stages and phases of development

- Good design happens through good process that involves all the stakeholders
- State lands are owned by the people of Texas and the peoples' business should be conducted in public

Expert design team with successful urban infill experience

- The design of Shoal Creek Fields' development in its entirety will be facilitated by an integrated design team of architects, landscape architects and engineers
- The design team will have proven and lauded experience in realizing high quality, neighborhood-friendly, ecologically sensitive urban design



The Grove at Shoal Creek Planned Unit Development Roadway Framework Plan

March 28, 2016

Sheet 1 of 1

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

ATTACHMENT 2

Proposed Code Modifications

CHAPTER 25-1 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
1. <i>Definitions, Article 2, Chapter 25-1-21</i>	"SITE means a contiguous area intended for development, or the area on which a building has been proposed to be built or has been built. A site may not cross a public street or right-of-way."	"SITE means a contiguous area intended for development, or the area on which a building has been proposed to be built or has been built. A site may cross a public street or right-of-way if that public street or right-of-way is within the boundaries of The Grove at Shoal Creek PUD."
2. <i>Parkland Requirements, Article 14, Chapter 25-1 and 25-4-211</i>	25-1-602(A) "A subdivider or site plan applicant shall provide for the parkland needs of the residents by the dedication of suitable parkland for park and recreational purposes under this article."	"Section 25-1-602 (Dedication of Parkland Required) is modified to provide that subdivider or site plan applicant shall provide for the parkland needs of the residents by providing suitable parkland for park and recreational purposes under the terms of The Grove at Shoal Creek Parks Plan and Parkland Improvement Agreement attached as exhibits to Planned Unit Development Ordinance No. ."
3. <i>Gross Floor Area, 25-2-21(44)</i>	25-1-21 "(44) GROSS FLOOR AREA means the total enclosed area of all floors in a building with a clear height of more than six feet, measured to the outside surface of the exterior walls. The term includes loading docks and excludes atria airspace, parking	"(44) GROSS FLOOR AREA means the total enclosed area of all floors in a building with a clear height of more than six feet, measured to the outside surface of the exterior walls. The term includes loading docks and excludes atria airspace, parking facilities, parking structures, driveways, and enclosed loading berths and

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

	facilities, driveways, and enclosed loading berths and off-street maneuvering areas.”	off-street maneuvering areas.”
CHAPTER 25-2 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
4. <i>Site Development Regulations, 25-2-492</i>	Not applicable.	The Applicant proposes that the site development regulations applicable to the Property be as shown on the Land Use Plan
5. <i>Site Development Regulations, 25-2-492 and Height, 25-1-21(47)</i>	City staff interprets a parking level to be a “story” for the purposes of determining compliance with site development regulations.	“In determining compliance with the applicable height limitations, a parking level shall not be and is not considered a ‘story’.”
6. <i>Visual Screening, 25-2-1006</i>	25-2-1006 Visual Screening of certain features	“Section 25-2-1006 (A) shall not apply to any water quality and/ or storm water drainage facility that serves as an amenity or to any Green Storm Water Quality Infrastructure as defined in the Environmental Criteria Manual, except that any green infrastructure hardened outfalls and control structures should still be buffered from public ROW. Section 25-2-1006 (C) shall not apply between uses or sites that are both located within the PUD boundaries. This section shall still apply at the boundaries of the PUD.”
7. <i>Planned Unit Development Regulations, Chapter 25-2, Subchapter</i>	“D. the minimum front yard and street side yard setbacks, which must be not	“Chapter 25-2, Subchapter B, Article 2, Division 5, Section 3.2.3.D.1 shall not

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

<i>B, Article 2, Division 5, Section 3.2.3.D.1</i>	less than the greater of: 1. 25 feet for a front yard, and 15 feet for a street side yard; or”	apply to the PUD. Notwithstanding the foregoing the remainder of that section shall apply to the PUD.”
<p>8. <i>Compatibility Standards, Chapter 25-2, Article 10</i></p> <p><i>NOTE: This Code modification only applies where the triggering property is located within the PUD. This Code modification does not apply where the triggering property is located outside the PUD. This Code modification is identical to the one granted in the Mueller PUD</i></p>	Chapter 25-2, Article 10, Compatibility Standards applied to triggering property within the PUD only	“Chapter 25-2, Article 10 (Compatibility Standards) does not apply only where development within the PUD triggers such compatibility standards. Notwithstanding the foregoing, Chapter 25-2, Article 10 (Compatibility Standards) shall apply, except as provided herein, where development outside of the PUD triggers such compatibility standards.”
9. <i>Compatibility Standards, 25-2-1063(C)(2)and (3)</i>	<p>25-2-1063(C) “(2) three stories and 40 feet, if the structure is more than 50 feet and not more than 100 feet from property:</p> <p>(a) in an SF-5 or more restrictive zoning district; or (b) on which a use permitted in an SF-5 or more restrictive zoning district is located;</p> <p>(3) for a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive;”</p>	“In the rectangular area of land in Tract B that is bounded by (i) the property line adjacent to Bull Creek Road on the west, (ii) a line 240 feet east from the property line adjacent to Bull Creek Road on the east, (iii) a line that is 200 feet south of the northern property line on the north, and (iv) a line that is 630 feet south of the northern property line on the south, Section 25-2-1063(C) (2) of the Austin City Code shall not apply, and Section 25-2-1063(C)(3) is modified to read to provide that for a structure more than 50 feet but not more than 300 feet from the property zoned SF-5 or more restrictive, height may is limited to 60’.”
10. <i>Compatibility Standards, 25-2-1067(G) and (H)</i>	25-2-1067 “(G) Unless a parking area or	“Section 25-2-1067(G) and (H) of the Austin City Code shall not apply to Tract A

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

	driveway is on a site that is less than 125 feet wide, a parking area or driveway may not be constructed 25 feet or less from a lot that is: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located.”	only, with respect to the construction of an alley, public road, trails and/or sidewalks.”
11. <i>Commercial Design Standards, Subchapter E, Chapter 25-2</i>	Chapter 25-2, Subchapter E, Design Standards and Mixed Use	“The Grove at Shoal Creek Design Guidelines generally address the physical relationship between commercial and other nonresidential development and adjacent properties, public streets, neighborhoods, and the natural environment, in order to implement the City Council's vision for a more attractive, efficient, and livable community. The requirements of Chapter 25-2, Subchapter E of the Austin City Code shall not apply to the property. All requirements in the Austin City Code that reference Chapter 25-2, Subchapter E shall be modified to refer to such Design Guidelines.”
CHAPTER 25-4 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
12. <i>Alleys, 25-4-132(B)</i>	25-4-132 “(B) Off-street loading and unloading facilities shall be provided on all commercial and industrial lots, except in the area described in Subsection (C). The subdivider shall note this requirement on a preliminary plan and a plat.”	“Off-street loading and unloading shall be provided on all commercial lots, except that loading and unloading may also occur in any alley that also serves as a fire lane. The subdivider shall note this requirement on a preliminary plan and a plat.”

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

13. <i>Block Length, 25-4-153</i>	25-4-153 Block Length requirements	"Section 25-4-153 of the Austin City Code shall not apply to the property."
14. <i>Secondary Street Access, 25-4-157</i>	Section 25-4-157 – Subdivision Access Streets	"Section 25-4-157 of the Austin City Code shall not apply to the property."
15. <i>Lots on Private Streets, 25-4-171(A)</i>	"(A) Each lot in a subdivision shall abut a dedicated public street."	"(A) Each lot in a subdivision shall abut a public street, private street or private drive subject to a permanent access easement."
16. <i>Parkland Requirements, Article 14, Chapter 25-1 and 25-4-211</i> <i>[NOTE: this is the same as No. 1 above]</i>	25-4-211 "The platting requirement for parkland dedication is governed by Chapter 25-1, Article 14 (Parkland Dedication)."	"The platting requirement for parkland dedication is modified to provide that such requirement is governed by the terms of The Grove at Shoal Creek Planned Unit Parks Plan and Parkland Improvement Agreement attached as exhibits to Development Ordinance No. _____. "
17. <i>Public Street Alignment, 25-4-151</i>	25-4-151 "Streets of a new subdivision shall be aligned with and connect to existing streets on adjoining property unless the Land Use Commission determines that the Comprehensive Plan, topography, requirements of traffic circulation, or other considerations make it desirable to depart from the alignment or connection."	"Notwithstanding Section 25-4-151 of the Austin City Code, the private drives and/ or private streets within the property may be aligned with and connect to existing or future streets on adjoining property."
18. <i>Dead-End Streets, 25-4-152(A)</i>	25-4-152 "(A) A street may terminate in a cul-de-sac if the director determines that the most desirable plan requires laying out a dead-end street."	"A street may terminate in a cul-de-sac if the director determines that the most desirable plan requires laying out a dead-end street, or may terminate in a connection with the private drives and/ or private streets within the property."
CHAPTER 25-6 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

19. <i>Street Design, 25-6-171(A)</i>	“(A) Except as provided in Subsections (B) and (C), a roadway, street, or alley must be designed and constructed in accordance with the Transportation Criteria Manual and City of Austin Standards and Standard Specifications.	“A roadway, private drive, street or alley must be designed and constructed in accordance with The Grove at Shoal Creek Design Guidelines. The Transportation Criteria Manual and City of Austin Standards and Standard Specifications shall apply to the extent they do not conflict with The Grove at Shoal Creek Design Guidelines.”
CHAPTER 25-8 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
20. <i>Heritage Trees, 25-8-641(B)</i>	“(B) A permit to remove a heritage tree may be issued only if a variance is approved under Section 25-8-642 (<i>Administrative Variance</i>) or 25-8-643 (<i>Land Use Commission Variance</i>).”	<p>“A permit to remove a heritage tree may be issued only if:</p> <p>(1) a variance is approved under Section 25-8-642 (<i>Administrative Variance</i>) or (25-8-643) <i>Land Use Commission Variance</i>, or</p> <p>(2) the tree is indicated as "Trees that May Be Removed" on The Grove at Shoal Creek Tree Survey and Disposition Plan as attached to The Grove at Shoal Creek Planned Unit Development Ordinance No. _____. Sections 25-8-642 and 25-8-643 shall not apply to the trees indicated as "Trees that May Be Removed" on The Grove at Shoal Creek Tree Survey and Disposition Plan.</p> <p>A permit issued under 25-8-642 (A) (2) shall require mitigation at the rates prescribed on The Grove at Shoal Creek</p>

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

		Tree Survey and Disposition Plan.”
CHAPTER 25-10 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
21. 25-10-1 - <i>Applicability</i>	25-10-1 – Applicability	“(D) To the extent they are in conflict, the signage standards set forth in the Design Guidelines for The Grove at Shoal Creek shall supersede this chapter.”
22. 25-10-103 – <i>Signs Prohibited in the Public Right-of-Way.</i>	25-10-103 – Signs Prohibited in the Public Right-of-Way.	“Section 25-10-103 of the Austin City Code shall not apply to the public Right-of-Way dedicated for the Jackson Avenue Extension within the boundaries of The Grove at Shoal Creek PUD as identified on the Roadway Framework Plan.”
23. 25-10-191 – <i>Sign Setback Requirements.</i>	25-10-191 – Sign Setback Requirements.	“Section 25-10-191 of the Austin City Code shall not apply for setbacks from the public Right-of-Way dedicated for the Jackson Avenue Extension within the boundaries of The Grove at Shoal Creek PUD as identified on the Roadway Framework Plan.”
DRAINAGE CRITERIA MANUAL MODIFICATIONS		
DCM SECTIONS TO BE MODIFIED	CURRENT DCM LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
24. <i>Fencing Requirements for Drainage Facilities, Section 1.2.4.E.1(a)</i>	DCM Section 1.2.4.E “1. (a) Where a portion of the stormwater facility either has an interior slope or wall steeper than three (3) feet horizontal to one (1) foot vertical with a height exceeding one (1) foot, or, an exterior slope or	“1. (a) Where a portion of the stormwater facility either has an interior slope or wall steeper than three (3) feet horizontal to one (1) foot vertical with a height exceeding one (1) foot, or, an exterior slope or wall steeper than three

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

	<p>wall steeper than three (3) feet horizontal to one (1) foot vertical with a height exceeding three (3) feet above adjacent ground, barrier-type fences at least six (6) feet high, and/or steel grating are required for all single-family or duplex residential development, City maintained stormwater facilities, and/or for any privately maintained stormwater facilities located within 500 feet of a residential structure. Barrier type fences include, but are not limited to chain link, solid wood, masonry, stone or wrought iron.”</p>	<p>(3) feet horizontal to one (1) foot vertical with a height exceeding three (3) feet above adjacent ground, steel grating is required for all single-family or duplex residential development, City maintained stormwater facilities, and/or for any privately maintained stormwater facilities located within 500 feet of a residential structure.</p>
ENVIRONMENTAL CRITERIA MANUAL MODIFICATIONS		
ECM SECTIONS TO BE MODIFIED	CURRENT ECM LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
<p>25. <i>Maintenance Responsibilities for Water Quality Control Facilities, Section 1.6.3.A.4</i></p>	<p>4. obtain final warranty release approval from the Watershed Protection Department.</p> <p>The City will also maintain water quality control facilities designed to service primarily publicly owned roads and facilities. These water quality control facilities must be designed and built according to the appropriate city standards.</p>	<p>“4. obtain final warranty release approval from the Watershed Protection Department. Water quality control facilities at The Grove at Shoal Creek PUD that treat publicly owned roads and facilities within and adjacent to The Grove at Shoal Creek PUD may be privately maintained.”</p>

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

TRANSPORTATION CRITERIA MANUAL MODIFICATIONS		
TCM SECTIONS TO BE MODIFIED	CURRENT TCM LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
26. <i>Classification Design Criteria, Section 1.3.2.B.2</i>	<p>2. Collector, Neighborhood.</p> <p>A neighborhood collector street is characterized by serving several districts or subdivisions. Neighborhood collector streets provide limited access to abutting property and may provide on-street parking, except where bus routes can be expected. Typically multifamily developments, schools, local retail developments and public facilities are located adjacent to neighborhood collectors. Direct driveway access for detached houses should be discouraged (see Figure 1-28 in Appendix H of this manual for design criteria).</p>	<p>2. Collector, Neighborhood.</p> <p>The Extension of Jackson Avenue in The Grove at Shoal Creek PUD as identified on the Roadway Framework Plan shall be considered a Neighborhood Collector and shall be designed per The Grove at Shoal Creek Design Guidelines. The cross section and any other design information contained in those design guidelines shall supersede any requirements of the Transportation Criteria Manual. All other circulation routes within The Grove including internal circulation routes and alleys shall be considered as private driveways and intersections with these driveways shall be subject to the 50' minimum spacing for Neighborhood Collectors.</p>
27. <i>Classification Design Criteria, Section 1.3.2.F</i>	F. Single Outlet Streets	<p>"The Jackson Avenue Extension shall not be considered a Single Outlet Street upon the construction of any publicly accessible private street, drive, or internal circulation route that is open to the public and connects Jackson Avenue to Bull Creek</p>

EXHIBIT D. THE GROVE PROPOSED CODE MODIFICATIONS

		Road.”
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EXHIBIT E. CITY OF AUSTIN RESPONSE REGARDING PETITION RIGHTS



City of Austin
Founded by Congress, Republic of Texas, 1839
Planning and Zoning Department
One Texas Center, 505 Barton Springs Road
P.O. Box 1088, Austin, Texas 78767

July 31, 2015

Mr. Chris Allen, Co-Chair
Rosedale NA zoning committee
c/o Some Assembly Required
1406 W 39th ½ Street
Austin, TX 78756

Subject: The Grove PUD

Dear Mr. Allen:

Thank you for your letter of July 23 2015 regarding The Grove Planned Unit Development (PUD) zoning request. You asked for responses to two questions relating to zoning petition rights. Regarding your first question, Staff has already stated that a valid petition signed by property owners representing 20% of the land area within 200 feet does not trigger a supermajority vote of the City Council since this is not a rezoning application but initiation of original zoning. This is consistent with Section 25-2-241 and Section 25-2-284 of the City of Austin Land Development Code (LDC). Section 25-2-241 (see below) recognizes the distinction between zoning and rezoning requests.

§ 25-2-241 - DISTINCTION BETWEEN ZONING AND REZONING.

A. **Zoning** is the initial classification of property as a particular zoning base district. Zoning amends the zoning map to include property that was not previously in the zoning jurisdiction or that was not previously included in the boundaries of a base district.

B. **Rezoning** amends the zoning map to change the base district classification of property that was previously zoned. The

Source: Section 13-1-401; Ord. 990225-70; Ord. 031211-11.

Section 25-2-284(A) (2) (see below) triggers a supermajority (3/4) vote of the City Council to approve a rezoning (not initial zoning) of a property. The LDC does not contain similar language for a zoning application.

§ 25-2-284 - REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.

A. The affirmative vote of three-fourths of the members of council is required to approve a proposed **rezoning** if:

(2) the proposed rezoning is protested in writing by the owners of not less than 20 percent of the area of land: (a) included in the proposed change; or (b) immediately adjoining the area included in the proposed rezoning and extending 200 feet from the area.

Your second question addressed whether a negative recommendation by the Zoning and Platting Commission to The Grove PUD zoning request would trigger the supermajority vote at the City Council. The short answer is no, since this is not a rezoning request. According to Section 25-2-284(A) (1) (see below), a supermajority (3/4) vote of the City Council is required to approve a rezoning (not initial zoning) of a property. The LDC does not contain similar language for a zoning application.

EXHIBIT E. CITY OF AUSTIN RESPONSE REGARDING PETITION RIGHTS

§ 25-2-284 - REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.

- A. The affirmative vote of three-fourths of the members of council is required to approve a proposed **rezoning** if:*
- (1) the Land Use Commission recommends denial of an application to rezone property to a planned unit development; or*

In summation, the Austin City Code limits valid petition rights to rezoning requests. It does not grant valid petition rights for the first (initial) zoning of a property. This is also consistent with a previous City of Austin Law Department opinion and State court decisions holding that petition rights do not apply to initial zoning.

If you have any questions regarding this determination, please call me at 512-974-2387 or by email at greg.guernsey@austintexas.gov.

Sincerely,



cc: Marc Ott, City Manager
Sue Edwards, Assistant City Manager
Deborah Thomas, Assistant City Attorney
Jerry Rusthoven, Current Planning Manager, Planning and Zoning Department

attachment: Law Department Memorandum dated January 23, 1985.

EXHIBIT E. CITY OF AUSTIN RESPONSE REGARDING PETITION RIGHTS



MEMORANDUM

TO: James B. Duncan, Director, Office of Land Development Services
Jim Smith, Director, Building Inspection Department

FROM: Walt McCool, Assistant City Attorney

DATE: January 23, 1985

SUBJECT: Implementation of Compatibility Standards

The Zoning Ordinance requires compliance with the compatibility standards for projects located in a certain proximity to property zoned or used "SF-5" or more restrictive. It is my opinion that property in interim zoning classification does not activate the compatibility standards.

The question is whether interim-zoned property is "zoned" within the meaning of the site development regulations in the Zoning Ordinance. Clearly, if a property owner wishes to install a nuclear test site next door to a single family home, the proposed project would have to meet the compatibility standards. The more difficult situation is where the proposed use is to be located next door to vacant property which is in an interim holding classification.

At least one Texas court has determined that interim classifications are imposed only to maintain the status quo pending the assignment of permanent zoning. Therefore, it is not necessary to comply with the notice and hearing requirements of the Zoning Enabling Act prior to interim zoning, since these procedural requirements are met prior to the hearings on permanent zoning. In Apollo Development Co. v. City of Garland, a property owner applied for permanent zoning on an interim-zoned tract. The surrounding property owners filed protest petitions which the city believed to be valid. The property owner won a declaratory judgment stating that the petition was invalid. The Court reasoned that a change from interim to permanent zoning would not give rise to protest rights, since such a change is really an original zoning.

I feel that this reasoning applies to our site development regulations as well. Property in an "I-SR" or other interim classification has not actually been zoned, in a legal sense. Therefore, the proximity of such property to a tract proposed for development should not require compliance with compatibility standards.

Walt McCool
Assistant City Attorney

WMC:taa

cc: Terry Childers, Senior Assistant City Manager
Andrew Martin, Assistant City Attorney
Marie Gaines, Assistant Director, Office of Land Development Services
Jim Bennett, Zoning Administrator

§ 25-2-284 - REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.

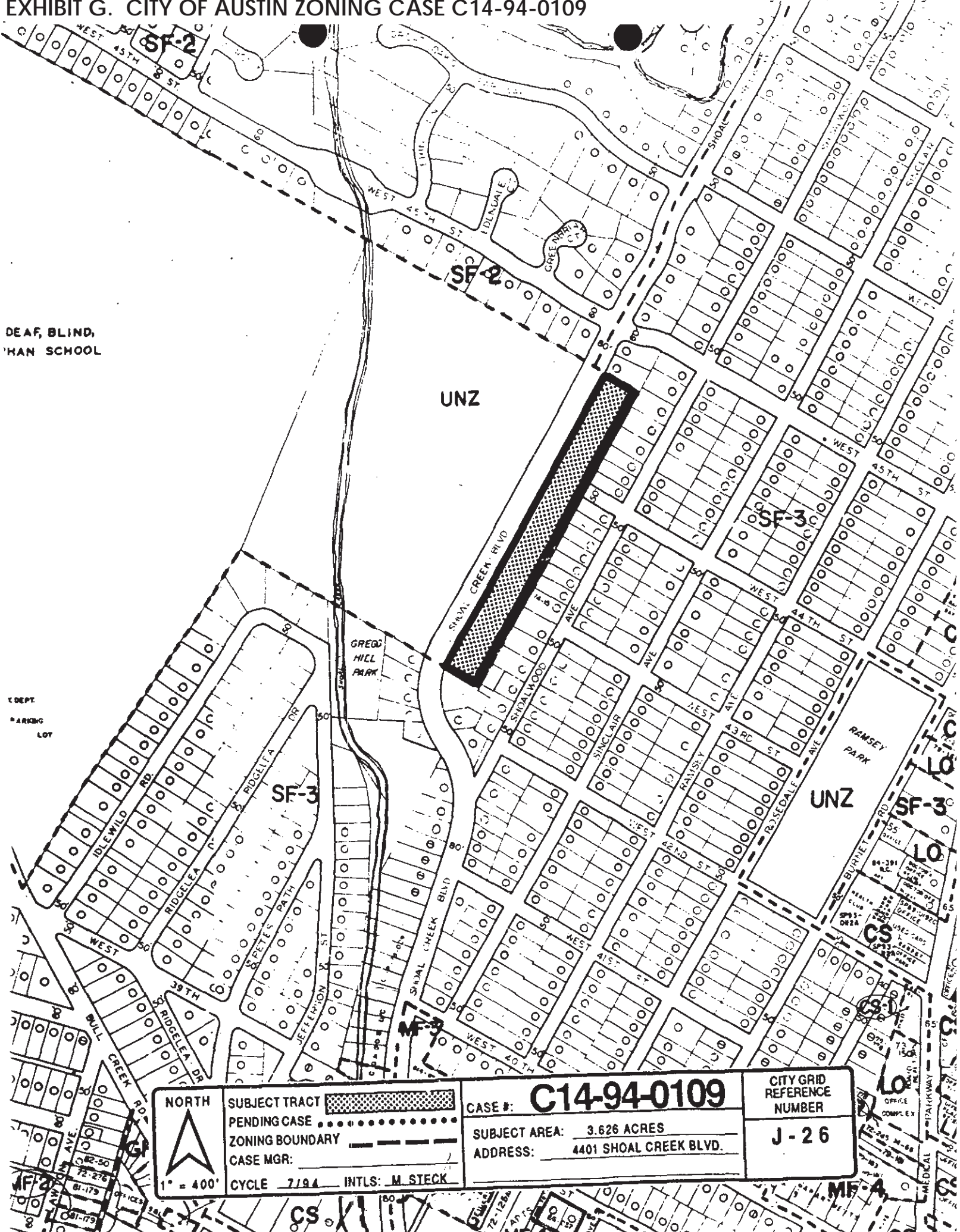
- (A) The affirmative vote of three-fourths of the members of council is required to approve a proposed rezoning if:
 - (1) the Land Use Commission recommends denial of an application to rezone property to a planned unit development; or
 - (2) the proposed rezoning is protested in writing by the owners of not less than 20 percent of the area of land:
 - (a) included in the proposed change; or
 - (b) immediately adjoining the area included in the proposed rezoning and extending 200 feet from the area.
- (B) The director of the Neighborhood Planning and Zoning Department shall include the area of streets and alleys to compute the percentage of land area under Subsection (A)(2).
- (C) The director of the Neighborhood Planning and Zoning Department shall include land subject to a condominium regime in a protest under Subsection (A)(2) if:
 - (1) the protest is signed by the authorized officer of the condominium on behalf of the governing body of the condominium and the protest states that the governing body has authorized the protest petition in accordance with procedures required by its bylaws; or
 - (2) the protest is signed by the owner of an individual condominium unit and the documents governing the condominium establish the right of an individual owner to act with respect to the owner's undivided interest in the common elements of the condominium.
- (D) Except as provided in Subsection (C), the director of the Neighborhood Planning and Zoning Department shall include land owned by more than one person in a protest under Subsection (A)(2) if a written protest is filed by one of the owners.

Source: Section 13-1-407; Ord. 990225-70; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11.

EXHIBIT G. CITY OF AUSTIN ZONING CASE C14-94-0109

DEAF, BLIND,
HUMAN SCHOOL

DEPT.
PARKING
LOT



NORTH



1" = 400'

SUBJECT TRACT

PENDING CASE

ZONING BOUNDARY

CASE MGR:

CYCLE 7/94 INTLS: M. STECK

CASE #:

C14-94-0109

SUBJECT AREA: 3.626 ACRES

ADDRESS: 4401 SHOAL CREEK BLVD.

CITY GRID
REFERENCE
NUMBER

J - 26

ORDINANCE NO. 941103-__C

AN ORDINANCE ORDERING A REZONING AND CHANGING THE ZONING MAP ACCOMPANYING CHAPTER 13-2 OF THE AUSTIN CITY CODE OF 1992 AS FOLLOWS: 3.626 ACRE TRACT OF LAND OUT OF THE GEORGE W. SPEAR LEAGUE SURVEY NO. 7, FROM "UNZ" UNZONED DISTRICT TO "SF-2-CO" SINGLE-FAMILY RESIDENCE (STANDARD LOT) DISTRICT-CONDITIONAL OVERLAY COMBINING DISTRICT, LOCALLY KNOWN AS 4401 SHOAL CREEK BOULEVARD, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; WAIVING THE REQUIREMENTS OF SECTION 2-2-3 OF THE AUSTIN CITY CODE OF 1992; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

~~(PART 1.~~ That Chapter 13-2 of the Austin City Code of 1992 is amended to change the base zoning district from ~~"UNZ"~~ Unzoned district to ~~"SF-2-CO"~~ Single-Family Residence (Standard Lot) district-Conditional Overlay combining district, on the property described in File C14-94-0109, as follows:

3.626 acre tract of land out of the George W. Spear League Survey No. 7, said 3.626 acre tract of land being more particularly described by metes and bounds in "Exhibit A" attached and incorporated herein for all purposes, *[hereinafter referred to as the "Property"]*

locally known as 4401 Shoal Creek Boulevard, in the City of Austin, Travis County, Texas.

~~(PART 2.~~ That the Property within the boundaries of the Conditional Overlay combining district established by this ordinance is subject to the following conditions:

1. There will be no vehicular access from the Property to West 44th Street. All vehicular access to the Property shall be from other adjacent public streets or through other adjacent property.
2. No site plan for development of the Property, or any portion of the Property, shall be approved or released, and no building permit for construction of a building on the Property, shall be issued if the completed development or uses authorized by the proposed site plan or building permit, considered cumulatively with all existing or previously authorized development and uses of the Property, generates traffic exceeding a maximum total traffic generation of 300 vehicle trips per day.

Except as specifically restricted pursuant to this ordinance, the Property may be developed and used in accordance with the regulations established for the "SF-2" Single-Family Residence (Standard Lot) base district and other applicable requirements of the Land Development Code.

~~(PART 3.~~ That it is ordered that the Zoning Map established by Section 13-2-22 of the Austin City Code of 1992 and made a part thereof shall be changed to record the amendment enacted by this ordinance.

~~(PART 4.~~ That the requirements imposed by Section 2-2-3 of the Austin City Code of 1992, as amended, regarding the presentation and adoption of ordinances are hereby waived by the affirmative vote of at least five members of the City Council.

~~(PART 5.~~ That this ordinance shall become effective upon the expiration of ten days following the date of its final passage, as provided by the Charter of the City of Austin.

PASSED AND APPROVED:

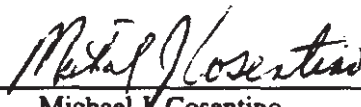
November 3, 1994

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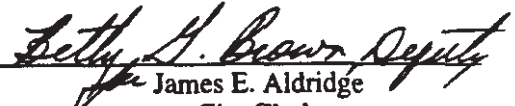
Bruce Todd
Mayor

APPROVED:



Michael J. Cosentino
Acting City Attorney

ATTEST:



James E. Aldridge
City Clerk

3Nov94
ME/jj

~~EAST OF SHOAL CREEK BOULEVARD~~

FIELD NOTES OF A SURVEY OF 3.626 ACRES OF LAND. [A PORTION OF A 100.0 ACRE TRACT OF LAND OUT OF THE GEORGE W. SPEAR LEAGUE SURVEY #7 IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS AS DESCRIBED IN A DEED FROM W. C. PHILLIPS TO THE STATE OF TEXAS, DATED JULY 28, 1887, AND RECORDED IN BOOK 76, PAGE 225, TRAVIS COUNTY DEED RECORDS, AS SURVEYED FOR THE STATE BUILDING COMMISSION OF THE STATE OF TEXAS BY THE METCALFE ENGINEERING COMPANY, 1710 EVA STREET, AUSTIN, TEXAS.

Beginning at a concrete monument at the northeast corner of a 100.0 acre tract of land out of the George W. Spear League Survey #7 in the City of Austin, Travis County, Texas as described in a deed from W. C. Phillips to The State of Texas, dated July 28, 1887, and recorded in Book 76, Page 225, Travis County Deed Records, said concrete monument being at the southeast corner of Lot #6 of Oak Haven, Section One, a subdivision of a portion of the George W. Spear League Survey #7 in the City of Austin, Travis County, Texas as shown on a map or plat as recorded in Plat Book 6, Page 114, Travis County Plat Records, said concrete monument being also in the west line of Block #19 of Rosedale "E", a subdivision of a portion of the George W. Spear League Survey #7 in the City of Austin, Travis County, Texas as shown on a map or plat as recorded in Plat Book 3, Page 245, Travis County Plat Records;

THENCE with the east line of the said 100.0 acre tract and the west line of Blocks #19, #18 and #17 of Rosedale "E", S 30° 12' W 1146.13 feet to a concrete monument at the southeast corner of the said 100.0 acre tract, said concrete monument being also the northeast corner of Lot #3, Block "B" of Shoal Courts, a subdivision of a portion of the George W. Spear League Survey #7 in the City of Austin, Travis County, Texas as shown on a map or plat as recorded in Plat Book 6, Page 185, Travis County Plat Records;

THENCE with the south line of the said 100.0 acre tract and the north line of Lot #3, Block "B" of Shoal Courts, N 59° 52' W 133.27 feet

to an iron stake at the northwest corner of said Lot #3, Block "B" in the curving east line of Shoal Creek Boulevard;

THENCE with the curving east line of Shoal Creek Boulevard an arc distance of 47.64 feet, said curve having a radius of 238.41 feet and a chord of which runs N 24° 30' E 47.56 feet to an iron stake at point of tangency;

THENCE with the east line of Shoal Creek Boulevard N 30° 23' E 1098.9 feet to an iron stake at the intersection of the east line of Shoal Creek Boulevard with the north line of the said 100.0 acre tract, said iron stake being the southwest corner of Lot #6 of said Oak Haven, Section One;

THENCE with the north line of the said 100.0 acre tract and the south line of said Lot #6 of Oak Haven, Section One, S 59° 53' E 137.8 feet to the place of the beginning, containing 3.626 acres of land.]

Surveyed August 28th and 29th, 1963.

HETCALFE ENGINEERING COMPANY

By *Marlton O. Hetcalfe*
Marlton O. Hetcalfe
Registered Public Surveyor

FB 349, p 47
Plan #9253



JEFFERY L. HART

Attorney and Counselor
807 Brazos St.
Suite 1001
Austin, Texas 78701-2553
Telephone: (512) 940-4444
Email: jeffhart1@att.net

December 14, 2015

City of Austin Board of Adjustment
505 Barton Springs Road
Austin, Texas 78704

Re: Appeal of Determination that Valid Petition Rights and
Super Majority Voting Should Be Denied for the
Application for the Grove at Shoal Creek PUD

Dear Chair and Members of the Board of Adjustment,

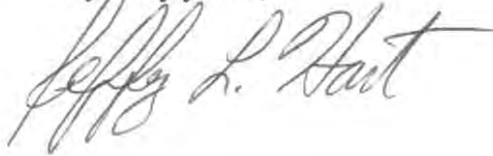
Enclosed please find the Application of Grayson Cox, et al, to appeal the interpretation that valid petition rights will be denied and that no super majority voting will be required when the referenced PUD application is considered for approval.

Applicants meet the requirements of Interested Parties under Section 25-1-131(A) and (B) of the LDC as set out in Part III of the attached Addendum.

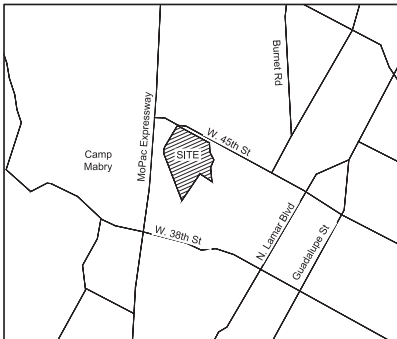
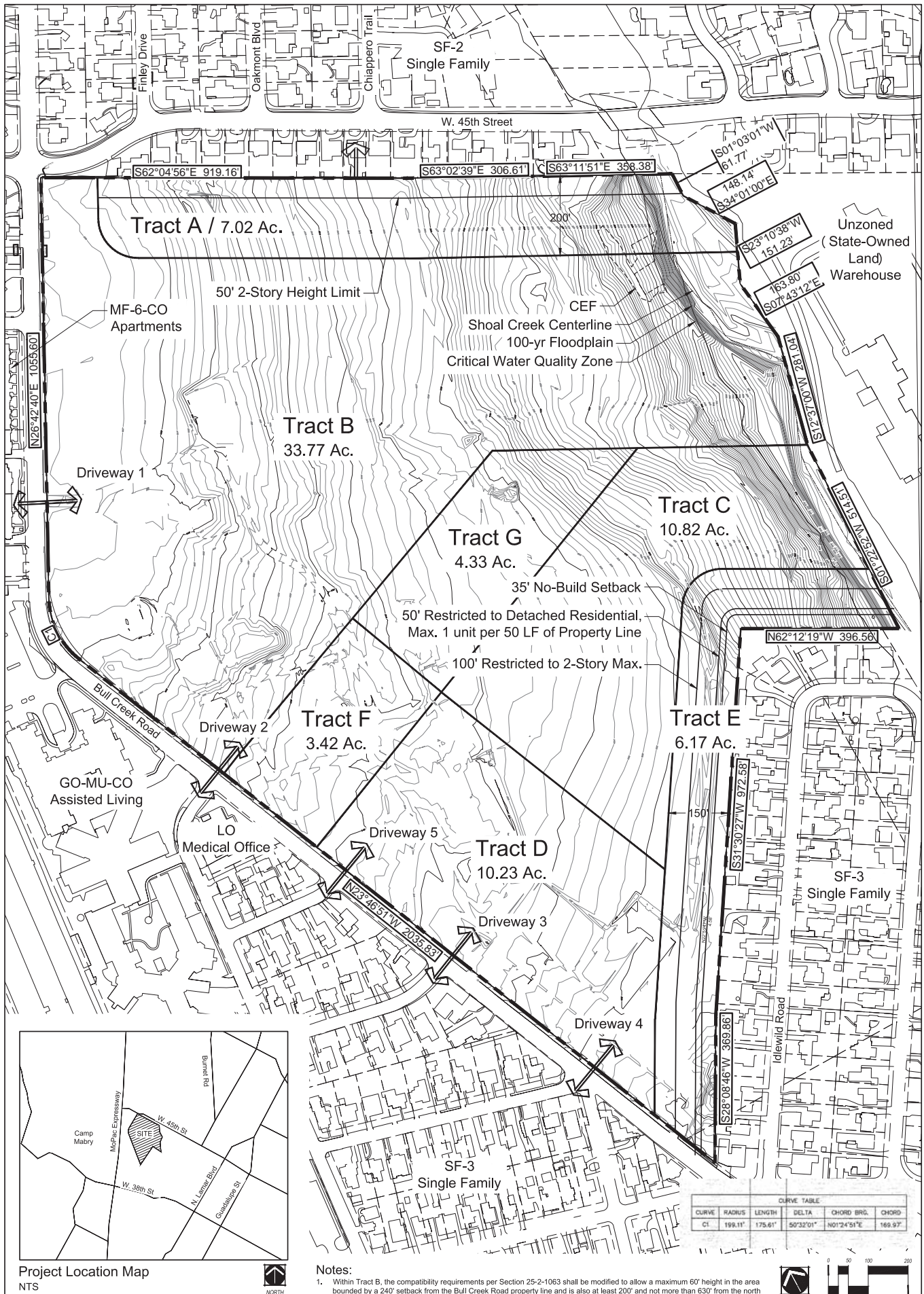
Enclosed is a land use plan for this PUD application. There is no plan yet showing proposed construction.

Also enclosed is the filing fee for this appeal in the amount of \$1608.88.

Very truly yours,



Cc w/encl.: Hon. Steve Adler, Mayor
Hon. Kathie Tovo, Mayor Pro Tem
Hon. Sheri Gallo, Council Member, District 10
Hon. Leslie Pool, Council Member, District 7
Marc Ott, City Manager
Sue Edwards, Assistant City Manager
Brent Lloyd, Assistant City Attorney
Greg Guernsey, Director, Planning and Zoning Department
Jerry Rusthoven, Development Services Manager



Project Location Map
NTS

Notes:

1. Within Tract B, the compatibility requirements per Section 25-2-1063 shall be modified to allow a maximum 60' height in the area bounded by a 240' setback from the Bull Creek Road property line and is also at least 200' and not more than 630' from the north property line.

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	CHORD BRG.	CHORD
CT	199.11'	175.61'	50°32'01"	N01°24'51"E	166.97'



The Grove at Shoal Creek Planned Unit Development Land Use Plan August 2015

2121 E. Sixth Street, Ste 203
Austin, Texas 78702
P 512.900.7888
F 303.892.1186

www.norris-design.com



TRACTS A & E
Condominium Residential
Duplex Residential
Retirement Housing (Small Site)
Single-Family Attached Residential
Single-Family Residential
Small Lot Single-Family Residential
Townhouse Residential
Two-Family Residential
Short-Term Rental
Religious Assembly

TRACT D
Community Garden
Condominium Residential
Congregate Living
Duplex Residential
Multifamily Residential
Public Primary Education Facilities
Public Secondary Education Facilities
Religious Assembly
Retirement Housing (Small Site)
Short-Term Rental
Single-Family Attached Residential
Single-Family Residential
Small Lot Single-Family Residential
Townhouse Residential
Two-Family Residential
Urban Farm

The uses below will be permitted in Tract D as live-work units only.

Administrative & Business Offices
Art Gallery
Art Workshop
Financial Services
Medical Offices (all sizes)
Off-site Accessory Parking
Personal Services
Pet Services
Professional Office
Software Development
Counseling Services
Cultural Services
Day Care Services (Commercial)
Day Care Services (General)
Day Care Services (Limited)
Private Primary Education Facilities
Private Secondary Education Facilities

OPEN SPACE

Park (Private Ownership, Privately Maintained, Publicly Accessible)
Drainage, Detention & Water Quality Facilities

TRACT B
Community Garden
Condominium Residential
Congregate Living
Duplex Residential
Multifamily Residential
Public Primary Education Facilities
Public Secondary Education Facilities
Religious Assembly
Retirement Housing (Small Site)
Short-Term Rental
Single-Family Attached Residential
Single-Family Residential
Small Lot Single-Family Residential
Townhouse Residential
Two-Family Residential
Urban Farm
Administrative & Business Offices
Art Gallery
Art Workshop
Financial Services
Medical Offices (all sizes)
Off-site Accessory Parking
Personal Services
Pet Services
Professional Office
Software Development
Community Garden
Urban Farm
Counseling Services
Cultural Services
Day Care Services (Commercial)
Day Care Services (General)
Day Care Services (Limited)
Private Primary Education Facilities
Private Secondary Education Facilities
Automotive Rentals
Automotive Sales (max. 3000 SF)
Automotive Washing (accessory only)
Business or Trade School
Business Support Services
Cocktail Lounge
Commercial Off-Street Parking
Consumer Convenience Services
Consumer Repair Services
Food Preparation
Food Sales
General Retail Sales (Convenience)
General Retail Sales (General)
Hotel-Motel
Indoor Entertainment
Indoor Sports & Recreation
Liquor Sales
Off-Site Accessory Parking
Outdoor Sports & Recreation
Personal Improvement Services
Printing & Publishing
Research Services
Restaurant (General)
Restaurant (Limited)
Theater
College & University Facilities
Community Recreation (Private)
Community Recreation (Public)
Hospital Services (Limited)
Safety Services

TRACT C
Community Garden
Condominium Residential
Congregate Living
Duplex Residential
Multifamily Residential
Public Primary Education Facilities
Public Secondary Education Facilities
Religious Assembly
Retirement Housing (Small Site)
Short-Term Rental
Single-Family Attached Residential
Single-Family Residential
Small Lot Single-Family Residential
Townhouse Residential
Two-Family Residential
Urban Farm

TRACT F&G
Community Garden
Condominium Residential
Congregate Living
Duplex Residential
Multifamily Residential
Public Primary Education Facilities
Public Secondary Education Facilities
Religious Assembly
Retirement Housing (Small Site)
Short-Term Rental
Single-Family Attached Residential
Single-Family Residential
Small Lot Single-Family Residential
Townhouse Residential
Two-Family Residential
Urban Farm
Administrative & Business Offices
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Community Garden
Urban Farm
Counseling Services
Cultural Services
Day Care Services (Commercial)
Day Care Services (General)
Day Care Services (Limited)
Private Primary Education Facilities
Private Secondary Education Facilities

SITE DEVELOPMENT REGULATIONS

	TRACT A	TRACT B	TRACT C	TRACT D	TRACT E	TRACT F	TRACT G
Minimum Lot Size in s.f.	3,000	3,000	3,000	3,000	3,000	3,000	3,000
Minimum Lot Width	30'	30'	30'	30'	30'	30'	30'
Maximum Height	40'	65' *	40' **	40' **	35'	40' **	60'
Minimum Setbacks from Public Streets							
Front Yard	10'	0'	10'	0'	10'	0'	0'
Street Side Yard	10'	0'	10'	0'	10'	0'	0'
Minimum Interior Yard Setbacks							
Interior Side Yard	0'	0'	0'	0'	0'	0'	0'
Rear Yard	0'	0'	0'	0'	0'	0'	0'
Maximum Floor Area Ratio	0.75:1	-	0.75:1	1:1	0.75:1	1:1	1:1

* Up to 10% of Tract B is permitted to be up to 75' in height.

** Height may be increased to a maximum of 60' for an Affordable Housing development with the Affordable Housing program. Height will be required to meet City of Austin compatibility standards.

NOTES:

- Impervious cover, number of dwelling units, density, building coverage, and other site development regulations not listed per individual Tracts in the Site Development Regulations table shall be dealt with per a "bucket" system. Individual Tracts and/or Site Plans may vary above or below the listed limits, as long as the calculation for the overall 75.76 acre site does not exceed the limit. The Applicant is responsible for keeping track of the amounts allotted and remaining in the "bucket" with each application.
- Total residential units on the site is capped at 1515 dwelling units. Congregate living and affordable housing units do not count towards the 1515 unit cap.
- Overall project impervious cover is capped at 65%.
- The FAR maximums listed in the Site Development Regulations table apply to individual Tracts within the PUD and the FAR shall not be exceeded on an individual Tract basis but may be exceeded on an individual site plan within a Tract. Tacking the allotted and remaining FAR within each Tract is the responsibility of the Applicant.
- Parks and open space are allowed uses in all Tracts.
- Cocktail lounge uses are capped at 75,000 SF total and a maximum size of 7500 SF for any one tenant space.
- Liquor sales uses are capped at 15,000 SF total and a maximum size of 10,000 SF for any one tenant space.
- Live-work units are defined as residential units which are similarly configured to residential row houses or townhomes but are distinguished by a ground level workspace, studio, storefront, or business that is flush with the street.
- Driveway and trail locations shown on the Land Use Plan are approximate and will be determined at the time of Site Plan.
- Public art shall be installed in a minimum of three (3) locations throughout the project.



CITY OF AUSTIN

Development Services Department

One Texas Center | Phone: 512.978.4000
505 Barton Springs Road, Austin, Texas 78704

Board of Adjustment Interpretations Application Appeal of an Administrative Decision

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. ***If more space is required, please complete Section 6 as needed.*** All information is required (if applicable).

For Office Use Only

Case # _____ ROW # _____ Tax # _____

Section 1: Applicant Statement

Street Address: 4205 Bull Creek Rd.

Subdivision Legal Description:

n/a; commonly called the "Bull Creek tract."

Lot(s): n/a

Block(s): n/a

Outlot: n/a

Division: n/a

Zoning District: UNZ to PUD

I/We Jeffery L. Hart on behalf of myself/ourselves as
authorized agent for Applicants/appellants affirm that on
Month December, Day 11, Year 2015, hereby apply for an interpretation
hearing before the Board of Adjustment.

Development Services Department interpretation is:

The Development Services Department interpreted the Land Development Code (LDC) to recognize valid petition rights and super majority voting for the Grove at Shoal Creek PUD application. The Director of the Planning and Zoning Department has reversed that interpretation. See Part II of the attached Addendum.

I feel the correct interpretation is:

This PUD application is subject to valid petition rights and super majority voting under the correct interpretation of Section 25-2-284(A) and the other LDC section, and under the enabling state law. See Part IV of the attached Addendum.

Section 2: Findings

The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional supporting documents.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:

There is a reasonable interpretation of the LDC that this PUD application seeks rezoning under Section 25-2-284(A), and therefore is subject to valid petition rights and super majority voting. The city council, prior city attorneys, and others on the city staff have made statements supporting that interpretation and contrary to the Director's interpretation. See Parts II, V(A), and V(C)(4) of the attached Addendum.

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:

This appeal addresses the use approval process and the special loophole the Director wants to create for this PUD. That loophole will defeat the objectives of the LDC and state law, which otherwise uniformly require valid petition rights and super majority voting for PUD applications. It is not disputed that this PUD proposes land uses that not compatible with the surrounding residential zones and will have certain adverse impacts on existing homeowners.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

The Director's interpretation grants a special privilege to this PUD application not available to others. The correct interpretation sought here would eliminate that special privilege and treat this PUD application the same as all other PUD applications. That is, this PUD application should be subject to valid petition rights and super majority voting, just as all others are under the provisions of the LDC and as required by state law.

Section 3: Applicant/Aggrieved Party Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Applicant Signature: Jeffery L. Hart, agent/attorney Date: 12/11/2015

Applicant Name (typed or printed): Grayson Cox, et al (see Addendum Part III and Exhibit B)

Applicant Mailing Address: See Addendum Part III and Exhibit B.

City: Austin State: Texas Zip: _____

Phone (will be public information): _____

Email (optional – will be public information): _____

Section 4: Owner Information

Owner Name: ARG Bull Creek, Ltd.

Owner Mailing Address: 9111 Jollyville Rd., Suite 111

City: Austin, State: Texas Zip: 78759

Section 5: Agent Information

Agent Name: Jeffery L. Hart

Agent Mailing Address: 807 Brazos St., Suite 1001

City: Austin State: Texas Zip: 78701

Phone (will be public information): (512) 940-4444

Email (optional – will be public information): jeffhart1@att.net

Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

This PUD application proposes uses that are substantially out of character with the adjacent neighborhoods and will have certain adverse effects on the neighboring property owners. The Director is not disputing those facts. Also, the Director does not contend that valid petition rights and super majority voting were not intended to apply to PUD applications that propose such new and incompatible uses. Instead, the Director interprets a 1972 case involving newly annexed land in Garland, Texas to require those rights to be denied for this particular PUD. Contrary to a previous ordinance rezoning part of the undivided tract involved here, the Director says this PUD application does not involve rezoning and therefore he believes valid petition rights and super majority voting can be denied under Section 25-2-284(A)(1) and (2).

Additional Space (continued)

As discussed in the Addendum, the Director got off on the wrong track by believing that 1972 Garland annexation case controls this PUD application to deny valid petition rights and super majority voting that are otherwise required for PUD's under the City's Land Development Code and state law.

SAVE

ADDENDUM TO APPEAL

This Addendum is to the appeal application of Grayson Cox and the other appellants listed in Part III below, regarding interpretations used by the Director of the Planning and Zoning Department (Director)¹ to support his conclusion that valid petition rights and super majority voting should be denied for the Grove at Shoal Creek PUD application.

I. Summary

This PUD application seeks the type of new zoning uses and development that unquestionably was intended to involve valid petition rights and 3/4 super majority voting for approval. Because the proposed development is a PUD, the Land Development Code (“LDC”) provides for a separate super majority voting requirement to reverse a denial by the Land Use Commission (in this case the Zoning and Platting Commission). The new land uses proposed by this PUD are very different from the established surrounding neighborhoods and will adversely affect those homeowners in certain substantial ways. The Director does not dispute those adverse impacts on neighbors, nor does he dispute the purpose and intent of valid petition rights and super majority voting in such cases. He does not dispute that in substance, this PUD application is no different than other PUD applications that would be covered by those rights.

Instead, the Director wants to create a technical legal loophole to deny valid petition rights and super majority voting for this particular PUD based on a new reinterpretation of the LDC which is contrary to past interpretations by the City Council and previous City Attorneys, and other members of the current city staff. He wants to say that changing the zoning classification of this particular land is not “rezoning” despite the fact that a prior Ordinance says it is. He wants to say that this PUD does not involve rezoning based an old Garland annexation case that a previous City Attorney opinion, confirmed by legislation Austin helped to pass, says does not apply to PUDs. He wants to ignore the reality that this PUD application, like every other PUD, is by definition rezoning because it requires amendments or changes to the applicable base zoning regulations under the LDC. The LDC requires such base zoning regulations before a PUD application can be validly filed.

II. Issues in this appeal

(Supplementing Section 1 of the appeal application)

On April 24, 2015, a meeting was held to discuss this PUD application and included city staff and a group of representatives from the Bull Creek Road Coalition (which includes the appellant Neighborhood Associations). At that meeting, the City’s Development Services Manager assured the group that this PUD application would be subject to valid petition rights and super majority voting. After that meeting, the idea apparently came up that the 1972 Garland annexation case, *City of Garland v. Appolo Development Inc.*, required a different interpretation of the LDC. Hearing about the confusion that case was causing, BCRC followed up with several requests for clarification and/or explanation for any change in the city’s position on valid petition rights and super majority voting. In response, the Director then reversed the Development

¹ It is unclear whether the interpretations are those of the Director or the city attorney. See Exhibit A. If necessary, reference to the Director includes the city attorney.

Services Department's interpretation of the LDC in the email and letter attached as Exhibit A. In this correspondence, the Director interprets the Garland annexation case to say this PUD – unlike other PUDs – does not involve “rezoning” under Section 25-2-284(A)(1) or (2) of the LDC because this land has a base zoning of UNZ; therefore, he says the city and the developer are exempted from valid petition rights and super majority voting. The Director's conclusion is incorrect for the following reasons:

1. It is wrong to ignore the City Ordinance stating that this was “rezoning” when a part of this undivided tract was changed from UNZ to another zoning classification. See part V(A) below.

2. It is wrong to ignore the fact that the PUD approval process is structured to be “rezoning” under the LDC. See Part V(B) below. It is also wrong to ignore the fact that state law requires valid petition rights and super majority voting because of the many changes to LDC regulations and restrictions sought by this PUD application. See Part V(D) below.

3. It is wrong to interpret the 1972 Garland annexation case to require the creation of a special loophole for the purpose of denying valid petition rights and super majority voting for this particular PUD application. See part V(C) below.

4. It is wrong not to follow the 1977 City Attorney's opinion that the Garland annexation case does not apply to PUD applications, regardless of the zoning classification of the land involved. See part V(C)(4) below.

III. Applicants for this Appeal (Supplementing Section 3 of the appeal application)

Appellants in this appeal include Rosedale Neighborhood Association, Oakmont Heights Neighborhood Association and Allandale Neighborhood Association, all of whom are neighborhood organizations recognized by the City of Austin. Also appealing are individuals living near the property in question. Grayson Cox is lead appellant. Exhibit B lists the appellants complaining about the Director's conclusion that they should be denied valid petition rights and that no super majority voting will be required by the Council for this PUD application.

Appellants meet the requirements as Interested Parties under Section 25-1-131(A) and (B) of the LDC.

There are petitions objecting to the proposed PUD in its current form, signed by owners of more than 20 percent of the land within the relevant adjacent areas to qualify as a valid petition under the law. Those petitions have not been filed, nor or are they required to be filed at this time. Representatives of the protesting landowners are continuing to negotiate in good faith with the developer's representatives and it is always hoped that a mutually acceptable compromise could be reached that would make the actual filing of that valid petition unnecessary. Most of the individual appellants are valid petition signatories.

IV. The LDC should be correctly interpreted and applied to require valid petition rights and super majority voting (Supplementing Section 1 of the appeal application)

The following correct interpretations of the LDC should be made, and valid petition rights and super majority voting should be recognized for this PUD application:

1. This PUD application is a rezoning under LDC Section 25-2-284(A)(1) and (2). (The

LDC sections mentioned in this Addendum are attached as Exhibit C). As stated in the 1994 Ordinance changing the zoning for a part of this undivided tract, changing it from UNZ to another district classification is “rezoning” under the LDC. See Part V(A) below.

2. This PUD application seeks to change base zoning regulations for this land and rezone it as a PUD zoning district with different regulations. See Part V(B) below. The LDC regulation changes sought by this PUD application also guarantee valid petition rights and super majority voting under state law. See part V(D) below.

3. The Garland annexation case does not say that valid petition rights must be denied here. The facts of that case and the issue decided by the court were completely different from what is involved with this PUD application. See part V(C) below.

4. The distinction between zoning and rezoning in Section 25-2-241 is intended to deal with land that had not been within the jurisdiction of the city and subject to the regulations and restrictions of the LDC. It was not intended to create a loophole to deny valid petition rights and super majority voting for land that has been within the city and under the jurisdiction of the land use and development regulations of the LDC and all previous Austin zoning ordinances for over 80 years, and is now surrounded by established residential neighborhoods,

V. Facts and Discussion (Supplementing Section 2 of the appeal application)

A. The previous zoning change involving this property was determined by the City Council to be “rezoning” under the LDC

Changing the zoning of this land has already been considered and decided by the City Council to be “rezoning” under the LDC. In 1994, the Council adopted “AN ORDINANCE ORDERING A REZONING AND CHANGING THE ZONING MAP” for a portion of the undivided tract involved in this PUD application. That ordinance amended the 1992 LDC “to change the base zoning district from ‘UNZ’ Unzoned district to ‘SF2-CO’ Single-Family Residence (Standard Lot) district-Conditional Overlay combining district.” (That 1994 Ordinance is Exhibit D). That Ordinance also ordered that the Zoning Map be amended to record the change in base district from UNZ to SF2-CO. That Ordinance says explicitly what is defined as “rezoning” under Section 25-2-241(B) of the LDC. Under that definition, there is no difference between changing this land from UNZ to SF2-CO in 1994 and changing a part of the same tract from UNZ to PUD with this application.

The Director disagrees with the clear language of that 1994 Ordinance. Because it cannot be reconciled with the position he has today, he says it is “irrelevant” and can be ignored.²

It is important to understand that property designated as “UNZ” is not completely “unzoned” and exempt from all development and use regulations and restrictions. In 1994, the

² The Director is wrong in saying that when this land was owned by the State at the time of the 1994 Ordinance, it “retained immunity from zoning.” By statute, State land developed or used for any nongovernmental purpose is subject to city zoning regulations. Any change sought in those regulations is “Rezoning.” See Section 31.163 of the Texas Natural Resources Code. The section of the Local Government Code referenced by the Director is meant to defer to the Natural Resources Code procedures for rezoning, not to grant blanket “immunity from zoning.”

desired development was not allowed under the applicable regulations of the zoning ordinance without the zoning change made by the Ordinance. The same is still true. This land cannot be developed into the desired PUD under existing LDC regulations prohibiting it.³

The essential purpose of this PUD application is to change that fairly comprehensive set of land use and development regulations so that a new PUD zoning can be granted. That body of regulations meets the definition of a “base district” classification under Section 25-1-21(8) of the LDC, which is consistent with the 1994 Ordinance’s reference to “UNZ” for this land as a “base zoning district.” In fact, under LDC Section 25-2-221 it would be a violation if UNZ is not considered a base zoning district. That Section states, “all land within the zoning jurisdiction shall be designated as a named zoning base district.” Changing or modifying the existing regulations and changing the zoning classification to “PUD” is “rezoning” – just as the ordinance changing the zoning designation in 1994 was “rezoning.”

B. The LDC structures the PUD approval process as rezoning

The PUD section of the LDC requires that proposed PUD land has a baseline of established zoning regulations determined by the regulations of its base zoning district and other applicable development regulations. That is set out in Section 1.3.1 of the Pre-Application Filing Requirements of the PUD Ordinance. Those established zoning regulations are used as the baseline that cannot be exceeded unless Development Bonuses are earned under Section 2.5.

Unless “UNZ”, with the LDC regulations applicable to this land, is a base district for rezoning purposes as the City Council has said it is in the 1994 Ordinance, this application is not filed in compliance with the LDC. The only other way to comply with the Code is for the Council to take action under Section 1.3.3 to establish a different set of baseline regulations. Either way, there is or will be a base district set of regulations for this property that this PUD cannot exceed unless they are changed or modified through the PUD approval process. The Council will have to enact an ordinance changing the established baseline regulations and substituting a new PUD zoning for this land. That is rezoning under Section 25-2-241(B) of the LDC.

Unless land is in the extraterritorial jurisdiction outside the city limits, the Code does not allow a PUD application to be filed as “initial zoning”, as the Director wants to label this application. Contrary to what the Director wants to call it, this application is noticed as “rezoning” and is posted as a zoning “change.” See examples in Exhibit E. Basically, the Director’s determination to deny valid petition rights and super majority voting is based on his labeling this PUD application something it really isn’t under the PUD Ordinance and the LDC.

³ The Director says it is “unclear” what LDC regulations on the land use and development apply to this property. The set of applicable regulations and limitations is known as shown by the scores of applicable regulations this PUD application seeks to change (see Exhibit K discussed in Part V(D) below), and the staff’s Master Review Report for this application.

C. The 1972 Garland annexation case does not say valid petition rights must be denied here.

The Director apparently feels that he should label this PUD application “initial” zoning and say valid petition rights and super majority voting should be denied because of the 1972 court decision in *City of Garland v. Appolo Development Inc.* (“Garland annexation case”). Exhibit F is a copy of that Garland annexation case. He is really stretching what was decided in that old case.

The Garland annexation case involved newly annexed land that had not previously been subject to city zoning ordinance regulations (in contrast to the land here, which has been inside the city of Austin and under its zoning ordinances for 80 years and is surrounded by long established neighborhoods). That case also did not involve a PUD and the numerous exceptions and changes to zoning regulations that PUD approval requires. Here are some of the more critical differences between the Garland annexation case and this PUD application and reasons it does not support the Director’s interpretation:

1. The land in the Garland annexation case was newly annexed; the land here has been in the city for over 80 years. In the Garland annexation case, the land had just been annexed by the city, never having been under city regulation. The land here has been inside the city limits and subject to city jurisdiction for over 80 years – and is surrounded by long established city neighborhoods. It has long enjoyed city services of electricity, water and sewer, city streets, fire and police protection, etc.

2. Garland’s comprehensive zoning did not apply to the land in the Garland annexation case; Austin’s LDC applies to this land. Garland’s comprehensive zoning ordinance did not apply to that land because the city had not given the required notice before adopting that ordinance. There is no dispute that the LDC, and all of its predecessor ordinances, were enacted properly and have long applied to the land here.

3. This PUD application seeks changes to LDC regulations; in the Garland annexation case there were no regulations to change. Because the Garland comprehensive zoning ordinance was not applicable to the property there, there were no regulations or restrictions to change. This PUD application seeks numerous changes to the applicable LDC regulations. Seeking to change regulations is what triggers the guarantee of valid petition rights.

4. The Garland annexation case does not apply to a PUD application for land validly within the city limits, regardless of its previous zoning classification. The Garland annexation case did not involve a PUD. After that case was decided, the Austin City Attorney issued an opinion that it did not apply to deny valid petition rights and super majority voting for a PUD application for land validly annexed but without a permanent zoning classification. As stated in the 1977 Council resolution quoting the City Attorney (see Exhibit G), his opinion was reversed due to a court decision invalidating San Antonio’s similar super majority voting ordinance. However, at the urging of cities, including the City of Austin, that court decision was quickly overturned by the Legislature and super majority voting specifically restored for cases like this. See Exhibit H, which is the 1977 letter from then-Mayor Lowell Leberman supporting the passage of that corrective legislation and discussing the importance of super majority voting. Attached as Exhibit I is the valid petition rights and super majority voting statute after that 1977 amendment.⁴ It has the underlined super majority voting sentence that was added after the

⁴ Exhibit I is the valid petition rights and super majority section of the Zoning Enabling Act, Article

Garland annexation case was decided.

5. This PUD developer knew the LDC applied when it purchased this land. The developer has only owned the land for about a year. Unlike the owner in the Garland annexation case, this developer purchased this land many decades after it was annexed and integrated into the city and subject to regulation under the LDC and all of Austin's previous comprehensive zoning ordinances. Before the developer purchased this land, it was advised by the seller, the State of Texas, that the LDC applied to any zoning change needed for development, and that, "The process is a public process with the neighborhood having input."

D. The Texas Zoning Enabling Act

Valid petition rights have been guaranteed by state law since the legislature first enacted the Texas Zoning Enabling Act in 1927 to give cities the power to regulate land use with zoning ordinances. Integral to that law was the valid petition protection that required super majority approval when any "regulation" or "restriction" in a city's comprehensive zoning ordinance is "amended, supplemented, changed, modified, or repealed" if challenged by 20 percent of the adjacent landowners. See wording of Exhibit I discussed in footnote 4.

Without the authority granted by the Zoning Enabling Act, cities such as Austin could not regulate land use and development. Cities cannot exceed the authority granted by that Act, which includes changing their zoning ordinance regulations without recognizing valid petition rights.

Whether or not the Director wants to call this PUD application zoning or rezoning, there is no question that the application is seeking a PUD ordinance amending the LDC to make substantial changes to the existing regulations and restrictions. See for example Exhibit K, which is an attachment to this PUD application. State law requires those and any other such changes made by ordinance to be subject to valid petition rights and super majority voting.

When the Legislature acted in 1977 to protect valid petition rights from limitation, then Austin Mayor Lowell Leberman explained why those rights were important to Austin and made part of our LDC. That letter to the Legislature is Exhibit H. To carry out the common purpose and intent of state law and the LDC on valid petition rights, their use of the terms "rezoning" and "zoning change" and "change in "regulations" all must have the same meaning.⁵ Section 2-2-221 requires that the LDC be interpreted and applied in accordance with the procedures of the Texas Zoning Enabling Act.

1011e, as it existed from 1977 until 1987 when it was moved into Section 211.006 of the Texas Local Government Code. Section 211.006 today is Exhibit J. The Legislature expressly stated in 1987 that it intended no substantive change in the prior law.

⁵ State law has been interpreted to require valid petition rights and super majority voting whenever a city changes its comprehensive zoning ordinance. See for example the 1977 summary of the law the Dallas City Attorney sent to the Legislature supporting valid petition rights; attached as Exhibit L. Generally, the distinction between "initial" zoning and a "change" in zoning (or rezoning) is the former is the adoption of an ordinance with comprehensive regulations applicable to the city as a whole, while the latter is an amendment of those regulations for a specific property. This PUD application seeks an ordinance changing the LDC for the benefit of a single piece of property.

From: Lloyd, Brent brent.lloyd@austintexas.gov
Subject: Grove @ Shoal Creek -- Petition Rights Issue
Date: December 1, 2015 at 2:14 PM
To: Jeffery Hart jeffhart1@att.net
Cc: Guernsey, Greg Greg.Guernsey@austintexas.gov

LB

Jeff –

Following our meeting a few weeks ago, I re-reviewed this matter with Director Guernsey, his staff, and other attorneys in our office. Based on that review, we cannot agree with your position that petition rights apply to the roughly 75-acre property, commonly called “the Bull Creek tract,” included in the Grove @ Shoal Creek PUD application. City Code § 25-2-284 (*Requirement for Approval by Three-Fourths of Council*) says what it says—i.e., that the right of petition applies only to rezones, not to original zoning.

Director Guernsey’s position is consistent with well-settled City practices and is supported by state law. Accordingly, city staff are correct to follow the Code as written. With this in mind, I’ll address each of the specific points raised in your letter dated October 30, 2015 (attached hereto), regarding the status of the Bull Creek tract and the prior zoning case affecting an adjacent parcel.

The 1994 Zoning Ordinance

Ordinance No. 941103-C, adopted by Council in 1994, applied SF-2 zoning to a 3.63-acre tract of state-owned land located east of Shoal Creek Boulevard between West 42nd and 45th Streets. The Bull Creek tract was graphically depicted in an exhibit to the 1994 ordinance, but was neither zoned nor requested to be zoned as part of the 1994 proceedings.

You make two arguments regarding the legal effect of the 1994 ordinance. First, you argue that the Bull Creek tract should be treated as though it was zoned property because it *could have been zoned* at that time and because it was shown in the application materials for the 1994 zoning case. We cannot accept that argument.

In determining whether a zoning case constitutes a “rezone,” as opposed to initial “zoning,” it’s legally irrelevant whether or not the property in question was previously eligible for zoning. Until the City Council actually zones a parcel, which has not occurred for the Bull Creek tract, any action to zone the property does not constitute a “rezone” within the meaning of City Code § 25-2-241(B).

As you are aware, that section states: “Rezoning amends the zoning map to change the base district classification of *property that was previously zoned.*” (Emphasis added).

Additionally, zoning applications and exhibits to zoning ordinances typically depict adjacent properties for illustrative purposes. So the mere fact that the Bull Creek tract is shown in the map accompanying Ordinance No. 941103-C is not evidence that it was actually zoned; on the contrary, the SF-2 zoning amendment in Part 1 is clearly limited to the 3.63 tract.

Second, you argue that the City has treated a property’s “unzoned” status as effectively its own base zoning district, such that any action by Council to zone an unzoned parcel actually constitutes a rezone under the code sections cited above. With respect to Ordinance No. 941103-C, we understand how you reach that conclusion: Part 1 of the ordinance uses the term “UNZ Unzoned district” in describing the application of SF-2 zoning to the 3.63-acre tract, which at that time was unzoned.

We respectfully disagree with your interpretation. The characterization of “UNZ” as a “district” in the 1994 Ordinance was simply shorthand to describe the property receiving SF-2 zoning. In no way does “UNZ” constitute an actual zoning district in the legal sense. It has never been listed among the base districts established in the City’s zoning code and has no corresponding use or development regulations, which is the whole purpose of establishing zoning districts under Texas Local Gov’t Code (“LGC”) § 211.005(a). *See City Code § 25-2-32 (Zoning Districts and Map Codes) et seq.*

Simply referring to something as a zoning district does not make it one. Under City Code § 25-1-21(8), a zoning district must be established in City Code and must include land use regulations:

BASE DISTRICT means a zoning district established by this chapter [i.e., the City’s zoning code] to prescribe basic regulations governing land use and site development.

What likely happened, we believe, is that city staff tasked with preparing Ordinance No. 941103-C relied on a standard template which used the term “district” as boilerplate language for amending the zoning map. In the vast majority of cases, zoning ordinances are used to zone land that is located within

some kind of a zoning district—e.g., an interim district, applied concurrent with annexation, or one of the standard residential, commercial, or industrial districts established in City Code Chapter 25-2. So it's not surprising that the standard template included the language "district."

Additionally, Director Guernsey and his staff have found no evidence that the City took any of the formal actions that would be legally required under state law—e.g., public hearings, notice, publication—in order to zone the Bull Creek tract or any portion of the property other than the 3.63-acre parcel that was zoned SF-2. *See, e.g.,* LGC § 211.006. Moreover, because all of the property except for the 3.63-acre SF-2 parcel remained under state ownership and control, it retained the immunity from zoning afforded to state and federal agencies under LGC § 211.013(c). So, notwithstanding the fact that "UNZ" is not an actual zoning district, the 1994 ordinance did not have the legal effect of zoning any land other than the SF-2 parcel.

Finally, if "UNZ" did exist as a base zoning district, it is unclear what limitations would apply on the use or development of the property. As stated above, unlike an actual zoning district, "UNZ" is nothing more than a notation and thus lacks any corresponding use or development regulations. In our view, this is further evidence that UNZ does not constitute an actual zoning district.

The Scope of *Appolo Development*

We understand that you read the Court of Appeals' decision in *Appolo Development*, 476 S.W.2d 365 (Tex.Civ.App.–1972), as applying only to recently annexed property for which a landowner has never before had an opportunity to seek zoning. To our knowledge, however, the case is generally read more broadly to mean that a "change" in zoning sufficient to trigger petition rights cannot occur until after a property is zoned in accordance with the statutory requirements—which has not occurred for the Bull Creek tract.

Additionally, as we've discussed, City Code § 25-2-284 does not assign legal significance to the timing of annexation or whether other portions of a larger property have already been zoned. The City's approach in this regard is consistent with the generally accepted reading of state law. As Professor John Mixon states:

For initial zoning, the [zoning enabling act] requires notice to the community by publication. Original zoning ordinances can be adopted by a

community by referendum. Zoning change ordinances can be adopted by a majority vote of the governing body. But for changing the classification of once-zoned tracts, the act requires specific notice by mail of the zoning commission's hearing to property owners within 200 feet of the target tract. If 20 percent of landowners within the affected area or adjoining and within 200 feet thereof object to proposed reclassification, the zoning amendment is not effective unless adopted by a three-fourths majority of the governing body.

TEXAS MUNICIPAL ZONING LAW § 7.002 (3rd Ed. 2014).

The Nature of PUD Zoning

Your final argument, as I understand it, is that a Planned Unit Development (PUD) effectively amends general city regulations and/or is tantamount to a “special use permit” for which courts have recognized petition rights.

As we understand the law, however, a PUD is neither an amendment to general district regulations or a variance thereto. Rather, a PUD is a freestanding zoning ordinance adopting use and development standards tailored to a particular site. The regulations adopted in a PUD usually incorporate by reference regulations from a conventional zoning district, along with any approved modifications relaxing or heightening particular standards. But a PUD is its own zoning ordinance, applicable only to the property to which it is applied, and does not amend regulations applicable in other zoning districts.

Moreover, we are aware of no basis for treating a PUD differently than any other zoning district for purposes of the distinction between “zoning” and “rezoning” under City Code § 25-2-284.

Thanks,

Brent D. Lloyd
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, TX 78767-1088
(512) 974-2974

From: Jeffery Hart [<mailto:jeffhart1@att.net>]

Sent: Friday, October 22, 2015 2:25 AM

Sent: Friday, October 30, 2015 9:25 AM
To: Lloyd, Brent; Guernsey, Greg
Cc: District10
Subject: Grove PUD

Dear Brent and Greg,

As discussed, attached is my follow-up letter from our meeting on Wednesday.

Jeff

Jeffery L. Hart
807 Brazos St.
Suite 1001
Austin, Texas 78701
(512)940-4444

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JEFFERY L. HART

Attorney and Counselor
807 Brazos St.
Suite 1001
Austin, Texas 78701-2553
Telephone: (512) 940-4444
Email: jeffhart1@aatt.net

October 30, 2015

Mr. Brent Lloyd
Assistant City Attorney
301 W. 2nd Street
Box 1088
Austin, Texas 78767

Mr. Greg Guernsey
Director, Planning and Zoning Department
One Texas Center, 505 Barton Springs Road
P.O. Box 1088
Austin, Texas 78767

Re: Proposed Grove at Shoal Creek Planned Unit Development

Dear Brent and Greg,

Thank you both for discussing this matter with me and representatives of BCRC on Wednesday. And by copy of this letter, we would like to thank Council Member Gallo for taking the time to be there too. I thought our discussions were very helpful for understanding the unique factual and legal issues and how they affect valid petition rights for this particular PUD application.

Among the matters brought up was the fact that this property was the subject of a rezoning in 1994. The State, then owner, sought a desired rezoning for this property. Nothing indicates that the State was precluded in that proceeding from including different or additional zoning for the undivided part of the property that is now involved here. It just chose not to do so. The city council approved the requested rezoning, and directed that the zoning district boundaries be redrawn. At least by that time, there was zoning proceeding for this property initiated by the owner. I understand that Greg is looking further into that proceeding and possibly previous zoning related events for this property (such as questions about the conflicting and inaccurate city maps). After he does that, I would ask that you confirm whether I am correct that this property has been the subject of a previous rezoning proceeding brought by its owner that changed its zoning classification, its zoning regulations and its zoning district boundaries.

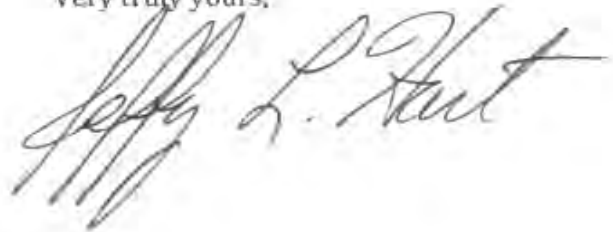
As Greg wrote, the "first (initial) zoning of a property" is exempted from valid petition rights under the LDC. By definition I think there can only be one "first" or "initial." Further, after an owner seeks and participates in an initial proceeding under a city's zoning ordinances, any possible notice and hearing deficiencies, which were the grounds for the *Appolo* decision, are eliminated. Am I correct in understanding the city's position is that only a single initial zoning proceeding involving a property can be exempted from the valid petition rights and supermajority voting? Or, would it be the city's position that *Appolo* created an exception that more or less runs with the land indefinitely and that might be invoked multiple times piecemeal?

A more fundamental question is, how can this application be labeled "zoning" when the city council is on record with an ordinance, approved by the city attorney, stating directly that changing this particular property from "UNZ" to another classification is "rezoning."

Another matter we discussed concerned the numerous and substantial exceptions this PUD application is seeking from city regulations. In substance these exceptions are not unlike variances or special permits that have been considered by the courts to be changes in applicable regulations and subject to valid petition rights. Is it the city's position that those rights and super majority voting protections are denied as to any and all requested exemptions from city regulations, regardless of their magnitude or impact?

I understand you are considering the request I made at the close our meeting for a written response to the above questions and to those set out in my October 14 letter to Greg. Among other things, I think that helps in reducing misunderstandings and hopefully can lead to a resolution. In this vein, for example, I do not see that recognizing valid petition rights here in compliance with the state statute, requires a concession, expressed or implied, that any part of the LDC is invalid. I believe that all can be harmonized, especially for this unique case.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jeff L. Hunt". The signature is fluid and cursive, with the first name "Jeff" being more prominent and the last name "Hunt" following in a similar style. There are some additional scribbles or flourishes at the end of the signature.

Cc: Hon. Sheri Gallo, Council Member, District 10



City of Austin
Founded by Congress, Republic of Texas, 1839
Planning and Zoning Department
One Texas Center, 505 Barton Springs Road
P.O. Box 1088, Austin, Texas 78767

July 31, 2015

Mr. Chris Allen, Co-Chair
Rosedale NA zoning committee
c/o Some Assembly Required
1406 W 39th ½ Street
Austin, TX 78756

Subject: The Grove PUD

Dear Mr. Allen:

Thank you for your letter of July 23 2015 regarding The Grove Planned Unit Development (PUD) zoning request. You asked for responses to two questions relating to zoning petition rights. Regarding your first question, Staff has already stated that a valid petition signed by property owners representing 20% of the land area within 200 feet does not trigger a supermajority vote of the City Council since this is not a rezoning application but initiation of original zoning. This is consistent with Section 25-2-241 and Section 25-2-284 of the City of Austin Land Development Code (LDC). Section 25-2-241 (see below) recognizes the distinction between zoning and rezoning requests.

§ 25-2-241 - DISTINCTION BETWEEN ZONING AND REZONING.

- A. **Zoning** is the initial classification of property as a particular zoning base district. Zoning amends the zoning map to include property that was not previously in the zoning jurisdiction or that was not previously included in the boundaries of a base district.
- B. **Rezoning** amends the zoning map to change the base district classification of property that was previously zoned. The

Source: Section 13-1-401; Ord. 990225-70; Ord. 031211-11.

Section 25-2-284(A) (2) (see below) triggers a supermajority (3/4) vote of the City Council to approve a rezoning (not initial zoning) of a property. The LDC does not contain similar language for a zoning application.

§ 25-2-284 - REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.

- A. The affirmative vote of three-fourths of the members of council is required to approve a proposed **rezoning** if:
 - (2) the proposed rezoning is protested in writing by the owners of not less than 20 percent of the area of land: (a) included in the proposed change; or (b) immediately adjoining the area included in the proposed rezoning and extending 200 feet from the area.

Your second question addressed whether a negative recommendation by the Zoning and Platting Commission to The Grove PUD zoning request would trigger the supermajority vote at the City Council. The short answer is no, since this is not a rezoning request. According to Section 25-2-284(A) (1) (see below), a supermajority (3/4) vote of the City Council is required to approve a rezoning (not initial zoning) of a property. The LDC does not contain similar language for a zoning application.

§ 25-2-284 - REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.

- A. The affirmative vote of three-fourths of the members of council is required to approve a proposed **rezoning** if:*
(1) the Land Use Commission recommends denial of an application to rezone property to a planned unit development; or

In summation, the Austin City Code limits valid petition rights to rezoning requests. It does not grant valid petition rights for the first (initial) zoning of a property. This is also consistent with a previous City of Austin Law Department opinion and State court decisions holding that petition rights do not apply to initial zoning.

If you have any questions regarding this determination, please call me at 512-974-2387 or by email at greg.guernsey@austintexas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Guernsey", with a stylized flourish at the end.

cc: Marc Ott, City Manager
Sue Edwards, Assistant City Manager
Deborah Thomas, Assistant City Attorney
Jerry Rusthoven, Current Planning Manager, Planning and Zoning Department

attachment: Law Department Memorandum dated January 23, 1985.



MEMORANDUM

TO: James B. Duncan, Director, Office of Land Development Services
Jim Smith, Director, Building Inspection Department

FROM: Walt McCool, Assistant City Attorney

DATE: January 23, 1985

SUBJECT: Implementation of Compatibility Standards

The Zoning Ordinance requires compliance with the compatibility standards for projects located in a certain proximity to property zoned or used "SF-5" or more restrictive. It is my opinion that property in interim zoning classification does not activate the compatibility standards.

The question is whether interim-zoned property is "zoned" within the meaning of the site development regulations in the Zoning Ordinance. Clearly, if a property owner wishes to install a nuclear test site next door to a single family home, the proposed project would have to meet the compatibility standards. The more difficult situation is where the proposed use is to be located next door to vacant property which is in an interim holding classification.

At least one Texas court has determined that interim classifications are imposed only to maintain the status quo pending the assignment of permanent zoning. Therefore, it is not necessary to comply with the notice and hearing requirements of the Zoning Enabling Act prior to interim zoning, since these procedural requirements are met prior to the hearings on permanent zoning. In Apollo Development Co. v. City of Garland, a property owner applied for permanent zoning on an interim-zoned tract. The surrounding property owners filed protest petitions which the city believed to be valid. The property owner won a declaratory judgment stating that the petition was invalid. The Court reasoned that a change from interim to permanent zoning would not give rise to protest rights, since such a change is really an original zoning.

I feel that this reasoning applies to our site development regulations as well. Property in an "I-SR" or other interim classification has not actually been zoned, in a legal sense. Therefore, the proximity of such property to a tract proposed for development should not require compliance with compatibility standards.

Walt McCool

Walt McCool
Assistant City Attorney

WMC:taa

cc: Terry Childers, Senior Assistant City Manager
Andrew Martin, Assistant City Attorney
Marie Gaines, Assistant Director, Office of Land Development Services
Jim Bennett, Zoning Administrator

Exhibit B--List of Appellants

Rosedale Neighborhood Association
1406 W. 39th 1/2 St.
Austin, TX 78756
512.467.2888

Oakmont Heights NA
1916 W. 40th
Austin, TX 78731
512.452.6188

Allandale NA
P.O.Box 10886
Austin, TX 78766
512.656.0058

Philip Courtois
2643 W. 45th
Austin, TX 78731
512.222.7531
Philip.courtois@gmail.com

Pim Mayo
2623 W. 45th
Austin, TX 78731
512.619.6071
Pim.mayo@gmail.com

Jeff Mayo
2623 W. 45th
Austin, TX 78731
214.901.2226
Jeff.r.mayo@gmail.com

Ryder Jeans
2629 W. 45th
Austin, TX 78731
512.623.9545
rjeans@gmail.com

Grayson Cox—Lead Appellant
2621 W. 45th
Austin, TX 78731
832.335.5180
emailgrayson@gmail.com

Reza Koohrang
2639 W. 45th
Austin, TX 78731
512.773.9223
koohrang@gmail.com

Tim Hahn
4502 Bull Creek Rd.
Austin, TX 78731
512.905.4920
Timhahn1999@yahoo.com

Elaine Rushing
2519 W. 45th
Austin, TX 78756
512.454.9412
Rushing.e@sbcglobal.net

Daniel De La Garza
2621 W. 45th
Austin, TX 78731
512.797.8574
Delagarza.uh@gmail.com

Daniel Hernandez
2635 W. 45th
Austin, TX 78731
512.739.7777
dhernandez@diversifiedsolutions.net

Aamer Shaukat
4114 Idlewild Rd.
Austin, TX 78731
512.586.8092
ashaukat@att.net

Cherie Havard
4011 Idlewild Rd.
Austin, TX 78731
512.517.2495
cghavard@gmail.com

Chris Allen
1406 W. 39 ½
Austin, TX 78756
512.467.2888
chris@somearchitect.com

Roseanne Giordaini
4107 Idlewild Rd.
Austin, TX 78731
512.964.8089
rglaw@me.com

John R. Moore
2637 W. 45th
Austin, TX 78731
512.917.0072
johnribblemoore@gmail.com

Drew Bradford
2619 W. 45th
Austin, TX 78731
512.826.5954
drew@bradfordtx.net

Lanith W. Derryberry
4100 Idlewild Rd.
Austin, TX 78731
512.426.5029
lwderryberry@yahoo.com

John Spath
4012 Idlewild Rd.
Austin, TX 78731
512.454.4620
Tropic3@me.com

Josephine Macaluso
2641 W. 45th
Austin, TX 78731
512.919.2354
Macamoo1@aol.com

Exhibit C Referenced LDC Sections

§ 25-2-241 - DISTINCTION BETWEEN ZONING AND REZONING.

- (A) Zoning is the initial classification of property as a particular zoning base district. Zoning amends the zoning map to include property that was not previously in the zoning jurisdiction or that was not previously included in the boundaries of a base district.
- (B) Rezoning amends the zoning map to change the base district classification of property that was previously zoned.

Source: Section 13-1-401; Ord. 990225-70; Ord. 031211-11.

§ 25-2-284 - REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.

- (A) The affirmative vote of three-fourths of the members of council is required to approve a proposed rezoning if:
 - (1) the Land Use Commission recommends denial of an application to rezone property to a planned unit development; or
 - (2) the proposed rezoning is protested in writing by the owners of not less than 20 percent of the area of land:
 - (a) included in the proposed change; or
 - (b) immediately adjoining the area included in the proposed rezoning and extending 200 feet from the area.
- (B) The director of the Neighborhood Planning and Zoning Department shall include the area of streets and alleys to compute the percentage of land area under Subsection (A)(2).
- (C) The director of the Neighborhood Planning and Zoning Department shall include land subject to a condominium regime in a protest under Subsection (A)(2) if:
 - (1) the protest is signed by the authorized officer of the condominium on behalf of the governing body of the condominium and the protest states that the governing body has authorized the protest petition in accordance with procedures required by its bylaws; or
 - (2) the protest is signed by the owner of an individual condominium unit and the documents governing the condominium establish the right of an individual owner to act with respect to the owner's undivided interest in the common elements of the condominium.
- (D) Except as provided in Subsection (C), the director of the Neighborhood Planning and Zoning Department shall include land owned by more than one person in a protest under Subsection (A)(2) if a written protest is filed by one of the owners.

Source: Section 13-1-407; Ord. 990225-70; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11.

§ 25-1-21 - DEFINITIONS.

Unless a different definition is expressly provided, in this title:

* * *

- (8) BASE DISTRICT means a zoning district established by this chapter to prescribe basic regulations governing land use and site development.

§ 25-2-221 - DISTRICT DESIGNATION REQUIREMENTS.

- (A) All land within the zoning jurisdiction shall be designated as a named zoning base district in accordance with the procedures of state law and this subchapter. Different portions of a site may be designated as different zoning base districts, but only one zoning base district designation may apply to any portion of a site.
- (B) A zoning combining district designation may be applied to property in addition to the zoning base district designation.

Source: Section 13-2-24; Ord. 990225-70; Ord. 031211-11

Division 5. - Planned Unit Developments.

Subpart A. - General Provisions.

§ 1.3. - PRE-APPLICATION FILING REQUIREMENTS AND REVIEW CRITERIA.

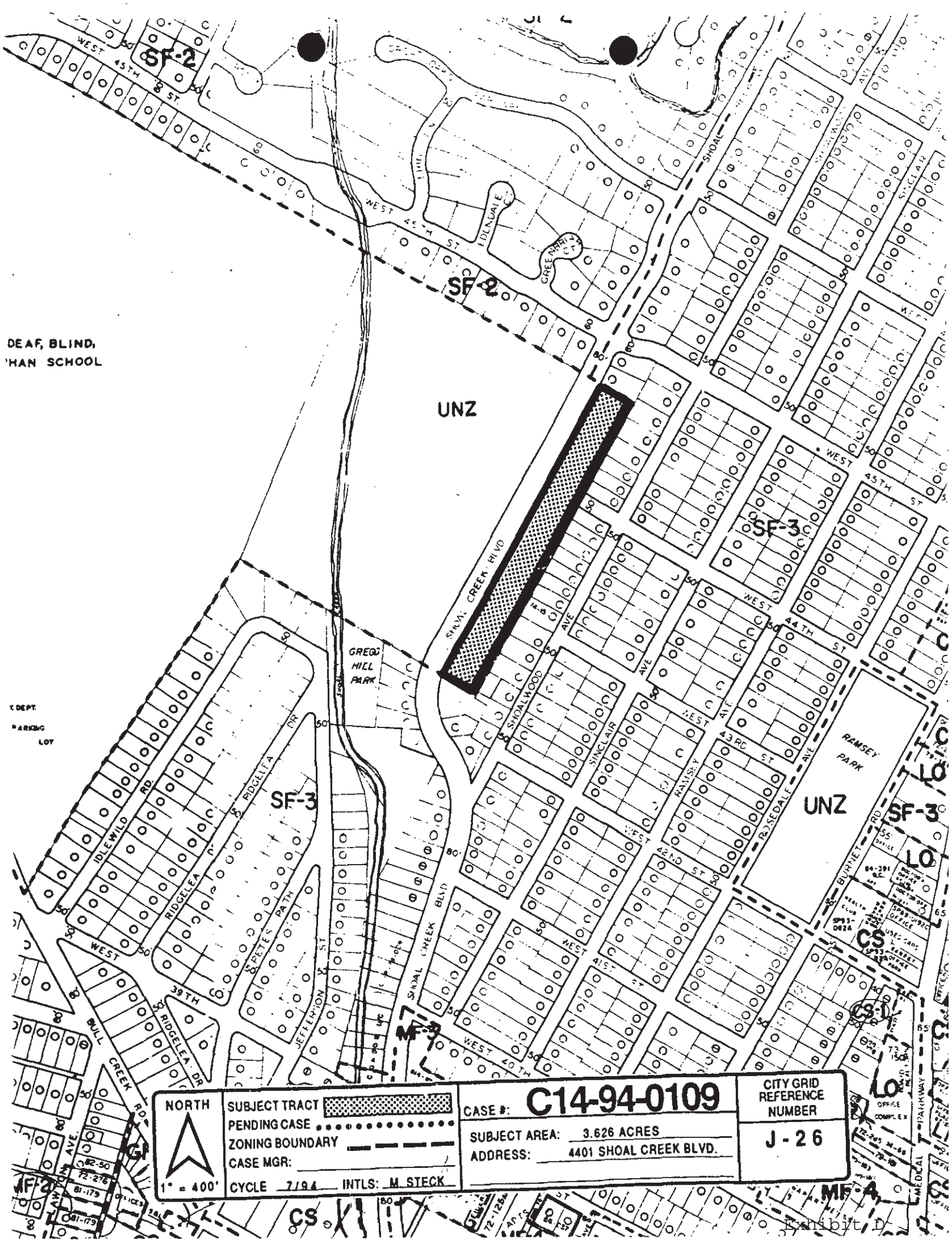
* * *

1.3.3. - BASELINE for DETERMINING DEVELOPMENT BONUSES.




- A. Unless the council establishes a different baseline as part of a comment under Section 1.3.2 (Council Response), the baseline for determining development bonuses under Section 2.5 (Development Bonuses) is determined by:
 - (1) the regulations of the base zoning district, combining district, and overlay district; and
 - (2) any other applicable site development standards.
- B. The director may recommend an alternate baseline for the property. Council may approve the director's recommendation or other baseline it determines is appropriate.
- C. Any bonuses granted under a combining district or overlay district may only be used to determine the baseline if the project complies with the requirements for the bonuses and the bonuses can be achieved without violating any other applicable site development standards.
- D. The director shall provide an estimate of the property's baseline entitlements in the project assessment report. If an alternate baseline is recommended by the director, the director shall include any assumptions used to make the estimate baseline entitlements.

DEAF, BLIND,
MANN SCHOOL

DEPT.
PARKING
LOT



1" = 400'

SUBJECT TRACT 
PENDING CASE 
ZONING BOUNDARY 
CASE MGR: _____
CYCLE 7/94 INTLS: M. STECK

CASE #: **C14-94-0109**
SUBJECT AREA: 3.626 ACRES
ADDRESS: 4401 SHOAL CREEK BLVD.

CITY GRID
REFERENCE
NUMBER
J - 2 6

ORDINANCE NO. 941103-__C

AN ORDINANCE ORDERING A REZONING AND CHANGING THE ZONING MAP ACCOMPANYING CHAPTER 13-2 OF THE AUSTIN CITY CODE OF 1992 AS FOLLOWS: 3.626 ACRE TRACT OF LAND OUT OF THE GEORGE W. SPEAR LEAGUE SURVEY NO. 7, FROM "UNZ" UNZONED DISTRICT TO "SF-2-CO" SINGLE-FAMILY RESIDENCE (STANDARD LOT) DISTRICT-CONDITIONAL OVERLAY COMBINING DISTRICT, LOCALLY KNOWN AS 4401 SHOAL CREEK BOULEVARD, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; WAIVING THE REQUIREMENTS OF SECTION 2-2-3 OF THE AUSTIN CITY CODE OF 1992; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

~~PART 1.~~ That Chapter 13-2 of the Austin City Code of 1992 is amended to change the base zoning district from ~~"UNZ" Unzoned district to "SF-2-CO" Single-Family Residence (Standard Lot) district-Conditional Overlay combining district~~, on the property described in File ~~C14-94-0109~~, as follows:

3.626 acre tract of land out of the George W. Spear League Survey No. 7, said 3.626 acre tract of land being more particularly described by metes and bounds in "Exhibit A" attached and incorporated herein for all purposes, *[hereinafter referred to as the "Property"]*

locally known as 4401 Shoal Creek Boulevard, in the City of Austin, Travis County, Texas.

~~PART 2.~~ That the Property within the boundaries of the Conditional Overlay combining district established by this ordinance is subject to the following conditions:

1. There will be no vehicular access from the Property to West 44th Street. All vehicular access to the Property shall be from other adjacent public streets or through other adjacent property.
2. No site plan for development of the Property, or any portion of the Property, shall be approved or released, and no building permit for construction of a building on the Property, shall be issued if the completed development or uses authorized by the proposed site plan or building permit, considered cumulatively with all existing or previously authorized development and uses of the Property, generates traffic exceeding a maximum total traffic generation of 300 vehicle trips per day.

Except as specifically restricted pursuant to this ordinance, the Property may be developed and used in accordance with the regulations established for the "SF-2" Single-Family Residence (Standard Lot) base district and other applicable requirements of the Land Development Code.

~~PART 3.~~ That it is ordered that the Zoning Map established by Section 13-2-22 of the Austin City Code of 1992 and made a part thereof shall be changed to record the amendment enacted by this ordinance.

~~PART 4.~~ That the requirements imposed by Section 2-2-3 of the Austin City Code of 1992, as amended, regarding the presentation and adoption of ordinances are hereby waived by the affirmative vote of at least five members of the City Council.

~~PART 5.~~ That this ordinance shall become effective upon the expiration of ten days following the date of its final passage, as provided by the Charter of the City of Austin.

PASSED AND APPROVED:


November 3, 1994

§
§
§
§
§




Bruce Todd
Mayor

APPROVED:


Michael J. Cosentino
Acting City Attorney

ATTEST:


James E. Aldridge
City Clerk

3Nov94
ME/jj

~~EAST OF SHOAL CREEK BOULEVARD~~

FIELD NOTES OF A SURVEY OF 3.626 ACRES OF LAND. [A PORTION OF A 100.0 ACRE TRACT OF LAND OUT OF THE GEORGE W. SPEAR LEAGUE SURVEY #7 IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS AS DESCRIBED IN A DEED FROM W. C. PHILLIPS TO THE STATE OF TEXAS, DATED JULY 28, 1887, AND RECORDED IN BOOK 76, PAGE 225, TRAVIS COUNTY DEED RECORDS, AS SURVEYED FOR THE STATE BUILDING COMMISSION OF THE STATE OF TEXAS BY THE METCALFE ENGINEERING COMPANY, 1710 EYA STREET, AUSTIN, TEXAS.

Beginning at a concrete monument at the northeast corner of a 100.0 acre tract of land out of the George W. Spear League Survey #7 in the City of Austin, Travis County, Texas as described in a deed from W. C. Phillips to The State of Texas, dated July 28, 1887, and recorded in Book 76, Page 225, Travis County Deed Records, said concrete monument being at the southeast corner of Lot #6 of Oak Haven, Section One, a subdivision of a portion of the George W. Spear League Survey #7 in the City of Austin, Travis County, Texas as shown on a map or plat as recorded in Plat Book 6, Page 114, Travis County Plat Records, said concrete monument being also in the west line of Block #19 of Rosedale "E", a subdivision of a portion of the George W. Spear League Survey #7 in the City of Austin, Travis County, Texas as shown on a map or plat as recorded in Plat Book 3, Page 245, Travis County Plat Records;

THENCE with the east line of the said 100.0 acre tract and the west line of Blocks #19, #18 and #17 of Rosedale "E", S 30° 12' W 1146.13 feet to a concrete monument at the southeast corner of the said 100.0 acre tract, said concrete monument being also the northeast corner of Lot #3, Block "B" of Shoal Courts, a subdivision of a portion of the George W. Spear League Survey #7 in the City of Austin, Travis County, Texas as shown on a map or plat as recorded in Plat Book 6, Page 185, Travis County Plat Records;

THENCE with the south line of the said 100.0 acre tract and the north line of Lot #3, Block "B" of Shoal Courts, N 59° 52' W 133.27 feet

to an iron stake at the northwest corner of said Lot #3, Block "B"
in the curving east line of Shoal Creek Boulevard;

THENCE with the curving east line of Shoal Creek Boulevard an
arc distance of 47.64 feet, said curve having a radius of 238.41 feet
and a chord of which runs N 24° 30' E 47.56 feet to an iron stake at
point of tangency;

THENCE with the east line of Shoal Creek Boulevard N 30° 23' E
1098.9 feet to an iron stake at the intersection of the east line of
Shoal Creek Boulevard with the north line of the said 100.0 acre tract,
said iron stake being the southwest corner of Lot #6 of said Oak Haven,
Section One;

THENCE with the north line of the said 100.0 acre tract and the
south line of said Lot #6 of Oak Haven, Section One, S 59° 53' E
137.8 feet to the place of the beginning, containing 3.626 acres of land.]

Surveyed August 28th and 29th, 1963.

METCALFE ENGINEERING COMPANY

By *Marlton O. Metcalfe*
Marlton O. Metcalfe
Registered Public Surveyor

FB 349, p 47
Plan #9253





NOTICE OF FILING OF APPLICATION FOR REZONING

Este Aviso le informa de una audiencia publica tratando de un cambio de zonificación dentro de una distancia de 500 pies de su propiedad. Si usted desea recibir información en español, por favor llame al (512) 974-3531.

Mailing Date: June 26, 2015

Case Number: C814-2015-0074

The City of Austin has sent this letter to inform you that we have received an application for rezoning of a property that requires approval by a Land Use Commission and final approval by the City Council. We are notifying you because City Ordinance requires that all property owners within 500 feet, residents who have a City utility account address within 500 feet, and registered environmental or neighborhood organizations whose declared boundaries are within 500 feet be notified when the City receives an application. **The Commission may not take action on this application until a public hearing is held. You will receive a separate notice of the public hearing once it has been scheduled, which will provide the date, time and location of the public hearing.** Below you will find information regarding the application.

Project Location:	4205 Bull Creek Road
Owner:	ARG Bull Creek, LTD, Garrett Martin, (512) 686-4986
Applicant	Thrower Design, A. Ron Thrower, (512) 476-4456

Proposed Zoning Change:

From: UNZONED

To: PUD – Planned Unit Development district is intended for large or complex developments under unified control planned as a single contiguous project. The PUD is intended to allow single or multi-use projects within its boundaries and provide greater design flexibility for development proposed within the PUD. Use of a PUD district should result in development superior to that which would occur using conventional zoning and subdivision regulations. The minimum size generally considered appropriate for a PUD is ten acres.

You can find more information on this application by inserting the case number at the following Web site: https://www.austintexas.gov/devreview/a_queryfolder_permits.jsp.

If you have any questions concerning the zoning change application, please contact the case manager, Jerry Rusthoven, at 512-974-3207 or via e-mail at jerry.rusthoven@austintexas.gov and refer to the case number located on this notice. The case manager's office is located at One Texas Center, 5th Floor, 505 Barton Springs Road, Austin, Texas. You may examine the file at One Texas Center between the hours of 7:45 a.m. and 4:45 p.m., Monday through Friday.

For additional information on the City of Austin's land development process, please visit our web site at: www.austintexas.gov/planning

GMC

TEXAS
DPS-4677

PROPOSED
**ZONING
CHANGE**

PUBLIC HEARING

FOR FURTHER INFORMATION
CONTACT:

PLANNING & DEVELOPMENT
REVIEW DEPARTMENT
ZONING REVIEW SECTION
512-974-6508

Please reference file number...

C814-2015-0074



City of Austin
DO NOT REMOVE

Page 365

476 S.W.2d 365
APPOLO DEVELOPMENT, INC.,
Appellant,
v.
CITY OF GARLAND, Texas, Appellee.
No. 17754.
Court of Civil Appeals of Texas,
Dallas.
Jan. 21, 1972.
Rehearing Denied Feb. 17, 1972.

Header ends here. Wyatt W. Lipscomb,
Garland, for appellant .

Robert E. Young, Garland, for appellee.

H. Louis Nichols, Saner, Jack, Sallinger &
Nichols, Dallas, amici curiae.

BATEMAN, Justice.

Appellant sought a declaratory judgment that the City Council of appellee had validly granted appellant's request for such commercial zoning of its real property as would permit the use of same as a park for mobile homes, and appeals from an adverse judgment.

In the year 1962 appellee adopted Ordinance No. 1011, being a comprehensive zoning ordinance. At that time appellant's property in question was not in the appellee city but was annexed by the city in 1969. In 1970 appellant applied for permanent zoning, and the City Council by a majority of five to four voted to grant the request. Objections, sufficient to invoke Article 1011e* if applicable, were filed by the owners of adjacent land. On advice of the city attorney that Article 1011e did apply, and since the request was not favored by as many as three-fourths of the nine-member council, the request was denied. The trial court upheld this ruling.

The statutes empowering cities to regulate the use of property within their boundaries, and setting out the procedure therefor and for the enforcement of the relevant ordinances are Articles 1011a to 1011j, inclusive. Article 1011d is as follows:

'The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.'

Such requirements of notice and hearing were met with respect to appellant's request for commercial zoning.

Section 5 of Ordinance No. 1011 provides in part:

'A. All territory hereafter annexed to the City of Garland shall be temporarily classified as A, Agricultural District,

Page 367

until permanent zoning is established by the City Council of the City of Garland. The procedure for establishing permanent zoning on annexed territory shall conform to the procedure established by law for the adoption of original zoning regulations.'

The appellee takes the position, and the trial court in effect found, that Section 5 of Ordinance 1011 has the effect of automatically zoning all newly annexed property as an Agricultural district and that the property was already zoned as such when appellant's

request for commercial zoning was made, and that the request, therefore, was for an amendment or change of the zoning, requiring a favorable vote of three-fourths of the council under the provisions of Article 1011e, which reads as follows:

'Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of 20 per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 200 feet therefrom, or of those directly opposite thereto extending 200 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearing and official notice shall apply equally to all changes or amendments.'

The adoption by appellee in 1962 of the comprehensive zoning ordinance cannot be said to have created zoning restrictions on appellant's land in question because it was not then in the city and its then owner or owners were not bound by the notice and hearing in connection therewith. Moreover, no one knew at that time whether the property in question would ever be annexed. Section 5 of the ordinance clearly applies only to property which might in future be annexed to the city. Its obvious purpose was, as stated in *City of Dallas v. Meserole*, 155 S.W.2d 1019, 1022 (Tex.Civ.App., Dallas 1941, writ ref'd w.m.), 'to maintain the status quo of such annexed territory and enable the City Council to gather data and information to be used as a basis for granting or refusing permits for construction, use and occupancy of buildings or structures in such territory, pending the permanent zoning thereof.'

We do not believe it was intended that Section 5 of Ordinance 1011 should have the effect of so zoning all property thereafter annexed that no owner of newly annexed property could apply for permanent zoning without placing himself under the burden of obtaining a favorable vote of three-fourths of the members of the City Council if a protest were made by adjacent property owners described in Article 1011e.

When this property was annexed in 1969, approximately seven years after enactment of Ordinance 1011, no effort was made to comply with the requirements of Article 1011d with respect to notice and hearing pertaining to zoning. Even if the notice and hearing with respect to annexation could be construed as an attempt to comply with Article 1011d, it would nevertheless fail for two reasons; viz., (1) zoning is not even mentioned either in the notice of the annexation hearing or in the minutes of that hearing or in the annexation ordinance itself; and (2) the notice was published for only 11 days, not for 15 days.

These requirements of the statute must be complied with in detail and each must be rigidly performed. They are necessary to the validity of all zoning ordinances, whether amendatory, temporary or emergency. *Bolton v. Sparks*, 362 S.W.2d 946, 950 (Tex.Sup.1962).

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We hold that because of appellee's failure to observe the express, mandatory provisions of Article 1011d with respect to zoning the property in question at any time prior to appellant's request for zoning, the approval of such request by a majority vote was all that was required.

The judgment appealed from is accordingly reversed, and judgment is here rendered declaring that the application of Appolo Development, Inc. for the zoning of its land consisting of 34.47 acres abutting on

Appolo Road and lying 815 feet north of Brand Road, in the City of Garland, Dallas County, Texas, as CB (Commercial District) with specific use permit for use as a mobile home park, was lawfully granted by the City Council of Garland, Texas, at its meeting of December 15, 1970, subject to the rules and regulations of the City of Garland, Texas, pertaining to mobile home parks.

Reversed and rendered.

* All Articles mentioned in the opinion are from Vernon's Tex.Rev.Civ.Stat.Ann. (1963).

Ayes: Councilmember Trevino, Mayor Friedman, Mayor Pro Tem Snell,
Councilmembers Himmelblau, Hofmann, Lebermann, Linn
Noes: None

LOS ALTOS CONDOMINIUMS

Councilmember Himmelblau moved that the Council adopt a resolution to instruct the staff to proceed with Zoning Case C814-76-001: Harvey H. Lane and John Van Winkle, Westlake Drive, from Interim "AA" Residence, 1st Height and Area to Planned Unit Development known as "Los Altos Condominiums." The motion, seconded by Mayor Pro Tem Snell, carried by the following vote:

Ayes: Mayor Pro Tem Snell, Councilmembers Himmelblau, Hofmann,
Lebermann
Noes: Mayor Friedman, Councilmembers Linn, Trevino

(Prior to the meeting, Councilmembers had received the following memo from Jerry L. Harris, City Attorney)

"The above site was annexed to the City of Austin on July 28, 1976. Under the City of Austin's zoning ordinance the property took on an interim classification of "AA," First Height and Area District. The owners then requested that the property be zoned as a Planned Unit Development. The Planning Commission denied the request and the case was considered by the City Council on January 27, 1977.

Although a petition against the zoning was presented by surrounding property owners, I had indicated to the attorney for the property owners, Mr. John Scanlan, that the petition would not be a basis for requiring that the applicant receive six (6) favorable votes of the City Council because it was held in Appolo Development, Inc. v. City of Garland, 476 S. W. 2d 365 (Tex. Civ. App. - Dallas, 1972, writ ref'd n.r.e.) that a petition against a zoning change does not require that the applicant get six (6) favorable votes if the property bears only a temporary zoning classification. A summary of the Appolo case is attached hereto as Exhibit "A." However, I indicated to the attorney for Los Altos, Mr. Stuart Henry, and the attorney for the opponents, John Scanlan, that six (6) votes would be required for approval of the zoning because our City Code provides that a denial of zoning by the Planning Commission can be overridden only by six (6) votes of the City Council.

Before the City Council, the Los Altos application received five (5) favorable votes and two (2) negative votes. Therefore, pursuant to the City Code provision, if valid, the Los Altos application was denied. However, about two weeks after City Council action, the Supreme Court upheld a Court of Civil Appeals opinion which declared that a zoning code provision, requiring a three-fourths favorable vote of the Council to override a denial of zoning by the Planning Commission, was invalid. A summary of this case, City of San Antonio v. Lanier, 542, S. W 2d 232, (Tex. Civ. App. - San Antonio, 1976, writ ref'd n.r.e.) is attached hereto as Exhibit "B."

"Since the City of San Antonio and Appolo Development, Inc., cases clearly hold that Los Altos was not required to receive six (6) favorable votes of the City Council but only a majority vote, it is my opinion that the Los Altos application was approved on January 27, 1977, when that application received five (5) favorable votes of the City Council."



LOWELL H. LEBERMANN
COUNCILMAN

FOUNDED BY CONGRESS, REPUBLIC OF TEXAS, 1839

P. O. BOX 1080
AUSTIN, TEXAS 78767
A / C 512-477-0511

April 14, 1977

Honorable W. E. Snelson, Chairman
Intergovernmental Relations Committee
The Senate of the State of Texas
Austin, Texas 78711

Re: S.B. 1209

Dear Senator:

I would like to take this opportunity to express my personal support for S.B. 1209, introduced by Senator Braecklein, which permits a municipality to adopt an ordinance requiring three-fourths vote of its legislative body to overrule a recommendation of denial by the municipality's Planning or Zoning Commission.

In establishing a Planning Commission with the responsibility of making zoning determinations and changes, Austin's City Charter specifically provided that a three-fourths vote of the City Council was required to overrule a recommendation of denial by the Planning Commission. In designating the Planning Commission as a recognized municipal entity, with sovereign power, Austin's City Charter provision was based on two dictums. First, as a commission with a narrow area of responsibility, i.e., zoning matters, it was logically assumed that members of the commission would have more time and opportunity to consider and weigh arguments and develop a degree of expertise in reviewing such matters over a period of time. Since Austin's legislative body, the City Council, has a much broader area of responsibility and, consequently, less time to devote to any one specific item, it was determined that the decisions of the Planning Commission should not be capable of being easily overturned.

The second reason for incorporating the three-fourths rule in the Charter was the Planning Commission's separation from immediate political concerns. Since the members of the Planning Commission are appointed and not as readily subject to the pressures to which elected officials are exposed, it was felt that the Commissioners would make a more objective and unbiased determination of the public interest during their deliberation.

Let me again underscore my support for this local-option legislation and encourage your favorable consideration and recommendation of it to the entire Senate. Thank you for your assistance and cooperation.

Cordially,

Lowell H. Lebermann
Lowell H. Lebermann
Councilman, Place 4

Llj

xc: Senator Bill Braecklin
Members, Intergovernmental Relations Committee
Members, Austin City Council

AN ACT

relating to authority of a municipality to adopt an ordinance requiring three-fourths vote of its legislative body to overrule a recommendation of denial by the zoning commission; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 5, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 1011e, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a written protest against such change, signed by the owners of 20 per cent or more either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same and extending 200 feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths of all ~~[the]~~ members of the legislative body of such municipality. The legislative body of a municipality may also provide by ordinance that a vote of three-fourths of all its members is required to overrule a recommendation of the zoning commission that a proposed amendment, supplement, or change be denied. The provisions of the previous section relative to public hearing and official notice shall apply equally to all changes or amendments."

Sec. 2. The importance of this legislation and the crowded

S.B. No. 1209

1 condition of the calendars in both houses create an emergency and
2 an imperative public necessity that the constitutional rule
3 requiring bills to be read on three several days in each house be
4 suspended, and this rule is hereby suspended, and that this Act
5 take effect and be in force from and after its passage, and it is
6 so enacted.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1209 passed the senate on
April 21, 1977, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1209 passed the house on May
26, 1977, by a non-record vote.

Chief Clerk of the House

Approved:

6/15/77
Date

15/ Dolph Briscoe
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
9:45 pm O'CLOCK

JUN 15 1977

Mark White
Secretary of State

Effective: 90 days
2

Sec. 211.006. PROCEDURES GOVERNING ADOPTION OF ZONING REGULATIONS AND DISTRICT

BOUNDARIES. (a) The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for adopting and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(b) In addition to the notice required by Subsection (a), a general-law municipality that does not have a zoning commission shall give notice of a proposed change in a zoning classification to each property owner who would be entitled to notice under Section 211.007(c) if the municipality had a zoning commission. That notice must be given in the same manner as required for notice to property owners under Section 211.007(c). The governing body may not adopt the proposed change until after the 30th day after the date the notice required by this subsection is given.

(c) If the governing body of a home-rule municipality conducts a hearing under Subsection (a), the governing body may, by a two-thirds vote, prescribe the type of

notice to be given of the time and place of the public hearing. Notice requirements prescribed under this subsection are in addition to the publication of notice required by Subsection (a).

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the area of the lots or land covered by the proposed change; or

(2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

(e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

ATTACHMENT 2

Proposed Code Modifications

CHAPTER 25-1 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
1. <i>Parkland Requirements, Article 14, Chapter 25-1 and 25-4-211</i>	25-1-602(A) “A subdivider or site plan applicant shall provide for the parkland needs of the residents by the dedication of suitable parkland for park and recreational purposes under this article.”	“A subdivider or site plan applicant shall provide for the parkland needs of the residents by providing suitable parkland for park and recreational purposes under the terms of The Grove at Shoal Creek Planned Unit Development Ordinance No. _____ . The requirements of Article 14, Chapter 25-1 of the Austin City Code shall not apply to the property.”
2. <i>Impervious Cover Measurement, 25-1-23</i>	<p>“(A) Except as otherwise provided in this section, impervious cover means the total area of any surface that prevents the infiltration of water into the ground, such as roads, parking areas, concrete, and buildings.</p> <p>(B) Impervious cover shall be calculated in accordance with the Environmental Criteria Manual and Section 25-8-63 (<i>Impervious Cover Calculations</i>).”</p>	“In determining compliance with the impervious cover limitations, impervious cover on any given site within a particular Tract may exceed the amount provided in the Site Development Regulations Table as long as (i) the total amount of impervious cover allowed on the Tract on an overall basis is not exceeded, and (ii) the total amount of impervious cover on all of the property on overall basis does not exceed 65%.”
CHAPTER 25-2 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD

3. <i>Site Development Regulations, 25-2-492</i>	Not applicable.	The Applicant proposes that the site development regulations applicable to the Property be as shown on the Land Use Plan
4. <i>Site Development Regulations, 25-2-492 and Height, 25-1-21(47)</i>	City staff interprets a parking level to be a “story” for the purposes of determining compliance with site development regulations.	“In determining compliance with the applicable height limitations, a parking level shall not be and is not considered a ‘story’.”
5. <i>Compatibility Standards, 25-2-1063(C)(2) and (3)</i>	<p>“(2) three stories and 40 feet, if the structure is more than 50 feet and not more than 100 feet from property:</p> <p>(a) in an SF-5 or more restrictive zoning district; or (b) on which a use permitted in an SF-5 or more restrictive zoning district is located;</p> <p>(3) for a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive;”</p>	<p>“In the rectangular area of land in Tract B that is bounded by (i) the property line adjacent to Bull Creek Road on the west, (ii) a line 240 feet east from the property line adjacent to Bull Creek Road on the east, (iii) a line that is 200 feet south of the northern property line on the north, and (iv) a line that is 630 feet south of the northern property line on the south, Section 25-2-1063(C) (2) of the Austin City Code shall not apply, and Section 25-2-1063(C)(3) is modified to read to provide that for a structure more than 50 feet but not more than 300 feet from the property zoned SF-5 or more restrictive, height may be limited to 60’.”</p>
6. <i>Compatibility Standards, 25-2-1067(G) and (H)</i>	“(G) Unless a parking area or driveway is on a site that is less than 125 feet wide, a parking area or driveway may not be constructed 25 feet or less from a lot that is: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located.”	“Section 25-2-1067(G) and (H) of the Austin City Code shall not apply to Tract A only, with respect to the construction of an alley, public road, trails and/or sidewalks.”

7. <i>Restaurant (Limited), 25-2-809(B)</i>	“(B) in a general office (GO), commercial recreation (CR), or neighborhood commercial (LR) district, the outdoor seating area, if any, for a restaurant (limited) use may not exceed 50 percent of the indoor seating area. Seating area is measured in square feet.”	“Section 25-2-809(B) of the Austin City Code shall not apply to the property.”
8. <i>Commercial Design Standards, Subchapter E, Chapter 25-2</i>	Chapter 25-2, Subchapter E, Design Standards and Mixed Use	“The Grove at Shoal Creek Design Guidelines generally addresses the physical relationship between commercial and other nonresidential development and adjacent properties, public streets, neighborhoods, and the natural environment, in order to implement the City Council's vision for a more attractive, efficient, and livable community. The requirements of Chapter 25-2, Subchapter E of the Austin City Code shall not apply to the property.”
9. <i>Condominium Residential Use, 25-2-776</i>	Section 25-2-776 containing provisions related to Condominium Residential Use	“Section 25-2-776 of the Austin City Code shall not apply to the property. Condominium residential use shall be subject to the site development regulations set forth in the Land Use Plan.”
CHAPTER 25-4 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
10. <i>Alleys, 25-4-132(B)</i>	“(B) Off-street loading and unloading facilities shall be provided on all commercial and industrial lots, except in the area described in Subsection (C). The subdivider shall note this requirement on	“Off-street loading and unloading shall be provided on all commercial lots, except that loading and unloading may also occur in any alley that also serves as a fire lane. The subdivider shall note this requirement

	a preliminary plan and a plat.”	on a preliminary plan and a plat.”
11. <i>Secondary Street Access, 25-4-157</i>	Section 25-4-157 – Subdivision Access Streets	“Section 25-4-157 of the Austin City Code shall not apply to the property.”
12. <i>Lots on Private Streets, 25-4-171(A)</i>	“(A) Each lot in a subdivision shall abut a dedicated public street.”	“(A) Each lot in a subdivision shall abut a public street, private street or private drive subject to a permanent access easement.”
13. <i>Parkland Requirements, Article 14, Chapter 25-1 and 25-4-211</i> [NOTE: this is the same as No. 1 above]	25-4-211 “The platting requirement for parkland dedication is governed by Chapter 25-1, Article 14 (Parkland Dedication).”	“The platting requirement for parkland dedication is governed by the terms of The Grove at Shoal Creek Planned Unit Development Ordinance No. _____. The requirements of Article 14, Chapter 25-1 of the Austin City Code shall not apply to the property.”
14. <i>Preliminary Plan Expiration, 25-4-62</i>	25-4-62 “An approved preliminary plan expires five years after the date the application for approval of the preliminary plan is submitted.”	“An approved preliminary plan expires ten years after the date the application for approval of the preliminary plan is approved.”
15. <i>Public Street Alignment, 25-4-151</i>	25-4-151 “Streets of a new subdivision shall be aligned with and connect to existing streets on adjoining property unless the Land Use Commission determines that the Comprehensive Plan, topography, requirements of traffic circulation, or other considerations make it desirable to depart from the alignment or connection.”	“Notwithstanding Section 25-4-151 of the Austin City Code, the private drives and/ or private streets within the property may be aligned with and connect to existing or future streets on adjoining property.”
16. <i>Dead-End Streets, 25-4-152(A)</i>	“(A) A street may terminate in a cul-de-sac if the director determines that the most desirable plan requires laying out a dead-end street.”	“A street may terminate in a cul-de-sac if the director determines that the most desirable plan requires laying out a dead-end street, or may terminate in a connection with the private drives and/ or private streets within the property.”

CHAPTER 25-5 MODIFICATIONS	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
17. <i>Site Plan Expiration, 25-5-81(B) and (D)</i>	<p>“(B) Except as provided in Subsections (C), (D), and (E) of this section, a site plan expires three years after the date of its approval.”</p> <p>“(D) A phase of a phased site plan expires on the expiration date determined under Section 25-5-21 (Phased Site Plan) unless: ...”</p>	<p>“Except as provided in Subsections (C), (D), and (E) of Section 25-5-81 of the Austin City Code, a site plan expires ten years after the date of its approval. A phase of a phased site plan expires on the expiration date determined in The Grove at Shoal Creek Planned Unit Development Ordinance No. _____ unless ...”</p>
18. <i>Site Plan Phasing, 25-5-21(B)</i>	<p>“(B) The director may approve development phasing if the date proposed for beginning construction on the final phase is not more than three years after the approval date of the site plan. Planning Commission approval is required for development phasing if the date proposed for beginning construction of a phase is more than three years after the approval date of the site plan.”</p>	<p>“(B) The director may approve development phasing if the date proposed for beginning construction on the final phase is not more than ten years after the approval date of the site plan. Planning Commission approval is required for development phasing if the date proposed for beginning construction of a phase is more than ten years after the approval date of the site plan.”</p>
CHAPTER 25-6 MODIFICATIONS	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
19. <i>Street Design, 25-6-171(A)</i>	<p>“(A) Except as provided in Subsections (B) and (C), a roadway, street, or alley must be designed and constructed in accordance with the Transportation Criteria Manual and City of Austin Standards and Standard Specifications.</p>	<p>“A roadway, street or alley must be designed and constructed in accordance with The Grove at Shoal Creek Design Guidelines. The Transportation Criteria Manual and City of Austin Standards and Standard Specifications shall apply to the extent they do not conflict with The Grove</p>

		at Shoal Creek Design Guidelines.”
CHAPTER 25-8 MODIFICATIONS		
CODE SECTIONS TO BE MODIFIED	CURRENT CODE LANGUAGE	PROPOSED MODIFICATION FOR THE GROVE AT SHOAL CREEK PUD
20. <i>Heritage Trees, 25-8-641(B)</i>	“(B) A permit to remove a heritage tree may be issued only if a variance is approved under Section 25-8-642 (<i>Administrative Variance</i>) or 25-8-643 (<i>Land Use Commission Variance</i>).”	<p>“A permit to remove a heritage tree may be issued only if:</p> <p>(1) a variance is approved under Section 25-8-642 (<i>Administrative Variance</i>) or (25-8-643) <i>Land Use Commission Variance</i>, or</p> <p>(2) the tree is indicated as "Trees that May Be Removed" on The Grove at Shoal Creek Tree Survey and Disposition Plan as attached to The Grove at Shoal Creek Planned Unit Development Ordinance No. _____. Sections 25-8-642 and 25-8-643 shall not apply to the trees indicated as "Trees that May Be Removed" on The Grove at Shoal Creek Tree Survey and Disposition Plan.</p> <p>A permit issued under 25-8-642 (A) (2) shall require mitigation at the rates prescribed on The Grove at Shoal Creek Tree Survey and Disposition Plan.”</p>



CITY OF DALLAS

DATE March 22, 1977

TO Honorable Mayor and Members of the City Council
of the City of Dallas

SUBJECT Proposed Legislation to Provide Statutory Authority for the City to
Require a Three-Fourths Vote to Overrule a Negative Recommendation
of the City Plan Commission

At the City Council meeting on March 21, it was requested that the City Attorney provide all relevant facts concerning the above subject.

For your information I am attaching a copy of the court decision in the case of City of San Antonio v. Lanier, 542 S.W.2d 232, error ref. n.r.e.

In the Lanier Case the three essential rulings are as follows:

- (a) In approving zoning ordinances, cities are confined to express authority delegated to them by the legislature;
- (b) The state statute authorizing a city to change the zoning ordinance from time to time and requiring a three-fourths favorable vote by the city council applies only in the event of a protest against such amendment by the owners of twenty percent or more of the area of the lots or land included in the proposed change or of the lots or land immediately adjoining the same and extending 200 feet therefrom; and the state statute does not require a three-fourths favorable vote where the City Plan Commission recommends that a requested change be disapproved; and
- (c) A city does not have statutory authority to require a three-fourths favorable vote to override a recommended denial by the City Plan Commission in the absence of a property owner's protest.

The Texas Supreme Court has refused to overturn this decision.

Dallas has operated for years under a system of requiring a three-fourths favorable vote on either a property owner's protest or a recommended denial by the City Plan Commission. The effect of the Lanier Case is that unless the state law is amended to provide the requisite statutory authority for our local rule, it can no longer be applied as in the past.

The decision before the City Council is whether such a change in the state law should be sought. The Lanier Case in no way suggests that it would be improper

Memorandum

Page -2-



CITY OF DALLAS

DATE March 21, 1977

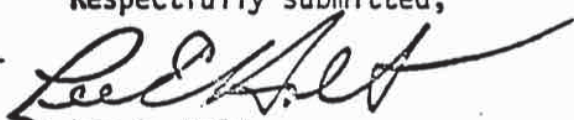
TO Honorable Mayor and Members of the City Council
of the City of Dallas

SUBJECT Proposed Legislation to Provide Statutory Authority for the City to
Require a Three-Fourths Vote to Overrule a Negative Recommendation
of the City Plan Commission

or inappropriate to seek an amendment in the state law. The court merely declared the status of the law as of the date of its opinion. This is a normal part of the legislative process wherein the courts regularly declare what particular statutes mean and the legislature makes appropriate changes in order to more clearly declare the legislative intent. In fact, the present state zoning statutes were enacted in direct response to a 1921 decision of the Supreme Court of Texas in the case of Spann v. City of Dallas, 235 S.W. 513, which held that cities could not adopt local zoning ordinances under laws and procedures then prevalent.

Should the City Council determine to seek this legislative change, it would be necessary at this time to secure the consent of four-fifths of either the House or the Senate for introduction because of the requirements of Article III, Section 5 of the Texas Constitution.

Respectfully submitted,


Lee E. Holt
City Attorney

WHEREAS, for a period of at least forty-eight years, the Comprehensive General Zoning Ordinance of the City of Dallas has contained a provision requiring a favorable vote of three-fourths of all members of the City Council to approve an amendment, supplement or change in the Zoning Ordinance in cases where the City Plan Commission has recommended denial; and

WHEREAS, on February 23, 1977, the Texas Supreme Court refused to overturn a decision by the San Antonio Court of Civil Appeals in City of San Antonio v. Lanier, 542 S.W.2d 232, error ref., n.r.e., holding that the State Law (Articles 1011a-1011j, Vernon's Annotated Texas Statutes) does not permit such a requirement; and

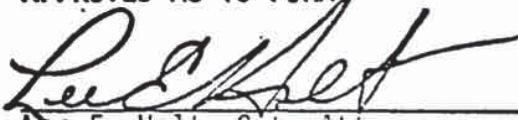
WHEREAS, almost half a century of experience and accepted practice has clearly demonstrated the value of such a requirement; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Attorney is authorized and directed to prepare and diligently seek introduction and passage of a Bill in the Texas Legislature providing authority for any city to include in its Comprehensive General Zoning Ordinance a requirement of a favorable vote of three-fourths of all members of the governing body to approve an amendment, supplement or change in the Zoning Ordinance in cases where the City Plan Commission has recommended denial.

SECTION 2. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Dallas City Charter, and it is accordingly so resolved.

APPROVED AS TO FORM:



Lee E. Holt, City Attorney

EXHIBIT I. CITY RESPONSE TO LANDOWNER PETITION



thesonofgray . <emailgrayson@gmail.com>

Petition Information Concerning Case C814-2015-0074 (The Grove at Shoal Creek PUD)

Sirwaitis, Sherri <Sherri.Sirwaitis@austintexas.gov>

Thu, Apr 14, 2016 at 3:45 PM

To: "emailgrayson@gmail.com" <emailgrayson@gmail.com>, "jeffhart1@att.net" <jeffhart1@att.net>

Hi Mr. Cox and Mr. Hart,

Here is the response to the petition that you submitted for case C814-2015-0074 (The Grove at Shoal Creek PUD). The GIS staff determined that 28.68% of the signees were within 200 feet of the subject tract. Also attached is a letter dated July 31, 2015 from Greg Guernsey, the Director of the Planning and Zoning Department, regarding Supermajority Rules for The Grove PUD for your review.

Thank you,

Sherri Sirwaitis

City of Austin

Planning & Zoning Department

sherri.sirwaitis@austintexas.gov

512-974-3057(office)

3 attachments



C814-2015-0074.pdf

256K



C814-2015-0074.xlsx

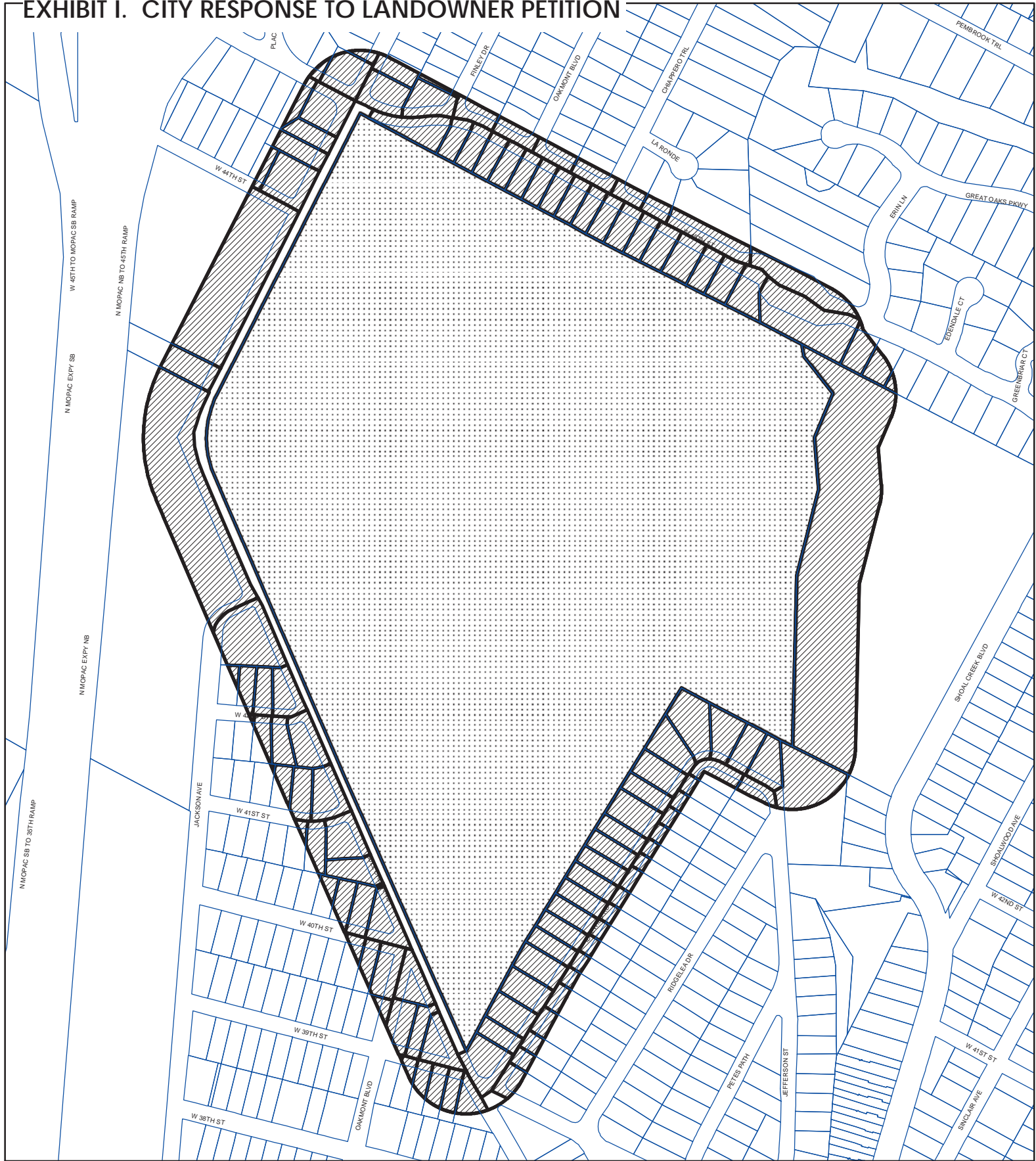
35K



LETTER TO CHRIS ALLEN - THE GROVE PUD.pdf

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EXHIBIT I. CITY RESPONSE TO LANDOWNER PETITION



N



BUFFER

PROPERTY_OWNER

SUBJECT_TRACT

PETITION

CASE#: C814-2015-0074



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

1" = 400'

EXHIBIT I. CITY RESPONSE TO LANDOWNER PETITION

Case Number:

C814-2015-0074

PETITION

Date: 4/25/2016

Total Square Footage of Buffer: 1697803.025

Percentage of Square Footage Owned by Petitioners Within Buffer: 28.68%

Calculation: The total square footage is calculated by taking the sum of the area of all TCAD Parcels with valid signatures including one-half of the adjacent right-of-way that fall within 200 feet of the subject tract. Parcels that do not fall within the 200 foot buffer are not used for calculation. When a parcel intersects the edge of the buffer, only the portion of the parcel that falls within the buffer is used. The area of the buffer does not include the subject tract.

TCAD ID	Address	Owner	Signature	Petition Area	Percent
0122000606	3906 IDLEWILD RD 78731	ALEXANDER MARIAN J	yes	13098.41	0.77%
0226000810	2627 W 45 ST 78731	ARG BULL CREEK LTD	no	8468.80	0.00%
0226000801	2645 W 45 ST 78731	ARMAN ANOUSHTAKIN & FERINAZ Z	yes	17342.20	1.02%
0124020308	4330 BULL CREEK RD 78731	AUSTIN BC LP	no	95010.04	0.00%
0226000130	4501 BULL CREEK RD	BARBUSH SONDRAL	no	16176.57	0.00%
0122000502	1820 W 39 ST 78731	BECK L ALEXANDRA	no	8485.11	0.00%
0226000248	2607 LA RONDE 78731	BLACKSTOCK MATHIS & MARY	yes	5620.50	0.33%
0223000122	4010 IDLEWILD RD 78731	BOYLES RUTH TRUSTEE	no	9740.00	0.00%
0226000820	2619 W 45 ST 78731	BRADFORD ANDREW & ANDREA	yes	10872.45	0.64%
0223000115	4112 IDLEWILD RD 78731	BRIER BENNETT ANDREW & BETTY LOU LITRELL	yes	14678.01	0.86%
0226000823	2615 W 45 ST 78731	CAJAS JOSEPH RICHARD III & MAYA VEGA	yes	9091.70	0.54%
0122000404	1817 W 39 ST 78731	CARREON REBECCA CLAIRE	no	6581.32	0.00%
0122020906	1903 W 41 ST 78731	CHIN KEVIN L & YUN GUO	no	8562.02	0.00%
0223000130	JEFFERSON ST 78756	CITY OF AUSTIN	no	30358.91	0.00%
0226000831	W 45 ST 78731	CITY OF AUSTIN ATTEN REAL ESTATE DIV	no	43848.54	0.00%
0122000708	4003 IDLEWILD RD 78731	CLIFTON GRANT HAMON & NATALIE CHRISTINE	yes	2444.16	0.14%
0223000129	4202 SHOAL CREEK BLVD 78756	CLINE MARGARET W	no	20.35	0.00%
0226000827	2515 W 45 ST 78756	COLTEN KEVIN DAVID & LAURA LEE STEELE	no	1262.37	0.00%
0126010915	2800 W 45 ST 78731	CONTALDI LISA MARIE	no	15606.33	0.00%
0223000203	4011 IDLEWILD RD 78731	COULSON ANDREW D & CHERIE G HA CHERIE G HAVARD	yes	2409.31	0.14%
0226000802	2643 W 45 ST 78731	COURTOIS PHILIP & AMITY	yes	8770.78	0.52%
0226000818	2621 W 45 ST 78731	COX GRAYSON MONTGOMERY & DANIEL DE LA GARZA	yes	8749.46	0.52%
0223000201	4007 IDLEWILD RD 78731	CROSS LAURA S & BENJAMIN S	no	2361.24	0.00%
0122000703	3905 IDLEWILD RD 78731	CULPEPPER GARY G & RICHARD A BALCUM	yes	3421.30	0.20%
0226000519	4500 CHIAPPERO TRL 78731	CURRIE CHAD D & JENNIFER	no	7571.54	0.00%
0122020907	1901 W 41 ST 78731	DAVIS TRACY & MATTHEW	yes	15981.72	0.94%
0223000120	4100 IDLEWILD RD 78731	DERRYBERRY LANITH WILBURN	yes	9488.22	0.56%
0226000129	2644 W 45 ST	DESTASIO CATHERINE	no	14814.54	0.00%
0124000303	1902 W 41 ST 78731	DEVENS FRELLSEN TRUST	no	10742.62	0.00%
0122020913	1910 W 40 ST 78731	ECHOLS CAPITAL GROUP LLC	no	47.60	0.00%
0122020823	1901 W 40 ST	FARMER PAUL A & SUSAN M	yes	13616.73	0.80%
0122000704	3907 IDLEWILD RD 78731	FARRELL JAMES	no	4662.20	0.00%
0226000833	2613 W 45 ST 78731	FENG BRUCE II	yes	10405.52	0.61%
0226000807	2633 W 45 ST	FROMMHOLD LOTHAR W & MARGARET M FROMMHOLD	yes	8715.65	0.51%
0124000302	1900 W 41 ST 78731	GIBSON SARAH J	no	15774.66	0.00%
0223000111	4107 JEFFERSON ST 78731	GILMORE JACK A & LUANN K	no	13444.84	0.00%
0223000209	4107 IDLEWILD RD 78731	GIORDANI ROSEANNE	no	2399.39	0.00%
0126011107	4404 BULL CREEK RD	GOERTZ PAUL MICHAEL	no	9165.14	0.00%
0223000123	4008 IDLEWILD RD 78731	GOLDING ROBERT L & NANCY M	yes	9460.46	0.56%
0223000119	4102 IDLEWILD RD 78731	GOTH JOHN A	no	9416.81	0.00%
0226000420	4501 FINLEY DR 78731	GUZMAN JOSE & KARLA RODRIGUEZ	no	8300.74	0.00%
0126010914	4502 BULL CREEK RD 78731	HAHN TIMOTHY M	yes	2318.37	0.14%
0122000504	1818 W 39 ST 78726	HAMLIN NICOLE	no	14123.07	0.00%
0126011110	2802 W 44 ST	HAMLIN NICOLE J	yes	3699.99	0.22%
0122020905	1905 W 41 ST 78731	HEHMSOTH CARL J & SHARON V	no	1613.80	0.00%
0122000706	3911 IDLEWILD RD 78731	HENDERSON JOHNN ROBERT	no	4139.73	0.00%
0226000806	2635 W 45 ST 78731	HERNANDEZ DANIEL	yes	8765.16	0.52%
0223000202	4009 IDLEWILD RD 78731	HORTON SAMUEL FRANKLIN APT 1909	no	2465.67	0.00%
0122000601	4004 IDLEWILD RD 78731	HRNCIR JOHN	yes	9497.93	0.56%
0226000128	4502 FINLEY DR 78731	HUME COLIN DAVID	no	1717.25	0.00%
0122000602	4002 IDLEWILD RD 78731	JACOB HONORA DESMOND	yes	9395.88	0.55%
0226000809	2629 W 45 ST 78731	JEANES RYDER F	yes	8669.17	0.51%
0122020822	1903 W 40 ST	JUDGE JOAN E	yes	6093.65	0.36%
0124000405	4220 BULL CREEK RD AUSTIN 78731	K&E PARTNERS LTD	no	33905.80	0.00%
0223000207	4103 IDLEWILD RD 78731	KASSAM SALIM & SHARMILA	yes	2092.44	0.12%
0122020912	1908 W 40 ST 78731	KHATIBI FAMILY REVOCABLE LIVING TRUST	no	2967.81	0.00%
0122000607	3902 IDLEWILD RD 78731	KOHLER ANNE T TRUSTEE A T KOHLER LIVING TRUST	yes	8427.82	0.50%
0226000804	2639 W 45 ST 78731	KOOHRANGPOUR REZA	yes	8613.84	0.51%

EXHIBIT I. CITY RESPONSE TO LANDOWNER PETITION

0223000116	4110 IDLEWILD RD 78731	LANDREAUX JOHN PATRICK % OZARK AUTOMOTIVE GROUP	yes	13724.80	0.81%
0122000709	4005 IDLEWILD RD 78731	LEGGE ROBERT MURRAY & DEBORAH DEBORAH EVE LEWIS	yes	2533.18	0.15%
0122000608	3900 IDLEWILD RD 78731	LINDSEY JAMES MALCOLM	no	19029.05	0.00%
0223000204	4013 IDLEWILD RD 78731	LOEHLIN JAMES N & LAUREL R G	no	3062.55	0.00%
0124000403	1904 W 42 ST 78731	LOUCKS JOHN S IV & MARLA BODOUR LOUCKS	no	6661.85	0.00%
0122020910	1904 W 40 ST	LOWRY WILLIAM PRICE III & LYDI LYDIA F LOWRY	no	10749.01	0.00%
0226000832	2611 W 45 ST 78731	LUND DONNA	no	13579.75	0.00%
0226000803	2641 W 45 ST 78731	MACALUSO JOSEPHINE	yes	9391.38	0.55%
0226000822	2617 W 45 ST 78731	MARTIN DEBRA LYNN	yes	12802.17	0.75%
0126011108	4402 BULL CREEK RD 78731	MAYFIELD SARAH R	no	10219.55	0.00%
0223000124	4006 IDLEWILD RD 78731	MCCALL DEAN	yes	9646.58	0.57%
0126011105	2803 W 45 ST 78731	MCCOLLUM JEFFERY & KAREN	no	5015.86	0.00%
0122000701	3901 IDLEWILD RD 78731	MIKA EMILY S & DALE W	no	6538.48	0.00%
0124000305	1906 W 41 ST 78731	MILEK RICHARD JOHN	no	218.18	0.00%
0223000210	4109 IDLEWILD RD 78731	MIRKIN DANA B & GAYLE L	no	2300.69	0.00%
0122000605	3908 IDLEWILD RD 78731	MODISSETT BENJAMIN & LESLIE & KENNETH & SANDRA C CAILLOUX	no	13655.46	0.00%
0124000310	1905 W 42 ST 78731	MONROE MARK M & GLENDA G	yes	5587.66	0.33%
0226000805	2637 W 45 ST 78731	MOORE JOHN R	yes	8955.96	0.53%
0226000811	2625 W 45 ST	MOORE LACY ELIZABETH	no	9080.27	0.00%
0124000404	1906 W 42 ST 78731	MUELLER PEGGY JEAN	no	1431.49	0.00%
0124000402	1902 W 42 ST 78731	MUELLER PEGGY JEAN	no	8749.99	0.00%
0223000206	4101 IDLEWILD RD 78731	NELSON KATHERINE	no	1984.76	0.00%
0126011106	2801 W 45 ST 78731	NGUYEN TRUNG & LORIS TRAN	yes	17742.67	1.05%
0226000633	4500 ERIN LN 78756	NICHOLS TROY & BARBARA	yes	21962.86	1.29%
0126010916	2802 W 45 ST 78731	OSHEA JENNIFER GASKINS	no	2021.80	0.00%
0226000234	2603 LA RONDE 78731	OVERSTREET INGA V & JENNIFER D GRAF	yes	16720.78	0.98%
0122000405	1815 W 39 ST 78731	PATTERSON NICHOLAS & ANGELA	no	6634.77	0.00%
0122020908	4006 BULL CREEK RD 78731	PERRY MATTHEW K	yes	11933.32	0.70%
0124000304	1904 W 41 ST 78731	PIGFORD WILLIAM SCOTT & LAURA LAURA ENTING PIGFORD	no	4870.59	0.00%
0122000707	4001 IDLEWILD RD 78731	PORTER MARK EDWARD	yes	2553.50	0.15%
0126011109	2800 W 44 ST 78731	RITTENHOUSE WILLIAM W	no	20323.87	0.00%
0122000501	3915 OAKMONT BLVD 78731	ROGERS LAUREN ELIZABETH & LEIGH ELLIS IV	no	13229.99	0.00%
0124000401	1900 W 42 ST 78731	ROSS ROBERT & BRENDA	no	12713.55	0.00%
0226000830	2519 W 45 ST	RUSHING ELAINE R	yes	9607.89	0.57%
0223000208	4105 IDLEWILD RD 78731	SAVAGE DAVID & STEPHANIE	yes	2305.27	0.14%
0226000247	2605 LA RONDE 78731	SCHOTTMAN STEPHEN T & EMILY H	yes	4945.75	0.29%
0124000311	1903 W 42 ST 78731	SCHRAE E DANA	yes	9458.67	0.56%
0223000114	4114 IDLEWILD RD 78731	SHAUKAT AAMER & CASSANDRA	yes	21342.01	1.26%
0223000131	4109 JEFFERSON ST 78731	SMITH THOMAS HENRY & STEPHEN LEROY LINDENBAUM	no	10474.03	0.00%
0124000309	1907 W 42 ST 78731	SIOBY ANNE ROSE	no	287.25	0.00%
0223000121	4012 IDLEWILD RD 78731	SPATH JOHN E	yes	9492.01	0.56%
0122000406	3806 BULL CREEK RD 78731	SPIRIT ROCK LLC	no	7725.49	0.00%
0223000110	4400 SHOAL CREEK BLVD 78756	STATE OF TEXAS	no	253906.24	0.00%
0223000212	4113 IDLEWILD RD 78731	STEWART THOMAS R	yes	8053.74	0.47%
0223000117	4108 IDLEWILD RD 78731	TAJCHMAN JUSTIN D & KRISTINA	yes	9670.57	0.57%
0226000815	2623 W 45 ST	TANNER ROBERT L	no	10099.96	0.00%
0122020809	1905 W 40 ST 78731	TAYLOR TERESA NELL & MARLIS EVE WEATHERLY	no	3108.71	0.00%
0122020911	1906 W 40 ST	TEXSTAR ACQUISITIONS LLC	no	7645.72	0.00%
0226000520	4501 OAKMONT BLVD 78731	THOMAS STEPHEN M	no	7251.04	0.00%
0223000118	4104 IDLEWILD RD 78731	TILTON TIMOTHY D & NAOMI ALEXA NAOMI ALEXANDRA	yes	15279.18	0.90%
0122000702	3903 IDLEWILD RD 78731	TORONYI BRIAN M & CHRISTINA A BURCIAGA	yes	3606.74	0.21%
0122000503	1822 W 39 ST 78731	TSCHESTER ERIC & SAYURI	no	11478.19	0.00%
0122000603	4000 IDLEWILD RD 78731	VAROZZA MICHAEL J & GWYN F	no	13797.25	0.00%
0226000808	2631 W 45 ST 78731	WAGNER TIM & DONNA WAGNER FLP	no	8587.13	0.00%
0226000419	2640 W 45 ST	WALDEN SAMUAL BRACKEN	yes	7583.29	0.45%
0223000213	4112 RIDGELEA DR 78731	WARE EDNA A TRUSTEE EDNA A WARE LIVING TRUST	yes	6305.56	0.37%
0124000104	4100 JACKSON AVE 78731	WESTMINSTER MANOR HEALTH FACILITIES CORP	no	131133.57	0.00%
0226000131	4503 BULL CREEK RD	WIELAND FAMILY LTD	no	8035.91	0.00%
0122020909	1900 W 40 ST	WIENER SABRINA S	no	15115.89	0.00%
0223000211	4111 IDLEWILD RD 78731	WILSON MICHAEL	no	2324.33	0.00%
0124000312	1901 W 42 ST 78731	WOLF ANGELA M	no	15741.27	0.00%
0124020307	4316 BULL CREEK RD 78731	WONG ALBERT S P & MAUREEN H TRUST AGREEMENT	no	14360.39	0.00%
0226000826	2517 W 45 ST 78756	YEAGER WESLEY	no	6700.37	0.00%
0223000113	4116 IDLEWILD RD 78731	ZIPFEL ERIC J	yes	14035.22	0.83%
0122000420	Address Not Found		no	2466.94	0.00%
0122021001	Address Not Found		no	2841.30	0.00%
0122000421	Address Not Found		no	4953.19	0.00%
Total				1600842.12	28.68%

EXHIBIT I. CITY RESPONSE TO LANDOWNER PETITION



City of Austin
Founded by Congress, Republic of Texas, 1839
Planning and Zoning Department
One Texas Center, 505 Barton Springs Road
P.O. Box 1088, Austin, Texas 78767

July 31, 2015

Mr. Chris Allen, Co-Chair
Rosedale NA zoning committee
c/o Some Assembly Required
1406 W 39th ½ Street
Austin, TX 78756

Subject: The Grove PUD

Dear Mr. Allen:

Thank you for your letter of July 23 2015 regarding The Grove Planned Unit Development (PUD) zoning request. You asked for responses to two questions relating to zoning petition rights. Regarding your first question, Staff has already stated that a valid petition signed by property owners representing 20% of the land area within 200 feet does not trigger a supermajority vote of the City Council since this is not a rezoning application but initiation of original zoning. This is consistent with Section 25-2-241 and Section 25-2-284 of the City of Austin Land Development Code (LDC). Section 25-2-241 (see below) recognizes the distinction between zoning and rezoning requests.

§ 25-2-241 - DISTINCTION BETWEEN ZONING AND REZONING.

A. **Zoning** is the initial classification of property as a particular zoning base district. Zoning amends the zoning map to include property that was not previously in the zoning jurisdiction or that was not previously included in the boundaries of a base district.

B. **Rezoning** amends the zoning map to change the base district classification of property that was previously zoned. The

Source: Section 13-1-401; Ord. 990225-70; Ord. 031211-11.

Section 25-2-284(A) (2) (see below) triggers a supermajority (3/4) vote of the City Council to approve a rezoning (not initial zoning) of a property. The LDC does not contain similar language for a zoning application.

§ 25-2-284 - REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.

A. The affirmative vote of three-fourths of the members of council is required to approve a proposed **rezoning** if:

(2) the proposed rezoning is protested in writing by the owners of not less than 20 percent of the area of land: (a) included in the proposed change; or (b) immediately adjoining the area included in the proposed rezoning and extending 200 feet from the area.

Your second question addressed whether a negative recommendation by the Zoning and Platting Commission to The Grove PUD zoning request would trigger the supermajority vote at the City Council. The short answer is no, since this is not a rezoning request. According to Section 25-2-284(A) (1) (see below), a supermajority (3/4) vote of the City Council is required to approve a rezoning (not initial zoning) of a property. The LDC does not contain similar language for a zoning application.

EXHIBIT I. CITY RESPONSE TO LANDOWNER PETITION

§ 25-2-284 - REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.

- A. The affirmative vote of three-fourths of the members of council is required to approve a proposed **rezoning** if:*
- (1) the Land Use Commission recommends denial of an application to rezone property to a planned unit development; or*

In summation, the Austin City Code limits valid petition rights to rezoning requests. It does not grant valid petition rights for the first (initial) zoning of a property. This is also consistent with a previous City of Austin Law Department opinion and State court decisions holding that petition rights do not apply to initial zoning.

If you have any questions regarding this determination, please call me at 512-974-2387 or by email at greg.guernsey@austintexas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Guernsey", with a stylized flourish at the end.

cc: Marc Ott, City Manager
Sue Edwards, Assistant City Manager
Deborah Thomas, Assistant City Attorney
Jerry Rusthoven, Current Planning Manager, Planning and Zoning Department

attachment: Law Department Memorandum dated January 23, 1985.

EXHIBIT I. CITY RESPONSE TO LANDOWNER PETITION



MEMORANDUM

TO: James B. Duncan, Director, Office of Land Development Services
Jim Smith, Director, Building Inspection Department

FROM: Walt McCool, Assistant City Attorney

DATE: January 23, 1985

SUBJECT: Implementation of Compatibility Standards

The Zoning Ordinance requires compliance with the compatibility standards for projects located in a certain proximity to property zoned or used "SF-5" or more restrictive. It is my opinion that property in interim zoning classification does not activate the compatibility standards.

The question is whether interim-zoned property is "zoned" within the meaning of the site development regulations in the Zoning Ordinance. Clearly, if a property owner wishes to install a nuclear test site next door to a single family home, the proposed project would have to meet the compatibility standards. The more difficult situation is where the proposed use is to be located next door to vacant property which is in an interim holding classification.

At least one Texas court has determined that interim classifications are imposed only to maintain the status quo pending the assignment of permanent zoning. Therefore, it is not necessary to comply with the notice and hearing requirements of the Zoning Enabling Act prior to interim zoning, since these procedural requirements are met prior to the hearings on permanent zoning. In Apollo Development Co. v. City of Garland, a property owner applied for permanent zoning on an interim-zoned tract. The surrounding property owners filed protest petitions which the city believed to be valid. The property owner won a declaratory judgment stating that the petition was invalid. The Court reasoned that a change from interim to permanent zoning would not give rise to protest rights, since such a change is really an original zoning.

I feel that this reasoning applies to our site development regulations as well. Property in an "I-SR" or other interim classification has not actually been zoned, in a legal sense. Therefore, the proximity of such property to a tract proposed for development should not require compliance with compatibility standards.

Walt McCool
Assistant City Attorney

WMC:taa

cc: Terry Childers, Senior Assistant City Manager
Andrew Martin, Assistant City Attorney
Marie Gaines, Assistant Director, Office of Land Development Services
Jim Bennett, Zoning Administrator