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Neighbors of The Grove PUD sue City over protest rights

Neighbors of the controversial proposed development, The Grove at Shoal Creek, filed suit Tuesday in district court against the City of Austin for the City's refusal to allow the surrounding property owners to submit a valid protest petition against the proposed zoning on the site.

Under state law, if 20% of property owners within 200 feet of a proposed zoning change file a protest petition with the City, it requires three-fourths of the City Council to approve the proposed zoning. The City has refused to recognize the rights of these property owners, claiming the City code and a 1972 court case voids those petition rights when the tract of land to be zoned has never been zoned before by the City. The 76-acre tract was previously owned and used by the state. The state law authorizing these protest rights has been on the books since 1927.

"We think the City is misinterpreting that old court case" said Grayson Cox, lead plaintiff. "We are asking the district court for a declaratory judgment telling us whether our interpretation or the City's interpretation is the right one."

The land, on Bull Creek Road near West 45th Street, is surrounded by residential neighborhoods built in the 1940s and 1950s. The tract was originally the site of the state school for African-American "orphans, deaf and blind youths." The City of Austin began providing services to the tract in 1918 and annexed it 1935 as the land continued to be used for various state facilities. Most recently, it was used by the Texas Department of Transportation for office space until the land was sold by the state in 2015.

"We believe these property owners should have the same rights as everyone else living in a developed part of the City," said Sara Speights, president of the Bull Creek Road Coalition (BCRC), which includes the seven neighborhood associations surrounding the proposed development.

Neighbors living within 200-feet of the property have filed a protest petition with the City. The City verified that the petition meets and exceeds the 20% requirement of the law, but the city refuses to acknowledge the protest rights of these neighbors and property owners.

This denial of protest rights continues a pattern of unfair treatment surrounding the City's administrative review of The Grove's planned unit development (PUD) zoning application.

In late March, the city and developer of The Grove revealed plans to demolish a single-family home owned by the developer adjacent to the property at 2627 West 45th Street, and for the City to build a street extension from The Grove onto 45th Street. The city described the demolishing of this house and building a street extension as "integral to the viability of the development." By

including this previously zoned property in the PUD application, the sole reason used by the City to deny the neighbors' protest rights was now invalidated. However, the City continues to refuse protest rights by labeling this ill-fated house and proposed street extension to serve The Grove as an "off-site improvement," intends to violate subdivision deed restrictions, and has yet to study the feasibility and public safety impacts of this proposal.

Continuing the pattern of peculiar decisions, the City has refused to comply with a public information request for the Synchro traffic file submitted by the developer as part of The Grove's PUD zoning application. Cox, who is also vice-president of the BCRC and a transportation engineer, explains, "This file contains the underlying assumptions and variables used by the developer's traffic engineer to develop the traffic impact analysis that was reviewed and approved by the City."

This traffic impact analysis estimates over 19,400 vehicle trips a day would be generated by the substantial proposed development. Before the City's required traffic review of The Grove's PUD zoning application was abruptly ended last month under questionable circumstances, the City's traffic engineers were unsure if the already congested two-lane Bull Creek Road could support the 19,400 trips, in addition to the current 7,000 vehicle trips a day.

The developer asked the city not to share the Synchro file with the BCRC and neighbors who filed the public information request on January 12.

The city delayed a decision for two months and then sent the request to the State's Attorney General for a decision on whether the information is public even though the Texas Board of Professional Engineers told the BCRC that it was indeed public information. The AG is not expected to reply to the City until the end of May.

"This refusal to release public information has forced neighbors to hire their own professional traffic engineer to help determine the true impact of this unprecedented amount of traffic," Cox said. "Austin residents should not be treated like this."

The complete Petition for Declaratory Judgment can be downloaded here:
<http://tinyurl.com/petitionrights>

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