

Agenda Item # 56

Walsh, Wendy

From Justin Spillmann [justin@charlesbrownlaw.com]
Sent Thursday, February 15, 2007 11:15 AM
To Walsh, Wendy
Cc justin@charlesbrownlaw.com
Subject Fox Hill - Request for postponement

Wendy

Thank you for calling me back this morning regarding the Fox Hill subdivision. As stated, I represent the Spillmann tract of land that surrounds the proposed Fox Hill subdivision.

I have several concerns that I think need to be addressed before the city council approves the zoning application. Therefore, I respectfully request that the zoning case be postponed until March 8, 2007.

The following are some of my concerns:

1. It appears as if a portion of the property to be zoned MF-2 is actually part of the 100-year floodplain. Page 2 of the zoning change review sheet states that RR zoning is appropriate for Onion Creek and its 100-year floodplain, and MF-2 is appropriate for the other portions. I do not fully understand why a portion of the floodplain is included in the MF-2 zoning area, when the review sheet states that RR is appropriate for such portions. The private deed restrictions, discussed in more detail below, state that development should be limited to **12 units per acre not in the 100-year floodplain**. Therefore, I believe zoning a portion of the floodplain as MF-2 could be problematic, due to the fact that the developer could comply with the zoning regulations but not the private restrictive covenants affecting the property.

2. There is a set of private restrictive covenants recorded between LIC (the prior owners of the Onion Creek Golf Course and the subject property) and Onion89, Inc. (the purchaser from LIC). I was surprised to hear that you were not aware of these restrictive covenants. In regard to the covenants, there are several provisions that protect the Onion Creek subdivision to a greater extent than the other surrounding properties, including but not limited to construction standards, set-backs, and location of storage facilities for boats, trailers, etc. Additionally, the ability to enforce the covenants lies with LIC and the owners of the golf course. LIC has since sold off almost all of their assets in the area, and therefore have limited incentive to enforce the restrictions in the future.

3. In regard to the TIA, it does not appear that the TIA included the possibility of Antone Blue being connected to Bradshaw Rd to the east. Only this past Monday, Feb. 12, 2007, has the applicant approached my family regarding specific plans to traverse our property to connect to Bradshaw Road. If this proceeds, it will result in significantly more traffic on Antone Blue, as vehicles in the Bella Fortuna (Buratti) subdivision would utilize the road, as would any future development that may occur on my family's property. The intersection of Antone Blue at Multi Family Lot 1 is already grading out at a C for both 2009 and 2016 in the TIA. The Fox Hill developer has plans to develop the Bella Fortuna (Buratti) tract to the east, which would create a significant burden on Antone Blue—even if my family's property wasn't developed—especially in light of the fact that there are other significant developments being constructed on Bradshaw Rd.

4. In regard to wastewater, there is no easement in place for wastewater services to be provided to the subject property.

I believe that there will be a significant impact on my family's property. The MF-2 zoning area is adjacent to our property, and is not shielded from us in the same manner that Onion Creek itself and the RR zoning area shield the MF-2 area from the Onion Creek subdivision. The fact that my family has no enforcement authority in the private restrictive covenants, and since the city does not routinely enforce private covenants, suggests that our land will be impacted by this development to a greater degree than the Onion Creek subdivision, without allowing us any protection.

I respectfully request that this zoning case be postponed until these issues can be addressed. Feel free to contact me if you have any questions.

2/15/2007

Thank you,
Justin Spillmann

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