

Frie Planning, Development



& Construction, LLC

Item # 117

Frie Planning, Development & Construction, LLC

1921 Lohman's Crossing Rd, Suite 100
Austin, Texas 78734
(512) 276-8895 (Office)
(512) 925-2562 (Mobile)

December 10, 2013

Austin City Council
Austin, Texas 78701

RE: C14-2013-0125 Sawmill Rezoning

Dear Mayor/City Council Members:

I am a former City Planning Director and agent for property owner Atlas Cook IV so writing to protest the arbitrary and capricious 11/5 ZAP recommendation Conditional Overlay (CO) amendment that limits this 12.8 acre property to a maximum of 30 lots and respectively request the City Council to approve this I-RR rezoning to SF-2 without the Part 2. CO conditions on attached draft zoning ordinance:

- A. Development of the Property shall not exceed 2.3341 residential units per acre.
- B. Development of the Property shall not exceed 30 residential units.

During the rezoning process, we met with the Oak Parke Home Owners Association (OPHOA) representing the approximate 350 homes within the Oak Parke neighborhood and discussed that the maximum allowable density for SF-2 zoning of 97 residential units was too dense and not compatible with the existing neighborhood so we agreed to limit property to no more than 53 lots for the property and no portion of property shall ever be zoned except RR, SF-1 or SF-2. The HOA Attorney Connie Heyer drafted the attached Restrictive Covenant and Agreement that Mr. Cook signed and legally recorded (Document No. 2013174490) on 9/18/13. Due to the compromised agreement, the OPHOA voted unanimously in their open public meeting at Bethany Church to support the rezoning as shown on the attached letter dated 9/17/13 signed by OPHOA Board of Directors.

At the 11/5 ZAP meeting, only one out of the 350 homeowners attended and spoke in opposition stating property would be too dense although at 53 lots would be less dense than remainder of neighborhood.

Once public hearing was closed, a motion was made and seconded to recommend SF-2 zoning and just before roll call for vote, Chair Betty Baker made an arbitrary and capricious amendment to further limit development to a maximum of 30 lots which was then adopted unanimously.

The reasons for our opposition to this ZAP recommendation is that we have full HOA support for the 53 lots, the ZAP amendment was arbitrary and capricious with no factual basis for the limited density and rezoning is about compatible land uses not maximum lot counts. At 53 lots the proposed subdivision would have average .2 acre lots which is compatible with the average .2 acre lots in the existing Oak Parke Subdivision.

This property already has numerous city adopted land use and environmental regulations in place that will limit the density, including but not limited to, zoning development restrictions, Edwards Aquifer Recharge Zone, Barton Springs Zone and Critical Water Quality Zone which will already limit the lot density but these regulations are based on engineering criteria so should allow that to determine number of lots during platting process not an arbitrary and capricious amount determined by a Commissioner with no basis in fact.

Lastly, rezoning should be considering compatible land uses not maximum lots counts as the basis for the approval and this property is bordered by James Bowie High School on the north, SF-2 zoned Oak Parke subdivision on the east, SF-2 zoned Oak Parke Estates subdivision on the south and the Circle C Ranch Metropolitan Park (which includes Slaughter Creek and Veloway) on the west so our rezoning request of SF-2 (with no CO) is a very compatible land use with the surrounding area.

The City of Austin has established twelve Zoning Principles as a guide to preserve the compatibility of land uses. City should use their adopted following principles to evaluate all rezoning requests:

- Zoning should be consistent with the Future Land Use Map or adopted neighborhood plan.
- Zoning should satisfy a public need and not constitute a grant of special privilege to an individual owner; the request should not result in spot zoning.
- Granting a request for zoning should result in an equal treatment of similarly situated properties.
- Granting the zoning should not in any way set an undesirable precedent for other properties in the neighborhood or within other areas of the city.

-
- Zoning should allow for a reasonable use of the property.
 - Zoning changes should promote compatibility with adjacent and nearby uses and should not result in detrimental impacts to the neighborhood character.
 - Zoning should promote a transition between adjacent and nearby zoning districts, land uses, and development intensities.
 - Zoning should promote the policy of locating retail and more intensive zoning near the intersections of arterial roadways or at the intersections of arterials and major collectors.
 - The request should serve to protect and preserve places and areas of historical and cultural significance.
 - Zoning should promote clearly identified community goals such as creating employment opportunities or providing for affordable housing.
 - A change in conditions has occurred within the area indicating that there is a basis for changing the originally established zoning and/or development restrictions for the property.
 - The rezoning should be consistent with the policies adopted by the City Council or Planning Commission/Zoning and Platting Commission.

As you can see, the Zoning Principles are about compatible land uses, not lot counts, so **we respectfully request the City Council to approve C14-2013-0125 from I-RR to SF-2 with no CO. If the Council prefers to include a CO, then we request the zoning ordinance be amended to:**

- A. Development of the Property shall not exceed 4.1342 residential units per acre.**
- B. Development of the Property shall not exceed 53 residential units.**

This request is consistent with the legally recorded OPHOA Restrictive Covenant and Agreement between OPHOA Board of Directors and property owner Mr. Cook (Document No. 2013174490) from these residents that lives are directly impacted by this agreement not the ZAP Commissioners that seemed compelled to further limit the residential units from the Dias with an arbitrary and capricious density.

Please contact me at 512-925-2562 or ross@frieppdc.com if you prefer to discuss further.

Sincerely,



Ross Frie, AICP
President/CEO

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING INITIAL PERMANENT ZONING FOR THE PROPERTY LOCATED AT 4010 SAWMILL DRIVE AND CHANGING THE ZONING MAP FROM INTERIM-RURAL RESIDENCE (I-RR) DISTRICT TO SINGLE FAMILY RESIDENCE STANDARD LOT-CONDITIONAL OVERLAY (SF-2-CO) COMBINING DISTRICT.

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

PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from interim-rural residence (I-RR) district to single family residence standard lot-conditional overlay (SF-2-CO) combining district on the property described in Zoning Case No. C14-2013-0125, on file at the Planning and Development Review Department, as follows:

12.85 acre tract of land, more or less, out of the and a portion of the Samuel H. Hamilton Survey Number 16, Abstract Number 340 the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this ordinance (the "Property"),

locally known as 4010 Sawmill Drive in the City of Austin, Travis County, Texas, and generally identified in the map attached as Exhibit "A".

PART 2. The Property within the boundaries of the conditional overlay combining district established by this ordinance is subject to the following conditions:

- A. Development of the Property shall not exceed 2.3341 residential units per acre.
- B. Development of the Property shall not exceed 30 residential units.

Except as specifically restricted under this ordinance, the Property may be developed and used in accordance with the regulations established for the single family residence standard lot (SF-2) base district and other applicable requirements of the City Code.

FIELD NOTES

BEING 12.853 ACRES OF LAND, MORE OR LESS, OUT OF AND A PORTION OF THE SAMUEL H. HAMILTON SURVEY NUMBER 16, ABSTRACT NUMBER 340, TRAVIS COUNTY, TEXAS AND BEING ALL OF THAT CERTAIN CALLED 12.82 ACRE TRACT OF LAND CONVEYED BY DEED ATLAS F. COOK IV AS RECORDED IN DOCUMENT NUMBER 2003269232 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 12.853 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a found ½" iron rod for the northeast corner of said 12.82 acre tract of land, and this tract of land, same being the southeast corner of Lot 86, Block B of Circle C Ranch, Phase C Section One (recorded in Book 87, Page 360 of the Travis County, Texas Plat records) as conveyed to the Austin Independent School District as recorded in Volume 9802, Page 303 or the Real Property Records of Travis County, Texas, and being the northwest corner of Lot 5, Block E of Oak Creek Parke Section One as recorded in Book 89, Page 96 of the Plat Records of Travis County, Texas;

THENCE S 29° 52' 47" W, along the westerly line of said Lot 5. passing a ½" iron rod found on the northerly right-of-way line at the westerly terminus of Sawmill Road at a distance of 129.95, passing the south right-of way line at a distance of 189.95 feet, (being the northwest corner of Lot 1, Block G of said subdivision) continuing along the north line of said Block G for a **TOTAL** distance of 391.27 feet to a ½" iron rod found for the southeast corner of said 12.82 acre tract of land and this tract of land, same being on the westerly line of Lot 3 of said Block G;

THENCE N 60° 09' 27" W, (Basis of Bearings) along the common dividing line between said 12.82 acre tract of land and said Lots 6-12, Block G of said Oak Creek Parke Section One, same being the south line of this tract of land, a distance of 599.90 feet to a ½" iron rod found for the north corner of Lots 12 and 13 of said subdivision, and being the northeast corner of Lot 5 of the Enclave at Oak Parke Section 2 also being an angle point in the south line of this tract of land;

THENCE N 58° 46' 45" W, continuing along the south line of said 12.82 tract of land, passing the northwest corner of said Lot 5 at 137.07 feet, same being the northeast corner of Lot 6, Block A of The Enclave At Oak Parke Section 2, continuing along the south line of said 12.82 acre tract of land and this tract of land now being the common dividing line between said 12.82 acre tract of land and said Lot 6 for a **TOTAL** distance of 841.55 feet to a ½" iron rod found for the southwest corner of said 12.82 acre tract of land and this tract of land, same being the northwest corner of said Lot 6 and being on the easterly line of that certain 268.218 acre tract of land conveyed by deed to the City of Austin as recorded in Volume 9495, Page 281 of the Real Property Records of Travis County, Texas;

THENCE N 29° 47' 13" E, along the common dividing line between said 268.218 acre tract of land and said 12.82 acre tract of land, same being the west line of this tract of land, a distance of 379.85 feet to a 1" diameter iron pipe found for the northwest corner of said 12.82 acre tract of land and this tract of land, same being the southwest corner of said Lot 86, Block B of Circle C Ranch Phase C Section 1;

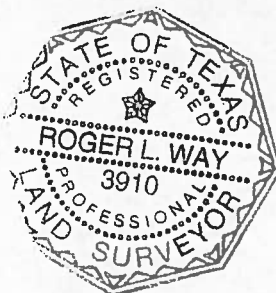


THENCE along the common dividing line between said 12.82 acre tract of land and said Lot 86 the following four (4) courses and distances:

- 1) S 59° 39' 00" E 410.55 feet, a 1" diameter iron pipe found
- 2) S 59° 42' 35" E 815.59 feet, a 1" diameter iron pipe found
- 3) S 60° 38' 03" E 9.32 feet, a 1" diameter iron pipe found, and
- 4) S 60° 28' 07" E 206.41 feet to **THE POINT OF BEGINNING** and containing 12.853 acres of land< more or less

This metes and bounds description is to accompany a survey map of same date.

Roger L. Way
ROGER L. WAY
R.P.L.S. No. 3910
JOB No. 01B20512-1



5/22/13
Date



SCALE: 1"=150'

EXHIBIT A

LEGEND

- IRON ROD FND.
- PIPE FND.

CITY OF AUSTIN
268.218 ACRES
VOL. 9495, PG. 281

(N 29°53'14"E 379.96')
N 29°47'13"E 379.85'

THE ENCLAVE AT OAK PARKE
SECTION 2
BOOK 102, PG. 107-108
LOT 6, BLOCK A

(N 58°56'51"W 841.49')
N 58°46'45"W 841.55'

CIRCLE C RANCH
SECTION ONE, PHASE C
BOOK 87, PG. 36D-37A
LOT 86, BLOCK B

SURVEYOR'S NOTES

() DENOTES RECORD INFORMATION

THE ENCLAVE AT OAK PARKE
SECTION 1
BOOK 102, PG. 105-106
BLOCK G

ATLAS F. COOK IV
12.853 ACRES
DOC. 2003269232
O.P.R.T.C.T.

(S 59°44'43"E 815.82')
S 59°42'38"E 815.59'

IMPORTANT NOTICE

THIS SURVEY WAS PREPARED WITHOUT
THE BENEFIT OF A TITLE REPORT AND
DEPicts ONLY THOSE BOUNDARIES,
EASEMENTS AND BUILDING LINES SHOWN
ON THE RECORDED PLAT. BOUNDARY
AMENDMENTS, ADDITIONAL EASEMENTS
AND SETBACKS MAY AFFECT THIS TRACT.

OAK CREEK PARKE
SECTION ONE
BOOK 89, PG. 94-96
BLOCK G

LOT 12

LOT 11

LOT 9

LOT 8

LOT 7

LOT 6

LOT 4

LOT 3

LOT 2

LOT 1

SAWMILL DRIVE

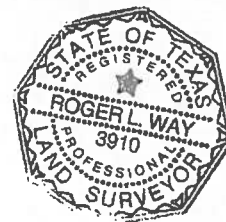
P.O.B.

LOT 5, BLOCK E

(S 29°52'47"W 391.27')
(S 29°58'57"W 391.35')

(S 60°45'22"E 9.27')
S 60°38'03"E 9.32'

(S 60°30'15"E 206.44')
S 59°08'45"E 206.41'



Roger L. Way



4010 SAWMILL ROAD




ALL POINTS SURVEYING

1714 FORTVIEW, SUITE 200
AUSTIN TX. 78704

TELE.: (512) 440-0071 - FAX: (512) 440-0199

SURVEY DATE: 08-22-13
Job No. 08B29513



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

ZONING

ZONING CASE#: C14-2013-0125

1" = 400'

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 by the City of Austin regarding specific accuracy or completeness.

Exhibit B



STATE OF TEXAS
COUNTY OF TRAVIS

Restrictive Covenant and Agreement

This Restrictive Covenant and Agreement is made on the date set forth below by Atlas F. Cook, IV (the "Grantor") and Oak Parke Homeowners Association, Inc. (the "Association").

Grantor is the owner of certain real property (the "Property") in Travis County, Texas, described in Exhibit "A" attached to hereto.

The Grantor desires that the Association support Grantor's application to the City of Austin for SF-2 zoning (Single Family Residence – Standard Lot) on the Property. The Association desires that Grantor restrict the number of residential lots that shall ever be platted on the Property to 53 and that the Property never be zoned for any use except for the current RR zoning (Rural Residence), SF-1 zoning (Single Family Residence – Large Lot) or SF-2 zoning.

In consideration for the Grantor's imposition of the restrictive covenants contained herein on the Property, the Association hereby agrees to support Grantor's application to the City of Austin for SF-2 zoning on the Property by (1) providing Grantor with a letter signed by a duly authorized representative of the Association, indicating the Association's support, and (2) as reasonably necessary to confirm such support, making a representative of the Board of Directors reasonably available to confirm such support to City of Austin representatives.

In consideration for the Association's support of Grantor's SF-2 zoning application, Grantor hereby imposes the following restrictive covenants on the Property, effective upon recording, to run with the land and be forever binding on all successors and assigns:

1. Number of Lots. No more than 53 residential lots shall ever be platted on the Property.
2. Zoning. No portion of Property shall be zoned for any use except for the current RR zoning (Rural Residence), SF-1 zoning (Single Family Residence – Large Lot) or SF-2 zoning (Single Family Residence – Standard Lot).

Rights and obligations of the Association hereunder shall be enforced and carried out by the Board of Directors of the Association on behalf of the Association. These restrictive covenants shall be binding on the Property for a period of 10 years from the date of recordation in the Travis County Official Public Records, after which time they will automatically renew for successive 10 year terms. This Restrictive Covenant and Agreement may only be amended or terminated by mutual agreement of the Association and Grantor, or their successors and assigns, and may be enforced by either party.

Agreed to this 18 day of September, 2013.

GRANTOR

Atlas F. Cook IV

Atlas F. Cook, IV

Date: September 18, 2013

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 18 day of Sept,
2013, by Atlas F. Cook, IV in the capacity stated above.

Barry Smith
Notary Public, State of Texas



GRANTEE:

Oak Parke Homeowners Association, Inc.
Acting by and through its Board of Directors

By: _____

[Signature]

Title: President of Oak Parke Home Owner Association

Printed name: Monique A. Wells

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 16th day of September,
2013, by MONIQUE A. WELLS in the capacity stated above.

[Signature]
Notary Public, State of Texas

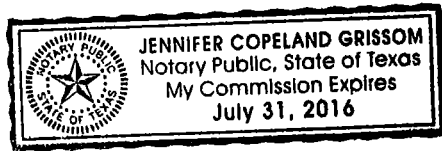


Exhibit "A"

**Approximately 12.82 acres of land as described in that
Warranty Deed filed of record in Document No. 2003269232,
Official Public Records of Travis County, Texas.**

**After recording return to
Niemann & Heyer LLP
1122 Colorado, Suite 313
Austin, TX 78701**



**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**

Dana DeBeauvoir

**DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS**

September 20 2013 10:01 AM

FEE: \$ 42.00 2013174490



We, the Board of Directors for Oak Parke Homeowner's Association, have voted unanimously to support the rezoning of the attached 12.853 acre property at 4010 Sawmill Road from I-RR (Rural Residential) to SF-2 (Single Family Resident – Standard Lot) as compatible zoning with the remainder of our neighborhood that is currently zoned SF-2 (Single Family Resident – Standard Lot).

Legal description of lots for rezoning:

ABS 340 SUR 16 HAMILTON S ACR 12.000 (1-D-1)
ABS 340 SUR 16 HAMILTON S ACR .820

Signed:

A handwritten signature in blue ink, appearing to read "Monique Wells", written over a horizontal line.

Monique Wells, President

Date:

A handwritten date in blue ink, "17 SEPT 2013", written over a horizontal line.

A handwritten signature in blue ink, appearing to read "Tom Young", written over a horizontal line.

Tom Young, Vice President

A handwritten date in blue ink, "Sept 17, 2013", written over a horizontal line.

A handwritten signature in blue ink, appearing to read "Gena Minjares", written over a horizontal line.

Gena Minjares, Treasurer

A handwritten date in blue ink, "17 Sept 2013", written over a horizontal line.