

# **PLANNING AND ZONING COMMISSION**

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**MINUTES OF A REGULAR MEETING FOR THE PLANNING AND ZONING COMMISSION OF THE CITY OF PEARLAND, TEXAS, HELD ON JULY 21, 2003, IMMEDIATELY FOLLOWING THE JOINT PUBLIC HEARING, IN THE FIRST FLOOR COUNCIL CHAMBERS OF CITY HALL, 3519 LIBERTY DRIVE, PEARLAND, TEXAS**

## **I. CALL TO ORDER**

The Regular Meeting was called to order with the following present:

Chairman	Todd Iocco
P&Z Commissioner	Ray Bacon
P&Z Commissioner	Sheryl Greiner
P&Z Commissioner	Don Sederdahl
P&Z Commissioner	Robert Scherrer
Deputy City Attorney	Nghiem Doan
Plat and Plans Administrator	Richard Keller
Executive Director of Community Services	Tobin Maples
Planner I	Theresa Grahmann
Temp. P&Z Secretary	Jennifer Gonzales

P&Z Commissioner Ruby Sandars was absent.

## **II. APPROVAL OF MINUTES**

**June 16, 2003**  
**July 7, 2003**

Commissioner Sederdahl made a motion to approve the above listed minutes as presented with a second by Commissioner Bacon.

**Motion to approve passed 5 to 0.**

## **III. PUBLIC HEARING FOR CLOVERGATE COMPLEX REPLAT**

### **1) CALL TO ORDER**

Chairman Iocco called to order agenda item III for a public hearing on a replat at 7:10 p.m.

### **2) PURPOSE OF HEARING**

# **PLANNING AND ZONING COMMISSION**

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**Clovergate Complex, a partial replat of the Original Townsite of Pearland of Lots 20-27 in block 15 of The Original Townsite of Pearland in the H.T.&B. R.R. Co. Survey, abstract No. 232.**

Plat and Plans Administrator Richard Keller stated the plat is a replat of property for the First Baptist Church. He stated staff has brought the item forward for a public hearing because it is a state requirement.

**3) PERSONS WISHING TO SPEAK FOR THE REQUEST**

Kevin Cole, 2319 Frances, Pearland, TX 77584 stated that he is in favor of the replat. He explained they have went through the required hearings for a "PUD" and this is the final step of the platting process.

**4) PERSONS WISHING TO SPEAK AGAINST THE REQUEST**

NONE

**5) STAFF/COMMISSION DISCUSSION**

Chairman Iocco asked if staff has any problems with the plat. Plat and Plans Administrator Richard Keller replied staff does not.

**6) ADJOURNMENT**

The public hearing adjourned at 7:15 p.m.

## **IV. NEW BUSINESS**

**A. CONSIDERATION & POSSIBLE ACTION - Clovergate Complex, a partial replat of the Original Townsite of Pearland of Lots 20-27 in block 15 of The Original Townsite of Pearland in the H.T.&B. R.R. Co. Survey, abstract No. 232.**

Plat and Plans Administrator Richard Keller stated staff recommends approval of the replat as presented.

Commissioner Bacon made a motion for approval with a second by Commissioner Sederdahl.

**Motion to approve passed 5 to 0.**

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## **B. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1115**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Commercial District (C), on the following described property, to wit:**

### **Zone Change Application No. 1115**

**Legal Description:** 2.467 acres, out of the H.T. & B.R.R. Company Survey, Abstract 243, Tract 48A and 48A2, Brazoria County, Texas (8027 Broadway Street, at Zapalac Road)

**Owner:** William and Katherine Favor  
3933 Meadowlark Way  
Pearland, Texas 77584

**Agent:** No agent

Commissioner Sederdahl made a motion to forward Zoning Application No. 1115 to City Council for approval. Commissioner Bacon seconded the motion.

Commissioner Greiner stated that the Comprehensive Plan calls for “General Business District” and they are requesting “Commercial”. She stated that is quite a jump from “General Business” to “Commercial”. She added that the property backs up to Residential and she would like to see some kind of buffer between the two properties.

Chairman Iocco shared the concern for the request of “Commercial” zoning on this property.

Commissioner Bacon argued the whole section backs up to FM 518 and he can't see any problems with this property being “Commercial”. He commented everything along FM 518 is some form of Commercial.

Commissioner Greiner stated the current plan calls for “General Business District”. Therefore, she cannot support “Commercial”. Chairman Iocco concurred with Commissioner Greiner.

Chairman Iocco called for the vote.

**Motion to approve passed 3 to 2.**

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Voting Record:

“Aye” - Commissioner’s Bacon, Scherrer, and Sederdahl.

“No” - Chairman Iocco and Commissioner Greiner.

**Commissioner Scherrer made a motion to combine applications no. 1117 and 1118 together. Commissioner Sederdahl seconded the motion.**

**Motion failed 2 to 3.**

## **C. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1117**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Single Family Dwelling District (R-1), on the following described property, to wit:**

### **Zone Change Application No. 1117**

**Legal Description: 0.619 acres of land, being Tract No. 3 in the Sandoval Subdivision located in the west one-half of the northwest one quarter of the northeast one quarter of Section 15, H.T. & B.R.R. Company Survey, Abstract 241, Brazoria County, Texas (Morenci Street)**

**Owner: Jose E. Quintonilla  
8110 Gulick Lane  
Houston, Texas 77075**

**Agent: No agent**

**Commissioner Bacon made a motion to forward Zoning Application No. 1117 to City Council for denial. Chairman Iocco seconded the motion.**

**Commissioner Bacon stated the he has a major concern. He added that you now have an “SD” property and if it is changed to “Residential” then the concurrent “Commercial” property would be penalized in the future should it ever bring in a new business. Mr. Bacon explained that the Commercial property would then be required to abide by the masonry fence requirements because it is along a residential property.**

# PLANNING AND ZONING COMMISSION

Commissioner Scherrer argued that he does not think the "Residential" property owner should be penalized and not receive his zoning because there may be a business in the future.

Discussion ensued regarding a Commercial property being near Residential property. Commissioner Scherrer pointed out there would be a buffer of Suburban Development.

Commissioner Bacon asked if the "SD" was undeveloped land. Chairman Iocco replied it is undeveloped.

Chairman Iocco called for question.

**Motion to deny failed 1 to 4.**

Voting Record:

"Aye" - Commissioner Bacon

"NO" - Chairman Iocco and Commissioner's Greiner, Sederdahl, and Scherrer.

Commissioner Scherrer made a motion to forward Zoning Application No. 1117 to City Council for approval with a second by Commissioner Sederdahl.

**Motion to approve passed 3 to 2.**

Voting Record:

"Aye" - Commissioner's Greiner, Scherrer and Sederdahl.

"No" - Chairman Iocco and Commissioner Bacon.

## **D. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1118**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Single Family Dwelling District (R-1), on the following described property, to wit:**

### **Zone Change Application No. 1118**

**Legal Description:** 0.620 acres of land, being Tract No. 7 in the Sandoval Subdivision located in the west one-half of the northwest one quarter of the northeast one quarter of Section 15, H.T. & B.R.R. Company Survey, Abstract 241, Brazoria County, Texas (Morenci Street)

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**Owner:** Jose E. Quintonilla  
8110 Gulick Lane  
Houston, Texas 77075

**Agent:** No agent

Commissioner Greiner made a motion to forward Zoning Application No. 1118 to City Council for approval with a second by Commissioner Bacon.

**Motion to approve passed 5 to 0.**

## **E. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1116**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Estate Lot Single Family Dwelling District (R-E), on the following described property, to wit:**

### **Zone Change Application No. 1116**

**Legal Description:** 9.7980 acres of land, being the east ½ of Lots 11 and 12 of the Allison Richey Gulf Coast Home Company Subdivision, being part of the Suburban Gardens, situated in the H.T. & B.R.R. Company Survey, Abstract 304, Brazoria County, Texas (County Road 403 (Hughes Ranch Road), east of CR 94)

**Owner:** Lisa and David Tran  
10522 Sagepark  
Houston, Texas 77089

**Agent:** Paksima Group  
203 Aurora Street  
Houston, Texas 77008

Commissioner Scherrer made a motion to forward Zoning Application No. 1116 to City Council for approval with a second by Commissioner Bacon.

Commissioner Greiner asked for a point of information. She clarified the developer is asking for “RE” but they are going to subdivide at a later date.

Executive Director of Community Services Tobin Maples stated she is correct and if the developer does choose to subdivide they will have to do ½ acre lots. He

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added that he is not certain of what the developer is going to do. Mr. Maples stated that staff had a Pre-Development Meeting with the developer and they presented a conceptual plan with subdividing the land into 3 lots.

**Motion to approve passed 5 to 0.**

**F. CONSIDERATION & POSSIBLE ACTION – A Final Plat of Autumn Lake Section Three, a Subdivision of 18.8283 acres located in the H.T.&B. R.R. Co. Survey, Abstract 304, City of Pearland, Brazoria County, Texas.**

Plat and Plans Administrator Richard Keller stated that Theresa Grahmann, Planner, has attached a memo to the plat with an explanation of why this plat is being presented. Mr. Keller added that the plat was approved several weeks ago with a condition that the plat would not be recorded until they take out the liftstation (a note was added to the plat). He stated that the developer cannot take out the liftstation until the sewer line is finished on FM 518, therefore would like to add a different note to the plat stating that the subdivision would not be accepted by City Council until the liftstation is removed. Mr. Keller added that doing the plat this way would allow for them to record the plat now and get started on the subdivision construction.

Chairman Iocco asked for clarification.

Mr. Keller stated the developer is asking to get this plat recorded with a note added to the plat stating that the subdivision will not be accepted by City Council until the temporary liftstation is removed.

Commissioner Greiner asked if they would be able to build. Mr. Keller replied they would be able to put the infrastructure in but not build any homes until the subdivision is accepted by City Council.

Commissioner Bacon made a motion to approve the Final Plat of Autumn Lake Section Three with staff's comments. Commissioner Scherrer seconded the motion.

**Motion to approve passed 5 to 0.**

**G. CONSIDERATION & POSSIBLE ACTION – Amending plat of Towne Lake Estates Section Two, being 30.3614 acres of land composed of two tracts in the L.W. Murdock Subdivision recorded in Volume 29, page 174 of the Brazoria County Deed Records, and out of the A.C.H.&B. Survey, A-594, Brazoria County, Texas, M.U.D. 18.**

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Plat and Plans Administrator Richard Keller stated that this amending plat is to remove Note 24 from the plat.

Commissioner Scherrer made a motion to approve the Amending Plat of Towne Lake Estates Section Two with a second by Commissioner Sederdahl.

**Motion to approve passed 5 to 0.**

## **H. CONSIDERATION & POSSIBLE ACTION – Final Plat of Bellavita at Green Tee Section Four, being a subdivision of 32.6281 acres of land out of the W.D.C. Hall Survey, A-23, City of Pearland, Harris County, Texas.**

**Variance Request: Request by Eddie A. Taher of Century Engineering, Inc. for a variance from the Subdivision Ordinance to allow for the construction of the proposed underground utilities in Bellavita at Green Tee Section 4 to commence and proceed simultaneously with the construction of the 15-acre detention pond that will serve Bellavita at Green Tee 4.**

Plat and Plans Administrator Richard Keller stated that staff recommends approval of the plat as presented. He added that the variance request is for construction on both the detention and underground utilities at the same time. Mr. Keller commented that staff is recommending approval of the variance request also.

Commissioner Scherrer asked which is upstream. Mr. Keller replied that the detention is upstream.

Commissioner Bacon made a motion to approve the plat and variance request for Bellavita at Green Tee Section Four. Commissioner Sederdahl seconded the motion.

Discussion ensued between the Commission and Mr. Keller regarding drainage.

Commissioner Greiner asked when the detention will be done. She stated she is concerned that the developer will start paving before the detention is finished. Commissioner Greiner stated that what if the developer starts paving before they are ready to hold the water, especially now during hurricane season.

Terry Brooks of West Development stated that the request is specifically for underground utilities only, which does not include paving. She added that they are about 50% complete on the detention pond.

**Motion to approve passed 4 to 1.**

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## Voting Record:

"Aye" - Chairman Iocco and Commissioner's Bacon, Scherrer, and Sederdahl.

"No" - Commissioner Greiner.

Commissioner Greiner stated for the record that her concern is the developer is trying to pull the cart before the horse.

### **I. CONSIDERATION & POSSIBLE ACTION – Final Plat of Shadow Creek Ranch SF-18A, 12.237 acres, being out of the H.T.&B.R.R. Co. Survey, Section 82, Abstract 565, City of Pearland, Brazoria County, Texas.**

Plat and Plans Administrator Richard Keller stated that this plat was previously denied because not all of the lienholders were listed on the plat. He stated the developer has submitted an updated title report, therefore he recommends approval of the plat as presented.

Commissioner Scherrer made a motion to approve the Final Plat of Shadow Creek Ranch SF-18A with a second by Commissioner Bacon.

**Motion to approve passed 5 to 0.**

### **J. CONSIDERATION & POSSIBLE ACTION – Final Plat of Shadow Creek Ranch SF-18B, 20.120 acres being out of the H.T.&B. R.R. Co. Survey, Section 82, Abstract 565, City of Pearland, Brazoria County, Texas.**

Plat and Plans Administrator Richard Keller stated this plat had the same issue as the previously mentioned plat, therefore staff recommends approval as presented.

Commissioner Scherrer made a motion to approve the Final Plat of Shadow Creek Ranch SF-18B with a second by Commissioner Greiner.

**Motion to approve passed 5 to 0.**

### **K. CONSIDERATION & POSSIBLE ACTION – Final Plat of Alvin I.S.D. Elementary School No. 11, 12.000 acres being out of the T.C.R.R. Co. Survey, Section 4 Abstract 675 and the T.C.R.R. Co. Survey, Section 3, Abstract 678, City of Pearland, Brazoria County, Texas.**

Plat and Plans Administrator Richard Keller stated that staff recommends approval as presented.

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Commissioner Bacon made a motion to approve the Final Plat of Alvin ISD Elementary School No. 11 with a second by Commissioner Greiner.

**Motion to approve passed 5 to 0**

Commissioner Greiner clarified that this is the plat that came in with the variance to begin construction before final plat approval. Mr. Keller stated she is correct. Commissioner Greiner commended the developer on the good faith effort.

**L. CONSIDERATION & POSSIBLE ACTION – Preliminary Plat of Reyna Estate, A 1.7174 acre tract, out of that certain 102 acre tract in Section 5 of the H.T.&B. Railroad Company Survey, Abstract 237, City of Pearland, Brazoria County, Texas.**

Plat and Plans Administrator Richard Keller stated that this is a plat for a single family dwelling unit and staff recommends approval as presented.

Commissioner Scherrer made a motion to approve the Preliminary Plat of Reyna Estates with a second by Commissioner Bacon.

**Motion to approve passed 5 to 0.**

**V. NEXT MEETING DATES:** August 4, 2003 (P&Z Meeting)  
August 18, 2003 (JPH & P&Z)

## **VI. ADJOURNMENT**

**The Regular meeting adjourned at 7:45 p.m.**

These minutes respectfully submitted by:

\_\_\_\_\_  
Jennifer Gonzales, Planning & Zoning Secretary

Minutes approved as submitted and/or corrected on this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Todd Iocco, Planning & Zoning Chairman



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**Legal Description:** 2.467 acres, out of the H.T. & B.R.R. Company Survey, Abstract 243, Tract 48A and 48A2, Brazoria County, Texas (8027 Broadway Street, at Zapalac Road)

**Owner:** William and Katherine Favor  
3933 Meadowlark Way  
Pearland, Texas 77584

**Agent:** No agent

## **C. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1117**

Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Single Family Dwelling District (R-1), on the following described property, to wit:

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**Owner:** Jose E. Quintonilla  
8110 Gulick Lane  
Houston, Texas 77075

**Agent:** No agent

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Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Single Family Dwelling District (R-1), on the following described property, to wit:

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**Owner:** Jose E. Quintonilla  
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**Agent:** No agent

## **E. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1116**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Estate Lot Single Family Dwelling District (R-E), on the following described property, to wit:**

### **Zone Change Application No. 1116**

**Legal Description:** 9.7980 acres of land, being the east ½ of Lots 11 and 12 of the Allison Richey Gulf Coast Home Company Subdivision, being part of the Suburban Gardens, situated in the H.T. & B.R.R. Company Survey, Abstract 304, Brazoria County, Texas (County Road 403 (Hughes Ranch Road), east of CR 94)

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**Agent:** Paksima Group  
203 Aurora Street  
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**F. CONSIDERATION & POSSIBLE ACTION – A Final Plat of Autumn Lake Section Three, a Subdivision of 18.8283 acres located in the H.T.&B. R.R. Co. Survey, Abstract 304, City of Pearland, Brazoria County, Texas.**

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- H. **CONSIDERATION & POSSIBLE ACTION** – Final Plat of Bellavita at Green Tee Section Four, being a subdivision of 32.6281 acres of land out of the W.D.C. Hall Survey, A-23, City of Pearland, Harris County, Texas.

Variance Request: Request by Eddie A. Taher of Century Engineering, Inc. for a variance from the Subdivision Ordinance to allow for the construction of the proposed underground utilities in Bellavita at Green Tee Section 4 to commence and proceed simultaneously with the construction of the 15-acre detention pond that will serve Bellavita at Green Tee 4.

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- K. **CONSIDERATION & POSSIBLE ACTION** – Final Plat of Alvin I.S.D. Elementary School No. 11, 12.000 acres being out of the T.C.R.R. Co. Survey, Section 4 Abstract 675 and the T.C.R.R. Co. Survey, Section 3, Abstract 678, City of Pearland, Brazoria County, Texas.

- L. **CONSIDERATION & POSSIBLE ACTION** – Preliminary Plat of Reyna Estate, A 1.7174 acre tract, out of that certain 102 acre tract in Section 5 of the H.T.&B. Railroad Company Survey, Abstract 237, City of Pearland, Brazoria County, Texas.

V. **NEXT MEETING DATES:** August 4, 2003 (P&Z Meeting)  
August 18, 2003 (JPH & P&Z)

## VI. ADJOURNMENT

This site is accessible to disabled individuals. For special assistance, please call Young Lorfing at 281-652-1655 prior to the meeting so that appropriate arrangements can be made.

POSTED: 18 Day of July, 2003 A.D.

REMOVED: 22<sup>nd</sup> Day of July, 2002 A.D.



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## **E. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1116**

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## **VI. ADJOURNMENT**

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To: Planning Commission members  
c/o Richard Keller  
Plan and Plats Administrator  
3519 Liberty Drive

7/16/03

RECEIVED

JUL 16 2003

ENGINEERING

Fax: 281-652-1702 (3 pages total)

In response to the Preliminary Plat request for Alexander Landing, Section 7, I am forwarding a proposal map that recommends the extension of Westminster and Alexander Lane, allowing connection to the "New" Barry Rose road.

I understand that a traffic study has been conducted and concluded that the additional 99 homes would not "adversely" affect traffic flow on London Court. My neighbors and myself all disagree with this conclusion.

We are strongly recommending that a connection to "New" Barry Rose be part of this new Plat so that the additional traffic from this new subdivision will NOT totally depend on London Court for access to Barry Rose and eventually the Pearland Parkway.

The recommended extensions on the map would also provide easier access to Barry Rose and the Parkway for the residents of Banbury Cross, who presently use London Court for access to Barry Rose and will have no choice but to use this route to access the Parkway, once it is opened.

London Court is way too narrow to handle the current traffic volume and an additional 99 homes, plus the future opening of the Parkway is definitely an "impact" to those of us who live on this street.

I urge the Planning Commission to strongly address our concerns and seriously consider our recommendations.

Thank you,

Anselmo Lozano  
3213 London Court resident  
and Block spokesperson  
281-997-7246

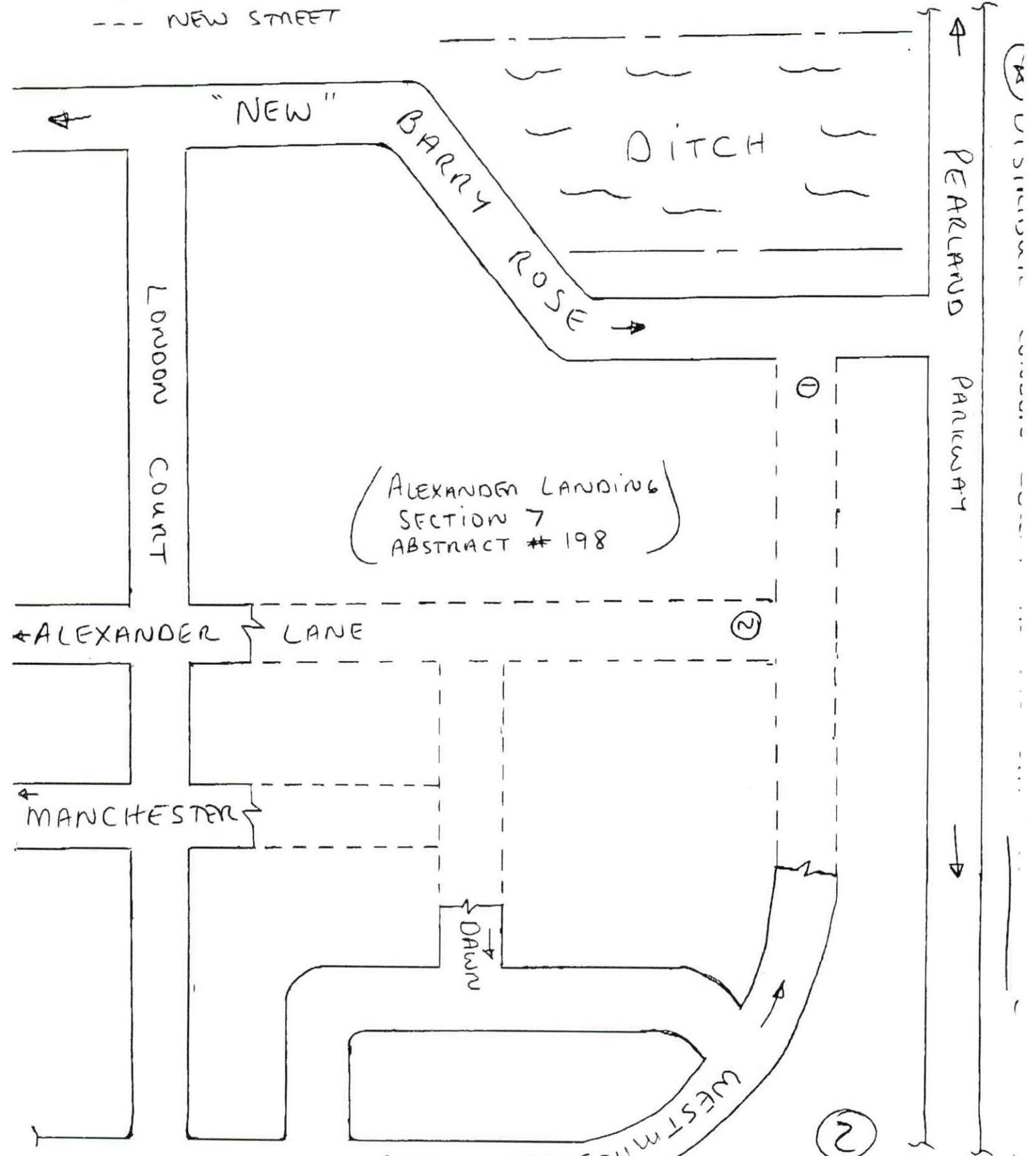
①

① PROPOSE EXTENDING WESTMINSTER TO BARRY ROSE.

② EXTEND ALEXANDER LANE TO WESTMINSTER.

— TERMINATED STREETS (PRESENTLY)

--- NEW STREET



**LOZANO, ANSELMO, JR (JSC-EA) (NASA)**

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**From:** AMueller@ci.pearland tx.us  
**Sent:** Monday, April 21, 2003 12:04 PM  
**To:** chrisjanet@catholicfamilies.net; bshimek@bechtel.com; jab@bpibmi.com; cclifton@newplan.com; ASchroeder@slb.com; LOZANO, ANSELMO, JR (JSC-EA) (NASA); greg.may@chron.com; jrzimmermanniii@shellus.com  
**Subject:** Proposed Plat - Alexander Landing Section 7

Barry Rose Committee Members:

Many of you have expressed concern about traffic volume on London Court and the affects of future development on London Court traffic. Therefore, I wanted to advise you that I noticed on the Planning Commission agenda for this evening that a preliminary plat has been submitted for 31 acres north and east of London Court, containing 99 lots. As of now, the preliminary plat shows connections to existing Alexander Lane, Manchester Lane, and Dawn Street (off of Tower Bridge Road), but no new connection to Barry Rose Road. The boundaries of the plat do not extend to Pearland Parkway.

As I have stated previously, a traffic impact analysis (TIA) is required to be submitted by the developer. The TIA has been submitted and is currently being reviewed by the City's traffic engineer. I have notified the City's engineer of your concerns.

Approval of a plat is a two step process: the preliminary plat and the final plat. The Planning Commission is the body that is responsible for plat approvals. The plat is not official until the final plat is approved and recorded. Tonight's action is on the preliminary plat.

The Planning Commission meetings for plat approvals are open to the public, but they are not "public hearings" where anyone has the right to speak. To make sure your concerns are heard, I suggest that you address written comments to the Planning Commission, C/O Richard Keller, Plan & Plats Administrator, 3519 Liberty Drive, 77581; fax number 281-652-1702. I will also advise the Planning Commission of your concerns from our previous meetings.

If you choose to attend the meeting this evening, there will be public hearings on zoning cases (unrelated to this issue) beginning at 6:30 pm, with the business meeting where plats are considered beginning after the hearings are concluded. Again, you are welcome to attend, but an opportunity to speak on this plat issue is not guaranteed. Written comments would be the best way to make sure the Commission hears your concerns.

The TIA will be reviewed according to standard criteria to see if a second outlet to Barry Rose is justified for this development. I can not prejudge the outcome of that process, but in any case, I think it is important for the Commission to be aware of your concerns.

Sorry for the short notice, but I just saw the agenda this morning. Let me know if you have any questions or if any of this information is unclear.

Alan

Darrin M. Coker  
City Attorney  
Telephone (281) 652-1678  
Telecopier (281) 652-1679

Jenifer K. Smith  
Legal Secretary  
Telephone (281) 652-1664  
Telecopier (281) 652-1679



Nghiêm V. Doan  
Deputy City Attorney  
Telephone (281) 652-1665  
Telecopier (281) 652-1679

Lawrence G. Provins  
Assistant City Attorney  
Telephone (281) 652-1666  
Telecopier (281) 652-1679

TO: PLANNING & ZONING COMMISSION

FROM: DARRIN M. COKER, CITY ATTORNEY *DMC*

DATE: JULY 17, 2003

SUBJECT: TOWNE LAKE ESTATES, SECTION 2-Amending Plat

---

For your information, approval of the above referenced plat has been delayed due to a lawsuit filed against the City by the developer. The suit arose out of the City's action in conditioning the approval of the plat on the developer's agreement to pay a portion of the cost of constructing a section of Pearland Parkway. The developer alleged that the condition imposed by the City constituted an unconstitutional "taking" of property in violation of the state and federal constitutions.

After reviewing the facts of the case, it was concluded that the state takings claim would be difficult to defend (see attached "analysis") and that it was in the best interest of the City to negotiate a settlement in the matter. Ultimately, those efforts led to a Development Agreement (see attached "Agreement") between the City and developer that set forth the terms under which each party would share in the cost of constructing the roadway and also provides for the amending of Towne Lake Estates, Section 2 to remove Note 24. Following adoption of the Development Agreement by the City Council, the United States District Court entered an order dismissing the previously mentioned lawsuit.

I offer this information to keep the Planning & Zoning Commission apprised of all information that is relevant to your consideration of the Towne Lake Estates, Section 2 amending plat. Based on the aforementioned information, it is my recommendation that the amending plat be approved in order for the City to comply with the terms of the agreed to settlement. If you have questions regarding this issue, please do not hesitate to contact my office at your convenience.

cc: Tobin Maples  
Alan Mueller  
Theresa Grahmann  
Richard Keller

**OLSON & OLSON**  
ATTORNEYS AT LAW  
THREE ALLEN CENTER  
SUITE 1000  
900 CLAY STREET  
HOUSTON, TEXAS 77002

---

(713) 750-0100  
TELECOPIER (713) 750-0114

March 20, 2003

**PRIVILEGED ATTORNEY-CLIENT COMMUNICATIONS**

**Via Facsimile (512) 491-2366**

Ms. Mary Potts  
TML - Intergovernmental Risk Pool  
P.O. Box 149194  
Austin, Texas 78714-9194

Re: C.A. 11-03-0850; *Towne Lake, L.P. v. City of Pearland, Texas*; in the United States District Court for the Southern District of Texas, Houston Division (formerly Cause No. 22953\*PS03 in the 239th District Court of Brazoria County, TX).

**TML Claim No. 0300090486**

Dear Ms. Potts:

Please accept this letter as our preliminary status report on the above referenced matter. The information in our report was gathered from conferences with City officials, a preliminary review of certain documents provided by the City, and preliminary legal research.

**Introduction**

The claims in this lawsuit arise out of the City's action in conditioning the approval of a residential subdivision plat on the developer's agreement to pay a portion of the cost of constructing a section of a nearby major thoroughfare. The developer alleges that the condition imposed by the City constitutes an unconstitutional "taking" of its property in violation of the state and federal constitutions.

The Plaintiff in this lawsuit is Towne Lake L.P. (the "Developer"), a Texas Limited Partnership controlled by Renee West ("West"). West is a real estate developer who has developed several other projects within the City of Pearland. The City of Pearland is the only defendant.

Ms. Mary Potts  
TML - Intergovernmental Risk Pool  
March 20, 2003  
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The property in question is known as the Towne Lake Subdivision ("Towne Lake"). It is approximately 77 acres in area, and is planned to include 219 single-family residential lots. The tract is being developed as a gated residential subdivision with a detention pond/lake in the center and lots surrounding the lake on all sides. The streets within the subdivision will be private. Access to the subdivision will be from Oiler Drive to the north and State Highway 35 to the west. Immediately northeast of Towne Lake's boundaries is a strip of undeveloped property that has been designated on the City's major thoroughfare map as the location for an extension of Pearland Parkway, a four-lane divided boulevard.

The Developer has divided the subdivision into two sections, with section 1 consisting of the property along the northern and western boundaries of the tract and in the center surrounding the lake. Section 2 abuts the planned extension of Pearland Parkway to the northeast and undeveloped property to the south. Section 1 has 118 lots and Section 2 is planned to have 101 lots.

The City requires sub-dividers to dedicate the right-of-way for, and to construct, all streets that are shown on a proposed plat, including major thoroughfares designated on the City's major thoroughfare plan. Authority for the policy can be found in the City's subdivision ordinance. According to City staff, the City has consistently enforced this policy in the past. The ordinance allows a developer to seek a variance from the road dedication and construction requirement in certain defined circumstances.

The property acquired for Towne Lake does not include the land on which the City plans to construct the extension of Pearland Parkway. Instead, the area designated for construction of the Pearland Parkway extension is located within a relatively narrow strip of undeveloped land between the existing Shadycrest subdivision to the north and east and Towne Lake to the south and west. It is possible that the Towne Lake property was divided out of a larger tract that included the narrow strip but we do not have that information at this time.

The City has consistently told West that she must acquire and dedicate the right-of-way and pay for half of the cost of constructing the section of Pearland Parkway that abuts Towne Lake to the northeast. She has resisted this requirement from the start and has questioned the City's authority to impose it. She has requested a variance from the requirement in accordance with the procedures outlined in the ordinance and the City has denied that request. The City's estimate of the construction costs she is required to bear is \$800,000. This sum does not include the cost of acquiring the right-of-way. Under the City's practice the amount collected from West for construction costs would be placed in a

Ms. Mary Potts  
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The subdivision plat for section 1 has been approved and the construction of single-family homes is underway on approximately 50 of the 118 lots. The subdivision plat for section 2 has not been approved. It was placed on the City Planning & Zoning Commission agenda for approval of the final plat on March 17, 2003 but was pulled by the Developer, reportedly because of the number of deficiencies that needed to be corrected. One of the deficiencies noted by the staff was the Developer's failure to "provide funds for construction of one-half of Pearland Parkway including sidewalks, landscaping, and special design streetlights."

1. **Plaintiff's Claims.** West asserts that the City's action in conditioning approval of her subdivision plat on payment of a portion of the costs of constructing a segment of Pearland Parkway constitutes: a) a taking of her property without due process in violation of the state and federal constitutions (the "Regulatory Takings Claims"); b) a violation of her right to Substantive Due Process; c) a violation of her right to Equal Protection under the state and federal constitutions; and d) a violation of her right to Procedural Due Process. She also asserts a right to a declaratory judgment. A brief discussion of the elements of each of the claims is as follows.

a) **The Regulatory Takings Claims.** The legal rules governing regulatory takings claims are extremely complex and many important questions remain unanswered. The most recent case discussing the elements of a regulatory takings claim in the context of conditions imposed on subdivision approval in Texas is *Town of Flower Mound v. Stafford Estates*, 71 S.W.3d 18 (Tex.App.-Fort Worth 2002). The Texas Supreme Court has granted a petition to review the decision in *Flower Mound* and there is a reasonable possibility that some portion of the decision will be modified or reversed. However, until the Supreme Court announces its decision on the appeal, the decision in *Flower Mound* provides the most authoritative basis for determining the necessary elements of a takings claim in a subdivision exaction case. According to *Flower Mound*, once a developer challenges a decision by a city to condition approval of a development on the exaction of right-of-way or other benefits, the burden shifts to the city to prove: i) that there is a connection between the legitimate state interest impacted by the proposed development and the concessions required of the developer; and ii) that the required concessions are roughly proportional in nature and extent to the impact of the development to which they are addressed. If the city establishes the two elements, then the takings claim fails. The Plaintiff has asserted takings claims under both the federal and state constitutions. Her federal takings claim is unripe and cannot be considered until her state takings claim has been resolved.

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b) **The Substantive Due Process Claim.** In order to recover on her Substantive Due Process claim, West must demonstrate that the City's action was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare". *Shelton v. City of College Station*, 780 F.2d 475 (5th Cir. 1986).

c) **The Equal Protection Claim.** To recover on her Equal Protection claim, West must prove that the City's action treated her property differently from substantially similar property and that there was no rational basis for that different treatment.

d) **The Procedural Due Process Claim.** West's Procedural Due Process claim challenges the City's actions in adopting its subdivision ordinance. We do not believe there is any legal basis for challenging a legislative act based on an alleged lack of Procedural Due Process.

e) **The Declaratory Judgment Claim.** In order to succeed on her declaratory judgment claim West would have to succeed on one of her other claims and demonstrate that a declaration of her rights is necessary in addition to the other relief she might be entitled to.

2. **Affirmative Defenses.** All of West's claims are made under provisions of the state or federal constitutions. The doctrine of sovereign or governmental immunity does not apply to claims under the state or federal constitutions.

3. **Damages.** The measure of damages for a takings claim is the fair market value of the property or interest in property taken by the government. The measure of damages for a violation of the Due Process or Equal Protection clauses of the federal constitution is the actual damages suffered as a result of the violation. There is no right to recover money damages for a violation of the Equal Protection or Due Course of Law provisions of the state constitution. In addition to damages, a claimant can recover her attorney's fees if successful on a federal claim. There is no provision for the recovery of attorney's fees in a successful takings claim under the state constitution.

4. **Indemnification and Contribution.** We are unaware, at this time, of any potential sources of indemnification or contribution.

5. **Claim Analysis.** We have not completed our review of this matter, but our initial impressions are that it will be very difficult to defend the City's action against the state takings claim. It appears that the City's policy has no provision for making a

determination of the nature and extent of the impact a proposed development will have on existing and planned public improvements in its immediate area and that no such determination was made in this case. Even if we hire cooperative experts in traffic engineering and city planning to perform an "after the fact" determination, it is unlikely that the result of that determination would support the assessment of costs that has been made in this case. It will be very difficult to demonstrate that the Towne Lake Subdivision will have an effect on traffic levels on the planned extension of Pearland Parkway that is "roughly proportional" to an assessment of 1/2 of the cost of acquiring the right-of-way for, and constructing, that section of roadway. Pearland Parkway is a major thoroughfare and it is difficult to conceive of a set of facts under which the construction of a 219 lot residential subdivision would contribute a level of traffic approaching 50% of the capacity of a 4-lane boulevard.

On the other hand, the City has strong defenses to the Plaintiff's federal claims. Her federal takings claim is unripe and will not become ripe until she exhausts her state law takings claim. Her federal Procedural Due Process claim is frivolous, as the controlling case law clearly holds that there is no constitutional right to Procedural Due Process in the enactment of legislation. Her federal Substantive Due Process and Equal Protection claims are similarly weak. All the City needs to do to defeat those claims is show some rational basis for its action. We believe that most courts will agree that it is rational for a City to recover some of the costs of roads and similar public improvements from developments that increase the use of those improvements.

We have removed the case to federal court to take advantage of the federal courts greater willingness to grant summary judgments on legal issues. The case was assigned to Judge Lynn Hughes. We believe there is a realistic chance that we can persuade Judge Hughes to dismiss the federal claims. However, we do not see any reasonable possibility of obtaining summary judgment on the state takings claim. We intend to file a motion to dismiss or summary judgment motion seeking a judgment in the City's favor on the federal claims, if the case goes forward. Should Judge Hughes grant our motion, the state law takings claim would still be outstanding. In that event, he would have the option of remanding the case to state court for resolution of that claim or retaining jurisdiction over the case.

Our preliminary strategy for resolving this dispute and protecting the City's interests is to work toward an early settlement of the case. Our understanding is that West has indicated that she is willing to pay some, but not all of the costs of the new roadway that have been assessed against her development. We believe the City would be wise to compromise its position in order to get some contribution from her and to avoid the financial and other risks of an adverse judgment.

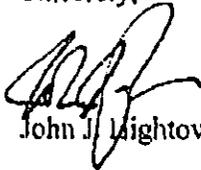
Ms. Mary Potts  
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6. **Defense Expenses.** We estimate that the cost of our services through the completion of an attempt to resolve the dispute by agreement will be in the range of \$4,000.00 to \$8,000.00.

7. **Damage Reserves.** We recommend total damage reserves in the amount of \$150,000.00.

8. **Additional Information.** If the case cannot be settled, we will need to engage traffic engineers, city planners, and other professionals to perform an assessment of the impact of the Towne Lake Subdivision on traffic on the new section of Pearland Parkway and on other streets in the City.

Sincerely,



John J. Lightower

Attachment

cc: Ms. Mary Hickling  
Fund Coordinator  
City of Pearland

Via Facsimile (281) 652-1703

Darrin Coker  
City Attorney  
City of Pearland

Via Facsimile (281) 652-1679

**ATTACHMENT A  
LITIGATION BUDGET**

**Style:** *Towne Lake, L.P. v. City of Pearland, Texas;*

**Date:** March 20, 2003

**Claim No:** 0300090486

**Attorney Handling:** John J. Hightower

**Initial Response:** Meet client, research issues, file answer,  
file preliminary motions, 30-day report. **\$ 3,500.00**

**Discovery:** **\$ 15,000.00**

- a. Serve request for production, admissions, and interrogatories.
- b. Meet client witnesses, visit scene.
- c. Respond to plaintiff's written discovery.
- d. Prepare for deposition of client and client's witnesses.  
Take deposition of plaintiff and plaintiff's witnesses.

Number of depositions expected: 8 to 12

**Expert Discovery (if needed):** **\$ 10,000.00**

- a. Meet with own experts.
- b. Prepare for and attend deposition of own experts.
- c. Estimate of expert expenses.
- d. Research and depose plaintiff's experts.

**Pre-Trial Activity:** **\$ 15,000.00**

- a. Research (number of hours 12).
- b. Motion for summary judgment.
- c. Other pre-trial motions and discovery motions.
- d. Mediation.
- e. 120-day report.

**Trial Preparation:** **\$ 10,000.00**

- a. Prepare trial pleadings, trial motions and jury issues.
- b. Pre-trial report.
- c. Prepare client and witnesses for trial.
- d. Prepare presentation of expert witnesses.
- e. Prepare for cross-examination of plaintiff's witnesses.

**Trial:** **\$ 5,000.00**

- a. Total cost for trial, excluding witness and expert fees (4 days). **\$ 500.00**
- b. Witness fees for trial. **\$ 500.00**
- c. Expert fees for trial. **\$ 2,500.00**

**GRAND TOTAL:** **\$ 61,500.00**

Recommended damage reserves. **\$150,000.00**

**DEVELOPMENT AGREEMENT**  
(EXHIBIT "A" TO RESOLUTION R2003- 83 )

This Agreement is entered into this 12<sup>th</sup> day of June, 2003, by and between the CITY OF PEARLAND, TEXAS, (hereinafter "City"), and R. West Development Company (hereinafter "Developer").

*WHEREAS*, Developer intends to develop thirty five (35) acres of land as a single family residential community to be known as Towne Lake Section Two (hereinafter "Subdivision"); and

*WHEREAS*, The Subdivision borders on the proposed extension of Pearland Parkway, a major thoroughfare, as shown on the City's Thoroughfare Plan; and

*WHEREAS*, Developer is responsible for constructing or funding a portion of Pearland Parkway under provisions of the City's Subdivision Ordinance; and

*WHEREAS*, City and Developer desire an agreement to set forth their respective responsibilities with regard to the Pearland Parkway Extension.

**W I T N E S S E T H :**

*NOW THEREFORE*, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Within eighteen months following the execution of this Agreement, Developer will design and construct the following improvements: Beginning at Oiler Drive and extending approximately 1723 feet to the south, ½ boulevard of paving 25 feet in width with curbs (the "Southbound Lanes"), trunk storm sewer located in the median of Pearland Parkway, lateral storm sewers with drainage inlets on the Southbound Lanes, stub outs for future storm sewer laterals for the future northbound lanes, storm water detention (provided in the median swale), related earthwork, and appropriate storm sewer outfall ditch (hereinafter, the "Pearland Parkway Extension").
2. Developer will cause its engineer to prepare plans and specifications, in accordance with City standards and regulations, and perform geotechnical studies for the construction of the Pearland Parkway Extension. City has the right to review and approval of the plans and specifications, which approval shall not be unreasonably withheld. City will reimburse developer 50% of the cost of the engineering and geotechnical studies, as provided in Paragraph 6. The estimated cost for such services is \$604,130.45 as shown in Exhibit 1. Therefore, the total estimated principal amount to be reimbursed by City to Developer \${50% of total}.

3. Upon approval of the plans and specifications by the City, Developer will obtain competitive line item bids in accordance with Local Government Code Chapter 252 for the construction of the Pearland Parkway Extension in accordance with the plans and specifications. The bids will be reviewed by Developer and the City and a contract will be awarded to the successful bidder by Developer. Both City and Developer reserve the right to reject any and all bids for construction.
4. Upon approval of the bids by the Developer, the Developer shall cause the work to be completed in accordance with the plans and specifications. Developer's engineer shall monitor the progress and workmanship of the contractor, including construction administration and materials testing. City shall also provide inspection to monitor the workmanship of the contractor. Developer shall advance the funds necessary to pay the contractor for the work performed.
5. City will reimburse Developer 50% of the actual construction cost as provided in Paragraph 6. The current estimated cost for the Pearland Parkway Extension, including paving, drainage, and contingency is \$604,130.45 as shown on Exhibit 1. Therefore, the total estimated principal amount to be reimbursed by City to Developer is  $\{50\%$  of total}. Upon completion of the project, actual costs will be accounted and reported to City.
6. City will reimburse Developer for City's share of engineering and construction costs, plus simple interest, within two years of the date of substantial completion of the Pearland Parkway Extension. Simple interest shall be calculated, beginning on the date of substantial completion of the Pearland Parkway Extension, at the same interest rate as Developer's rate of borrowing funds for the Pearland Parkway Extension, not to exceed 8% per annum. City may make partial payments at any time.
7. Upon execution of this Agreement, the City does hereby agree that the reservation described on Note 24 of that certain subdivision plat recorded under Clerk's file number 03-024083, in Volume 23, pages 297-300, of the Brazoria County Texas Clerk that provides "the City of Pearland will not accept the Subdivision improvements for Towne Lake Estates, Section 2 for operation and maintenance by the City until the improvements for the adjacent segment of Pearland Parkway (1/2 blvd.) have been accepted by the City" shall be deemed null and void, and the City shall endeavor to have such reservation deleted by amending the plat.
8. West will also construct a masonry fence, landscaping, irrigation, and six-foot curvilinear sidewalk on the west side and adjacent to the Pearland Parkway Extension in accordance with the Pearland Parkway Overlay District standards contained in City's Land Use and Urban Development Ordinance. The costs of such improvements will not be eligible for reimbursement by the City.

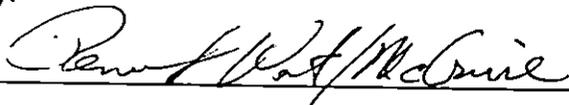
9. City obligations under this Agreement will be paid from lawfully available funds that may be currently available in the budget year in which the obligation may be due. City agrees to use its best efforts to collect such revenues and appropriate such funds as may be required to finance its obligations.
10. The initial term of this Agreement shall be for a period of three (3) years, commencing on the 12<sup>th</sup> day of June, 2003, and terminating on the 11<sup>th</sup> day of June, 2006, at which time, this Agreement may be automatically renewed in one (1) year increments contingent upon need and the necessary funds being appropriated for said project in accordance with the City's annual budgeting process.
11. This Agreement may only be amended, modified, or supplemented by written agreement and signed by both parties.
12. No assignment by a party hereto of any rights under or interests in this Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
13. Nothing herein is intended to supersede or waive any City ordinance or regulation pertaining to such construction.
14. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is prohibitive or invalid under applicable law, such provision shall be ineffective to the extent of such provision or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
15. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas.
16. This Agreement and all obligations created hereunder shall be performable in Brazoria County, Texas.
17. Resolution No. R2003-83 is incorporated herein and made a part of this Agreement for all purposes.
18. To accomplish execution of this Agreement, it may be executed in multiple counterparts.

19. DEVELOPER HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS, AND ASSIGNS FROM ANY AND ALL CLAIMS, DEMANDS, RIGHTS OR CAUSES OF ACTION OF WHATSOEVER CHARACTER OR NATURE, INCLUDING ATTORNEYS' FEES, ARISING FROM OR BY REASON OF ANY AND ALL BODILY OR PERSONAL INJURIES, INCLUDING DEATH AND MENTAL ANGUISH, DAMAGE TO PROPERTY AND THE CONSEQUENCES THEREOF WHICH MAY BE SUSTAINED BY DEVELOPER, ITS HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS, OR ASSIGNS AS A RESULT OF THE CONSTRUCTION BY DEVELOPER OF THE IMPROVEMENTS REFERENCED ABOVE, UNLESS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS, OR ASSIGNS. DEVELOPER SHALL KEEP AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS, AND ASSIGNS FROM ANY AND ALL COST, LIABILITY, DAMAGE OR EXPENSE OF ANY NATURE AND HOWSOEVER CAUSED, INCLUDING ATTORNEYS' FEES, CLAIMED OR RECOVERED BY ANYONE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF DEVELOPER, THEIR AGENTS, EMPLOYEES, SUCCESSORS, OR ASSIGNS ARISING IN CONNECTION WITH SUCH CONSTRUCTION BY DEVELOPER. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION, EXPIRATION, OR CANCELLATION OF THIS AGREEMENT.

In witness whereof, the parties have hereunto set their hands and signatures on the date first above mentioned.

R. West Development Company

By:



---

ATTEST:

CITY OF PEARLAND,  
a Texas municipal corporation

By:   
Young Loring, City Secretary

  
Bill Eisen, City Manager

STATE OF TEXAS

BRAZORIA COUNTY

This instrument was acknowledged before me on this 3<sup>rd</sup> day of June, 2003, by Kenae West (MC) Hurst on behalf of Corporation.

*[Handwritten Signature]*

Notary Public, State of Texas  
My Commission Expires:

May 20, 2005



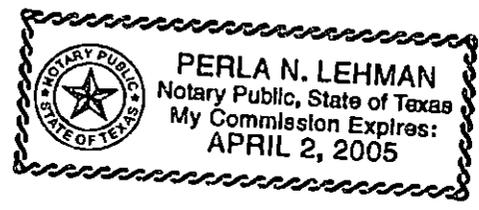
STATE OF TEXAS  
BRAZORIA COUNTY

This instrument was acknowledged before me on this 12 day of June, 2003, by Bill Eisen, City Manager of the City of Pearland, a Texas home rule municipality, on behalf of said municipality.

*[Handwritten Signature]*

Notary Public, State of Texas

My Commission Expires: April 2, 2005



**"EXHIBIT 1"**

**PEARLAND PARKWAY  
BCMUD No. 18**

Pearland, TX

4-23-03

Job No. 1967

**STORM SEWER SYSTEM**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>\$/UNIT</b>	<b>TOTAL COST</b>
1.	24" RCP Storm Sewer Pipe	LF	130	\$46.00	\$ 5,980.00
2.	30" RCP Storm Sewer Pipe	LF	760	\$58.00	\$ 44,080.00
3.	36" RCP Storm Sewer Pipe	LF	953	\$69.00	\$ 65,757.00
4.	Type "C" Street Inlets	EA	3	\$1,600.00	\$ 4,800.00
5.	Trench Safety	LF	1843	\$1.00	\$ 1,843.00
6.	Type "E" Inlet/MH	EA	5	\$1400.00	\$ 7,000.00
7.	Type "A" Grate Inlets	EA	1	\$1700.00	\$ 1,700.00
8.	Emergency Overflow	EA	1	\$800.00	\$ 800.00
9.	Storm Outfall Protect	EA	1	\$2500.00	\$ 2,500.00
10.	Connect Prop "30" RCP To existing "E" Inlet	EA	1	\$1000.00	\$ 1,000.00
11.	Connect Prop "24" RCP To Exist "E" inlet	EA	1	\$1000.00	\$ 1,000.00
12.	Drainage Ditch Excav	CY	41951	\$3.00	\$125,853.00
13.	24" Plug	EA	1	\$500.00	\$ 500.00
14.	Special Stm MH (10' x 5' Box MH)	LS	1	\$5000.00	\$ 5,000.00
				<b>Sub-Total</b>	<b>\$267,813.00</b>

**PEARLAND PARKWAY**  
**BCMUD No. 18**  
 Pearland, TX  
 4-23-03  
 Job No. 1967

**PAVEMENT**

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	\$/UNIT	TOTAL COST
1.	9" Concrete Pavement	SY	4908	\$35.00	\$ 171,780.00
2.	6" Roll Concrete Curb	LF	3505	\$3.50	\$ 12,267.50
3.	Excavation	CY	5301	\$3.00	\$ 15,903.00
4.	12" Lime Stabilization	SY	5595	\$4.00	\$ 22,380.00
5.	Street Sign with Stop Signs	EA	1	\$250.00	\$ 250.00
6.	Barricades	EA	1	\$650.00	\$ 650.00
7.	Pollution Prevention	Lump Sum	1	\$25,000.00	\$ 25,000.00
8.	Hydro Mulch	AC	6.37	\$1800.00	\$ 11,466.00
9.	Lime 36#	Tons	155	\$140.00	\$ <u>21,700.00</u>
<b>Street Sub-total</b>					<b>\$ 281,386.50</b>

**PEARLAND PARKWAY  
BCMUD No. 18**

Pearland, TX  
4-23-03  
Job No. 1967

**SUMMARY**

1. Storm and Detention	\$ 267,813.00
10% Contingency	\$ 26,781.30
Utilities Sub-Total	<u>\$ 294,594.30</u>
1. Pavement	\$ 281,396.50
10% Contingency	\$ 26,139.65
Pavement Sub-Total	<u>\$ 309,536.15</u>
<b>Main Total</b>	<u><b>\$ 604,130.45</b></u>

5-16-03

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RESOLUTION NO. R2003-83

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO A DEVELOPMENT AGREEMENT WITH R. WEST DEVELOPMENT COMPANY FOR THE EXTENSION OF PEARLAND PARKWAY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

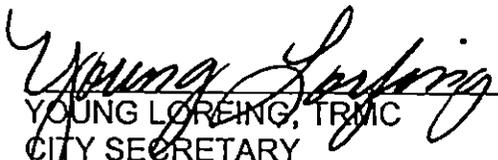
Section 1. That certain development agreement by and between the City of Pearland and R. West Development Company, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes, is hereby authorized and approved.

Section 2. That the City Manager or his designee is hereby authorized to execute and the City Secretary to attest a development agreement with R. West Development Company, for the extension of Pearland Parkway.

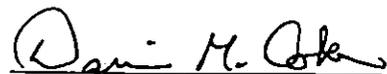
PASSED, APPROVED and ADOPTED this the 9th day of June,  
A.D., 2003.

  
\_\_\_\_\_  
TOM REID  
MAYOR

ATTEST:

  
\_\_\_\_\_  
YOUNG LOREING, TRMC  
CITY SECRETARY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DARRIN M. COKER  
CITY ATTORNEY

**OLSON & OLSON**  
ATTORNEYS AT LAW  
THREE ALLEN CENTER  
SUITES 1000  
100 CLAY STREET  
HOUSTON, TEXAS 77002

(713) 780-0000  
TELECOPIER (713) 780-0000

July 14, 2003

**PRIVILEGED ATTORNEY-CLIENT COMMUNICATIONS**

Ms. Mary Potts  
TML - Intergovernmental Risk Pool  
P.O. Box 149194  
Austin, Texas 78714-9194

Re: C.A. H-03-0850; *Towne Lake, L.P. v. City of  
Pearland, Texas*; in the United States District Court  
for the Southern District of Texas, Houston  
Division (formerly Cause No. 22953\*PS03 in the  
239th District Court of Brazoria County, TX).

**TML Claim No. 0300090486**

Dear Ms. Potts:

On July 9, 2003, the United States District Court entered an order dismissing the above-referenced case, with prejudice. A copy of that order is attached for your further reference. The order was entered pursuant to a joint stipulation of dismissal filed by the parties. The entry of the order was the last step in a settlement process that began with the parties' negotiation of a developer participation agreement that resolved their dispute over the funding of the subject section of Pearland Parkway.

Please call if you have any questions.

Sincerely,

  
John J. Hightower

Ms. Mary Potts  
TML – Intergovernmental Risk Pool  
July 14, 2003

cc: Ms. Mary Hickling  
Fund Coordinator  
City of Pearland

**Via Facsimile (281) 652-1703**

Darrin Coker  
City Attorney  
City of Pearland

**Via Facsimile (281) 652-1679**

United States Courts  
Southern District of Texas  
ENTERED

JUL 09 2003

Michael N. MiBy, Clerk of Court

CIVIL ACTION H-03-850

TOWNE LAKE, L.P.,

Plaintiff,

versus

CITY OF PEARLAND,

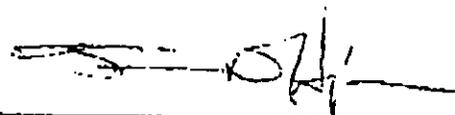
Defendant.

§  
§  
§  
§  
§  
§  
§

Order of Dismissal

On the parties' stipulation, this case is dismissed with prejudice. Costs are taxed against the party incurring them.

Signed July 8, 2003, at Houston, Texas.



Lynn N. Hughes  
United States District Judge

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**NOTICE OF A PUBLIC HEARING OF THE  
PLANNING AND ZONING COMMISSION  
OF THE CITY OF PEARLAND, TEXAS**

Notice is hereby given that on the 21<sup>st</sup> day of July, 2003, immediately following the Joint Public Hearings for that evening, the Planning and Zoning Commission of the City of Pearland, Brazoria, Harris and Fort Bend Counties, Texas, will conduct a Public Hearing in the Second Floor Conference Room, City Hall, 3519 Liberty Drive, Pearland, Texas, on the request of The Wilson Survey Group, surveyor for Clovergate, Inc., Sterling Bank, First Christian Academy, and Gulf Meadows Church, all of which are owners for a *Replat of The Townsite of Pearland of lots 20-27 in Block 15 of the Original Townsite of Pearland in the H.T.&B. R.R. Co. Survey, Abstract No. 232.*

At said hearing all interested parties shall have the right and opportunity to appear and be heard on the subject.

**Jennifer Gonzales**  
Engineering Secretary

Replat of The Townsite of Pearland

POSTED: 3rd day of July, 2003, A.D.

REMOVED: \_\_\_\_\_ day of \_\_\_\_\_, 2002, A.D.



## PLANNING & ZONING COMMISSION AGENDA ITEM

**SUBJECT:** Final Plat of Autumn Lake Section III

**PREPARED BY:** Theresa Grahmann, Planner I

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**ITEM SUMMARY:** At the June 16, 2003, Planning and Zoning Commission Meeting, the Commission unanimously approved the Final Plat of Autumn Lake Section III. The final plat was approved with the condition that the plat is not to be filed until the temporary sewage treatment plant, which is located within this Section, be removed and replaced by the permanent sewer line that is currently being constructed by the City along FM 518 and Wooten Road. The sewage treatment plant is located in the vicinity of Lots 9 and 10 of Block 4 on this plat. The developer has indicated that this would delay construction of the public improvements for Autumn Lake for at least six months, as construction cannot begin until the plat is filed.

In order to avoid having to wait until the sewage treatment plant is abandoned, the developer has instead proposed that a note be added to the plat stating the following:

“The existing 20 foot sanitary sewer easement and temporary sewage treatment plant and easement shall be abandoned and removed by the developer prior to acceptance of the subdivision by the City of Pearland. No building permits will be issued for construction of any residential dwelling units until such removal and abandonment.” (see Note No. 18).

If approved by the Commission, this revised condition would allow the developer to file the plat, and construction of the streets and utilities could begin. The sewage treatment plant and easement would be removed prior to acceptance of the subdivision, and no residences could be built until the plant and easement are removed from the property.

**STAFF RECOMMENDATION:** Staff recommends that the Commission approve the final plat of Autumn Lake Section III with the revised condition as stated above.

# PLANNING AND ZONING COMMISSION

AGENDA OF A REGULAR MEETING FOR THE PLANNING AND ZONING COMMISSION OF THE CITY OF PEARLAND, TEXAS, TO BE HELD ON JULY 21, 2003, IMMEDIATELY FOLLOWING THE JOINT PUBLIC HEARING, IN THE FIRST FLOOR COUNCIL CHAMBERS OF CITY HALL, 3519 LIBERTY DRIVE, PEARLAND, TEXAS

I. CALL TO ORDER

II. APPROVAL OF MINUTES

June 16, 2003

July 7, 2003

III. PUBLIC HEARING FOR CLOVERGATE COMPLEX REPLAT

1) CALL TO ORDER

2) PURPOSE OF HEARING

Clovergate Complex, a partial replat of the Original Townsite of Pearland of Lots 20-27 in block 15 of The Original Townsite of Pearland in the H.T.&B. R.R. Co. Survey, abstract No. 232.

3) PERSONS WISHING TO SPEAK FOR THE REQUEST

4) PERSONS WISHING TO SPEAK AGAINST THE REQUEST

5) STAFF/COMMISSION DISCUSSION

6) ADJOURNMENT

IV. NEW BUSINESS

A. CONSIDERATION & POSSIBLE ACTION - Clovergate Complex, a partial replat of the Original Townsite of Pearland of Lots 20-27 in block 15 of The Original Townsite of Pearland in the H.T.&B. R.R. Co. Survey, abstract No. 232.

B. CONSIDERATION & POSSIBLE ACTION - ZONING APPLICATION NO. 1115

Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Commercial District (C), on the following described property, to wit:

Zone Change Application No. 1115

*Format for Public Hearing*  
*On 6-21-04*

# PLANNING AND ZONING COMMISSION

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**Legal Description:** 2.467 acres, out of the H.T. & B.R.R. Company Survey, Abstract 243, Tract 48A and 48A2, Brazoria County, Texas (8027 Broadway Street, at Zapalac Road)

**Owner:** William and Katherine Favor  
3933 Meadowlark Way  
Pearland, Texas 77584

**Agent:** No agent

## **C. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1117**

Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Single Family Dwelling District (R-1), on the following described property, to wit:

### **Zone Change Application No. 1117**

**Legal Description:** 0.619 acres of land, being Tract No. 3 in the Sandoval Subdivision located in the west one-half of the northwest one quarter of the northeast one quarter of Section 15, H.T. & B.R.R. Company Survey, Abstract 241, Brazoria County, Texas (Morenci Street)

**Owner:** Jose E. Quintonilla  
8110 Gulick Lane  
Houston, Texas 77075

**Agent:** No agent

## **D. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1118**

Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Single Family Dwelling District (R-1), on the following described property, to wit:

### **Zone Change Application No. 1118**

**Legal Description:** 0.620 acres of land, being Tract No. 7 in the Sandoval Subdivision located in the west one-half of the northwest one quarter of the northeast one quarter of

# PLANNING AND ZONING COMMISSION

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Section 15, H.T. & B.R.R. Company Survey, Abstract 241, Brazoria County, Texas (Morenci Street)

**Owner:** Jose E. Quintonilla  
8110 Gulick Lane  
Houston, Texas 77075

**Agent:** No agent

## **E. CONSIDERATION & POSSIBLE ACTION – ZONING APPLICATION NO. 1116**

Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Estate Lot Single Family Dwelling District (R-E), on the following described property, to wit:

### **Zone Change Application No. 1116**

**Legal Description:** 9.7980 acres of land, being the east ½ of Lots 11 and 12 of the Allison Richey Gulf Coast Home Company Subdivision, being part of the Suburban Gardens, situated in the H.T. & B.R.R. Company Survey, Abstract 304, Brazoria County, Texas (County Road 403 (Hughes Ranch Road), east of CR 94)

**Owner:** Lisa and David Tran  
10522 Sagepark  
Houston, Texas 77089

**Agent:** Paksima Group  
203 Aurora Street  
Houston, Texas 77008

**F. CONSIDERATION & POSSIBLE ACTION – A Final Plat of Autumn Lake Section Three, a Subdivision of 18.8283 acres located in the H.T.&B. R.R. Co. Survey, Abstract 304, City of Pearland, Brazoria County, Texas.**

**G. CONSIDERATION & POSSIBLE ACTION – Amending plat of Towne Lake Estates Section Two, being 30.3614 acres of land composed of two tracts in the L.W. Murdock Subdivision recorded in Volume 29, page 174 of the Brazoria County Deed Records, and out of the A.C.H.&B. Survey, A-594, Brazoria County, Texas, M.U.D. 18.**

# PLANNING AND ZONING COMMISSION

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- H. **CONSIDERATION & POSSIBLE ACTION** – Final Plat of Bellavita at Green Tee Section Four, being a subdivision of 32.6281 acres of land out of the W.D.C. Hall Survey, A-23, City of Pearland; Harris County, Texas.

Variance Request: Request by Eddie A. Taher of Century Engineering, Inc. for a variance from the Subdivision Ordinance to allow for the construction of the proposed underground utilities in Bellavita at Green Tee Section 4 to commence and proceed simultaneously with the construction of the 15-acre detention pond that will serve Bellavita at Green Tee 4.

- I. **CONSIDERATION & POSSIBLE ACTION** – Final Plat of Shadow Creek Ranch SF-18A, 12.237 acres, being out of the H.T.&B.R.R. Co. Survey, Section 82, Abstract 565, City of Pearland, Brazoria County, Texas.

- J. **CONSIDERATION & POSSIBLE ACTION** – Final Plat of Shadow Creek Ranch SF-18B, 20.120 acres being out of the H.T.&B. R.R. Co. Survey, Section 82, Abstract 565, City of Pearland, Brazoria County, Texas.

- K. **CONSIDERATION & POSSIBLE ACTION** – Final Plat of Alvin I.S.D. Elementary School No. 11, 12.000 acres being out of the T.C.R.R. Co. Survey, Section 4 Abstract 675 and the T.C.R.R. Co. Survey, Section 3, Abstract 678, City of Pearland, Brazoria County, Texas.

- L. **CONSIDERATION & POSSIBLE ACTION** – Preliminary Plat of Reyna Estate, A 1.7174 acre tract, out of that certain 102 acre tract in Section 5 of the H.T.&B. Railroad Company Survey, Abstract 237, City of Pearland, Brazoria County, Texas.

- V. **NEXT MEETING DATES:** August 4, 2003 (P&Z Meeting)  
August 18, 2003 (JPH & P&Z)

## VI. ADJOURNMENT

This site is accessible to disabled individuals. For special assistance, please call Young Lorfing at 281-652-1655 prior to the meeting so that appropriate arrangements can be made.

POSTED: 18 Day of July, 2003 A.D.

REMOVED: Day of, 2002 A.D.

Daz

called to order

7:42

Chairman

Welcome new secretary - Betty F

A. Zone 1176

DAVID RAN APP

Sheryl Green

Aye - 5-0

B Zone 1177

Sheryl motion

Aye 5-0

Linda second

C Zone 1175

Sheryl - motion table

Aye ~~5-0~~ 3-2

Ruby 2nd

Linda & David - No

non-debatable

D Final plat Bankers

deduction lane needs to be built - needs to be approved

Ruby Sanders - asked if paid for trees

Richard replied yes

Ruby opens w/ staff comments

Sheryl

AR2

Richard	Theresa	Council member
Doug	Richard	Steve Chape fr
Lata	John Dabson	Steve - Ast fr

7:42pm

1175 - tabled

D. Richard comment  
3 tracks flat

Ruby - entrance 518  
Richard - Walgren driveway  
Ruby - trees

E Richard comments  
Lata - 4 ft sidewalks  
Doug - address - final plot

F Richard - redeli  
Steve Timin - has kw

G.

H. Cheryl - questi density  
2,141 lotw  
12,700 "alloted"