

**MINUTES OF A SPECIAL MEETING OF THE CITY COUNCIL
OF THE CITY OF COTTONWOOD SHORES, TEXAS
4111 COTTONWOOD DRIVE – CIVIC CENTER
THURSDAY, DECEMBER 2, 2004 at 7:00 PM**

1. **CALL TO ORDER AND ROLL CALL:** Mayor Pfeifer called this Special Meeting to Order at 7:02 p.m. with Council Members Beyer, Carusi, Hildebrand, and Plumley in attendance a Quorum was Present. Councilwoman Logan was absent.
2. **DISCUSS, CONSIDER AND ACT ON LETTER OF AGREEMENT REGARDING THE DEVELOPMENT OF THE WINDCHIME SUBDIVISION LOT 1, AN 11.55 ACRE TRACT, MORE OR LESS, AND A 3.54 ACRE TRACT, MORE OR LESS, LOCATED IN THE EXTRA TERRITORIAL JURISDICTION (ETJ) OF COTTONWOOD SHORES, BURNET COUNTY, TEXAS:** Mayor Pfeifer read the Letter of Agreement which had been signed by Mr. Mike Kelly, President of KLP Homes. Councilman Hildebrand asked what the City Attorney's opinion on this agreement was. Ms. Paige Saenz, Assistant City Attorney, stated that this Letter of Agreement was something she had worked out with Mr. Matt Stern. She was agreeable with the terms and recommended that the Council accept the Letter of Agreement. Councilman Carusi made a motion to accept the Letter of Agreement. Councilman Plumley seconded his motion, which carried by unanimous vote.

ANNEXATION

3. **SECOND READING OF AN ORDINANCE ANNEXING LOT 1, WINDCHIME SUBDIVISION, A SUBDIVISION IN BURNET COUNTY, TEXAS, AS SHOWN ON THE PLAT RECORD IN CABINET 3, SLIDES 136 C & D, PLAT RECORDS OF BURNET COUNTY, TEXAS BEING 10.31 ACRES, MORE OR LESS, LOCATED ON THE EAST SIDE OF THANKSGIVING MOUNTAIN, WEST OF THE CURRENT CITY LIMITS, AND SOUTH OF RR 2147, INCLUDING THE ABUTTING STREETS, RIGHTS-OF-WAY AND ROADS:** Mayor Pfeifer stated that this was the second reading of the ordinance annexing Lot 1, Windchime Subdivision.
4. **SECOND READING OF AN ORDINANCE ANNEXING 11.55 ACRES, MORE OR LESS, SITUATED IN BURNET COUNTY, TEXAS, LOCATED ON THE EAST SIDE OF THANKSGIVING MOUNTAIN, WEST OF THE CURRENT CITY LIMITS, AND EAST OF HI-RIDGE ROAD, AND ABUTTING THE SOUTHERN AND WESTERN BOUNDARIES OF LOT 1, WINDCHIME SUBDIVISION INCLUDING THE ABUTTING STREETS, RIGHTS-OF-WAY AND ROADS:** Mayor Pfeifer stated that this was the second reading of the ordinance annexing the top of Thanksgiving Mountain.
5. **SECOND READING OF AN ORDINANCE ANNEXING 3.54 ACRES, MORE OR LESS, SITUATED IN BURNET COUNTY, TEXAS, LOCATED ON THE EAST SIDE OF THANKSGIVING MOUNTAIN, WEST OF THE CURRENT CITY LIMITS, AND EAST OF HI-RIDGE ROAD, AND ABUTTING THE WESTERN RIGHT-OF-WAY OF KNIGHT'S ROW INCLUDING THE ABUTTING STREETS, RIGHTS-OF-WAY AND ROADS:** Mayor Pfeifer stated that this was the second reading of the ordinance annexing the upper-most top of the hill. He stated that concluded the reading of Items 3, 4 and 5 on the agenda. Ms. Saenz stated that she had reviewed the timeline for the passage of the ordinance and it looks like all the legal

requirements have been met. She recommended that the Council could pass all three ordinances if they so chose. Councilman Plumley made a motion to accept the annexation ordinances on Items 3, 4 and 5 of the agenda. Councilman Carusi seconded his motion, which carried by unanimous vote.

ZONING

- 6. DISCUSS, CONSIDER, AND ACT ON THE PERMANENT ZONING OF LOT 1, WINDCHIME SUBDIVISION, A SUBDIVISION IN BURNET COUNTY, TEXAS, AS SHOWN ON THE PLAT RECORD IN CABINET 3, SLIDES 136 C & D, PLAT RECORDS OF BURNET COUNTY, TEXAS BEING 10.31 ACRES, MORE OR LESS, TO THE MULTI-FAMILY RESIDENTIAL – DISTRICT “R-3”, PURSUANT TO THE MAPS OF FILE WITH THE CITY:** Councilman Hildebrand asked the City Attorney for an opinion. Mr. Charles Eldred, Assistant City Attorney, stated that he believed that the Zoning Ordinance could be passed as written. Councilman Hildebrand made a motion to approve Item 6 on the agenda. Councilman Carusi seconded his motion, which carried by unanimous vote.
- 7. DISCUSS, CONSIDER, AND ACT ON THE PERMANENT ZONING OF 11.55 ACRES, MORE OR LESS, AND 3.54 ACRES, MORE OR LESS, OF LAND, TO A MIXED USE PLANNED UNIT DEVELOPMENT DISTRICT CONSISTING OF A MIXTURE OF MULTI-FAMILY RESIDENTIAL – DISTRICT “R-3” AND LIGHT COMMERCIAL – DISTRICT “C-1”, PURSUANT TO THE MAPS ON FILE WITH THE CITY:** Councilman Hildebrand asked the City Attorney for an opinion. Mr. Eldred, Assistant City Attorney, stated that he believed that the Zoning Ordinance could be passed as written and advised the Council that they may do so. Councilman Plumley stated that since C-1 was kind of broad he wondered if they would have to allow anything in C-1. Ms. Saenz stated that because this was part of the PUD the notes limited uses to those approved by Council. Councilman Plumley made a motion to accept Item 7 on the agenda. Councilman Carusi seconded his motion, which carried by unanimous vote.
- 8. CITIZEN COMMENTS:** Mayor Pfeifer stated that with as many people as there were here tonight he wanted to limit it to 3 minutes each so everyone can speak. Ms. Jane Mitchell stated that it says on the agenda that you are going to discuss, consider and act on permanent zoning, but all she heard was act. She added that she didn't hear any discussion. She noted that if you discussed it prior to this she thought this audience would like to have been part of that discussion. Mayor Pfeifer stated that it had been discussed before in a Council Meeting right here in this room. Mr. Chris Atwell stated that he thought we would be talking about this before the Council acted. He cautioned the Council to reconsider what that did tonight. He stated that the zoning ordinance that they just passed violated local government code, in his opinion and your City Attorney may disagree. He asked if the Council remembers with the developer said he wanted to set down at a meeting. He noted that he tried to schedule a meeting and schedules didn't work out, and now the developer was not returning his calls. He stated that this was getting ramrod through this Council. He added that he had not heard the Council make one modification to the development brought before them. He stated as a result you have allowed the developer to increase congestion on your streets, to worsen your public safety and create problems down the road without any consideration. He stated that the City had not complied with Local Government Code § 211.006, he stated that there had been no fifteen (15) days prior publication of this particular

action. He stated that the City had not complied with Local Government Code Section 211.007, which required ten (10) days advance written notice of each public hearing and that didn't happen. He stated that the City didn't comply with Local Government Code 211.004, which requires that the zoning regulations be done in accordance with the Comprehensive Plan. He stated that he had asked the City Secretary to show him the Comprehensive Plan, but he still hadn't seen it. He noted that the zoning regulations adopted in 2002 were designed to lessen congestion on your streets, secure safety, to prevent overcrowding, and avoid undue concentration of population. He asked how the Council could tell their citizens that putting an eight-story hotel on top of Thanksgiving Mountain was consistent with own zoning ordinance. He stated that the Council just acted to zone property that they didn't even have authority over. He cautioned them to think about what they were hearing from their counsel. He noted that the counsel had given them a zoning ordinance that says the jurisdiction is in Travis County. He added that he thought that we were in Burnet County here. He stated that the zoning ordinance stated that this land is presumably in R-1, but you have now made it into C-1 and R-3. Mayor Pfeifer informed Mr. Atwell that his time was up. Mr. Jimmy Davis deferred his three minutes to Mr. Atwell. Mr. Atwell stated that according to the zoning ordinance the approval of a PUD must be preceded by a review of the Planning and Zoning Commission, which is also established according to your zoning ordinance. He added that you don't have a Planning and Zoning Commission. Councilman Plumley stated that Local Government Code Section 211.007 (e) states that if a General Law Municipality exercises zoning authority without the appointment of a zoning commission any reference in the law to municipal zoning or planning commission means the governing body of the municipality. He added that was the Council. Mr. Atwell stated that he understood Mr. Plumley's reading of that section, but the City's own ordinance says that there is a Planning and Zoning Commission and there is none so how are you complying with your own ordinance. He noted that the approval also had to be consistent with the City's Comprehensive Plan. He asked the Council to read Section 50 of the Zoning Ordinance, which says that PUD rules were designed to allow development that was harmonious with nearby areas. He wondered how the Council could possibly tell them selves that putting an eight-story hotel surrounded by single family homes was harmonious with surrounding development. He asked the Council on behalf of his client and to avoid the uncertainty of litigation, which he thought was a near certainty now that the Council had acted to reconsider pushing this through. He added that they wanted to meet with the developer and had tried to meet with them. He added that Mr. Pedersen had not been returning his calls. He stated if they want to meet, if they want to be good neighbors, if that want to help this entire community then they will follow through on that effort, but they hadn't done that. He encouraged the Council to allow the developer to do that before the City gets drug into litigation and the developer walks away because he doesn't have this sweetheart deal on a platter which has been promised. Mr. Matthew Stern stated that he was an attorney and represented Primera Homes. He wanted to clear up a couple of facts. He stated that Mr. Pedersen had set a meeting on Monday of this week and they rearranged all of their schedules after a holiday weekend, in good faith to try and meet with Mr. Atwell and his clients to try to work something out. He noted that they got a call at 9:30 a.m. Monday morning with the meeting scheduled at 1:00 p.m. that Mr. Atwell's clients were not available and out of town. Mr. Stern noted that Mr. Pedersen then said to schedule a meeting for Wednesday for which Mr. Atwell's clients were unavailable. Mr. Stern noted that

they tried again in good faith to meet. He thought that the threat of litigation has always been their aim and that they had not always been acting in good faith. He added that we saw that tonight. He continued that his team was here to present a project that was not only harmonious to Cottonwood Shores, but harmonious to the surrounding area, and that was not just going to benefit Cottonwood Shores, but the environment, and be economically viable for the developer. He thought that Mr. Atwell's clients wanted nothing to be put there and their idea of harmonious use was for nothing to be built there. He added that he was sorry, but that was not going to happen. He noted that if the threat of litigation was something that they chose to do, then that was their choice. He noted that his team came from a position of good faith and trying to meet half way. *Someone else says they deferred their time to Mr. Atwell.* Mr. Atwell stated that they did have a meeting scheduled for Monday, but he could not make it happen. He added that he was so sorry about and wondered if that was why they weren't returning his calls. He asked how many times this Council had met to discuss this proposal outside of public eye. He asked if we had heard any discussion at any of the meetings regarding scaling back this development, regarding examining traffic, regarding looking at the sewage. He wondered why this Council would not turn over this information. He wondered why there was a reading of a letter agreement for the first time tonight and no one had seen it before now. He wondered what the letter agreement gave the Council. He asked if it was binding. He added no, it was a letter of understanding that we would negotiate in good faith. He noted that he had said his peace and the Council had made their decision. He added that the Council looked at this closely and decided they were going to do this. He added that the Council had not made one change and the minutes would reflect that. He added that the Council had not asked this developer to scale back any element of the development plans. He added that showed that the Council was not thinking about placing commercial up on top of that hillside, but increased tax revenue. He added that he thought that the Council was trying to look out for the citizens' best interest. He agreed with that whole heartedly, but those interests are not limited to potential tax revenue. He added that those interest included what the zoning ordinance required which included looking at the surrounding neighborhoods which included living up to the Local Government Code. He added that if the Council was confident that they had complied with the Local Government Code and wanted to ignore the red flags they were free to do so. He asked the Council to allow some sensible negotiations to take place. He added that these people don't want to stop any and all development they just don't like the scope of this development which is obviously ill advised for the twenty-five (25) acre site. He added that they want to see the right type of development that is consistent with the entire city. He asked if they saw any commercial development like this anywhere else in the city. He added that he didn't think so. He asked the Council again to reconsider this rash act before it is too late. Mrs. Saenz stated that since Mr. Atwell was an attorney he should understand that attorneys negotiate among themselves for their clients, and that we have seen that the attorneys been negotiating. She noted that they had been negotiating the PUD notes and the letter of agreement which he spoke about earlier. She added that they were negotiating the development agreement and once the attorneys are satisfied they bring it to the Council for approval. She added that is how it works and that is what has been going on, we have been working behind the scenes for Council to consider in public meetings. Mr. Atwell asked if she was telling that the density of the developer's plans had been reduced. Mr. Stern stated that he thought that this gentleman is saying two things. He explained on one had he seems to know a great deal about

the proposed development, but on the other hand he says he hasn't been presented with anything on the density or configuration. He added that you either have or you haven't, and if you haven't, as you say you haven't, then you have no idea whether or not the planned development was going to be harmonious. He thought that was the main point today, we were at a preliminary stage before the Council for zoning and annexation so when we move on we'll get to the point where those types of things will be back before the Council for approvals. He noted that the gentleman talked about different studies; well these studies are not warranted right now. He added that any development in any municipality in Texas there are certain studies, which are required at certain times of development and when those studies are required developers produce those studies. He noted that at this time those were not required, but when the studies are required they would present those studies. He stated that if the gentleman wanted to know more about the development then he should have made the meeting on Monday, then he could have know all about our development, including height, density, and all about the cost and expense, and hard work that went into taking his clients concerns into account. Mr. Paul Pedersen stated that he had tried to call Mr. Atwell several times, but had never heard back from him. He noted that as a matter of fact, they had talked to TXDOT and they are for any development as long as their guidelines are adhered to. He added that he wanted to put to rest the allegation that TXDOT would not approve the traffic flows. Mr. Schultz was concerned about the C-1 in the development. He noted that there were three convenience stores counting Bob's, the 7-11, and the one by the HSB entrance. He could not see what another convenience store on top of the hill because we had enough. He wondered what the Light Commercial entailed. He asked if it was a Laundromat or grocery store or what. He felt the Council should look at it before they set down. Mrs. Mitchell asked when we got to the studies would that be an open meeting or a closed meeting. Mr. Stern replied that we would do the Council requires. Mayor Pfeifer explained the reasons for executive session. Councilman Plumley stated that there would not be any convenience stores or car parts stores on top the hill. He added that this was not about public safety. He thought that Mr. Atwell painted the residents around Thanksgiving Mountain as victims. He questioned why Mr. Atwell had been at the meetings if they were not planning on litigation. He thought that the people in Horseshoe Bay do not want Cottonwood Shores touching Horseshoe Bay. He added that it forced them to face the prospect that someday they would have to incorporate. In his opinion, it was all that it boiled down to. Mr. Dunn stated that he was not interested in looking at a 10 ft. high wall at his back door or an eight story hotel just twenty-five ft. from his property. He added that he was not having it, and he would be here from the first meeting to the last, every day that it takes, too keep you guys from doing this if at all possible. Mr. Brandon Griffith stated that as far as the comment about the lack of consideration or deliberation, he thought that the meetings before this had entailed a good deal of deliberation and in his opinion this meeting was the meeting for action. He added that he agreed with Councilman Plumley's comment about Mr. Atwell painting his clients as victims. He stated that after Mr. Atwell cancelled the meeting with the developer, he should have tried to find a time that would be good for both of them. He added that he was around during the scheduling of the meeting and it seemed it was a one sided affair. He noted that Mr. Stern had tried to reschedule and his attempts were simply denied. He felt that tonight that was used to again make Mr. Atwell's clients look like victims. Mr. Ken Anderson stated that Mr. Atwell was not at the first meeting or the second meeting. He stated that when it became obvious that this thing was going to

be railroaded through then on the afternoon of the third meeting Mr. Atwell was retained. Mrs. Blanton stated that she did not live in Horseshoe Bay or Cottonwood Shores. She noted that she lived on 2147 and she was getting stepped all over. She noted that she was part of the small group of Castle Acres who she thought were really effected. She noted they would be the ones dealing with the traffic and the wrecks, and the light, and the pollution from the increase in population. She stated she would have to put up a fence to keep people from crossing her property to get to the lake. Mr. Curtis Rittman stated that he lived in Cottonwood Shore. He stated that development was going to happen regardless, and this area was vastly expanding with the overflow from Austin. He stated that Marble Falls was rapidly and aggressively annexing land so it would not be long before we were part of Marble Falls. He felt that Cottonwood Shores was a good city to be in and he liked what was happening. Councilman Hildebrand assured everyone that he was taking his or her comments into consideration. He agreed to a certain extent that he would not like an eight-story hotel next to his house, but progress was going to happen and development was going to happen. He noted that everyone needed to "give and take" or else development was not going to happen, and that was not going to help the City of Cottonwood Shores. He added that was what this was about, helping the citizens of Cottonwood Shores. Councilman Plumley stated that he made notes and listened to what was said, but that some of the concerns will be addressed later after the annexation. He added that not everyone was going to be happy, but he would do the best that he could.

9. **ADJOURNMENT:** Councilman Plumley made a motion to adjourn at 7:47 p.m. Councilman Hildebrand seconded his motion, which passed by unanimous vote.

ATTEST:


Tena Collier, City Secretary



CITY OF COTTONWOOD SHORES

3808 COTTONWOOD DRIVE
COTTONWOOD SHORES, TX 78654
(830) 693-3830 FAX: (830) 693-6436



ATTENDANCE RECORD
CITY COMMISSIONERS MEETING
CITY OF COTTONWOOD SHORES, TEXAS

DATE: 12.2.04

PLEASE SIGN IN:

Mary Duran
W. Howard
 Chris Howell
 Paula Pfeifer
 Jane Mitchell
 Billy Skutt
 Seledack Skutt
 Clint Niles
 Jani Maridunst
 Janet Taylor
 Janet Dunn
~~Blaine~~
 MAPLEY
 Jenni Beer
 Curtis Rittman
 Brent Krey
~~Rita~~
 Margie Phage

E. Phipps
~~Blaine~~
 Craig Long
~~Janet~~
 Jannel Austin
 KEN ANDERSON
 Ralph Hertor
~~Log~~
 Bill Drost
 Mike Jawley
 Billie Parker
 Lisa Anderson
 Gloria Blanton
 Ron Blanton
 Mike Butler

**SPECIAL MEETING OF THE CITY COUNCIL
OF THE CITY OF COTTONWOOD SHORES, TEXAS
4111 COTTONWOOD DRIVE – CIVIC CENTER
THURSDAY, DECEMBER 2, 2004 at 7:00 PM**

AGENDA

1. CALL TO ORDER AND ROLL CALL.
2. DISCUSS, CONSIDER AND ACT ON LETTER OF AGREEMENT REGARDING THE DEVELOPMENT OF THE WINDCHIME SUBDIVISION LOT 1, AN 11.55 ACRE TRACT, MORE OR LESS, AND A 3.54 ACRE TRACT, MORE OR LESS, LOCATED IN THE EXTRA TERRITORIAL JURISDICTION (ETJ) OF COTTONWOOD SHORES, BURNET COUNTY, TEXAS.

ANNEXATION

3. SECOND READING OF AN ORDINANCE ANNEXING LOT 1, WINDCHIME SUBDIVISION, A SUBDIVISION IN BURNET COUNTY, TEXAS, AS SHOWN ON THE PLAT RECORD IN CABINET 3, SLIDES 136 C & D, PLAT RECORDS OF BURNET COUNTY, TEXAS BEING 10.31 ACRES, MORE OR LESS, LOCATED ON THE EAST SIDE OF THANKSGIVING MOUNTAIN, WEST OF THE CURRENT CITY LIMITS, AND SOUTH OF RR 2147, INCLUDING THE ABUTTING STREETS, RIGHTS-OF-WAY AND ROADS.
4. SECOND READING OF AN ORDINANCE ANNEXING 11.55 ACRES, MORE OR LESS, SITUATED IN BURNET COUNTY, TEXAS, LOCATED ON THE EAST SIDE OF THANKSGIVING MOUNTAIN, WEST OF THE CURRENT CITY LIMITS, AND EAST OF HI-RIDGE ROAD, AND ABUTTING THE SOUTHERN AND WESTERN BOUNDARIES OF LOT 1, WINDCHIME SUBDIVISION INCLUDING THE ABUTTING STREETS, RIGHTS-OF-WAY AND ROADS.
5. SECOND READING OF AN ORDINANCE ANNEXING 3.54 ACRES, MORE OR LESS, SITUATED IN BURNET COUNTY, TEXAS, LOCATED ON THE EAST SIDE OF THANKSGIVING MOUNTAIN, WEST OF THE CURRENT CITY LIMITS, AND EAST OF HI-RIDGE ROAD, AND ABUTTING THE WESTERN RIGHT-OF-WAY, AND ABUTTING THE WESTERN RIGHT-OF-WAY OF KNIGHT'S ROW INCLUDING THE ABUTTING STREETS, RIGHTS-OF-WAY AND ROADS.

ZONING

6. DISCUSS, CONSIDER, AND ACT ON THE PERMANENT ZONING OF LOT 1, WINDCHIME SUBDIVISION, A SUBDIVISION IN BURNET COUNTY, TEXAS, AS SHOWN ON THE PLAT RECORD IN CABINET 3, SLIDES 136 C & D, PLAT RECORDS OF BURNET COUNTY, TEXAS BEING 10.31 ACRES, MORE OR LESS, TO THE MULTI-FAMILY RESIDENTIAL – DISTRICT "R-3", PURSUANT TO THE MAPS OF FILE WITH THE CITY.
7. DISCUSS, CONSIDER, AND ACT ON THE PERMANENT ZONING OF 11.55 ACRES, MORE OR LESS, AND 3.54 ACRES, MORE OR LESS, OF LAND, TO A MIXED USE PLANNED UNIT DEVELOPMENT DISTRICT CONSISTING OF A MIXTURE OF MULTI-FAMILY RESIDENTIAL – DISTRICT "R-3" AND LIGHT COMMERCIAL – DISTRICT "C-1", PURSUANT TO THE MAPS ON FILE WITH THE CITY.
8. CITIZEN COMMENTS.
9. ADJOURNMENT.

I CERTIFY THAT THE ABOVE NOTICE WAS POSTED AT CITY HALL, 3808 COTTONWOOD DRIVE, COTTONWOOD SHORES, TEXAS ON THIS 29TH DAY OF NOVEMBER, 2004 AT 5:00 P.M.

ATTEST:



TENA COLLIER, CITY SECRETARY




FRANK J. PFEIFER, MAYOR