

**CAUSE NO. D-1-GN-16-001762**

GRAYSON COX ET AL.,	§	IN THE DISTRICT COURT
Plaintiffs	§	
	§	
	§	TRAVIS COUNTY, TEXAS
vs.	§	
	§	
	§	
CITY OF AUSTIN,	§	
Defendant	§	126 <sup>TH</sup> JUDICIAL DISTRICT

**BRIEF OF AMICUS CURIAE FILED BY NEIGHBORS OF THE GROVE  
IN SUPPORT OF PLAINTIFFS**

TO THE HONORABLE JUDGE OF THIS COURT:

1. This amicus brief is intended to convey to the court that major concerns about the Grove at Shoal Creek Planned Unit Development (the Grove PUD) are widely shared by many residents in neighborhoods that surround the development. Amici are homeowners and renters in the following neighborhoods near the Grove PUD: Allandale, Rosedale, Ridgelea, Oakmont Heights, Bryker Woods, Highland Park West Balcones Area, and Westminster. The concerns shared by Amici and Plaintiffs exemplify the public policy rationale behind the application of the Valid Petitions Rights Statute, Texas Local Government Code Section 211.006(d).

2. Plaintiffs and other neighbors have filed the requisite valid petitions to trigger  $\frac{3}{4}$  voting under the Zoning Enabling Act. The City has rejected those petitions based on the contention that the Grove PUD is exempt from the mandatory application of the Valid Petition Rights Statute. To protect the property rights of the existing landowners, the Legislature has mandated that any ordinance changing the city's land use regulations to allow objectionable new or different

uses, must receive at least a  $\frac{3}{4}$  vote by the city council to be effective. The fundamental law granting cities zoning powers says ordinances in such cases are not to be determined by the politics of a simple majority vote of city council. The Valid Petition Rights Statute is specifically intended to give nearby landowners a meaningful voice in situations such as this, where a landowner seeks to change the zoning ordinance regulations to allow a new and different land use from the surrounding existing uses established under the current regulations. That right is especially important in cases such as this where the existing uses are homes.

3. Amici's *interest* in this case correspond with the *rights* of Plaintiffs to participate meaningfully in the city review and approval process for this PUD, which are being adversely affected by the City's determination not to comply with the Valid Petition Rights statute. The proposed Grove PUD is currently under review by various city departments for staff approval and recommendation to the city council. Plaintiffs are attempting to participate in that process as is their right, and Amici share in the desire to participate. In good faith, Plaintiffs and Amici are seeking modifications to certain objectionable aspects of the proposed Grove PUD that would be damaging to their homes and neighborhoods. The Zoning Enabling Act and the requirement of  $\frac{3}{4}$  voting is supposed to make that involvement meaningful so as to facilitate one of two solutions to such objectionable land use changes: either the objectionable parts of the proposed changes can be modified during the review process so that the valid petition objections can be withdrawn, or the objections of the adversely affected neighbors will be overridden by a  $\frac{3}{4}$  vote of the city council under the Valid Petition Rights Statute.

4. As a group of neighbors, Amici have a variety of perspectives, degrees of interest, expertise, and opinion. In spite of that reality, the undersigned Amici agree with all of the following statements.

- A. We are concerned that the proposed Grove PUD is dominated by hundreds of thousands of square feet of high-density commercial and retail development, and that this type of development will have a significant negative effect on traffic surrounding the tract. The magnitude of that proposed commercial and retail development is not compatible with adjoining residential neighborhoods and would cause harms and disruptions to the use and enjoyment of the existing homes in the area. The harms and disruptions include putting excessive traffic on Bull Creek Road, the already congested two-lane street adjacent to this tract. The Grove PUD is projected to generate more than 19,000 additional car and truck trips per day, causing transportation breakdowns and spilling excessive traffic over onto other neighborhood streets.
- B. We are concerned that ARG is proposing a large amount of square footage to be zoned for establishments with liquor licenses.
- C. We are concerned that ARG is proposing only the minimal required parkland under conventional zoning, and counting toward that amount some areas that cannot be used for active recreation uses – creek bed, critical environmental zones, riparian growth zones, sloping grade, and storm water facilities. This site exists in a parkland-deficient area, and parkland is a top neighborhood priority for this site.
- D. We are concerned about the environmental impacts of the development on the land itself and the neighborhoods surrounding it – including removal of heritage and protected trees, inadequate flood mitigation measures, and increased noise and air pollution.
- E. We believe that all homeowners in the City of Austin should be afforded an equal right to protest new and significantly different land

uses within 200 feet of their homes under the Valid Petition Rights Statute, regardless of whether such land was previously zoned. This is especially true where the proposed use is a Planned Unit Development (“PUD”), a unique land use that can have a very significant impact on the use and enjoyment of the homes of those living within 200 feet of such development.

- F. We are not reflexively against anything new, or against development per se. We have long recognized that the Bull Creek tract would likely be developed, and accept that development is inevitable. We are simply concerned at the overreach of the proposed development based on the issues raised above.

#### **PRAYER FOR RELIEF**

WHEREFORE, Amici respectfully pray that the Court render declaratory judgment on behalf of Plaintiffs.

Respectfully submitted,

## Amici

Name	Address