

April 10, 2018

Pamela Centeno, Director of Planning / Codes  
City of Seguin, Texas  
205 N. River Street  
Seguin, Texas 78155

*via email pcenteno@seguintexas.gov*

RE: Zoning Case No. ZC 05-18 Related to the Rio Verde Subdivision Being Approximately 170.68 Acres Located Along FM 725; Item No. 5 on the April 10, 2018 Planning and Zoning Commission Agenda and an Unspecified Item on the April 17, 2018 City Council Agenda

Ms. Centeno:

I am writing on behalf of the owner of an approximately 162.42 acre portion of the above-referenced property known as the Rio Verde Subdivision (the "Property"). The Property is the subject of an involuntary annexation and the above-referenced involuntary zoning case. Please be advised that the owner of the Property strongly objects to and hereby protests the zoning of the Property to "Single-Family Residential Zoning 1" ("R-1") as proposed by the City of Seguin (the "City") for the reason that such zoning is entirely inconsistent with the planned for use of the Property as a manufactured housing residential development. As such, the City's proposed R-1 zoning is a violation of Section 43.002 of the Texas Local Government Code ("Section 43.002").

As you are aware, pursuant to Section 3.4.3 of the City's Unified Development Code, manufactured housing is currently prohibited in R-1 zoning. However, the superior State law in Section 43.002(a)(2) prohibits the City from so prohibiting the planned for manufactured housing use. Specifically, Section 43.002(a)(2) provides that a "municipality may not, after annexing an area, prohibit a person from ...beginning to use land in the area in a manner that was planned for the land before the 90<sup>th</sup> day before the effective date of annexation" if a completed development application was timely filed with the City.

With respect to the Property, a completed application for a preliminary plat was filed, accepted, reviewed and approved by the City as the Rio Verde Subdivision while the Property was in the ETJ and not subject to the City's zoning regulations. The preliminary plat was filed, accepted, reviewed and approved by the City well before the time periods specified in Section 43.002. In addition, the City knew and understood that the planned for use Property is manufactured housing and knew that fact well before annexation occurred, as has been acknowledged by City officials. In fact, the involuntary annexation was undertaken because of the City's knowledge as an effort to retroactively prohibit something that is otherwise allowed by law. As a result, the City is prohibited by State law from prohibiting the planned for manufactured housing on the Property as it proposes to do with the involuntary R-1 zoning.

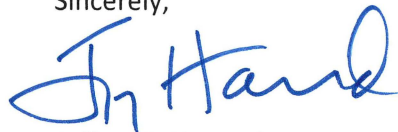
Section 43.002 is a private property rights law designed to protect applicants from the over-reach of local governments when those applicants have acted in reliance, through the expenditure of substantial funds and the filing of applications, on being able to commence a use that is allowed at the time they begin the development process. It is patently unfair for a city to change the rules on an applicant who has already started the development process by commencing an involuntary annexation and zoning process that will prohibit a use that is allowed in the ETJ. The State of Texas has recognized this inequitable use of local governmental zoning regulations by adopting Section 43.002. Moreover, both the United States Constitution and the Texas Constitution prohibit the unlawful taking of property without just compensation. Here, the involuntary annexation and zoning amount to an unconstitutional "regulatory taking" that unreasonably interferes with the owner's investment backed expectations. The amount of compensation the City would be required to pay in this case is substantial.

Finally, the zoning notice and Planning and Zoning Commission back up material implies that the proposed R-1 zoning is at the request of the owner. The owner does not in any way authorize the proposed R-1 zoning. Please correctly advise the public that the zoning designation is not requested by the owner but is, in fact, a government-initiated and involuntary zoning designation that is objected to and protested by the property owner. I am also hereby respectfully requesting that you provide this letter to all Planning and Zoning Commissioners and City Council Members and that this letter be part of the official public record.

It is the owner's sincere hope that the City will not adopt an involuntary zoning designation that violates State law and is unconstitutional in contravention of the owner's private property rights. Therefore, I am respectfully requesting that the City pull the zoning case from consideration from all agendas and postpone further action on the zoning designation of the Property so that the City may meet with the owner to work out the appropriate zoning designation that would be acceptable to the owner to avoid any further conflict or controversy.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey S. Howard". The signature is written in a cursive, flowing style.

Jeffrey S. Howard

cc: Douglas G. Faseler, City Manager  
Andy Quittner, City Attorney  
Naomi Manski, City Secretary