

FILED
CAUSE NO. 2005-20153-158
06 NOV 29 AM 8:28

ORRIC FREEMAN AND,
J. CHARLES HAYNES,

Plaintiffs,

v.

TOWN OF FLOWER MOUND,
TEXAS,

Defendant.

SHERRI ADELSTEIN
DISTRICT CLERK DENTON CO. TX

IN THE DISTRICT COURT

BY _____ DEPUTY

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OF DENTON COUNTY, TEXAS

158TH JUDICIAL DISTRICT

RULE 11 AGREEMENT REGARDING ABATEMENT AND SCHEDULING

TO THE HONORABLE COURT:

Plaintiffs, Orric Freeman and J. Charles Haynes, and Defendant, Town of Flower Mound, Texas, by and through their undersigned counsel, enter into this Rule 11 Agreement Regarding Abatement and Scheduling as follows:

1. Plaintiffs filed this action on May 18, 2005, seeking the disannexation of approximately 5,044 acres from the Town of Flower Mound, Texas pursuant to Tex. Loc. Gov't Code § 43.141.¹ Defendant filed a Motion to Dismiss for Lack of Subject-Matter Jurisdiction or, Alternatively, to Abate Proceedings ("Motion to Dismiss"). After the pleadings were amended and supplemented, Defendant filed an Amended Motion to Dismiss and a Supplement to the Amended Motion to Dismiss (collectively, "Amended Motion to Dismiss") and the Amended Motion to Dismiss was scheduled for hearing before the Court on August 23, 2005. Immediately prior to that hearing, the

¹ Plaintiffs and Defendant agree that the pre-1999 version of the statute applies, since the Annexed Area was annexed under that earlier version of the statute.

Court determined that this cause should be transferred to the 362nd Judicial District Court of Denton County, Texas, where a related lawsuit previously had been heard. The cause has not yet been transferred and since August 23, 2005, the parties have been engaged in detailed substantive negotiations relating to the provision of municipal services to the disputed area and the appropriate land uses for the area.

2. By notice dated October 17, 2006, this Court notified the parties that this cause is set for a dismissal hearing on November 29, 2006, at 8:30 a.m.

3. In light of the status and progress of the parties' negotiations and in an effort to resolve this dispute with limited Court intervention, the Plaintiffs and Defendant hereby jointly move the Court to abate this matter for a period of 180 days in order to give the parties additional time to implement the agreements and measures contemplated by the remainder of this Agreement. If the Court declines to abate this case, the parties will request that the Court proceed with transferring this cause to the 362nd Judicial District Court of Denton County, Texas.

4. The parties hereto agree to the following:

(a) The Town Council at its December 4, 2006, meeting shall endeavor to approve an agreement with the Trinity River Authority ("TRA") for wastewater services in the Denton Creek District, and approval of said agreement by the Town of Flower Mound is contingent upon the dismissal of the instant lawsuit. Said agreement is between the Trinity River Authority and the Town of Flower Mound, the Town of Northlake and the Town of Argyle pursuant to which the three towns agree to share the costs associated with the TRA's design and construction of the Graham Branch Interceptor Line ("Interceptor Line") described in the December 2006 Technical Alignment Report for the Graham Branch Regional Wastewater System prepared by Cheatham & Associates. Further, the parties hereto acknowledge that the construction of Segment B of the Interceptor Line will be undertaken by TRA, not the Town; however, the Town will make reasonable efforts to ensure that all such construction will be

completed within 24 months of the execution of the TRA agreement by all parties.

(b) No later than February 20, 2007, the Town Council shall endeavor to amend the Town's Master Plan 2001 to transfer that portion of the land located in the Town, as shown on Exhibit 1 to this Rule 11 Agreement (the "Property"), out of the Cross Timbers Conservation Development District into a new district, reflected as Area Plan 5 on Exhibit 1²;

(c) The parties hereto agree that the owners of the Property shown on Exhibit 1 to this Rule 11 Agreement shall vest estate density residential and mixed use land uses, pursuant to Chapter 245 of the Texas Local Government Code, and that for purposes of this Rule 11 Agreement, Exhibit 1 attached hereto shall be deemed a development plan pursuant to Section 245.002 of the Texas Local Government Code; however, all development of the Property shall be consistent with all other Town codes and ordinances applicable to the Property. This Rule 11 Agreement does not constitute a waiver by the Town of any development ordinances or conditions. Additionally, this Rule 11 Agreement shall constitute a contract subject to the provisions of subchapter I of Chapter 271 of the Texas Local Government Code.

(d) Within thirty (30) days of the Town's approval of the TRA agreement and amending the Master Plan, and prior to the regularly scheduled February 2007 meeting of TRA, Plaintiffs and Defendant agree to jointly move the Court for the dismissal this cause with prejudice.

5. The parties agree that nothing in this Rule 11 Agreement shall be construed to be a waiver of the Defendant's plea to the jurisdiction or Amended Motion to Dismiss in this cause. Further, nothing in this Rule 11 Agreement shall be construed as an admission by any party as to any facts or legal argument relating to the party's positions on the merits or jurisdiction in this cause. No party, by virtue of this Rule 11 Agreement admits any liability to the other party or to any other person or entity.

² The parties hereto acknowledge that the eastern property line of the Old WR Ranch generally approximates the western boundary of the Cross Timbers Conservation Development District; however, the western boundary of the Cross Timbers Conservation Development District generally follows the escarpment and natural land features whereas the eastern property line of the Old WR Ranch does not follow the same natural land features.

6. The parties hereby enter into this Rule 11 Agreement by and through their respective counsel on the 21st day of November, 2006.

Respectfully submitted,

**FOR PLAINTIFFS ORRIC FREEMAN
AND J. CHARLES HAYNES**

By: 

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Exhibit 1

Master Plan Update

Town of Flower Mound

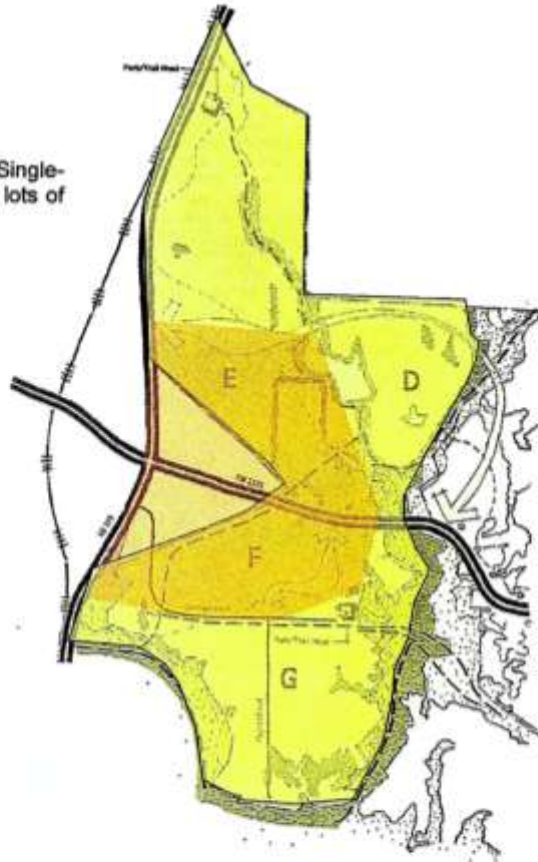


Attachment 2

2.0 AREA PLANS

Area Plan 5 (West) - White's Branch to US 377

Estate Density Residential – Single-family detached development on lots of one acre or larger.



-  Estate Density Residential
-  Mixed Use