

I am: in favor of opposed to neutral to the request for **PLZC20220124**

COMMENTS: This rezoning proposal is not appropriate for our Rural neighborhood

NAME: Robert Stanfield SIGNATURE Robert Stanfield
(PLEASE PRINT)

STREET ADDRESS: 12654 Woman Hollering Road

DATE: 11/9/2022

Emily Delgado

From: Cathy Torgerson
Sent: Wednesday, November 9, 2022 4:09 PM
To: Emily Delgado
Subject: Rezoning request submitted by R & H Ruhmanns

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Delgado,

Ms. Starr said it would be best to at least get our objections to this Rezoning request in writing to be included in the public record. We did not enumerate the reasons we find this plan unacceptable on our zoning sheets we returned to you.

This is a rural community and we desire to keep it as such. This is what we expected when we purchased this property and I believe we should be able to count on that representation. We are simply too old to start over some place else.

Apartments overlooking our back yard would be intrusive in the extreme. It will most certainly affect the value of our home should we ever HAVE to sell due to health reasons or other mitigating circumstances. Who would want this place if you had to be overlooked by apartments?

Thank you for your time and we will see you on November 16th.

Sincerely,
Raymond & Catherine Torgerson

Sent from my iPad

NOTICE OF PUBLIC HEARING

November 3, 2022

Dear Property Owner,

The Schertz Planning and Zoning Commission will conduct a public hearing on Wednesday, November 16, 2022 at 6:00 p.m. located at the Municipal Complex Council Chambers, 1400 Schertz Parkway, Building #4, Schertz, Texas to consider and make recommendation on the following item:

PLZC20220124- A request to rezone approximately 31 acres of land to Apartment/ Multi-Family Residential (R-4), generally located east of the intersection of FM 1518 and Woman Hollering Road, also known as 12535 Woman Hollering Road, also known as Bexar County Property Identification Numbers, 1150385 and 310128 Bexar County, Texas.

The Planning and Zoning Commission would like to hear how you feel about this request and invites you to attend the public hearing. This form is used to calculate the percentage of landowners that support and oppose the request. You may return the reply form below prior to the first public hearing date by mail or personal delivery to Emily Delgado, Planning Manager, 1400 Schertz Parkway, Schertz, Texas 78154, or by e-mail edelgado@schertz.com. If you have any questions, please feel free to call Emily Delgado, Planning Manager directly at (210) 619-1784.

Sincerely,

Emily Delgado

Emily Delgado
Planning Manager

Reply Form

I am: in favor of [] opposed to [X] neutral to [] the request for PLZC20220124

COMMENTS: WE HAVE THE GREATEST EXPOSURE AND IMPACT

NAME: RAYMOND B. TORGERSON (PLEASE PRINT) SIGNATURE [Signature]

STREET ADDRESS: 8795 Quailwood Run, Schertz TX

DATE: 08 Nov 2022

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Sincerely,

Emily Delgado
Planning Manager

Reply Form

I am: in favor of opposed to neutral to the request for **PLZC20220124**

COMMENTS: See below for Comments

NAME: Emily Torgerson SIGNATURE Emily Torgerson
(PLEASE PRINT)

STREET ADDRESS: 11305 Hollering Pass (The Crossvine) - Inheritance Property - 8795 Quailwood Run, Schertz TX 78154

DATE: Nov. 9, 2022

My name is Emily Torgerson, Senior Vice President of Strategic Communications for Phillips Infrastructure Holdings, Inc. - a women-owned heavy civil contractor. My husband and I strongly OPPOSE this zoning change. My parents, Col. and Mrs. Torgerson, currently live at 8795 Quailwood Run. This property is set to be my inheritance property and a place in which I hope to pass on to my children. The 31-acre property in question shares a common boundary with my inheritance property, and re-zoning the property to include apartments will significantly decrease the value of my property. Additionally, I have purchased a new build in The Crossvine community directly across from the property in question. Our new house will be on Hollering Pass, very close to 1518. Had I been aware that this was a potential - and attempt for those property owners just to make money with no regard for their neighbors - I would have not bought the property in The Crossvine neighborhood. My husband, also an attorney, and I are vehemently opposed to this re-zoning change and will do everything in our power to stop it. We are open to a reasonable solution - just not one that will significantly change our ability to enjoy and live on our family's property for years to come.



November 9, 2022

Hon. Mayor Ralph Gutierrez
Hon. Schertz City Council Members
City Council Chambers
1400 Schertz Parkway, Bldg 4
Schertz, TX 78154

**Re: My Client: Colonel Raymond Bruce Torgerson, USAF, Retired
Mrs. Catherine Torgerson
RE: PUBLIC HEARING 11/16/22
PLCPA20220164
PLZC20220175**

Honorable Council Members:

I represent the Torgersons, owners of 8795 Quailwood Run, Schertz, TX 78154 which is located in the "Tom Williams" subdivision of South Schertz. The Torgersons have owned this property for nearly three decades. It shares a long common boundary (approximately 800 feet) with 12535 Woman Hollering Road, owned by the Ruhmanns.

The Ruhmanns have unilaterally, and for their own economic enrichment, asked the City of Schertz to enact a new zoning plan for their property, converting it from an "Estate Neighborhood" designation to a "Mixed Use Neighborhood" classified as an R-4, allowing developers to erect apartments on the previously serene thirty acres. A public hearing is scheduled to take place regarding the proposals on November 16, 2022.

I write this letter on behalf of the Torgersons first and foremost to appeal to your sense of community trust. We ask you to deny the proposed rezoning plan as being against public interest. Enactment of the proposed rezoning plan would be nothing short of a betrayal of decades of community trust and signal to the public that if they rely on the city and its assurances, they do so to their detriment. Additionally, the proposed rezoning plan runs counter to the interests of Schertz, which has historically vowed to "preserve the rural character of South Schertz."

I also write to alert you to legal peril the city will open itself up to if it enacts new zoning plans. **If the city enacts the Ruhmanns' requested new zoning plan, the Torgersons (and any other property owners who have standing and wish to join) will file suit against the city for enacting the new zoning plan to the detriment of nearby and neighboring property owners without first completing a takings impact assessment, as required by the Real Property Rights Preservation Act. We will seek a declaration of the invalidity of the governmental action as well as attorneys' fees and costs.**

1. Granting Ruhmanns' Unilateral Request for a New Zoning Plan For Their Own Enrichment Will Destroy Community Trust

The Torgersons spent the entirety of their adult life in service to the United States Air Force. Colonel Torgerson actively served all over the world and all over the United States of America for decades. When the Air Force relocated the Torgersons to San Antonio in the early 1990's, they began renting the house at 8795 Quailwood Run. In 1994, an opportunity to purchase the home presented itself to the Torgersons, and they jumped at the chance. The family's deployments and relocations continued over the years, but the Torgersons never lost sight of the goal-- one day they would retire to Quailwood Run in Schertz, Texas on their own little piece of paradise.

Week after week, month after month, and year after year, the Torgersons put in the work to ready their home for the day they could retire. With their own hands, the Torgersons perfected the landscaping. By their own sweat and with their own tools, the Torgersons erected an arbor and pavilion. Under their own strength, the Torgersons constructed a workshop. Finally, five years ago, the Torgersons were able to fully retire to their Schertz oasis.

Even in retirement, the Torgersons didn't stop perfecting their parcel. With their children, the Torgersons built a pool house. With their grandchildren, the Torgersons blazed trails for exploring and made a treehouse. As a finishing touch, the Torgersons reached into their retirement savings and installed an outdoor kitchen so they could spend as much time outside as possible, enjoying the fruits of three-decades worth of labor, grit, and sweat.

NOW COMES THE NOTICE: The Ruhmanns want the city to enact a new plan for their property—one that will allow them to erect apartment complexes that will tower over not only the Torgersons' home, but also each and every resident of the subdivision who placed their trust in the City of Schertz when it issued the Comprehensive Land Plan, Future Land Use Map, and 2013 Sector Plan Amendment.

A change in the zoning plan for the Ruhmanns' property will have a detrimental effect the Torgersons' property, to be sure. But more broadly, changing the zoning plan for the Ruhmanns' property will have a detrimental effect on the Schertz community, as a whole. If a property owner can't rely on the Land Use Plan and Future Use Plan laid out for them by the city in making big life decisions like where to retire or where to invest, what can they rely on the city for?

To maintain the public trust and in the interest of the public good, the Torgersons ask you to follow through on the city's word and keep the subject property zoned as an Estate Neighborhood.

2. Ruhmanns' Rezoning Plan Would Detrimentally Affect the Community

For nearly half a century, the Ruhmanns' property has been zoned as an "Estate Neighborhood." As recently as this year, the Schertz City Council affirmed "[t]he Estate Neighborhood land use designation is designed similar to the Agricultural Conservation designation, which is intended to preserve the rural character of South Schertz." However, the Ruhmanns now ask permission to pack up to 600 apartment units into this rural space. Enacting such a change would drastically, sweepingly, and immediately change the rural character of South Schertz. For decades, the city of Schertz has proclaimed their interest in keeping South Schertz rural. The change requested by the Ruhmanns is not compatible with that interest.

Not only would the rezoning plan change the exact rural character Schertz proclaims an interest in protecting, but it would also wreak practical havoc on the citizens in the area. Over the last five years, The Crossvine has developed along 1518. This is a beautifully planned suburban community full of wonderful people, but the strain the subdivision has placed on 1518 traffic is evident every morning, afternoon, and evening. Additionally, the council recently approved a plan to erect apartment complexes a couple hundred yards away from the Ruhmanns' property. The approved plan is for 300 multifamily apartment units and will consist of eight three-story buildings with units ranging from one bedroom to four bedrooms—all on a piece of property that's historically housed a single family.

Between construction in The Crossvine, TXDOT Construction, and groundbreaking and construction of the recently approved nearby apartment complex, allowing zoning for an additional, even larger, multi-family development would create a frustrating traffic situation. Even more importantly, the change would create unsafe working conditions for construction and TXDOT workers, as well as burden emergency services in the event they need to respond to an emergency.

We urge you NOT to push rural South Schertz right past "suburban Schertz" and into "urban Schertz" by enacting the proposed rezoning plan, which would allow a developer to stuff over 600 families onto a parcel which has been occupied by no more than a single family for the last half-century. This decision is a tipping point for rural South Schertz, as well as the safety and comfort of its citizens. Please keep South Schertz rural.

3. *If Schertz Enacts a New Plan for Ruhmanns' Property, the Private Real Property Rights Preservation Act waives Schertz's Immunity from Suit and Protects Property Owners*

If the City of Schertz grants the rezoning plan proposed by the Ruhmanns, every private property owner affected by the rezoning plan will have a cause of action under the Private Real Property Rights Preservation Act ("PRPRPA"). First, under the PRPRPA, any affected property owners could invalidate the rezoning plan because the City of Schertz failed to conduct a "takings impact assessment" as required by the PRPRPA. Second, even if the city conducts the "takings assessment impact" and still proceeds to enact a new zoning plan on the Ruhmanns' property, all private property owners affected by the rezoning will have a cause of action against the city for a governmental "taking."¹

A. PRPRPA: Waiver of Immunity

The Private Real Property Rights Preservation Act became Texas Law in 1995 and operates to waive immunity for a governmental taking of private real property. The PRPRPA defines a governmental "taking" in several ways. Primarily, it defines a governmental taking as *any* "**governmental action** that affects private real property, in whole or part or temporarily or permanently." PRPRPA § 2007.002(5)(A).² PRPRPA *specifically* defines one "**governmental action**" for which immunity is waived as "an action by a municipality that has effect in the extraterritorial jurisdiction...and that enacts or enforces an ordinance, rule, regulation, or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction." PRPRPA § 2007.003.

The City of Schertz is not immune from suit if it chooses rezone the Ruhmanns' property, thereby affecting private real property of nearby and neighboring owners. Specifically, the Ruhmanns' have *requested* the city take governmental action by issuing a rezoning plan for their property, turning it from OCL (outside city limits) Estate Neighborhood property to an R-4 mixed use neighborhood. The Ruhmanns' property is in the extraterritorial jurisdiction ("ETJ"), as is the Torgersons'. The council is considering enacting new zoning rules/ordinances on a single parcel of land in the ETJ that will not apply to the entire ETJ. This would undeniably have a drastic effect on all nearby and neighboring properties, especially the Torgersons' property, which shares a large common boundary with the Ruhmanns' property. This governmental action falls squarely within the purview of the PRPRPA's waiver of municipal immunity.

¹ For purposes of this letter, PRPRPA is the only "taking" regulation addressed. However, I believe several other governmental immunity waivers may be in play, such as regulatory taking based on unreasonable interference with a property owner's right to use and enjoy property.

² PRPRPA contains additional definitions of "taking" which may also be applicable, such as if governmental action "is a producing cause of a reduction of at least 25 percent in the market value of the affected private real property." § 2007.002(5)(B)(ii).

B. PRPRPA: Takings Impact Assessment and Notice

If a city engages in “governmental action³” as described above, it “**shall prepare a written takings impact assessment** of a proposed governmental action. PRPRPA § 2007.043 (a).⁴ Further, a city who engages in governmental action “that *may* result in a taking shall provide at least 30 days’ notice of its intent to engage in the proposed action... The political subdivision shall, *at a minimum*, include in the notice a reasonably specific summary of the takings impact assessment that was prepared as is required by this subchapter and the name of the official of the political subdivision from whom a copy of the full assessment may be obtained.” PRPRPA § 2007.042(a). “A private property owner affected by a governmental action taken without the preparation of a takings impact assessment... may bring suit for a declaration of the invalidity of the government action.” PRPRPA § 2007.044(a). If the property owner prevails, the court must award reasonable attorneys’ fees and costs to the property owner. PRPRPA § 2007.044(c).⁵

Undeniably, the city is considering taking “governmental action” as defined by the PRPRPA, as it is considering enacting a new zoning plan for one particular parcel of land—a new zoning plan that is not being considered for the entire ETJ. That “governmental action” will certainly affect “private real property, in whole or part or temporarily or permanently.” The PRPRPA *specifically* contemplates valid of causes of action for all property owners *affected* by governmental action—not just those to whom the action is specifically directed. Accordingly, before the City of Schertz takes “governmental action” that “*may*” constitute a taking it *must* prepare a written takings impact assessment, provide a summary to the public in notice of hearing, and identify where the full assessment can be located.

Schertz has not conducted the required takings impact assessment. Accordingly, if Schertz enacts the requested rezoning plan, **we will seek a declaration of the invalidity of the governmental action as well as attorneys’ fees and costs.**

³ Note that the statute does not state a “taking” must occur for a “taking impacts statement” to be required; it requires a “taking impacts stament” for ANY “government action” as described in the PRPRPA. A city enacting a zoning chance to a single parcel of the ETJ clearly falls within “government action” as defined by § 2007.003(3).

⁴ The “takings impact statement” must comply with PRPRPA § 2007.043(b).

⁵ Note that under this provision, the city would *not* be awarded attorney fees if it prevails.

C. PRPRPA: Governmental Taking

The PRPRPA, “a private real property owner may bring suit...to determine whether the governmental action of a political subdivision results in a taking.” PRPRPA § 2007.021. “Whether a governmental action results in a taking is a question of fact.” PRPRPA § 2007.23(a). If a jury finds that a government taking has taken place under the PRPRPA, the government is liable to invalidate the action which resulted in the “taking.” The judgment in favor of the private property owner must have a fact finding that determines the monetary damages suffered by the private property owner. PRPRPA § 2007.024(b). At that point, the governmental entity may elect to pay the damages as compensation to the private real property owner, rather than invalidating its order. PRPRPA § 2007.024(c).

If a private real property owner prevails in a suit under the PRPRPA, the court must award reasonable and necessary attorney’s fees and court costs to the property owner. PRPRPA § 2007.026(a).

For the last several decades, the rural character of South Schertz is what has drawn residents to this subdivision. Both objectively and subjectively, the rural nature of this area is what drives property values. If Schertz takes governmental action and creates a new plan that would allow the largest property in the heart of this subdivision develop everything from Walgreens to massive apartment complexes, the rural character of this subdivision will be eviscerated. With respect to the Torgersons, specifically, I suspect a drastic drop on their home value if the rezoning plan is granted as well as a compensable loss of use and enjoyment of their property, both temporarily and permanently.

Enacting the requested change to the zoning plan currently in place on the Ruhmanns’ property would constitute a governmental taking on the part of the city because the action would adversely affect private real property of neighboring and nearby owners. Accordingly, if the City of Schertz enacts the Ruhmanns’ proposed re-zoning plan, the affected property owners can pursue civil litigation against the city under the PRPRPA.

November 9, 2022

Page 7 of 7

While the Torgersons optimistically believe the City of Schertz will decline to enact a new zoning plan with respect to the Ruhmanns' property, they are prepared to file a lawsuit against the city and have a jury decide if the rezoning of the Ruhmanns' property constitutes an impermissible government taking as it relates to their affected property. We have faith that the City of Schertz will not betray the public trust by erasing decades of precedent and promises with the flick of a pen.

The city proclaims "community, service, and opportunity" to be Schertz core values. I urge you to keep the promises you've made to the rural South Schertz **community**, honor the **service** of several of Schertz's most distinguished active and retired service members who live in the "Tom Williams" subdivision, and allow those in this rural community to realize the **opportunity** they seized upon when they chose South Schertz as home.

Sincerely,



KACIE STARR

Cc: ralphgutierrez@schertz.com
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[enclosures]