

## SUBDIVISION REVIEW SHEET

**CASE NO.:** C8-2017-0292.0A**ZAP DATE:** January 19, 2019**SUBDIVISION NAME:** Greens on Cooper Lane**AREA:** 4.64**LOT(S):** 1**OWNER/APPLICANT:** Townbridge Homes, LLC (Aaron Levy)**AGENT:** Thrower Design (Ron Thrower)**ADDRESS OF SUBDIVISION:** 7513 Cooper Lane**GRIDS:** F15**COUNTY:** Travis**WATERSHED:** South Boggy Creek**JURISDICTION:** Full-Purpose**EXISTING ZONING:** SF-6-CO**MUD:** N/A**NEIGHBORHOOD PLAN:** N/A**PROPOSED LAND USE:** Single Family

**ADMINISTRATIVE WAIVERS:** An administrative waiver to section 25-4-33, the original tract requirement, (aka balance of the tract), was granted to the applicant to not include the entire parent tract. Further information regarding this waiver is attached, (see staff memorandum). The adjacent owners of the balance of the tract, (the Estate of Ygnacio Perez) oppose this administrative waiver and may wish to speak to the Commission at the public hearing.

**VARIANCES:** None

**SIDEWALKS:** Sidewalks will be provided on the subdivision side of boundary streets.

**DEPARTMENT COMMENTS:** The request is for approval of the Greens on Cooper Lane Final Plat. The proposed plat is composed of 1 lots on 4.64 acres. The applicant proposes to resubdivide Lots 1 and 2, Willie G. Garcia Subdivision and 2.25 acre unsubdivided tract for proposed residential use. All utilities will be provided by the City of Austin. The developer will be responsible for all costs associated with any required improvements.

**STAFF RECOMMENDATION:** The staff recommends approval of the plat. This plat meets all applicable State and City of Austin LDC requirements.

**ZONING AND PLATTING COMMISSION ACTION:**

**CITY STAFF:** Don Perryman

**E-mail:** [don.perryman@austintexas.gov](mailto:don.perryman@austintexas.gov)

**PHONE:** 512-974-2786

A RESUBDIVISION OF LOTS 1 AND 2  
RESUBDIVISION OF TRACT 1  
WILLIE C. GARCIA SUBDIVISION  
AND A 2.25 ACRE TRACT OF LAND

THE "KID" and "TODD" Companies, Inc.



## MEMORANDUM

**TO:** Members of the Zoning and Platting Commission

**FROM:** Don E. Perryman, Planner Senior  
Development Services Department

**DATE:** January 8, 2019

**SUBJECT:** 25-4-33 Original Tract Requirement  
C8-2017-0292.0A Greens on Cooper Lane Subdivision

The applicant has requested and received an administrative waiver to not include the entirety of the parent tract. This provision in the code is to ensure orderly development and prevent adjacent properties from becoming “land-locked” (preventing frontage of the balance of the tract to a dedicated public street).

Staff has granted this waiver based upon the criteria outlined in 25-4-33(D)(1-4).

- (1) subdividing only a portion of the original tract will not substantially impair the orderly planning of roads, utilities, drainage, and other public facilities;

*Staff believes this has been met as the balance of the tract has development potential independent of the proposed resubdivision.*

- (2) the portion of the original tract contiguous to the area to be subdivided has direct access to a public street, or the applicant has provided access to a public street by dedicating right-of-way at least 50 feet wide;

*The portion of the original tract contiguous to the proposed subdivision (Perez Estate) does have direct access to a public street and is not “land-locked” by the proposed resubdivision.*

- (3) a reasonable use of the balance of the original tract is possible;

*Staff believes a reasonable use of the balance of the tract is possible, especially if combined with other adjacent tract.*

- (4) the applicant has mailed, by certified mail, to all owners of land that is a portion of the original tract and contiguous to the land included in the application a request that each owner provide written confirmation to the director that:
  - (a) the owner's land is not a legal lot or tract; and
  - (b) the owner must plat the land before the City may approve a development permit or a utility company may provide initial or additional service.

*The applicant has mailed certified letters to the owners of the balance of the tract and the City has followed up with certified letters in accordance with 25-4-33(E)*

Based upon these criteria, staff believes the applicant has met the requirements for approval of the administrative waiver request.

If you have any questions or concerns, please contact me directly at 512-974-2786.

Thanks,

Don E. Perryman  
Development Services Department  
don.perryman@austintexas.gov



**RICHARD THORMANN**

Attorney &amp; Counselor at Law

November 19, 2018

***Via Email to Don.Perryman@austintexas.gov***

Don Perryman-City of Austin Senior Planner

R.E. 7603 Cooper Lane

Austin, Texas

Re: Cause No. C-1-PB-16-000374; *In the Matter of the Estate of Ygnacio Perez aka Ygnacio Perez, Sr., Deceased*; In the Probate Court Number One of Travis County, Texas

Cause No. C-1-PB-16-000373; *In the Matter of the Estate of Rosa Perez aka Rosa Lima Perez, Deceased*; In the Probate Court Number One of Travis County, Texas

Dear Mr. Perryman,

I represent Michael Perez, Administrator of the Estates of Ygnacio and Rosa Perez. It was brought to our attention on Friday November 2, 2018 that Townbridge Homes has applied to The City of Austin to have their properties turned in to a Legal subdivision per Municipal Statute Requirements. Abbe Waldman is the listing agent representing the Perez Estates in selling Tract 1 of the estate's holdings. (see attached survey)

Ms. Waldman asked that the pending subdivision process be placed on hold by the City as the proper statutory notification was not given to my clients per City code. We are requesting that the City of Austin conduct appropriate staff and full legal review by your legal counsel of the negative impact this new subdivision may have on my clients' property being Tracts 1 and 2 (see attached survey). In addition, the Town Bridge Homes subdivision request could create legal ramifications and concerns as well for a .20 acre tract shown on this survey owned by a family member Maryann Perez.

I do not represent Ms. Perez. I mention her property only in regard that she is part of the "parent" tract as are Tracts 1 and 2 that one of Townbridge Homes current holdings on Cooper Lane was sold from.

It is my understanding that the City has amongst its' many development regulations a doctrine called a "balance of tract". This regulation along with many other Municipal Code regulations may be problematic for future owners of The Perez Estate's Tracts #1 and #2 future usage and decisions or changes my client or future buyers/owners of these tracts may want to undertake.

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Michael Perez, as Administrator of the Perez Estates, has met with City Planners numerous times trying to gain an understanding of what usages will be allowed for these properties.

He put in an application in 2017 to have a land status legal determination as suggested by City staff.

His understanding at that time after meeting with several senior City planners was that:

1. The Perez Estate Tracts #1 and #2 and the Maryann Perez Tract are considered an "illegal" subdivision. If these properties were to ever be sold the new purchaser will be unable to obtain electric, water nor wastewater services until the property goes through the process of becoming a legal subdivision. Mr. Perez was also told that no building permits can be obtained by the current owners nor any future owners until these properties are made legal.
2. Mr. Perez also understood that if the estates or any heir or future owners wanted to apply for a zoning change from the current "DR" zoning to say a SF-6 zoning that would allow condominiums the City would be favorable to this zoning as there are so many high-density properties surrounding this property that have SF-6 zoning.
3. Mr. Perez also understood from his meetings with City officials that it was strongly advisable to apply for legal status to be a legal subdivision at the same time that Town Bridge Homes submitted an application. He was told that a doctrine exists called the "balance of tract" and because a portion of the Townbridge tract originated from the Estates "parent" tract it was important to try and get all the land legal simultaneously. *We had also been advised that Town Bridge has a statutory obligation to offer to include the Perez tracts in their subdivision. No such offer to date has been made to the Perez Estate.*

Last year Townbridge Homes went before the Board of Adjustments asking for a variance in City Code to allow them to place their access driveway for their new Condominium development immediately adjacent and contiguous along the Perez Estates north boundary line instead of having the normal protective statutory setbacks from their boundary line.

Their main claim they needed a variance for was because there is an existing home located on their frontage on Cooper Lane that made it impossible for them to have their access driveway anywhere else except the spot where they requested a variance. In addition, they claimed some trees were in the way. **Since Townbridge obtained their variance from the Board of Adjustments to get a waiver for their access driveway, it is our understanding that they will be removing the old home that they previously claimed was a hardship that necessitated a waiver for their road access.**

Abbe Waldman-Realtor represented the Perez Estates and spoke against this variance. Twice she was able to get the variance request postponed. Many members of

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the Board of Adjustments agreed with her concerns about the narrow road frontage the Perez Tract #1 has on Cooper Lane as it is only 48.87 feet wide. One of her many concerns is that the Townbridge road access that was granted by the Board of Adjustments would in turn pose set back issues for the Perez Estates Tract #1 narrow road frontage of only 48.87 feet on Cooper Lane. In addition, she was concerned that there would be a negative impact of undue noise from having in excess of 50-150+ cars a day using a driveway located right on the Perez property line. We also are concerned that if the Townbridge variance for their driveway imposes set-back requirements on the Perez Estates' Tract #1 it could greatly alter the usage the City will allow for Tract #1. If the City will not allow a higher zoning change for this tract to occur because of any additional set-back requirements the City decides to impose on the Perez Estate we feel this is grossly inappropriate.

This matter is relevant to part of our concerns we have now. We feel that with Townbridge being given a variance to put their main access driveway contiguous and right on the Perez north property line that this will impose additional cumbersome set-backs for the Perez Estate's Tract #1's only access on Cooper Lane.

In addition, City staff that Ms. Waldman and Mr. Perez met with mentioned that the Estate could have any number of undue difficulties obtaining a legal subdivision status if it was not done at the same time as Townbridge.

We had also been advised that Townbridge has a statutory obligation to offer to include the Perez tracts in their subdivision. No such offer to date has been made to the Estate.

We are requesting a staff and legal review and response to the following:

1. Does Townbridge have a statutory obligation to offer to include the Perez tracts in their subdivision?
2. What will the additional fees be to add the Perez Tract #1 to the existing Town Bridge application? Tract #2? And lastly the .20 of an acre tract owned by MaryAnn Perez? We need to know the City of Austin fees required to join in the existing Townbridge subdivision application for each individual tract.
3. We feel it is not realistic to allow Townbridge to proceed forward given the configuration currently of all the tracts including the Townbridge tract located to the east of the Perez Estates Tract #1. A hardship does exist for Maryann Perez. She is land locked. Please keep in mind that we are talking about 3 different owners at 7603 Cooper Lane. Tract #1 belongs to 12 heirs in The Perez Estates. Tract #2 will belong to Michael Perez when the Estate settles but is currently held in the Perez Estates, and **Maryann Perez owns the .20 of an acre out tract and she is currently land locked. Her situation means the balance of tract doctrine comes in to play as the Townbridge application creates a road frontage issue for Maryann Perez correct?**

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4. Please explain the meaning of the administrative waiver Town Bridge is asking for in their application?
5. The Perez Tract #1 only has 48.87 feet of access on Cooper Lane. If a future owner of the Perez Estates Tract #1 decides to re-zone the property to any zoning higher than DR say SF-1, SF2, SF3, SF5, SF6, is the City going to require a 10 ft, 20 ft or 25 ft setbacks from the Town Bridge access road that was recently allowed by the Board of Adjustments to be placed right on the boundary line between the Town Bridge Driveway and the Perez Tract #1?  
If so, the Perez Tract #1 will be rendered unbuildable and undevelopable correct?
6. Is there a procedural way to appeal the Board of Adjustments decision to grant Townbridge to locate their access road immediately contiguous to my clients' north boundary line? The waiver they requested at the time was because of a home in the way. If in fact that home may be removed it appears the necessity they claimed may no longer exist? As Townbridge has applied for a subdivision request it seems this would be an appropriate time for the City to impose a requirement on Townbridge to move their access driveway if in fact it is negatively impacting my clients' appropriate development of their tract. City code does state:

*"...The director may waive the requirement of Subsection (B) if the director determines that: (1) subdividing only a portion of the original tract will not substantially impair the orderly planning of roads, utilities, drainage, and other public facilities..."*

As follows I have asked specific questions highlighted in red next to the City of Austin Municipal Code that follows:

§ 25-4-33 - ORIGINAL TRACT REQUIREMENT.

(B) An applicant shall include all land in the original tract in an application for preliminary plan or plat approval. Townbridge Homes has not approached the Perez Estate, nor Michael Perez nor MaryAnn Perez to be a part of their application to date.

(C)

The Land Use Commission may waive the requirement of Subsection (B) if the Land Use Commission determines that the requirement is impractical or imposes an unreasonable hardship on the applicant.

(D)

The director may waive the requirement of Subsection (B) if the director determines that:

(1)

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subdividing only a portion of the original tract will not substantially impair the orderly planning of roads, utilities, drainage, and other public facilities; In our opinion this has not been fully determined. Tract #1, and the Mary Ann Perez tracts have less than a 50 ft wide access easement as The Perez Estate only owns Tract # 1 and # 2

(2)

the portion of the original tract contiguous to the area to be subdivided has direct access to a public street, or the applicant has provided access to a public street by dedicating right-of-way at least 50 feet wide; The Perez Estates' Tract # 1, and the Mary Ann Perez tracts have less than a 50 ft wide access easement. The survey shows 48.87 feet on Cooper Lane.

(3)

a reasonable use of the balance of the original tract is possible; and Possibly-- we do not know what setback requirements will be mandated by the City of Austin on the Perez Estates' Tract #1 owns 48.87 feet, and the Mary Ann Perez tract has only 48.87 feet access easement. Her easement states it is a 50' foot easement but the survey shows the actual measurement to be less.

**If the City requires setbacks from the new Town Bridge access driveway that the Board of Adjustments granted them, then the manner in which the Town Bridge property is being subdivided COULD impact the orderly development of the balance of the Perez Tract #1 as well as the .20 acres owned by Maryann Perez.**

(4)

the applicant has mailed, by certified mail, to all owners of land that is a portion of the original tract and contiguous to the land included in the application a request that each owner provide written confirmation to the director that: This notification has not been received by the Perez Estate, Michael Perez, nor Maryann Perez

(a)

the owner's land is not a legal lot or tract; and

(b)

the owner must plat the land before the City may approve a development permit or a utility company may provide initial or additional service.

(E)

If the director does not receive the written confirmations requested under Subsection (D)(4) by the 10th day after the requests were mailed, the director shall

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mail, by certified mail, to each owner a notice containing the statements described in Subsections (D)(4)(a) and (b).

(F)

*In making a determination under Subsection (D)(3) that a reasonable use of the balance of the original tract is possible, the director may require that the applicant provide a schematic land plan of the balance of the original tract. The director may not require that the applicant provide detailed engineering information. Is Town Bridge going to do this? Does this mean Town Bridge has to provide a schematic showing how the Perez Estate Tract # 1 can be developed for use for SF-1, SF-2, SF-3, SF-5 and SF-6? We ask as after visiting with Senior City Planners we had an appraisal performed for commercial value as we were advised that if someone were to apply for re-zoning condominiums might be possible on Tract #1.*

(G)

An interested party may appeal the director's determination under this section to the Land Use Commission.

(H)

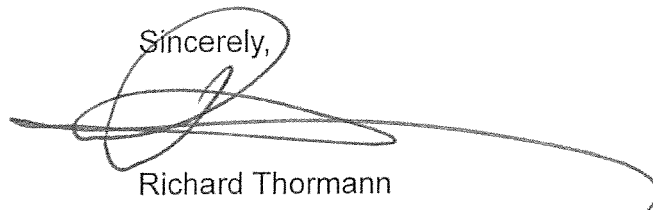
An applicant who satisfies the requirement of Subsection (D)(2) by dedicating right-of-way to provide access to a public street is not required to construct improvements within the right-of-way.

Source: Sections 13-1-481(c) and 13-1-481.1; Ord. 990225-70; Ord. 000309-39; Ord. 010607-8; Ord. 031211-11.

I apologize for the lengthy and detailed letter but these are very important concerns to the Estates and the Administrator of the Estates whose administration is supervised by Travis County Probate Judge Guy Herman.

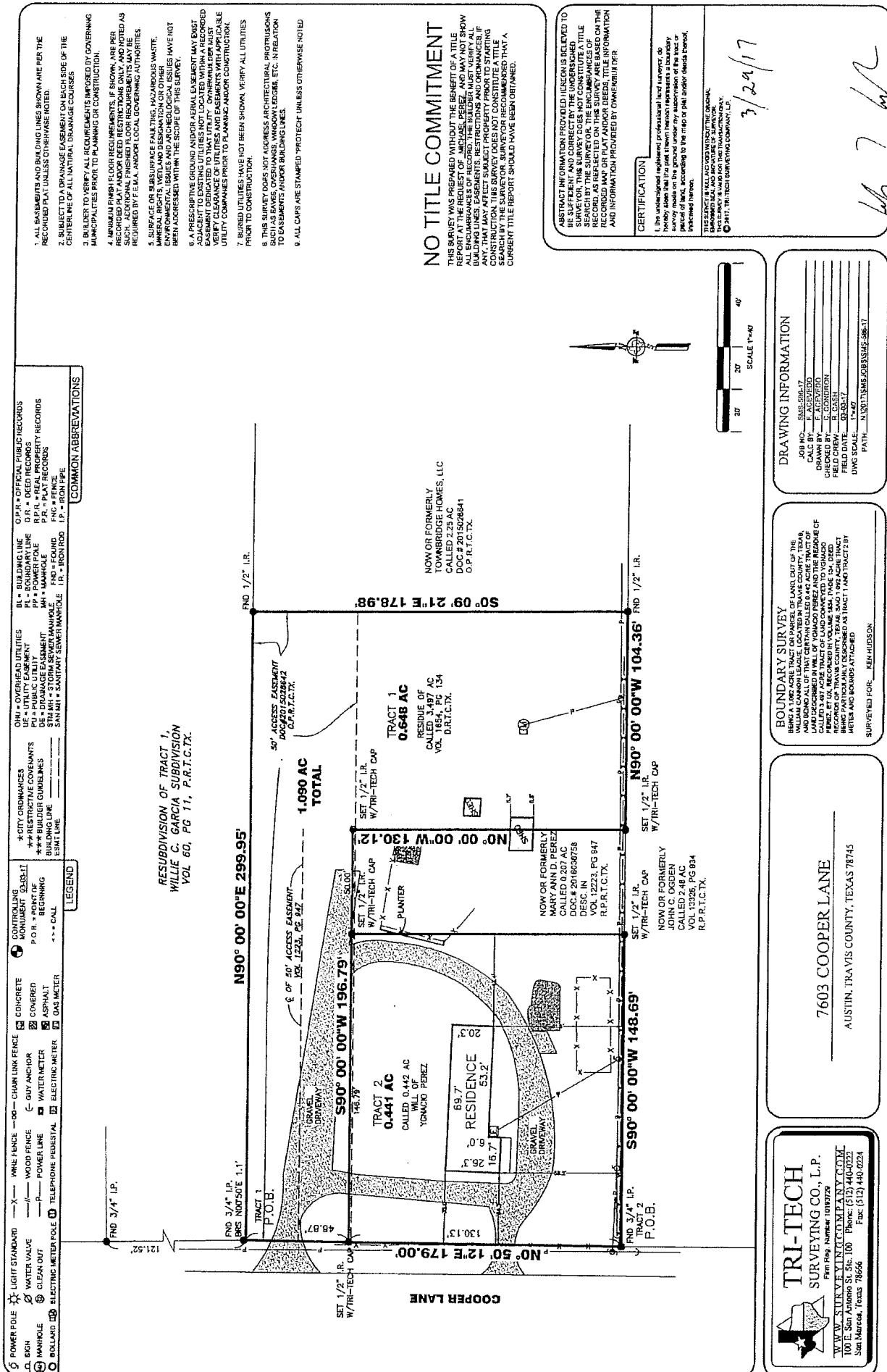
I would appreciate your responses and feel free to contact our real estate agent, Abbe Waldman, or my office.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line extending to the right.

Richard Thormann

cc: Abbe Waldman  
Michael Perez



**Perryman, Don**

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**From:** Ron Thrower <~~ron@throwerdesign.com~~>  
**Sent:** Tuesday, January 08, 2019 5:03 PM  
**To:** Perryman, Don  
**Subject:** FW: Greens on Cooper Lane  
**Attachments:** 18-1204 Greens on Cooper Lane Plat ZAP Presentation.pdf; Perez Estates Don Perryman Letter.pdf; C8S-72-151.pdf; C8s-71-74.pdf

**Ron Thrower***Thrower Design*

510 S. Congress Avenue, Ste 207  
P.O. Box 41957  
Austin, Texas 78704  
512/476-4456

**From:** Ron Thrower  
**Sent:** Friday, December 14, 2018 4:16 PM  
**To:** 'Perryman, Don' <Don.Perryman@austintexas.gov>; 'Lloyd, Brent' <brent.lloyd@austintexas.gov>; Linseisen, Andrew (Andrew.Linseisen@austintexas.gov) <Andrew.Linseisen@austintexas.gov>  
**Cc:** Aaron Levy (~~aaron@townbridgehomes.com~~) <~~aaron@townbridgehomes.com~~>; Neslie Cook <~~neslie@throwerdesign.com~~>  
**Subject:** Greens on Cooper Lane

Don, Brent, Andy,

I'd like to see some action by the City on the issue relating to the item associated with the Balance of Tract matter raised by an adjoining property owner. The issue has languished long enough at the city and we need to keep the ball rolling on this so that there is not any last minute assertions of additional delay needed to resolve the matter. Attached is a plan that clearly reflects the conditions of ownership linework as the adjoining property has laid out in their letter to you (attached).

To be clear, the plat MEETS ALL ORDINANCE REQUIREMENTS. We are expecting that the City make this finding abundantly clear with all Commissioners and that the backup for the case accurately reflects this. We have met all the conditions necessary to receive an administrative waiver to grant the balance of tract from the City of Austin for this condition. We have mailed notices via certified mail to the property owners. And my understanding is that the City has fulfilled their obligation by doing the same.

It is a certain fact that their property conditions are either self-imposed (by the sale of the property to my client), and, the situation of not having 50' of frontage is a condition created by the judge in the division of the property by giving a frontage of 48.87' for the property abutting The Greens at Cooper Lane Plat. Had the judge been aware of the 50' easement for which the 48.87' came from, perhaps he would have divided it in such a way that Tract 1 could have their 50' of frontage. None the less, their lack of frontage at this juncture is not caused by my client. The entire frontage of the Greens at Cooper Lane property is currently today platted property as 2 lots – see attached C8s-72-151 Resubdivision of Tract 1, Willie C. Garza Subdivision. Note that this is a Resubdivision of the entire property covered under a single lot described in the attached C8s-71-74. Since at least November of 1971 the property frontage of the

Greens at Cooper Lane Plat has been platted property. None of these changed or modified the conditions of the Perez property frontage in width or any limitation of access to Cooper Lane.

The sale of the Perez property to my client includes solely a 2.25-acre tract at the rear of the Perez property. We recognize that this 2.25-acres is not a legal tract which is why we have the pending Resubdivision styled as The Greens At Cooper Lane. For clarity, this Greens on Cooper Lane Plat contains the entire currently platted property covered under C8s-72-151 and this 2.25-acres. At the time of this voluntary conveyance of land by the Perez's, their frontage remained intact. It was not until sometime later that the Perez family sought court ordered division of property to satisfy heirs of the property. At the time of sale, the Perez Family was a property that could be platted alone. Nothing that my client has done by the purchase of the 2.25-acres or proposed with the Greens at Cooper Lane Plat has caused for that condition to change.

It is possible that you may treat the letter provided by the Perez's attorney as an appeal to the granting of the waiver for the balance of the tract. While an appeal is possible under the code, it must meet the conditions of an appeal, which I believe have not been met. First and foremost is a letter from them explicitly asking for an appeal which has not occurred timely. Secondly, there must be a fee paid by them for the appeal to take place. I believe that also has not occurred timely. In the event that the City may construe the Perez letter as an appeal, then you must also provide notice to us and also provide for notice to other parties and also have proper posting of the appeal for the January 15<sup>th</sup> hearing of the Plat before the Zoning & Platting Commission.

My client and I are fully expecting a hearing to occur on that date and are also fully expecting for the Perez attorney or representative to assert that the platting of the property is illegal. However, and to make this abundantly clear, the plat complies with city code and must be approved. We are looking for a decision that night at Commission and ask that the city do their part to make sure that additional delays are not caused by lack of city action please.

If you have any questions, please contact me.

**Ron Thrower**

*Thrower Design*

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