

AGENDA ITEM 24

Discuss and take appropriate action on the closed and abandoned landfill inventory project from CAPCO.

Betty Voights and Casey Kneupper with the Capital Area Planning Council addressed the court concerning the determination of closed, unpermitted and abandoned landfills in Williamson County with a minimum size of ¼-acre.

No action was taken on this agenda item.

AGENDA ITEM 25

Consider appropriate amendment to Developer Agreement with Avery Ranch.

Charlie Crossfield addressed the court concerning the proposed amendment, to extend the agreement for six months (from December 31, 2001 to June 30, 2002) to include an additional two lanes on Avery Ranch Boulevard from Parmer Lane to O'Connor.

Moved: **Commissioner Boatright**

Seconded: **Judge Doerfler**

Motion: To approve amendment to development agreement with Avery Ranch to extend the agreement to complete Phase 1-B by June 30, 2002.

Vote: **4 – 0** with Commissioner Hays absent from the dais.

< Attachment >

**FIRST AMENDMENT TO
DEVELOPER'S AGREEMENT**
(AVERY RANCH ROAD DISTRICT NO. 1)

THIS FIRST AMENDMENT TO DEVELOPER'S AGREEMENT (this "*Amendment*") is by and among the undersigned Continental Homes of Texas, L.P., a Texas limited partnership ("*Continental*"), Developers of Avery Ranch, Ltd., a Texas limited partnership ("*Central Avery Ranch Developer*"), The Golf Club at Avery Ranch, Ltd., a Texas limited partnership (the "*Golf Course Developer*"), and Rathgeber Investment Company, Ltd., a Texas limited partnership ("*Rathgeber*"), all as developers of Avery Ranch (as defined herein), and Williamson County, a political subdivision of the State of Texas (the "*County*") on this the _____ day of December, 2001.

RECITALS:

WHEREAS, on the 14th day of November, 2000, the Commissioners' Court of Williamson County has authorized the creation of the Avery Ranch Road District No. 1 (the "*District*"), and

WHEREAS, as consideration for the creation of said district, Continental, Central Avery Ranch Developer, the Golf Course Developer, and Rathgeber (collectively, the "*Developers*") agreed to the construction of Avery Ranch Boulevard within the District, as described in the Developer's Agreement executed by and among (*inter alia*) the County and the Developers, dated November 14, 2000 (the "*Agreement*")

WHEREAS, The Developers and the County desire to amend the Agreement, as more fully set forth in this Amendment;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the undersigned Developers covenant and agree as follows:

1. **Avery Ranch Boulevard.** The Developers have previously dedicated or caused to be dedicated in fee simple to the County the necessary right-of-way for Avery Ranch Boulevard. The Developers have commenced construction of Avery Ranch Boulevard.

2. **Construction Phases - Avery Ranch Boulevard.** Pursuant to Section 4 of the Agreement, the Developers agreed that Avery Ranch Boulevard will be constructed in three phases in accordance with the schedule set forth in Section 5 of the Agreement. The County and the Developers agree that Section 4 of the Agreement is hereby amended as follows:

(a) **Phase I.** "*Phase I-A*" of Avery Ranch Boulevard will consist of the construction of four lanes from Parmer Lane west to the existing railroad track, as shown on Exhibit "A". "*Phase I-B*" of Avery Ranch Boulevard will consist of the construction of four lanes from Parmer Lane east to the eastern boundary of the Avery Ranch and of the District.

(b) **Phase II.** "*Phase II*" of the construction of Avery Ranch Boulevard shall consist of the construction of either two or four lanes of traffic (as may be determined

appropriate by the Developers and the County), from the railroad tracks in the western portion of the Avery Ranch to the western boundary line of the Avery Ranch, as shown on Exhibit "A".

(c) Phase III. Phase III of the construction of Avery Ranch Boulevard shall be the construction of the additional two lanes of such road from the railroad track to the western property line, assuming that such additional two lanes have not been constructed as part of Phase II (it being the intent of the Developers and the County that not more than four lanes shall be constructed by the Developers).

3. Timing of Construction. The County and the Developers agree that Section 5 of the Agreement is hereby amended as follows:

(a) Phase I. The Developers agree that Phase I-A of the construction of Avery Ranch Boulevard will be completed by December 31, 2001. The Developers agree that Phase I-B of Avery Ranch Boulevard will be completed by June 30, 2002.

(b) Phase II. The Developers agree that they will commence construction of those portions of the Avery Ranch Boulevard comprising Phase II at such time as the Developers complete construction of 1000 legally platted residential lots within Avery Ranch. The Developers agree that they will complete construction of all aspects of Phase II of Avery Ranch Boulevard by December 31, 2006.

(c) Phase III. The Developers agree that they will commence construction of Phase III of Avery Ranch Boulevard at such time as the Developers complete construction of 2000 residential lots in Avery Ranch, and they will complete construction by December 31, 2009.

The County may construct or cause to be constructed, or improve or cause to be improved, any portion of Avery Ranch Boulevard at anytime, and the Developers agree to issue or cause to be issued debt sufficient to reimburse the County for all costs of construction, including engineering costs, subject to the limit on indebtedness described in Section 2 of the Agreement and applicable law.

Nothing herein shall restrict the Developers from building more than one phase at any given time or from building any phase or phases ahead of the schedule set forth herein.

4. Miscellaneous.

(a) "Avery Ranch" and the "District" means the land in Williamson County, Texas, more particularly described on Exhibit "C" attached hereto.

(b) Texas Law to Apply. This Amendment shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by the Contract are performable in Williamson County, Texas.

(c) Assignment; Parties Bound. This Amendment may be assigned by the Developers only with the prior written approval of the County, which approval will not be

unreasonably withheld, conditioned, or delayed. This Amendment shall be binding upon and inure to the benefit of the parties to this Amendment and their respective heirs, executors, administrators, personal representatives, legal representatives, successors and assigns.

(d) Authority. The County represents and warrants to the Developers that the County is duly authorized and empowered to enter into this Amendment. Each Developer and Owner represents and warrants to the County that it has the requisite authority to enter into this Amendment. Each signatory to this Amendment represents and warrants that he or she has the authority to execute this Amendment on behalf of the party for whom such person is signing.

(e) No Partnership. Continental, Central Avery Ranch Developer, Rathgeber, and the Golf Course Developer are not partners or joint venturers. In no event will any of the parties hereto be liable or responsible for any contractual, tortuous, or other liability, obligation, or debt of any other party, whether a party to this Amendment or otherwise.

(f) Legal Construction. In case any one or more of the provisions contained in this Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Amendment, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Amendment.

(g) Gender. Words of any gender used in this Amendment shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

(h) Multiple Counterparts. This Amendment may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; but in making proof of this Amendment, it shall not be necessary to produce or account for more than one such counterpart.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Executed to be effective _____.

THE DEVELOPERS:

CONTINENTAL:

Continental Homes of Texas, L. P.
(a Texas limited partnership)

By: **CHTEX of Texas, Inc.**
(a Delaware corporation)
Its General Partner

By: _____
Terry E. Mitchell, Vice President

RATHGEBER:

Rathgeber Investment Company, Ltd.
(a Texas limited partnership)

By: **Rathgeber Investment GP, Inc.**
(a Texas corporation)
Its General Partner

By: _____
Edward R. Rathgeber, Jr., President

GOLF COURSE DEVELOPER:

The Golf Club at Avery Ranch, Ltd.
(a Texas limited partnership)

By: **A.R. Golf Management Co., L.L.C.**
(a Texas limited liability company)
Its General Partner

By: _____
Robert D. Wunsch, President

CENTRAL AVERY RANCH DEVELOPER:

Developers of Avery Ranch, Ltd.
(a Texas limited partnership)

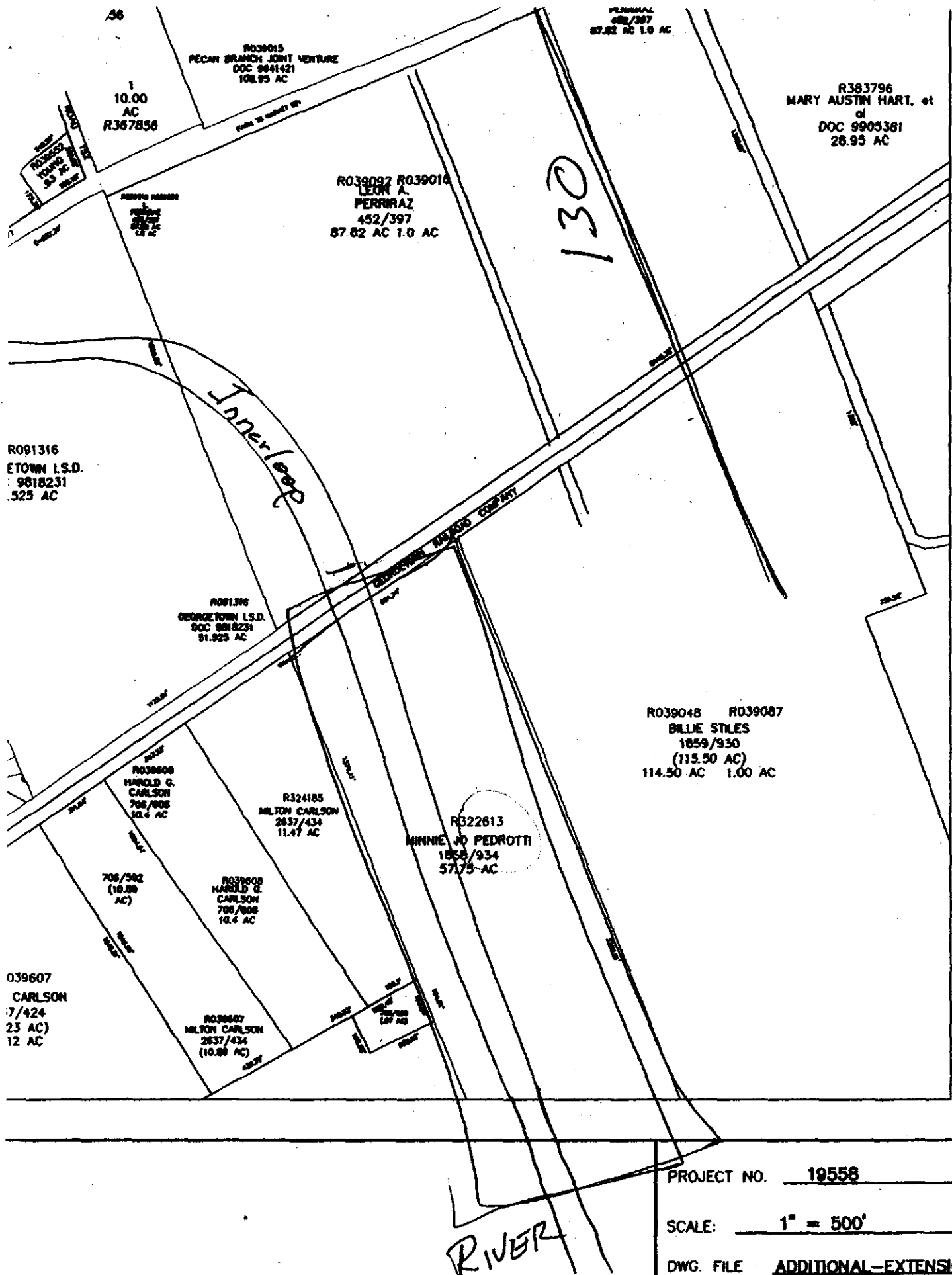
By: RWR Development Company, L.L.C.
(a Texas limited liability company)
Its General Partner

By: _____
Robert D. Wunsch, President

THE COUNTY:

Williamson County, Texas

By: John C. Daerfler 1-15-02
Name: John C. Daerfler
Title: County Judge



COMMISSIONERS' COURT ADJOURNED TO EXECUTIVE SESSION AT 11:20 A.M. ON TUESDAY, JANUARY 15, 2002.

AGENDA ITEM 26

Discuss real estate (EXECUTIVE SESSION as per VTCA Govt. Code sec. 551.072 matters regarding real property.)

No action was taken in Executive Session.

AGENDA ITEM 27

Discuss parkland acquisition (EXECUTIVE SESSION as per VTCA Govt. Code sec. 551.072 relating to real property.)

No action was taken in Executive Session.

COMMISSIONERS' COURT RECONVENED FROM EXECUTIVE SESSION AT 12:05 P.M. ON TUESDAY, JANUARY 15, 2002.

AGENDA ITEM 28

Discuss and take appropriate action on Williamson County Academy building.

Moved: **Judge Doerfler**

Seconded: **Commissioner Heiligenstein**

Motion: To extend the feasibility study and the County's move-out date for 90 days.

Vote: **5 - 0**

< Attachment >