VILLAGE OF VOLENTE

RESOLUTION NO. 2004-R-26

A RESOLUTION OF THE VILLAGE OF VOLENTE, TEXAS, DISAPPROVING AN APPLICATION FOR A FINAL PLAT WHICH VARIOUS LANDOWNERS AND DEVELOPERS HAD ATTEMPTED TO FILE WITH THE VILLAGE ON SEPTEMBER 10, 2004, FOR A PROPOSED CIELO VENTANA ADDITION; PROVIDING FOR CONFLICTS WITH OTHER RESOLUTIONS AND ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE FOR THE RESOLUTION.

WHEREAS, the Village of Volente ("Volente") was incorporated pursuant to the laws of the State of Texas as a Type B General-Law Municipality following an election held on February 1, 2003; and

WHEREAS, the City Council of Volente ("Council") enacted Ordinance 2003-O-01 on May 20, 2003, which established a temporary moratorium on the filing and processing of applications for subdivision plats, site development plans, building permits and zoning applications; and

WHEREAS, the Council excepted from the moratorium those properties upon which construction had commenced prior to May 20, 2003; those properties that had received a site development permit from Travis County, Texas, prior to May 20, 2003; and, single-family residential structures and improvements to be constructed on lots legally platted prior to May 20, 2003; and

WHEREAS, the Council has subsequently extended the moratorium from time to time in order to develop a Comprehensive Plan for Volente prior to enacting ordinances governing the existing and future development of Volente; and

WHEREAS, the most recent extension of the moratorium extends the moratorium to November 6, 2004, unless sooner terminated by action of the Village Council; and

WHEREAS, it took a substantial period of time to solicit, receive, evaluate and incorporate into the Comprehensive Plan the responses to a community survey which requested the citizens of Volente to provide the Council with their opinions, desires and needs in connection with the future growth of Volente; and,

WHEREAS, the Comprehensive Plan has been completed, it was presented to the Planning and Zoning Commission, and the Commission recommended the Plan to the Council for adoption; and

WHEREAS, the Comprehensive Plan was adopted by the Council on October 19, 2004;

WHEREAS, various citizen committees have been working on ordinances to provide the rules and regulations to achieve the goals set forth in the Comprehensive Plan; and

WHEREAS, the zoning ordinance, the subdivision ordinance, the watershed ordinance, the sign ordinance and the fee ordinance have been recommended to the Council by the Commission and were adopted by the Council on October 19, 2004;

WHEREAS, a site development plan ordinance and the Zoning Map for the Village have been considered by the Commission and recommended to the Council for adoption;

WHEREAS, the Council plans to adopt both the Zoning Map and the site development plan ordinance prior to the expiration of the moratorium

WHEREAS, on September 10, 2004, certain persons representing themselves to be landowners and developers of a proposed Cielo Ventana Addition project attempted to file a final plat application with the Village attorney;

WHEREAS, the Village attorney refused to accept the filing and the persons attempting to file the application with the Village left the application with the Village Secretary who also refused to accept the application because of the moratorium; and

WHEREAS, the Council has concluded the moratorium applies to the proposed final plat; and

WHEREAS, the attorney for the applicant has contended that the Village's moratorium does not comply with the provisions of the Texas Local Government Code and the returning of the application does not obviate the Village's obligation to act on the application within 30 days of action by the Commission recommending denial of the plat application, in accordance with §212.009, Tex. Loc. Gov't Code;

WHEREAS, the Village Council has concluded that in the event a district court agrees with the applicant's position that the Village's moratorium is not legally effective, it should comply with the provisions of §212.008 of the Texas Local Government Code and disapprove the proposed plat.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF VOLENTE, TEXAS:

1. Disapproval of the Proposed Plat

The application for final subdivision plat for the Cielo Ventana Addition, which the landowners attempted to file with the Village of Volente on September 10, 2004, is hereby disapproved for the following reasons:

a. At the time of the attempted filing, the Village had a moratorium in effect, which prohibited persons from filing and the Village from processing applications for subdivision plats;

b. At the time of the filing of the application, the Village had not yet adopted a general plan for the Village, but has now adopted such a comprehensive plan, which will be the general plan of the municipality pursuant to the provisions of §212.010 of the Texas Local Government Code. Consequently, the Village Council finds that at the time this application was filed, the proposed Cielo Ventana Addition plat did not conform to the general plan of the Village;

c. For the reasons set forth in (b) above, the Village Council finds that the proposed Cielo Ventana Addition plat does not conform to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality, taking into account access to and extension of sewer and water mains and instrumentalities of public utilities.

d. The Village has recently adopted and is in the process of adopting additional rules pursuant to Section 212.002 of the Texas Local Government Code governing plats and subdivisions of lands within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality. Until such rules are adopted, the Village Council finds that the proposed Cielo Ventana Addition plat does not conform to the rules adopted and to be adopted under Section 212.002 of the Texas Local Government Code.

Section 2. Conflicting Provisions.

In the event there is a conflict between the provisions of this Resolution and any other currently effective resolution or ordinance of Volente, the provisions of this Resolution will control. In adopting this Resolution, the Village Council is not making any determination on whether it will or will not grant the applicant's application for a subdivision plat if it is re-filed after the moratorium expires on November 6, 2004, and the Council encourages the applicant to re-apply under the Village's rules and regulations which are in effect on the expiration of the moratorium.

Section 3. Severability.

If any portion of this Resolution or the application of this Resolution to any person or set of circumstances is held to be invalid or unenforceable for any reason, then that holding shall not be construed to affect the validity of any other portion of this Resolution, and all other portions shall remain in full force and effect. All provisions of this Resolution are declared severable for that purpose.

Section 4. Effective Date.

This Ordinance shall take effect immediately upon its approval by the Village Council at a special council meeting held on October 25, 2004.

PASSED AND APPROVED this, the 25th day of October, 2004, by a vote of the Volente Village Council of 5 in favor to 0 opposed with 0 abstentions.

Jan Yenawine, Mayor

Attest:

Jennifer L. Zufelt, City Secretary