

RESPONSE TO THE APPEAL OF LAND USE COMMISSION APPROVAL OF NORTH TRAIL OFFICE PARK SITE PLAN (SPC-2023-0357C)

Nature of the Case: This case is an Appeal of the Zoning and Platting Commission (“ZAP”)’s approval of Bull Creek Market LLC (“Applicant”)’s North Trail Office Park site plan (the “Site Plan”). Appellant Marcus Shaftel (“Appellant”) has listed eighteen (18) objections to the Site Plan’s approval, all of which restate objections that the Save Our Springs Alliance (“SOS”) raised during ZAP’s consideration of the Site Plan. After due consideration, ZAP voted to approve the City Staff’s recommendation that the Commission approve the Site Plan. Appellant has appealed that approval to the City Council for a final determination and has restated the same objections previously raised. The Applicant asks City Council to uphold ZAP’s determination, deny the Appeal, and approve the Site Plan.

Standard for Review: Section 25-5-147 of the Land Development Code states as follows: “The Land Use Commission *shall* approve a site plan for development in a Hill Country Roadway Corridor if the Land Use Commission determines that the proposed development complies with the requirements of this title.” (emphasis supplied). The standard set forth in Section 25-5-147 is nondiscretionary and requires approval if the proposed development complies with the City Code. The Appeal to City Council must follow this same standard of review pursuant to Section 25-1-192 of the Land Development Code.

Discussion of the Case: This Response is submitted to answer the points raised and rejected at the ZAP on December 17, 2024. On the day of the ZAP hearing, the Save Our Springs Alliance filed a seven-page letter outlining their concerns related to the thoroughly reviewed and vetted the North Trail Office Park Site Plan. Today’s Appeal simply repeats the same Save Our Springs Alliance’s points and the Applicant would ask that the City Council reject this Appeal.

The City's site plan review process is exhaustive. After a site plan is submitted, the City Staff spend considerable time reviewing the plans and submitting comments to applicants, which then prompts applicants to update their site plans to address the City Staff's comments. The North Trail Office Park Site Plan went through eight (8) cycles of review and comment – which includes a withdrawal and resubmittal – before successfully obtaining the City Staff's approval that the Site Plan adhered to and complied with all applicable City Code requirements. These requirements included those from the Lake Austin Ordinance which apply to this particular site as the result of a settlement agreement with the prior landowner, memorialized in ordinance.

The purpose of the City's review process is to assure compliance with applicable City Code provisions. After more than two (2) years and eight (8) updates, City Staff concluded that the North Trail Office Park Site Plan met all applicable City Code provisions. During the review process, neighboring property owners raised questions and issues directly with City Staff to ensure compliance with City Code. The City Staff responded to and even met with those neighbors to answer all questions and demonstrate full compliance with the City Code.

Additionally, the Zoning and Platting Commission postponed the North Trail Office Park Site Plan twice before taking it up for action, to provide ample time for questions and concerns to be raised and addressed. The Save Our Springs Alliance submitted a list of eighteen (18) objections to ZAP on the date of the meeting at which ZAP was scheduled to consider the North Trail Office Park Site Plan. Even so, ZAP discussed these objections and, after due consideration, ultimately determined that the North Trail Office Park Site Plan complies with City Code and warrants approval.

The Appeal before Council today does not offer any new objections to the Site Plan. Instead, it simply repeats the same objections already duly considered by ZAP.

The Applicant believes that City Staff, the Zoning and Platting Commission, and the Applicant have amply answered the points raised in the Save Our Springs Alliance's letter to the Zoning and Platting Commission, as restated in this Appeal. Nevertheless, the Applicant wishes to respond to these points again in order to ensure that the record includes a full and accurate accounting and rebuttal of the objections raised. The Applicant provides the following responses using the same numbering system as the Appeal.

1. 25-4-192(A) – The 10.112-acre tract is exempt from subdivision rules and, moreover, is not within 100 feet of a public wastewater system. The State exempts tracts from City subdivision rules if they are more than five (5) acres in size and meets other conditions. This tract meets those State criteria. Because this tract is exempt from subdivision and not subject to City subdivision rules, Section 25-4-192 is not applicable. Additionally, this tract is more than 200 feet from the nearest wastewater main.

2. 25-4-192(B) – Similar to #1 above, this section of City Code applies to a subdivision, from which the 10.112-acre North Trail tract is exempt. Section 25-4-192(B) is also conditional and only applies if the subdivision “is to be served by a public wastewater system or community disposal system,” which is not the case. Instead, the approved septic system will have structures and lines that meet specific criteria of the Texas Commission on Environmental Quality (“TCEQ”).

3. The plat note requirement was achieved when, prior to obtaining a certificate of occupancy, the Waterloo Ice House, Sienna Restaurant, and other structures subject to the plat note were connected to the City's wastewater system. Additionally, the plat note does not prohibit the use of a septic system.

4. This objection effectively restates the prior objections described and rebutted above by noting that other rules, regulations, requirements, and restrictions apply to the Site Plan cumulative of Title 25 (*see* Section 25-1-3). The Applicant acknowledges that the applicable requirements are cumulative – and notes that City Staff has reviewed and approved the Site Plan, and stated that it complies with all applicable rules and regulations.

5. The Applicant submitted a land status determination as a way to provide reassurance that the subsequently divided tract was compliant and City Staff agreed. This objection contends that previously subdivided property is ineligible for the platting exceptions that State Law and City Code provide. However, City Staff have stated that any property that meets the criteria specified in State Law and City Code are eligible for an exception to platting. City Staff confirmed this at the ZAP hearing, stating that:

“It is my understanding that they met those criteria, which were – which are just that the land be five acres or greater, that it has access to or frontage along public right-of-way or public roadway, and that – that the other criteria was that nothing was dedicated to the public as part of that land status determination. So long as those criteria are met... there is no prohibition that formerly platted property cannot receive land status determinations. That’s not part of the – of the function of state law or the code. Um, so as long as those three criteria are met, any tract of land that meets those criteria can receive the five-acre exemption.”

6. This objection contends that the North Trail property is not eligible for the platting exception described in #5 above because the Applicant is providing a right of way (“ROW”) to the Texas Department of Transportation (“TxDOT”) through a donation agreement. As noted above, City Staff has confirmed that the North Trail property meets the criteria for the specified platting exception, including the criterion that “nothing was dedicated to the public *as part of that land status determination.*” (emphasis supplied). The Applicant sought and received a land status determination for the North Trail property. The Applicant later submitted the Site

Plan and, during that latter process, sought to provide ROW to TxDOT through a donation agreement, an action that does not affect and has no bearing on the previous land status determination.

7. Vesting was not required. The City Staff explicitly confirmed that the “Champion Settlement Agreement is still valid for this subject property and the provisions of that agreement will govern the review of the proposed Site Plan.” The Champion Settlement Agreement is codified as Ordinance No. 96-0613J. There is no requirement that a formal vested rights determination must be filed and, furthermore, the Staff’s determination is not based on Chapter 245 or Section 43.002 of the State Local Government Code. In fact, Section 25-1-531(6) specifically defines “Vested Rights Petition or Petition means a petition requesting a determination of development rights *under Chapter 245 or use rights under Section 43.002 of the Local Government Code.*” (emphasis supplied). A determination that a settlement agreement controls is – by definition – not a “vested” rights determination under the State Local Government Code; instead it is merely compliance with the Settlement Agreement and the Ordinance memorializing such agreement. The Site Plan complies with the terms of the Settlement Agreement.

8. Section 25-6-415(A) requires that “A maximum of two access points is permitted from any one site to a hill country roadway.” The Site Plan contains one access point from the North Trail site to a Hill Country Roadway and thus complies with this requirement. The objection conflates the North Trail site with a separate, neighboring site developed under a separate site plan (the Waterloo Ice House/Sienna Restaurant development). The Site Plan complies with the access point requirement and has received City Staff approval.

9. Loop 360 does not have a grade greater than eight percent (8%) at the point where the driveway accesses the Hill Country Roadway. The Save Our Springs Alliance's letter, as restated by the Appellant, misreads Section 25-6-416(B)(4); it is not referencing the grade of private property, but instead states that a driveway "may not access a portion of *a hill country roadway* that has a grade of eight percent or more." (emphasis supplied). The grade of the Hill Country Roadway at the access point is less than eight (8) percent.

10. The setback requirements set forth in the Settlement Agreement are not waivers. Instead, those setbacks are provided in Ordinance No. 96-0613J, which controls. Moreover, the Save Our Spring Alliance's letter, which the Appellant restates, misreads Section 25-2-1105; nowhere in the cited Code provision is there a specific requirement that waivers must be identified on the site plan. Instead, the cited Code provision outlines the requirements of and process for seeking a waiver. In addition, the Appellant knew that the Settlement Agreement applied. The Site Plan complies with the requirements of the Settlement Agreement and City Staff has confirmed this.

11. This objection, restated by the Appellant, again misreads the cited Code provision, this time concerning height limitations. The Applicant acknowledges that height limitations exist; the Site Plan demonstrates compliance with those height restrictions at Sheet 12. However, Section 25-2-1124 *does not* require a specific declaration of compliance other than the elevations showing such compliance. At least one ZAP Commissioner noted that the average finished floor and the top of the roof elevations were provided to demonstrate compliance with the height limitation. City Staff also specifically requested, commented upon, and reviewed the building height and building height presentation on Sheet 12 of the Site Plan, and determined the Site Plan's compliance.

12. In the Hill Country Roadway, there is a requirement that forty percent (40%) of the site remain undisturbed “natural area”; the North Trail Office Park Site Plan reflects approximately fifty-six percent (56%) undisturbed natural area as demonstrated by the landscape plans included in the Site Plan application and confirmed in the Staff Report. The Applicant met the Environmental Criteria Manual requirement; the manual does not require an affirmative statement that the natural area is forty percent (40%) or more; it requires compliance, which the Site Plan exceeds and which City Staff confirmed.

13. Similarly, the site landscape plans reflect the revegetation criteria for a Hill Country Roadway as set forth in Section 5, Appendix A of the Environmental Criteria Manual. The landscape plans were reviewed against the rules set forth in the Environmental Criteria Manual, including those rules that apply on a Hill Country Roadway Corridor. City Staff concluded that the Site Plan complied with those rules.

14. The North Trail Office Park Site Plan includes pages which contain specifications for mitigation (restoration) requirements of the Environmental Criteria Manual Section 3.5.4. This, too, has been confirmed through City Staff’s review and approval of the Site Plan application.

15. Table 2 correctly indicates that no portion of any building is proposed to be located on a slope greater than thirty-five percent (35%). Although there is one table on the Site Plan at page 29 (Table 3) which mistakenly indicates that a portion of a building is on a slope greater than thirty-five percent (35%), the Zoning and Platting Commission reviewed this issue and confirmed that (i) Table 2 correctly indicated that no portion of any building was on a slope greater than thirty-five percent (35%) and (ii) City Staff specifically walked the site area in question to confirm that slopes greater than thirty-five percent (35%) did not exist. Therefore,

Site Plan does not violate Section 9-10-394(b) of the Lake Austin Ordinance and, in fact, complies.

16. At the ZAP meeting, Commissioners asked the Applicant's Engineer and the City Staff's Drainage Reviewer to explain the drainage system. The ZAP Commissioners concluded that Section 9-10-392 explicitly grants Staff discretion to direct an Applicant to engineer the runoff in the best way possible. To this end, the City's Drainage Reviewer confirmed that (i) overland sheet flow should be maintained "wherever possible," but that Staff has discretion to review the overland flow plans and to implement the best possible outcome, and (ii) the best outcome in this case was to collect much of the overland flow (some overland flow remains) and move it to the water quality pond flow splitting structure for distribution to protect against erosion of the slopes and to achieve better pollutant removal in the water quality pond.

17. On cross examination by a ZAP Commissioner, the Applicant's Engineer stated that there was no place within the Site Plan of which he was aware of cut and fill exceeding four (4) feet. Moreover, City Staff has not identified any area in which a cut-and-fill variance is required.

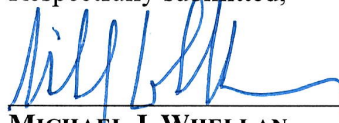
18. As noted in #17 above, no cut-and-fill variance was sought because there is no known cut and fill greater than four (4) feet.

CONCLUSION

The City's site plan review process is thorough. Because it is subject to a Settlement Agreement and requires Land Use Commission approval, City Staff expected close scrutiny of the North Trail Office Park Site Plan. Accordingly, the City took more than two (2) years to review the plans and required the applicant to respond to eight (8) sets of comments in order to ensure compliance with all applicable rules and regulations. As a result of this strenuous effort,

City Staff concluded that the Site Plan met all applicable City Code requirements and the Zoning and Platting Commission concluded that the Site Plan met all applicable City Code requirements and should be approved. The Appeal – based on the Save Our Springs Alliance’s letter to the Zoning and Platting Commission – simply misses the mark. The Applicant requests that the City Council deny the Appeal to allow the issuance of the site development permit.

Respectfully submitted,



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