

**CITY COUNCIL
SITE PLAN EXTENSION APPEAL REVIEW SHEET**

CASE NUMBER: SP-2007-0688C(XT) **CC DATE:** March 21, 2013

PROJECT NAME: Wells Branch Commercial

ADDRESS: 1205 W. Wells Branch Pkwy.

AGENT: Crocker Consultants (Sarah Crocker)
4808 W. William Cannon
Austin, TX 78749
(512) 529-2511

APPELLANT: Crocker Consultants (Sarah Crocker)

APPLICANT: Panhandle Notes LC (Michael Voticky)
1801 Lavaca
Austin, TX 78701
(512) 499-0449

NEIGHBORHOOD ORGANIZATION:

511- Austin Neighborhoods Council
1200- Super Duper Neighborhood Objectors and
Appealers Assn.
114- North Growth Corridor Alliance
1037- Homeless Neighborhood Assn.
786- Homebuilders Assn of Greater Austin
267-Sarah's Creek HOA

PROJECT INFORMATION:

SITE AREA: 4.63A

EXISTING ZONING: CS-CO

PROPOSED USE: Office and Warehouse

APPLICABLE WATERSHED ORDINANCE: Comprehensive Watersheds Ordinance

CAPITOL VIEW: Not in View Corridor

IMPERVIOUS COVER ALLOWED: 95%

IMPERVIOUS COVER PROPOSED: 45.3%

PARKING REQ'D: 38

PARKING PROPOSED: 55

WATERSHED: Harris Branch (Suburban)

EXIST. ZONING: CS-CO

SITE AREA.: 4.63A

EXIST. USE: Vacant

PROP. USE: Office and Warehouse

CASE MANAGER: Lynda Courtney, 974-2810

SUMMARY COMMENTS ON THE SITE PLAN APPEAL:

Summary

The Wells Branch Commercial Site Development Permit, Case Number SP-2007-0688C, located at 1205 W. Wells Branch Parkway was approved for the construction of two 12,000 square foot commercial buildings and associated parking on March 25, 2009. A copy of the Site Plan is attached as Exhibit A for your reference. On December 29, 2011, prior to the expiration of the Site Development Permit, the applicant submitted a request for a one-year site plan extension to March 25, 2013. The site plan extension was not approved by staff due to insufficient response to staff comments, and the application for the extension expired December 28, 2012, constituting a denial of the application. As provided by the Land Development Code, the applicant appealed the staff denial to the Zoning and Platting Commission. The Zoning and Platting Commission upheld staff's denial by a vote of 4-1 on February 5, 2013. The Zoning and Platting Commission's decision is now appealed by the applicant to City Council.

Underlying Conditions

This site is part of a previously approved subdivision construction plan, Wells Point Commercial, Section 1 (C8-85-161.01.1(86), that constructed private joint water quality and detention facilities which are partially located on the subject tract and serve a larger upstream portion of the subdivision. Since the completion of the original water quality and detention ponds in 1987, significant beaver activity has occurred on an adjacent downstream tract to the south of the site creating a large wetland area, estimated to be in excess of 3 acres, and obstructing the flow in the channel of Harris Branch Creek. An overall view of the subject tract, existing ponds, the beaver dams and wetlands areas is included as Exhibit B. A copy of the drainage map from the original subdivision plans showing the common drainage facilities in reference to the subject tract is attached as Exhibit C. The downstream obstruction of the creek by the beaver dams results in a backwater condition that partially inundates the shared water quality and detention facilities proposed to be utilized by this development. The continuous backwater has resulted in significant sediment deposits and vegetation growth in the existing water quality and detention ponds causing the facilities to become non-compliant with City maintenance requirements. On April 24, 2012, City of Austin Watershed Protection Department Code Compliance issued a Notice of Violation (NOV) to Panhandle Notes, LLC, the registered owner of the site, requesting that corrective action be taken to restore the water quality and detention ponds to fully functioning conditions. The applicant has held on-site meetings with Watershed Protection Field Operations Division staff to discuss option to cure the Notice of Violation, but as March 11, 2013, the NOV has not been addressed by the landowner and is still in place.

Downstream Wetlands Areas

The tract immediately downstream of the subject site that contains the beaver dams and a large portion of the wetlands are located on private property owned by Cook Walden/Capitol Parks. The City of Austin does not have a dedicated drainage easement that contains the channel of Harris Branch Creek through the downstream Cook Walden/Capitol Parks property which would allow for City maintenance of the channel area and

the beaver dams. The beaver dams have created significant areas of wetlands which are protected as Critical Environmental Features under the Land Development Code and would require mitigation and variances prior to their disturbance. The wetlands area may also be subject to regulation by the U.S. Army Corp of Engineers (USACE) due to its size and scope requiring a USACE 404 Permit prior to disturbance. Panhandle Notes, L.P., has filed notice via their legal counsel with Cook Walden/Capitol Parks that the beaver dams on the Cook Walden/Capitol Parks property are resulting in adverse impacts to their property and have requested that they remove the dams. Panhandle Notes, L.P. has also requested via their legal counsel that the City of Austin remove the dams and maintain the waterway to restore drainage conveyance in Harris Branch Creek. The City of Austin Watershed Protection Department currently has no legal authority to perform maintenance on the Cook Walden/Capitol Parks property and at this point is unable to intervene in this dispute between two private land owners.

Engineering Review

As a part of a site plan extension request, staff reviewed the application for compliance with applicable current codes and criteria and requested modifications to the plans if required. Given the complexities of this application with respect to drainage conveyance, detention, and water quality treatment, City of Austin staff asked to meet with the design engineer to discuss the drainage analysis and the assumptions that resulted in the original approval in 2009. The applicant refused to allow the design engineer to meet with City staff during the review of the extension request and has subsequently refused further requests to meet with staff after the appeal to Council was filed to provide additional detail and work towards a possible solution. Without a substantive discussion with the design engineer, PDRD drainage and water quality review staff is unable to verify that the proposed development prevents downstream adverse flooding impacts and is in compliance Section 25-7-61(A) of the Land Development Code.

Options

- A. A City Council vote to overturn the Zoning and Platting Commission's decision (approving the appeal) would effectively approve the site plan extension request, and extend the life of the site plan until March 25, 2013.
 - 1. The applicant could immediately start construction and complete the project. However, it is unlikely that a building permit could be obtained for both buildings prior to March 25th. Additionally, the Notice of Violation for lack of pond maintenance would still remain in place and the site would be unable to obtain a Certificate of Occupancy until the pond was maintained to City standards.
 - 2. The applicant could also immediately file a second site plan extension request prior to the expiration on March 25, 2013, which would subsequently be reviewed by staff and the Zoning and Platting Commission.
- B. A Council vote upholding the Zoning and Platting Commission's decision (denying the appeal) will disallow the site plan extension and the site plan will be expired.

1. If the site plan expires it is likely that the applicant could refile the same basic site plan with the same use and density and be in compliance with most applicable codes and ordinances. However, the applicant would be required to address the water quality, detention, and flood conveyance issues prior to approval and cure the Notice of Violation related to pond maintenance.
2. As part of a new application the applicant could request that the City of Austin assist in procuring a downstream easement for drainage conveyance and subsequent maintenance of the channel, as allowed by Section 25-7-151(F) of the LDC, should efforts to work with Cook Walden/Capitol Parks to remove the drainage obstructions be unsuccessful. However, the City would not be obligated to obtain that easement.

Recommendation

Staff recommends that Council uphold the Zoning and Platting Commission's decision to deny the appeal and allow the site plan to expire.

SITE PLAN EXTENSION REVIEW AND EVALUATION CRITERIA

The following evaluation is included to provide staff position on each point of the conditional use permit criteria. Section 25-5-62, 63 of the Land Development Code states: "The Land Use Commission may extend the expiration date of a released site plan... if the Land Use Commission determines that the request complies with the requirements for extension by the director under Section 25-5-62."

The Director determines that:

1. The site plan substantially complies with the requirements that apply to a new application for site plan approval; **Staff response: Complete review cannot be completed to verify whether this site plan substantially complies or does not.**
2. The applicant filed the original application for site plan approval with the good faith expectation that the site plan would be constructed; **Staff response: The applicant has stated that they filed the original site plan with the good faith expectation that the site plan would be constructed.**
3. The applicant constructed at least one structure shown on the original site plan that is suitable for permanent occupancy, or, the applicant has constructed a significant portion of the infrastructure required for the development of the original site plan; **Staff response: No construction has been initiated on this property.**
4. If a Traffic Impact Analysis (TIA) was submitted with the application for site plan approval, the assumption and conclusions of the TIA are valid, or, if the assumptions and conclusions are not valid, the applicant has submitted an addendum to the TIA that demonstrates traffic will be adequately mitigated, or, if a TIA was not submitted with the site plan application for approval, the applicant demonstrates that the traffic impact will be adequately mitigated; **Staff response: No TIA addendum required.**