

SECOND READING SUMMARY SHEET

ZONING CASE NUMBER: C814-2012-0160

211 South Lamar Boulevard Planned Unit Development

REQUEST:

Approve second reading of an ordinance amending City Code Chapter 25-2 by rezoning property locally known as 211 South Lamar Boulevard (Lady Bird Lake Watershed) from general commercial services (CS) district zoning and general commercial services-vertical mixed use building (CS-V) combining district zoning to planned unit development (PUD) district zoning.

DEPARTMENT COMMENTS:

All Land Use Plan notes have been incorporated into the draft ordinance document. The following language has been incorporated into an ordinance provision: none of the pedestrian oriented uses along Riverside Drive or South Lamar Boulevard shall consist of residential uses.

Staff has been informed a private restrictive covenant, incorporating the terms of the Memorandum of Understanding between the Bridges on the Park Condominium Association and the property owner, is under review and should be executed prior to Second Reading.

With the exception of Exhibit MOU, which is new, all previous Exhibits to the staff report and late backup materials posted online and made available for the August 8, 2013 Council meeting remain unchanged, and have not been appended to the updated Zoning Change Sheet.

OWNER: Post Paggi, LLC (Jason Post)

APPLICANT: Winstead PC (Stephen O. Drenner)

DATE OF FIRST READING: August 8, 2013

ACTION ON FIRST READING: Approved PUD district zoning with the following two amendments and direction to staff:

The amendments were:

- Use all notes presently on the land use plan.
- Add the following language to note 36 “none of the pedestrian oriented uses along Riverside Drive or South Lamar Boulevard shall consist of residential uses.”

Direction was given to staff to have the MOU codified before it comes back to Council on second reading and to bring back the planned unit development (PUD) density ordinance on third reading.

Motion with amendments and staff direction by Council Member Riley; Council Member Spelman’s second on a 5-2 vote. Those voting aye were: Mayor Leffingwell, Mayor Pro Tem Cole and Council Members Martinez, Riley and Spelman. Those voting nay were: Council Members Morrison and Tovo.

CITY COUNCIL HEARING DATE: August 22, 2013

ASSIGNED STAFF: Lee Heckman / tel: 512-974-7604/ e-mail: lee.heckman@austintexas.gov

ZONING CHANGE REVIEW SHEET

CASE: C814-2012-0160 **P.C. DATE:** 03/12/2013; 04/09/2013;
211 South Lamar PUD 04/23/2013; 05/14/2013;
05/28/2013; 06/11/2013

ADDRESS: 211 South Lamar Boulevard **AREA:** 0.933 Acres (40,641 sq. ft.)

OWNER: Post Paggi, LLC (Jason Post)

APPLICANT: Winstead PC (Amanda Swor)

ZONING FROM: CS & CS-V;
General Commercial Services & General Commercial Services –
Vertical Mixed Use Building

ZONING TO: PUD; Planned Unit Development

NEIGHBORHOOD PLAN AREA: Zilker
(South Lamar Combined Neighborhood Plan Area)

SUMMARY STAFF RECOMMENDATION

To Grant Planned Unit Development (PUD) District Zoning as Requested

PLANNING COMMISSION ACTION:

June 11, 2013	To Grant Planned Unit Development (PUD) District Zoning as Recommended by Staff [R. Hatfield; J. Nortey-2 nd]. Passed 5-3 (Nays: D. Chimenti, J. Stevens, M. Smith; Absent: D. Anderson)
May 28, 2013	Postponed to June 11, 2013 at the request of neighborhood stakeholders, with a request for a historical assessment *
May 14, 2013	Postponed to May 28, 2013 at the request of the applicant.
April 23, 2013	Postponed to May 14, 2013 at the request of City staff.
April 9, 2013	Postponed to April 23, 2013 at the request of City staff.
March 12, 2013	Postponed to April 9, 2013 at the request of City staff.

* Representatives of the Bridges On The Park Condominium Association requested a 30-day postponement and requested the Commission direct staff to prepare a historic impact statement regarding the impact of the proposed PUD on the Paggi House. The Zilker Neighborhood Association concurred with the request. Staff informed the Commission a report could be finalized before the June 11 meeting. The Planning Commission granted a two-week postponement.

The historic context report, completed by the City's Historic Preservation Officer, has been attached as Exhibit H.

WATERFRONT PLANNING ADVISORY BOARD ACTION:

April 8, 2013	Motion to not recommend PUD rezoning [Motion by Board Member Walton; Seconded by Board Member Rindy. Passed 4-1-2. Board Member Schultz Opposed; Board member Zickert Abstained; Board member Pilgrim Recused].
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March 11, 2013 Postponed to April 8, 2013 at the request of neighborhood stakeholders.

ENVIRONMENTAL BOARD ACTION:

March 20, 2013 Recommended no recommendation on the proposed Planned Unit Development: 211 South Lamar Blvd C814-2020-0160 [Motion by Chair Maxwell, Seconded by Board Member Neely; Passed 6-0-1, Board Member Schissler Absent]

Recommended approval of the environmental treatment proposed in the 211 South Lamar Blvd PUD C814-2020-0160. [Motion by Board Member Neely, Seconded by Board Member Anderson; Failed 2-4-1, Board Member Schissler Absent]

Approved minutes of these Board meetings have been attached (please see Exhibit M).

ISSUES:

The 10-acre Requirement

One of the Tier 1 requirements for a Planned Unit Development (PUD) reads: a PUD district must include at least 10 acres of land, unless the property is characterized by special circumstances, including unique topographic constraints. Tier 1 requirements are those that are to be met by all PUDs. However, the City Council has the legislative authority to determine whether PUD zoning is appropriate regardless of whether the proposed development meets the standards prescribed.

As discussed in the Basis for Land Use Recommendation, staff thinks the site, at less than 1 acre, is characterized by special circumstances given it is surrounded by public rights-of-way, City-owned property, and existing development, including historically-zoned property. Whether the City Council concurs that a site less than 10 acres is appropriate for PUD designation is at their discretion.

Provision for Affordable Housing

The Density Bonus section of the PUD ordinance requires affordable housing or fee-in-lieu of for residential development that exceeds height, floor-area-ratio (FAR) or building coverage over a baseline amount. As written, the PUD ordinance requires affordable units or fee-in-lieu payment for the entire habitable square feet of the PUD. Planning and Development Review Department staff operated with the interpretation that the intention of the ordinance was that affordable housing or fee-in-lieu payment be provided for a percentage of the "bonus", or square footage above the baseline amount.

In this case, the existing zoning of CS allows a 2:1 FAR; with existing bonus provisions of the Waterfront Overlay, the site could, theoretically, be developed at an FAR of 3.2:1. The applicant is proposing a FAR of 5.0:1, resulting in an additional 73,154 square feet of habitable space. The fee-in-lieu payment option is calculated at 60% of the Interim Downtown Density Bonus rate, or \$6/square foot. The applicant is proposing to pay a fee equal to an amount of \$6 per square feet on the entire amount of square footage above the baseline. Others had differing opinions on what was intended or required, as this issue was discussed or mentioned at Board and Commission meetings. Please see the memo from

Neighborhood Housing and Community Development regarding this issue, and a response from the applicant (see Exhibit AH).

On June 6, 2013, the Council adopted a Resolution relating to affordable housing and PUDs, in response to varying interpretations of the density bonus section and affordable housing requirements of the PUD ordinance. Specifically, adoption of the Resolution (see Exhibit AH) initiated a code amendment to clarify that the calculation of affordable housing requirements, or fee in lieu of, be calculated using the amount of building square footage in the proposed PUD that exceeds the baseline height or floor to area ratio. The Resolution did not specify the formula or dollar amounts to be used, as further study was deemed necessary to determine appropriate rates. Nevertheless, this Resolution clarifies that affordable housing participation is based on the bonus square footage only, and, as noted above, that is what the applicant proposes to do.

Open Space

A PUD's Tier 1 requirements for the provision of open space are 10% for residential and 20% for nonresidential; candidacy for Tier 2 superiority requires an additional 10% above the Tier 1 minimum. For this project as currently envisioned, that would equate to 4,215 square feet at Tier 1 and 4,636 square feet at Tier 2, when based on a 202,796 square foot building.

There is no specification in the PUD requirements what type of open space is required. When the Development Assessment was reviewed, and when the application was submitted, a request was made by the applicant to include part of the non-public open space towards the open space requirement. This has been listed in previous staff reports as one of the six proposed modifications to the LDC sought in the PUD.

Such a modification, or variance, is not required.

An ordinance adopted in December 2011 provides for Private Common Open Space and Private Personal Open Space, and addresses how Condominium Residential Use open space requirements are to be met in conjunction with Design Standards and Mixed Use. Essentially, this ordinance recognizes that a private residential building on private property but with public interfaces and spaces, may have different open space needs or offer different amenities than a multifamily or non-mixed use project. It also recognizes there is a difference between open space that can be used by residents and their guests, versus the general public.

Upon refinement of the proposed development, the applicant has determined their common open space amount, which includes a public plaza, outdoor sitting areas, and certain-sized landscaping amenities, is 3,446 square feet. The Private Common Open Space, which includes a pool area and residents'-only patio, will be approximately 5,882 square feet; above grade open space is credited at a 30% rate, or in this case 1,391. Taken together, the public open space (3446) and private common open space (1391) equals 4837, which is above the 4,636 required by Tier 2.

The balconies serving the individual units are considered Private Personal Open Space under the ordinance, but are not required to be included in meeting open space requirements. Similarly, water quality treatments – which can be included in meeting open

space requirements (if they meet associated criteria), have not been included in the public or private common open space calculations.

The Tier 1 & 2 Compliance Table (please see Exhibit B) and Land Use Plan notes reflect this update. Please note, the Land Use Plan notes have since been included in the draft ordinance with the exception of 2 or 3 notes which are informational only in nature, and have no regulatory impact. Compliance with open space requirements is the purview of the City's Parks and Recreation Department. Staff from that Department have reviewed the proposed open space provisions, and have concurred with the applicant's proposal (see Exhibit D – 99).

Board and Commission Consideration and Recommendations

The proposed PUD application does not seek any variances to the Waterfront Overlay District/Butler Shores Subdistrict land uses or development regulations under LDC Section 25-2; nor does it seek environmental variances under LDC Section 25-8. Nonetheless, presentation to, and consideration by, the Waterfront Planning Advisory Board and the Environmental Board were required.

In the case of the Waterfront Planning Advisory Board (WPAB), because the subject tract is within the Butler Shores Subdistrict of the Waterfront Overlay District, its proposed rezoning must be considered by the WPAB, and a recommendation regarding that rezoning application provided to the Planning Commission. In the case of the Environmental Board, because the rezoning application is for PUD zoning, their consideration of any environmental elements that meet and/or exceed environmental requirements of the LDC is required as part of the PUD process.

To help evaluate the superiority of the proposed PUD, the applicant developed summary tables that highlighted compliance with the Waterfront Overlay requirements and Environmental code, as well as identifying those proposals which provided superiority (please see Exhibit E). Although Environmental review staff had concluded the application was environmentally superior as pertains to the proposed water quality controls and tree preservation, the Environmental Board did not concur the project was environmentally superior, and a motion to recommend the proposed environmental features as such failed. The Environmental Board also specifically approved a recommendation to not make a recommendation as to whether the property should be rezoned PUD. The WPAB considered the PUD application on April 8, and a recommendation to deny PUD zoning was approved.

The WPAB and Environment Board are advisory boards. The Planning Commission and City Council are not bound by their recommendations, and with one exception a simple majority is required in terms of Council voting requirements. The exception is that should the Planning Commission recommend denial of a PUD request, a supermajority of the Council is required to approve such a request. As noted above, the PUD was recommended for approval as requested by the Planning Commission.

Petition & Correspondence

A petition has been submitted in opposition to the rezoning request by the Bridges On The Park (BOTP) Condominium Association, Inc. The petition was first submitted on December 11, 2012, when the PUD application was still in its Development Assessment phase. The petition was reaffirmed by the HOA as recently as February 28, 2013. However, because the property comprises 14.2% of the eligible property, it does not meet the threshold to

establish a valid petition (please see Exhibit P). The petition, even if filed by a single property, however, represents 104 residents.

Additional correspondence from the BOTP Board, the Zach Theatre, the Zilker Neighborhood Association, individual property owners and other stakeholders objecting to the proposed PUD has been submitted to staff (see Exhibit C). Because this project has been in for review for a number of months, first as a Development Assessment application and then as a formal PUD application, correspondence to the case manager began arriving in December, in response to the first public notice. An attempt has been made to include all correspondence received, to the date of this report.

Illustrations

In response to a request from the Waterfront Planning Advisory Board, the applicant has provided illustrations of the project (see Exhibit I). A site plan, renderings, or other illustrations may be conceptual in nature, may not necessarily comply with all aspects of the Land Development Code, have not been reviewed by staff for compliance, are not required as part of the rezoning request, and are not in any way binding on the applicant or formally incorporated into an application.

Changes in Applicant's Proposal since Planning Commission Recommendation for Approval

At the time the PUD was presented to, and recommended for approval by, the Planning Commission, the PUD proposed a minimum front yard and street yard setback of 0 feet. That is, there would be no minimum building setback from Lamar, Riverside, or Lee Barton. Currently, the applicant is proposing a minimum setback, of varying depth, at varying heights, and for varying lengths along Lamar Boulevard. The specifics of this change are reflected in the following:

South Lamar:

5' At ground floor (i.e. first above grade heated and cooled level)

8.5' for all floors above first level and between the southwestern corner of site and a point 100'; north of such southwestern corner (the "100' Point");

0' for all floors above first level and north of the 100' Point

Note: The setback described above for floors above the first level and between the southwestern corner of the site and the 100' Point shall not be applicable to balconies or canopies or similar improvements other than the primary westerly structural wall of the project in that location, as well as any adjacent stairwells.

Similarly, with CS as the base zoning district of the PUD, there were no setbacks required, or proposed, for the rear or internal side yard. This meant the south setback, along the property line with the Bridges on the Park condominiums, would have been 0 feet. The applicant is currently proposing a minimum setback, again of varying depth, height, and distance from east to west. The specifics of this change are reflected in the note regarding the building's design as relates to the "U" orientation and basic "building blocks" design. Part D, as follows, is new to the note.:

The Project will have the following design characteristics:

b. The project will have two basic building blocks described as follows:

- i. The first building block will have a maximum height of 96 feet and will be situated (A) along the entire length of the project's South Lamar Boulevard Edge; (B) along the entire length of the project's Riverside Drive Edge; and (C) along the project's Lee Barton Drive edge generally from the Project's Riverside Drive edge to a point no closer than 48 feet (excluding balconies) from the project's southern property line*
- d. The most southerly vertical structure of the project (i.e., the wall closest to the existing Bridges on the Park project) will have the following characteristics.*
 - i. The portion of such wall from the site's southwestern corner (i.e., adjacent to South Lamar Boulevard) to a point (the "Measuring Point") approximately 54 feet to the east of the project's southwestern corner (it being intended that the Measuring Point be directly across from the easternmost edge of the existing recessed window on the most northerly face of the Bridges on the Park Project) must (A) be set back at least 7.5 feet from the site's most southerly property line at the Measuring Point location (the "Setback Location") and (B) extend in generally a straight line (running generally east and west) from the Setback Location to a point on the site's most westerly boundary line (i.e., adjacent to South Lamar Boulevard);*
 - ii. The setback required by subpart i above shall not be applicable to any portion of the project parking garage;*
 - iii. The portion of such wall identified in subpart i above shall have a light reflective surface.*

DEPARTMENT COMMENTS:

The subject tract consists of 0.933 acres located at the intersection of South Lamar Boulevard, West Riverside Drive, and Lee Barton Drive (please see Exhibit A-1). The proposal consists of a mixed-use development comprised of approximately 175 condominium residential units and 10,000 square feet of retail, restaurant and other pedestrian-oriented uses.

The property contains an existing Tex-Mex restaurant with high-turnover indoor dining and drive-through service. The tract has approximately equal frontage on each of the abutting streets, perhaps slightly more on West Riverside Drive, where it lies across from the Pfluger Pedestrian Bridge (please see Exhibit A-2). To the west is City-owned property housing the Zach Theatre, which was recently redeveloped, and Parks and Recreation Department headquarters; to the east is also City-owned property, currently used as the Butler Park Pitch and Putt. To the south lie the Paggi House restaurant and the Bridges On The Park, a residential condominium development.

The subject property is currently zoned general commercial services-vertical mixed use building (CS-V) combining zoning district and general commercial services (CS) zoning district (please see Exhibit A-3). The tract is also located within the Butler Shores subdistrict of the Waterfront Overlay District, though it is outside the specified primary and secondary setbacks. Although not encumbered by the Capitol View Corridor Overlay, West Riverside Drive is a designated scenic roadway; so the property is distinguished with a Scenic Roadways Overlay. Additionally West Riverside Drive and South Lamar Boulevard are defined as Core Transit Corridors.

The property is located within the Zilker neighborhood, but does not have a Future Land Use designation because the South Lamar Combined Neighborhood Plan effort, which combined Zilker, Barton Hills, Galindo, and South Lamar neighborhoods, has been suspended. As such, there is no neighborhood plan or future land use map to consult in determining the staff recommendation. Per the recently adopted comprehensive plan, South Lamar Boulevard is identified as an Imagine Austin activity corridor on the Growth Concept Map, and may be served by high capacity bus service in the future. It is also identified as part of the potential Shoal Creek/West Bouldin Creek Urban Trail. However, the area is not further identified as one of the growth centers on the Growth Concept Map.

At the time the PUD was presented to and approved by the Planning Commission, it proposed base zoning district of CS, with the following modifications or variances to the Land Development Code:

- 1) Allow a maximum height of 96 feet;
- 2) Allow a minimum front yard setback of 0 feet*;
- 3) Allow a minimum street side yard setback of 0 feet*;
- 4) Allow a maximum floor-to-area ratio of 5.0:1; and
- 5) Allow maneuvering in the right-of-way along Lee Barton Drive (as pertains to loading and unloading facilities 9.3.0 #3 of the TCM)

** The request has been modified since recommended for approval by the Planning Commission; please see above under "Issues" for discussion.*

Despite a base zoning district of CS, the PUD also seeks to prohibit almost all other commercial uses, but retains the right to have condominium and multifamily residential, small-scale cocktail lounge or liquor sales, and additional pedestrian-oriented uses. The PUD proposal itself varies from the Code in that the site is less than 10 acres, but is constrained on three sides by existing public roadways, and on the fourth side by an existing condominium development and restaurant. In support of the requested PUD zoning, the applicant is offering a number of design innovations, participation in affordable housing and art in public places programs, enhanced bicycle facilities, and other items considered superior according to the PUD requirements for Tier 1 and 2 (see Exhibit B for a chart listing all superiority items and associated Land Use Plan with Notes page reflecting these items).

The review of a proposed PUD is an iterative one, beginning with the Development Assessment stage. Submitted on October 26, 2012 as Case # CD-2012-0021, a briefing was provided to the Council on December 13, 2012, at which time Council Members provided feedback on the proposal. The PUD application was formally submitted on December 19, 2012. Staff's initial review comments were issued on January 11 and a formal update was provided by the applicant on February 1. The applicant has continued to work with staff from various departments and disciplines through meetings and informal updates to clear any remaining comments or questions (see Exhibit D for application and staff comment materials).

As the application was reviewed and refined, there were several iterations of the Tier 1 & 2 Compliance Table and Land Use Plan, especially as it related to water quality and transportation. Other modifications reflected confirmation of specific terms, such as the size and duration of providing space for the City's Parks and Recreation Department. None of these iterative copies have not been included in exhibits (save for the initial submittal and first response in Exhibit D), in part because they were interpreted by staff as "current" and not necessarily "final" versions, and because the most up-to-date version of the Table and

Plan were always provided to Boards and the Commission as a separate exhibit (see Exhibit B). The versions of the Plan and Table included with this report reflect changes to notes numbered 22 (a clarification of the design characteristics of the building) and 37 (an update to the provision of open space since a waiver is not required).

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
Site	CS & CS-V	High Turnover Restaurant
North	P	COA Park and Pfluger Pedestrian Bridge landing
South	CS; CS-1; CS-H	Bridges on the Park Condominium; Paggi House Restaurant
East	P	COA Park (Currently Butler Park Pitch-and-Putt)
West	P; CS-1; CS-V; CS	COA Park, PARD Headquarters; Zach Theatre; Schlotzky's Restaurant

AREA STUDY: No

TIA: Not Required

CAPITOL VIEW CORRIDOR: No

WATERSHED: Lady Bird Lake

DESIRED DEVELOPMENT ZONE: Yes

HILL COUNTRY ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

Original Austin Neighborhood Association	57
Zilker Neighborhood Assn.	107
Bouldin Creek Neighborhood Assn.	127
South Central Coalition	498
Austin Neighborhoods Council	511
Austin Independent School District	742
Home Builders Association of Greater Austin	786
Save Our Springs Alliance	943
Save Town Lake.Org	1004
Homeless Neighborhood Organization	1037
Bouldin Creek Neighborhood Planning Team	1074
League of Bicycling Voters	1075
Perry Grid 614	1107
Austin Parks Foundation	1113
Super Duper Neighborhood Objectors and Appealers Organization	1200
Austin Monorail Project	1224
Sierra Club, Austin Regional Group	1228
The Real Estate Council of Austin, Inc.	1236
Austin Heritage Tree Foundation	1340
BPOE 201 Elks Lodge	1346
SEL Texas	1363
Bridges on the Park	1368

SCHOOLS:

Austin Independent School District

Zilker Elementary School

O Henry Middle School

Austin High School

ABUTTING STREETS:

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro
South Lamar Blvd	120'	MAD 4	Arterial	Yes	Yes	Yes
West Riverside Drive	120'	MAD 4	Arterial	Yes	Yes	Yes
Lee Barton Drive	55'	30'	Collector	No	No	No

CASE HISTORIES:

In 2008, Vertical Mixed Use Building was added to most properties along South Lamar Boulevard, exceptions being the Bridges on the Park and the Zach Theatre/COA parkland (C14-2008-0060).

NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
East of Lamar (north to south)			
Town Lake Park C14-89-0039	CS; CS-1; LI; & SF-3 to P	Approved; 07/25/1989	Approved; 08/24/1989
201-219 S Lamar Blvd; 200-218 Barton Drive; & 1301-1319 Riverside Drive C14-70-050	From "A" 1 st H&A & "C" 1 st H&A to "C" 1 st H&A	Granted	Approved; 05/14/1970
211 S Lamar Blvd CD-2012-0021	Development Assessment	N/A	12/06/2012; Briefing
C8-2012-0122	Subdivision (under review)	No action yet required	
SP-2012-0271C	Site Plan (under review)	No action yet required	
Paggi House 200 Lee Barton Drive C14H-74-006	"C" to "C-H" Commercial to Commercial-Historic	Granted	Approved; 11/21/1974
213-319 S Lamar Blvd C14-78-154	From "C" 1 st H&A to "C-2" 1 st H&A	Granted	Approved; 10/19/1978
Riverside Drive SP-04-0115D	Riverside Alignment (CIP Project)		
West of Lamar (north to south)			

1500 West Riverside; 200-214 S Lamar Blvd; & 1400-1800 Toomey Road C14-87-074	From "SF-3" to "P"	Approved; 08/25/1987	Approved; 05/26/1988
210-216 S Lamar Blvd C14-72-129	From "A" 1 st H&A to "C-2" 1 st H&A	Granted	Approved; 07/13/1972
1426 Toomey Road C14-2010-0072	CS to CS- 1; Withdrawn	N/A	
C14-05-0187	CS to DMU; Expired	N/A	

In addition to the above zoning cases, there has been some recent site plans in the area, including the following:

- 211 S Lamar Boulevard / SP-2012-0271C / this project
- 217 S Lamar Boulevard / SP-05-1664C/ Bridges on the Park
- 202 South Lamar Boulevard / SPC-2010-0061C / New Theatre at Zach Scott
- 300 S Lamar / SP-05-1279C / Cole Apartments & Mixed Use Project

CITY COUNCIL ACTION:

August 8, 2013

The public hearing was conducted and the motion to close the public hearing and adopt the first reading of the ordinance for planned unit development (PUD) district zoning was approved with the following amendments and direction on Council Member Riley's motion, Council Member Spelman's second on a 5-2 vote. Those voting aye were: Mayor Leffingwell, Mayor Pro Tem Cole and Council Members Martinez, Riley and Spelman. Those voting nay were: Council Members Morrison and Tovo.

The amendments were:

- Use all notes presently on the land use plan.
- Add the following language to note 36 "none of the pedestrian oriented uses along Riverside Drive or South Lamar Boulevard shall consist of residential uses."

Direction was given to staff to have the MOU codified before it comes back to Council on second reading and to bring back the planned unit development (PUD) density ordinance on third reading.

June 20, 2013

Postponed to August 8, 2013 at the request of the following organizations: Save Town Lake, Zilker Neighborhood Association, Bridges on the Park Condominium Association, Bouldin Creek Neighborhood Association, and the Barton Hills Neighborhood Association (see Exhibit PP).

STAFF RECOMMENDATION**C814-2012-0160**

To Grant Planned Unit Development (PUD) District Zoning as Requested

BACKGROUND

The subject tract consists of 0.933 acres located at the intersection of South Lamar Boulevard, West Riverside Drive, and Lee Barton Drive, with approximately equal frontage on each roadway. The site currently contains a Tex-Mex restaurant with high-turnover indoor dining and drive-through service. The tract lies between the Pfluger Pedestrian Bridge to the north and the Bridges on the Park, a residential condominium development, and the historic Paggi House restaurant to the south. To the west is City-owned property housing the Zach Theatre, recently redeveloped, and the headquarters of the City's Parks and Recreation Department. To the east is City-owned property that currently hosts the Butler Park Pitch and Putt. The subject property is currently zoned general commercial services-vertical mixed use building (CS-V) combining zoning district and general commercial services (CS) zoning district.

BASIS FOR LAND USE RECOMMENDATION

The proposed zoning should be consistent with the purpose statement of the district sought.

Per the Land Development Code, the Planned Unit Development (PUD) zoning district has been established to implement goals of preserving the natural environment, encouraging high quality development and innovative design, and ensuring adequate public facilities and services. The City Council intends PUD district zoning to produce development that achieves these goals to a greater degree than and that is therefore superior to development under conventional zoning and subdivision regulations.

To help evaluate the superiority of a proposed PUD, requirements are divided into two categories: Tier 1, which is requirements that all PUDs must meet, and Tier 2, which provides criteria in 13 topical areas in which a PUD may exceed code requirements and therefore be considered superior. A PUD need not address all criteria listed under Tier 2. There is no minimum number of criteria that must be satisfied, no minimum number of categories satisfied, or a specified mix of categories satisfied. A table listing the Tier requirements and how they are proposed to be met (see Exhibit B) is one of the primary methods by which staff can review a PUD application.

This proposed mixed-use PUD offers a development on the subject property that can create a distinct space that complements the relatively new Zach Scott Theatre and gateway to the area south of Lady Bird Lake. As envisioned, the PUD provides pedestrian-oriented uses on the ground floor, upper story residential, underground vehicular parking, landscaping with 100% native and adapted plants, rainwater harvesting, and charging stations for electric vehicles. In addition, the proposed PUD supports affordable housing initiatives, helps sustain the usability of a historic structure, preserves onsite and offsite trees, provides funding for offsite pedestrian improvements, provides a space onsite for the City of Austin Parks and Recreation Department and a community meeting space, contains a public plaza with art, will meet or exceed Austin Green Builder program standards at a 3-star level, and will provide additional bike parking for patrons and residents, as well as participate in the new Austin Bike Share program.

The anticipated mixed-use building is required to achieve 1 point on the Building Design Calculations Worksheet, which is part of the Building Design Options of Subchapter E (Design Standards and Mixed Use). The proposal is to obtain a minimum of 13 points by providing a variety of design options. This building, with varying heights, will house 175 homeowners, provide public, private common, and private open space areas and amenities, and provide pedestrian-oriented services to nearby park and trail users, pedestrian passers-by, and residents of this building, the adjacent Bridges On The Park, and nearby Cole multifamily development, located on South Lamar Boulevard at Toomey Road.

Staff thinks the PUD proposal offers an improvement over what would otherwise be required of standard CS or CS-V development requirements. In short, the proposed PUD does exceed code requirements; therefore, by LDC definition it is superior. However, it is City Council that has the authority and discretion to determine whether PUD zoning is appropriate - regardless of whether the proposed development meets the standards prescribed by the Tier 1 and 2 requirements of a PUD.

Relating to these standards, a Tier 1 requirement states that all PUDs must include at least 10 acres of land, unless the property is characterized by special circumstances, including unique topographic constraints. There is no truly unique topography on the site, as it is relatively flat. However, it is surrounded on three sides by public right-of-way, and public parkland beyond those rights of way. It is further constrained on the fourth side by an existing historical site and a recently constructed condominium project. There is simply no feasible way for the property to expand in terms of acreage. Even if the entire block were somehow incorporated into a redevelopment project, the acreage involved would be only 3.26 acres. Staff thinks the existing public infrastructure, public property and private property constraints do characterize the property with special circumstances. But again, this assessment of special circumstances is subject to Council deliberation.

Zoning should promote the policy of locating retail and more intensive zoning near the intersections of arterial roadways or at the intersections of arterials and major collectors.

The property is currently zoned CS and CS-V, General Commercial Services-Vertical Mixed Use Building. CS is the most intense commercial zoning and reflects the fact the property is bounded by two major arterials and a collector. This proposed PUD involves the addition of 175 residential units and approximately 10,000 square feet of retail and other uses on the site.

In the current market climate, there are mixed-use, multifamily, and condominium projects being developed throughout Austin on arterials and collectors, and South Lamar Boulevard is no exception. Most of these projects are being developed under existing zoning allowances, however, and are also not necessarily located at well-known intersections. In contrast, this is a case where a higher-density mixed-use development – and a proposed floor-to-area-ratio of 5.0:1 is relatively intense – is proposed at an intersection of arterials.

Zoning should not constitute a grant of special privilege to an individual owner; the request should not result in spot zoning; and granting a request for zoning should result in an equal treatment of similarly situated properties.

A primary driver of the PUD request is to allow for additional height of built structures. Similarly situated properties, that is, those of less than 10 acres and south of Lady Bird

Lake, have received similar favorable allowances. For example, the PUD-NP on the Hyatt Hotel property at 208 Barton Springs Road, approved in 2007, allows up to 200 feet in building height. The old AquaTerra site at 222-300 East Riverside site also allows development up to 200 feet and was approved in 2008. Closer to this site and more recently approved PUDs include The Park PUD at 801 Barton Springs Road, approved in Spring 2011, which allows for a 96-foot tall building, and the Broadstone PUD, at 201 S 1st & 422 W Riverside, approved in Autumn 2012 and allows for a 76-foot tall building.

Granting of the zoning should not in any way set an undesirable precedent for other properties in the neighborhood or within other areas of the city.

Staff is aware that each of the PUD applications noted above engendered discussion at the Planning Commission and Council about setting a precedent for future development south of Lady Bird Lake. Indeed, just because PUD district zoning was granted before for similar properties before does not automatically mean it would be granted in this case, thus perpetuating a real or perceived precedent. However, staff believes this property is unique because of its location. This property is bounded on three sides by public roadways and City parkland. The remaining side is developed with a fresh condominium mixed-use project and historic restaurant. This is a unique case of redevelopment but a classic case of infill; given the property's geographic constraints (being bound on three sides by roadways), it is not likely to be emulated by other properties in the immediate vicinity.

At the same time, this property is located at the foot of the Pfluger Pedestrian Bridge, abuts City parkland and the hike and bike trail, sits across from the new Zach Theatre, and is at an entry point or gateway from downtown to south Austin. Under current zoning, a typical 60-foot tall building could be constructed. Or, some other use otherwise permitted in the current district could be developed. In contrast to the proposal setting an undesirable precedent, this proposed PUD could serve as a higher-caliber, mixed use project on a prominent corner and gateway. If granted, the PUD would allow a greater quantity of development than otherwise allowed; yet by requiring that the quantity be combined with higher quality, a precedent can be set that demands superiority.

One concern expressed to staff and a discussion point of previous Board meetings has been the applicant's request for a variance to open space requirements, proximity to City parkland and hike-and-bike trails notwithstanding. As noted in the "Issues" section, there is no longer a variance related to the provision of open space, as the application fully complies with the City's open space requirements. Open space is a desirable amenity, and the applicant is providing more than the amount required with public, private common, and private personal open space.

Zoning should allow for a reasonable use of the property.

The subject tract is located at the intersection of South Lamar Boulevard, West Riverside Drive, and Lee Barton Road. It is located within the Butler Shores Subdistrict of the Waterfront Overlay and the Riverside Drive Scenic Roadway Overlay. It is adjacent to a historic property and existing residential. The combined effect of these location-specific constraints, in conjunction with City-wide development standards, results in challenging redevelopment parameters. As noted above, the property could be redeveloped in a straightforward manner under the existing zoning. However, the applicant has proposed a PUD project that would allow for superior development, which staff thinks is reasonable at this location.

Zoning should be consistent with an adopted study, the Future Land Use Map (FLUM) or an adopted neighborhood plan.

The South Lamar Combined Neighborhood Plan effort has been suspended. As such, there is no neighborhood plan or future land use map to consult in developing the staff recommendation. The Imagine Austin Growth Concept Map, found in the Imagine Austin Comprehensive Plan, identifies South Lamar Boulevard as an Activity Corridor, and may be served by high capacity bus service in the future. It is also identified as part of the potential Shoal Creek/West Bouldin Creek Urban Trail. However, the area is not further identified as one of the growth centers on the Growth Concept Map.



August 8, 2013

The Honorable Lee Leffingwell
The Honorable Sheryl Cole
The Honorable Mike Martinez
The Honorable Laura Morrison
The Honorable Chris Riley
The Honorable Bill Spelman
The Honorable Kathie Tovo

Austin City Council
301 W. Second Street
Austin, TX 78701

RE: 211 S. Lamar Blvd. Planned Unit Development Application

Dear Mayor and Council Members:

As representatives of the Bridges on the Park Condominium Association, Inc., we write to you regarding the 211 South Lamar Planned Unit Development (PUD), which is located at 211 South Lamar Boulevard and 1211 West Riverside Drive and is within the Town Lake Watershed. This is Item 93 on Council's agenda for August 8, 2013.

Since last Friday, we have been in negotiations with the developer, and we have reached an agreement on several items related to the proposed PUD. At this point, these items have been memorialized in a Memorandum of Understanding (MOU) that has been signed by both parties. The MOU is attached for your reference.

It is our intent to register as "neutral" on the proposed PUD at today's Council meeting. We respectfully request that the Council vote only on first reading today to allow us an opportunity to finalize our agreement with the developer in the form of a restrictive covenant.

If we receive an executed restrictive covenant from the developer incorporating the terms of the MOU, then we will withdraw our opposition and support the PUD on second and third readings. However, if that does not occur, then we will oppose the PUD on second and third readings.

Thank you in advance for your time and assistance.

Sincerely,
Robert Wilson, President
Sushma Jasti Smith, Vice President
Claudia Davila, Secretary
Bridges on the Park Condominium Association, Inc.

Enc: Memorandum of Understanding signed by Bridges on the Park Condominium Association, Inc. and Post Paggi Inc.

cc: J. Scott Rodgers, Ascension Development; Steve Drenner, John Donisi, Amanda Swor, Winstead PC; Lee Heckman, Planning & Development Review Dept., City of Austin

Exhibit MOU -1

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between **Bridges on the Park Condominium Association, Inc.**, ("BOTP") and **Post Paggi Inc.**, (the "Owner") (together, the "Parties") for the purpose of memorializing certain agreements relating to City of Austin Zoning Case No. C814-2012-0160 (the "Zoning Case") and the ensuing redevelopment project for 211 South Lamar Boulevard (the "Project"). This Memorandum of Understanding, unless otherwise noted, addresses the area described in the Zoning Case (the "Site").

The Parties have agreed to the following terms, conditions and obligations relating to the Project and the Zoning Case:

§1. Building Setbacks:

- a. **South Lamar Boulevard:** The building setback will be 8'-0" at the ground floor stair tower located near the southwest corner of the Site adjacent to South Lamar Boulevard. Additionally, the setback will be 11'-0" for the remainder of the South Lamar Boulevard frontage at the ground floor level (i.e. the first level above grade that is heated and cooled). All exterior building columns, sidewalks, railings and similar landscape features are not included in this setback requirement. The setback will be 8'-0" for all floors above the first level and between the southwestern corner of the Site adjacent to South Lamar Boulevard and a point 100 feet north of such southwestern corner (the "100' Point") and 0'-0" for all floors above the first level and north of the 100' Point. The setback described above for floors above the first level and between the southwestern corner of the Site and the 100' Point shall not be applicable to balconies or canopies or similar improvements.
- b. **Riverside Drive:** 0'-0"
- c. **Lee Barton Drive:** 0'-0"
- d. **Rear (adjacent to the BOTP project):** 0'-0" except as noted in Design and Other Setbacks below.

§2. Design and Other Setbacks:

The Project will have the following design characteristics:

- a. The Project will utilize a "U-shaped" design with the open portion of the "U" facing in a southerly direction. The open

portion of the "U" will be on the second level of the above-grade structure and will be a private courtyard and amenity deck.

b. The Project will have two basic building blocks described as follows:

(i) The first building block will have a maximum height of 96 feet and will be situated (A) along the entire length of the Project's South Lamar Boulevard edge; (B) along the entire length of the Project's Riverside Drive edge; and (C) along the Project's Lee Barton Drive edge generally from the Project's Riverside Drive edge to a point no closer than 40 feet at floor levels 2 and 3 and no closer than 48 feet at floor levels 4 and above (excluding balconies) from the Project's southern property line along Lee Barton Drive; and

(ii) The second building block will have a maximum height of 78 feet and will be (A) on the exterior side of the "U"; (B) situated along a portion of the Project's Riverside Drive edge (although it will not extend all the way to the Project's South Lamar Boulevard edge), wrapping the Project's Riverside Drive/Lee Barton Drive corner, and extending along the Project's Lee Barton Drive edge to the approximate terminus of the first building block described in subpart (i) above;

c. The area on the Lee Barton Drive edge between the southern property line and the southern edge of the two building blocks described in paragraph b above may not be fully enclosed, but it may contain a roof or shelter structure as long as such roof or shelter structure is no higher than 35 feet as measured from the Project's average grade (determined in accordance with the Land Development Code of the City of Austin). The terms of the restriction in this subpart c shall have no application to elevators, mechanical equipment, landscaping, outdoor furniture, grills, or similar items.

d. The most southerly vertical structure of the Project (i.e., the wall closest to the existing Bridges on the Park project) will have the following characteristics:

(i) The portion of such wall from the Site's southwestern corner (i.e., adjacent to South Lamar Boulevard) to a point directly across from the easternmost edge of the existing recessed window on the most northerly face of the Bridges on the Park project (the "Measuring Point") must (A) be set back at least 7.5 feet from the Site's most southerly property

line at the Measuring Point location (the "Setback Location") and (B) extend in generally a straight line (running generally east and west) from the Setback Location to a point on the Site's most westerly boundary line (i.e., adjacent to South Lamar Boulevard);
(ii) The setback required by subpart (i) above shall not be applicable to any portion of the Project parking garage and including any part of the structure on the first floor of the Project; and
(iii) The portion of such wall identified in subpart (i) above shall have a light reflective surface.

§3. Grease Receptacle:

The Owner shall cause the grease receptacle currently serving the Paggi House and located in the R.O.W. of Lee Barton Drive to be relocated to a place outside of the R.O.W. of Lee Barton Drive and within the Site or the site occupied by the Paggi House. Such relocation must occur before issuance of a certificate of occupancy for the residential portion of the Project. The relocation shall be specifically enforceable by BOTP.

§4. Restrictive Covenant:

The Owner and BOTP shall execute a restrictive covenant to the benefit of BOTP (the "Restrictive Covenant") that addresses the items listed in Sections 1, 2, 3, 5 and 6 of this Memorandum of Understanding. The Restrictive Covenant shall be executed by the Parties prior to action by the Austin City Council on third and final reading of the Zoning Case, and will be held in escrow by counsel for BOTP until after City Council approval of the Zoning Case. Upon approval by the Austin City Council of the Zoning Case on third and final reading, the Restrictive Covenant shall be filed of record. The Restrictive Covenant will only become effective, consistent with the terms of Section 6, upon the effective date of the Zoning Ordinance and if the Project exceeds 60 feet in average height as determined by the City of Austin, which is the maximum building height allowed under the current base zoning as of 8/1/13. The Parties agree to work in good faith to agree upon the form of the Restrictive Covenant, containing the terms set forth herein, prior to August 22, 2013.

§5. Payment of Fees:

The Owner will pay an amount equal to \$9800.00 for legal services associated with earlier BOTP actions and costs, and the amount will be paid upon the issuance of building permits for the Project.

§6. Terms of Support:

All items listed in Sections 1, 2, 3, 4 & 5 above are agreed upon by the Owner only under the condition that (a) the Board of BOTP withdraws its opposition and supports the Zoning Case during the Austin City Council Meeting(s) in which the vote for approval of the Zoning Case on third reading takes place and (b) the Board of the BOTP requests no further postponements of the Zoning Case. This support can be in the form of a letter to the Mayor of Austin and the Austin City Council Members or by a public statement by an authorized representative of BOTP during the previously mentioned City Council Meeting(s).

This Memorandum of Understanding addresses agreements between the Parties, including an agreement to enter into the legally binding Restrictive Covenant. This Memorandum of Understanding shall not be deemed to create legally enforceable covenants prior to the execution of the Restrictive Covenant.

By their respective signatures below, the Parties hereby enter into this Memorandum of Understanding, and the terms, conditions and obligations contained herein:

Bridges on the Park Condominium Association, Inc.

By: 

Title: Vice President

Date Executed: August 7, 2013.

Post Paggi Inc.

By: 

Title: Manager

Date Executed: August 8, 2013.