

**ORDINANCE NO. 20161110-071**

**AN ORDINANCE ADOPTING A PROJECT CONSENT AGREEMENT FOR COMMERCIAL DEVELOPMENT AT 12501 HEWITT LANE; PRESERVING PROPERTY LOCATED AT 2636 BLISS SPILLAR ROAD, COMMONLY KNOWN AS MARBRIDGE FARMS; AND WAIVING CERTAIN REGULATIONS IN CITY CODE CHAPTERS 25-7 AND 25-8.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The City Council makes the following legislative findings:

- (A) Chapter 245 of the Texas Local Government Code provides that development projects are, with a few exceptions, entitled to be completed under the rules and regulations in effect on the date that the first application for the project is filed.
- (B) Project consent agreements are a tool, authorized by City Code § 25-1-544 (*Project Consent Agreements*), that can be used to: (1) establish regulations for projects where vested rights are unclear; and (2) incentivize projects with clearly established vested rights to achieve greater compliance with current code.
- (C) The Development Services Department ("DSD"), in consultation with the Environmental Officer, has determined that the project consent agreement (PCA) adopted by this ordinance meets these threshold criteria because:
  - (1) DSD has determined that completion of a commercial project on a 12-acre parcel at 12501 Hewitt Lane would likely be vested to 1984 development regulations once sewer is extended to the property. Currently, because sewer has not been extended to the property, DSD has determined that vested rights to 1984 regulations are limited to completion of a residential project, which could include multiple units.
  - (2) Additionally, the applicant has asserted vested rights to earlier development regulations, based on a plat vacation and concurrent re-subdivision filed with the City of Austin in 1974.
  - (3) To address these competing claims, and achieve greater compliance with current regulations, the PCA adopted by this ordinance relaxes certain provisions of current code to facilitate development of a food sales and accessory use project, which may include an incidental service station use, on the Hewitt Lane property, but provides greater environmental protections than would apply if a commercial or residential project were approved under 1984 regulations.

- (4) Additionally, to help offset the impacts of commercial development on the Hewitt Lane property, the agreement provides for partial preservation of a nearby parcel at 2636 Bliss Spillar Road that is located within the Barton Springs Zone, over the Edwards Aquifer Recharge Zone, and is adjacent to environmentally sensitive features.

**PART 2.** Based on the foregoing findings, and on the recommendations of the DSD and the City's Environmental Officer, the City Council approves the following Marbridge Farms Project Consent Agreement.

**A. General Conditions & Limitations.**

The regulatory waivers authorized under the terms of this ordinance, hereafter referred to as the Marbridge Farms PCA, shall be limited to development of a food sales and accessory use project, which may include an incidental service station use, and shall be subject to all other restrictions set forth in the PCA. Following completion of the project, any further development or redevelopment is subject to the regulations in effect on the date the development application is submitted and may not utilize the regulatory waivers authorized by the PCA.

**B. Properties Covered by Marbridge Farms PCA.**

The Marbridge Farms PCA includes only the following properties:

- (1) An approximately 41-acre parcel located at 2636 Bliss Spillar Road, as more specifically described in Exhibit A-1, which is hereafter referred to as the "Exchange Tract."
- (2) An approximately 12-acre property located at 12501 Hewitt Lane, as more specifically described in Exhibit B-1, which is hereafter referred to as the "Brodie Lane Property."

**C. Incorporation of Staff Findings.**

The following staff reports are incorporated herein as additional findings and conclusions:

- (1) The October 4, 2016 Memorandum of Rodney Gonzales, Director of the DSD, to the Zoning & Platting Commission. *Attached hereto as Exhibit C.*

- (2) The July 13, 2016 Memorandum of Chuck Lesniak, Environmental Officer, to Rodney Gonzales, Director of the DSD. *Attached hereto as Exhibit D.*

**D. Regulatory Waivers for the Brodie Lane Property.**

Except as otherwise provided in this subsection, development of the Brodie Lane Property is subject to the development regulations in effect on the date a site plan application for the property is submitted.

- (1) ***Impervious Cover Restrictions.*** Notwithstanding the requirements of City Code Chapter 25-8, including Section 25-8-392 (*Uplands Zone*), maximum impervious cover for development of the Brodie Lane Property is limited to 7.9 acres.
- (2) ***Critical Water Quality Zone ("CWQZ").*** Notwithstanding the requirements of City Code Chapter 25-8, including Section 25-8-92 (*Critical Water Quality Zones Established*), Section 25-8-261 (*Critical Water Quality Zone Development*), and Section 25-8-262 (*Critical Water Quality Zone Street Crossings*):
- (a) the CWQZ is reduced to approximately 1.7-acres and the boundaries modified, as depicted in Exhibit B-2;
  - (b) a crossing for vehicles and pedestrians is permitted from Hewitt Lane, in the northwest corner of the property, and a crossing for vehicles and pedestrians is permitted in the interior of the property, both of which are generally described in Exhibit B-2;
  - (c) water quality and detention ponds are permitted within the CWQZ, but otherwise must comply with all applicable regulations.
- (3) ***Floodplain Modifications.*** Notwithstanding the requirements of City Code Section 25-8-364 (*Floodplain Modification*), floodplain modifications are allowed for the development generally described in Exhibit B-3. These improvements include, but are not limited to, culverts, water quality/detention facilities, vehicular crossings, and parking areas.

- (4) ***Drainage Easements.*** Notwithstanding the requirements of City Code Section 25-7-152 (*Dedication of Easements and Right-of-Way*), development within the drainage easement required for the 100-year floodplain is allowed as shown in Exhibit B-3. These improvements include, but are not limited to, culverts, water quality/detention facilities, vehicular crossings, and parking areas.
- (5) ***Administrative Variances.*** Notwithstanding the requirements of City Code Section 25-8-42 (*Administrative Variances*), the director may grant a variance to allow no more than 10 feet of cut and fill under Section 25-8-341 (*Cut Requirements*) and Section 25-8-342 (*Fill Requirements*). Section 25-8-42(D)(4) is modified so that the cut and fill is not located on a slope with a gradient of more than 15 percent or within the proposed CWQZ.
- (6) ***Heritage Tree Protections.*** Notwithstanding the property's location in the extraterritorial jurisdiction, the five heritage trees depicted in Exhibit B-4 must be preserved in accordance with the requirements of City Code Chapter 25-8, Subchapter B (*Tree and Natural Area Protection; Endangered Species*).
- (7) ***Rights under Section 43.002 of the Texas Local Government Code.*** Based on platting that has occurred to date, subsequent annexation and zoning of the property will not prohibit construction of a food sales and accessory use project that may include an incidental service station use.
- (8) ***Zoning & Platting Commission ("ZAP") Recommendation.*** To reflect ZAP's motion recommending approval of the PCA, it is noted that no fuel tanks are allowed within the 100-year floodplain under applicable floodplain regulations. By specifically noting this requirement, the PCA does not waive any other applicable floodplain regulations.
- (9) ***Commercial Design Standards & Sidewalks.*** Compliance with Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*) is not required, but sidewalks of at least six feet in width are required along the frontage of Hewitt Lane and Brodie Lane, at a location determined in site development review.

- (10) ***Height Restriction.*** The food sales and accessory use project, which may include an incidental service station use, described in Subsection (A) of this PCA is limited to 60-feet in height.

**E. Preservation of the Exchange Tract.**

As a condition precedent to developing the Brodie Lane Property under the provisions of Subsection D, the applicant must file and record a real property encumbrance preserving the Exchange Tract in accordance with the provisions of this subsection. The document, which may be a conservation easement or other appropriate instrument, must be on a form approved by the Director of the DSD and must be recorded no later than 180 days from the effective date of this ordinance.

- (1) ***Existing Baseline Development.*** For purposes of the Exchange Tract limitations described in this subsection, the existing baseline development of the Exchange Tract is limited to the development described in Exhibit A-2, which totals 1.36 acres of impervious cover.
- (2) ***Restrictions on Development beyond Baseline.*** Development beyond the existing baseline shall be restricted in accordance with the conditions set forth in Exhibit A-2, including prohibition of all new development north of the southern boundary of the current Water Quality Transition Zone (WQTZ). New development south of the WQTZ may include a new equestrian facility and guest house, as long as the total impervious cover on the property does not exceed 2.12 acres or 7.4 percent of net site area, whichever is less.
- (3) ***Affirmative Restoration.*** The following restoration shall be required prior to site plan approval, as depicted in Exhibit A-2:
  - (a) Removal of the interior driveway, existing barn, and any pens, fencing, structures, or other materials north of the creek;
  - (b) Restoration of the area with native vegetation, in accordance with applicable City of Austin standards; and
  - (c) Installation of a fence along the southern boundary of the WQTZ.

- (4) **Expiration.** The conservation easement or other encumbrance required to preserve the tract under this subsection must include an expiration clause specifying that, if a site plan application is not submitted prior to the expiration of the PCA, the conservation easement or other encumbrance expires and is of no force and effect.

**F. Expiration of Marbridge PCA.**

This subsection establishes expiration requirements for the PCA and related requirements for site plan review.

- (1) **PCA Expiration.** The PCA expires seven years from the effective date of Ordinance No. 20161110-071. In order to develop the Brodie Lane Property in accordance with the regulatory waivers provided under the PCA, the applicant must submit a site plan application for the food sales and accessory use project, which may include an incidental service station use, prior to the expiration of the PCA.
- (2) **Site Plan Extensions.** Notwithstanding the requirements of City Code Section 25-5-62 (*Extension of Released Site Plan by Director*) and Section 25-5-63 (*Extension of Released Site Plan by the Land Use Commission*), the Director or Land Use Commission shall consider whether improvements to FM 1626 have been completed as a relevant factor in determining whether to grant an extension.

**PART 3.** The City Council finds that the applicant and representatives of the surrounding homeowners association have agreed to further restrictions, to be imposed by private agreement, requiring:

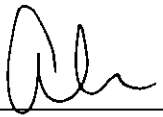
- (1) arrangements relating to full shielding of lighting, downlit so as not to spillover to adjoining property;
- (2) compliance with the City of Austin's noise ordinance; and
- (3) enhanced landscape buffers, specifically including a 15-foot landscape buffer along Brodie Lane with trees planted on 50-foot centers.

**PART 4.** This ordinance take effect on November 21, 2016.

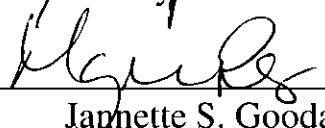
**PASSED AND APPROVED**

\_\_\_\_\_, November 10, 2016

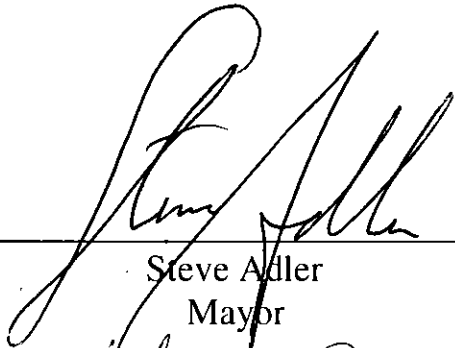
**APPROVED:**

  
\_\_\_\_\_  
Anne L. Morgan  
City Attorney

**ATTEST:**

  
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Jannette S. Goodall  
City Clerk

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Steve Adler  
Mayor