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April 4, 2017

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Mayor and Council
301 W. 2nd Street
Austin, TX 78701

Planning & Zoning Department

Re: Austin Oaks PUD - C814-2014-120

Dear Mayor, Mayor Pro Tem and City Council Members:

Thank you for your continued consideration of our concerns regarding the proposed Austin Oaks PUD. As you are aware, there is a valid petition in opposition of PUD zoning for the subject property. Nonetheless, based on recent comments from the applicant's counsel and city staff, we understand that the applicant may be amending the boundary lines of its rezoning request in an effort to invalidate the petition.

While defeating valid petitions by manipulating rezoning boundaries is unfortunately not new to Austin's rezoning process, we believe employing such a tactic would be especially troublesome in the case of a PUD. The sole purpose of PUD zoning is allow flexibility within the land development code to permit the development of a project that is superior to that which would occur using conventional zoning. For a project such as this, we might expect to see amendments to a PUD request that increases in parkland dedication or provisions to enhance water quality, but ***there is nothing superior about changing rezoning boundaries enabled by a variance to invalidate a petition.***

Effect of Changing PUD Boundaries

In addition to the above-expressed concerns, we believe that amending the PUD's boundaries raises other issues that will require substantial review, and, as a result, it would be impractical to bring the PUD back at April 13th council meeting. At this point, the extent to which the applicant may modify the boundaries of its rezoning request is unknown. Based on the configuration of the PUD and the objections of the community, it is most likely that the applicant will want to amend the rezoning boundaries to carve out parkland located on the western edge of the PUD.

While we can only speculate on the ultimate boundaries, we do know that ***any change of the PUD's boundaries would fundamentally alter the baselines and regulations upon which the PUD and its alleged superiority are based.*** For example, one of the primary selling points is that the total impervious cover would be reduced for the project. The applicant has included within the PUD a special amendment to the LDC that provides for the unique ability to transfer impervious cover from one site to another within the PUD's boundaries, which includes the transfer of 27,000 square feet of impervious cover from parkland to its commercial properties. As such, removing parkland from PUD's boundaries would necessarily alter the impervious cover allocations within the PUD, and the total amount of impervious cover with the PUD boundaries would substantially increase. But, allowing for off-site transfer of impervious cover of this kind would not be permissible under existing code nor would it be allowed under the PUD's existing provisions. Even more special code variations would need to be drafted and reviewed, if they are even feasible.

Due to the cross-allotments of entitlements and regulations throughout the PUD that would be altered based on the reduced acreage, the resulting PUD would be substantially different than the one considered by the Zoning and Platting Commission. To the extent that these regulations are changing (solely by reason of the applicant's manipulation of its boundaries to defeat a petition), we believe the PUD, including all new regulations and allotments, would need to be considered again by ZAP.

Dedication of Removed Parkland

Furthermore, if portions of the parkland included in the PUD are removed from the PUD's boundaries, such land will no longer be subject to the PUD's regulations. It is unclear how such removal would affect the PUD's proposed schedule for parkland dedication phasing. Ensuring the commitment of the parkland dedication on the removed property would require that **a separate instrument (like a public restrictive covenant) be drafted, which should be reviewed in advance of consideration at third reading and should be recorded simultaneously with the PUD ordinance (if approved).**

Additionally, we still do not know how the applicant intends to address the increased parkland dedication requirements resulting from the additional multi-family residential square footage that was offered by the City Council at second reading. The potential for removing parkland from the PUD itself only intensifies these concerns. In light of these modifications, we encourage you to request PARD staff to re-review the applicant's parkland plans to offer the City Council guidance on how these matters should be addressed.

Miscalculation of Spicewood Springs Right-of-Way

In reviewing our valid petition in anticipation of the applicant's boundary modification, we discovered an error in the City's calculations with the omission of certain right-of-way located along Spicewood Springs Road. We would like to call your attention to this omission and request that the City recalculate the valid petition to ensure consistency with the long-standing application of the Land Development Code.

Under LDC § 25-2-284, the director of the zoning department is required to "include the area of streets and alleys to complete the percentage of land area under [the provisions providing for the protest of a proposed rezoning by neighboring property owners]." In practice, the City has implemented this requirement by allotting to each petitioner one-half of the public right-of-way adjacent to such petitioner's property for purposes of calculating the 20% threshold. Normally, simply using the City's GIS shape files would adequately divide up the right-of-way to each petitioner without need for adjustment. However, in the case of this valid petition filed against the Austin Oaks PUD, some right-of-way along Spicewood Springs Road has been omitted.

The City owns a small 0.2653-acre strip of land located to the Northwest of the intersection of Spicewood Springs Road and Wood Hollow Drive (**Tax Parcel ID: 245573**). **Based on our review of the property records, this land appears to have been dedicated to the City of Austin as right-of-way under the "James M. Mitchell, Survey #17" recorded plat for the benefit of Spicewood Springs Road.** Furthermore, regardless of the manner in which this land was dedicated, this strip of land, in its present configuration, **is functionally inseparable from the Spicewood Springs Road as it provides drainage facilities for the roadway and room for possible expansion.** A review of the roadway grid on the City's GIS "Property Profile" map confirms that this property is an extension of the Spicewood Springs Road right-of-way throughout the corridor.

We request that the City recalculate the valid petition based on the inclusion of the above-mentioned tax parcel within the allotment for the adjoining properties to the immediate north of Spicewood Springs Road, pursuant to **LDC § 25-2-284**.

Advance Notice

As you can tell from our letter, there are many unanswered questions, and we feel isolated from the decisions being made. Given the level of involvement and concern from the community with regard to this PUD, we request that city staff work to include us in the ongoing deliberations. If the boundaries are changing, we should be notified and given ample time to review such changes.

Thank you for your time and continued consideration. If you would like to schedule a time to meet with us to discuss these matters, we would be happy to arrange a time that is convenient to you.

Thank you,


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