

**APPEAL TO
PLANNING COMMISSION
PARKLAND REQUIREMENT
REVIEW SHEET**

CASE NUMBER: SP-2019-0600C **Parks Board:** January 26, 2021
Planning Commission: February 9, 2021 postponed
March 9, 2021

CASE NAME: Wilder

DISTRICT: 3

ADDRESS: 4802 South Congress Avenue

ZONING: CS-MU-CO-NP

APPELLANT: Mike McHone
APPLICANT: Rivera Engineering (Michael Rivera)
OWNER: 4802 LLC (Mitch Ely)

**NEIGHBOR-
HOOD
PLAN:** South Congress Combined (West Congress Neighborhood)

PARKS AND RECREATION BOARD ACTION:

January 26, 2021: Board Member Mason-Murphy made a motion to recommend to the Planning Commission to deny the applicant's request to pay fee in lieu of land dedication for 4802 S. Congress (SP-2019-0600C) and uphold staff's recommendation for the dedication of parkland; Board Member Morgan seconded the motion. The motion passed on a vote of 9-1 with Board Member Luca voting nay and Vice Chair Farasat absent.

PLANNING COMMISSION ACTION:

February 9, 2021: Commissioner Seeger made the motion to postpone the item to March 9, 2021 at the request of the neighborhood; Commissioner Azar seconded the motion. The motion passed on a vote of 11 – 0.

To be heard on March 9, 2021.

PROPOSED DEVELOPMENT:

The applicant is proposing to construct 125 multifamily units in a multi-story building with an underground multi-level parking garage, driveway to South Congress Avenue, on-site storm water quality and detention pond, and site utilities.

APPEAL REQUEST:

The Appellant filed an appeal of the Parks and Recreation Department (PARC) decision to require land for this site plan, and requested to pay fee in lieu. This action is described in Land Development Code 25-1-605 (F); the appeal is to the Planning Commission, who will make the final decision. The case has already been heard by Park and Recreation Board, and a

recommendation made (see above).

SUMMARY STAFF RECOMMENDATION:

Staff recommends upholding PARD's original requirement to dedicate land as part of this site plan; and denial of the applicant's request to pay fee in lieu.

The criteria for the decision of whether to require land vs. fee in lieu are listed in 25-1-605.

(B). In determining whether to require dedication of land under Section 25-1-602 (Dedication of Parkland) or allow payment of a fee in-lieu of dedication under this section, the director shall consider whether the subdivision or site plan:

- (1) is located within the Deficient Park Area Map;
- (2) is adjacent to existing parkland;
- (3) has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;
- (4) is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map; or
- (5) would provide increased connectivity with existing or planned parks or recreational amenities.

These criteria are applied, and responded to below:

- (1) is located within the Deficient Park Area Map.

True - The great majority of the site is located with the Deficient Park Area map, particularly the area that PARD is requiring for dedication. This map is used to indicate the areas where the City is actively trying to acquire parkland, and is public on the City's Property Profile site.

- (2) is adjacent to existing parkland;

True – The site is adjacent to the Williamson Creek Greenbelt. The intent of the criterion is so that existing parkland may be built upon, and additional access provided.

- (3) has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;

True – the standard in the Parkland Dedication Operating Procedures is $\frac{1}{4}$ acre, and the standard can be met on this site.

- (4) is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map;

True – The parkland would address a critical need for a planned greenbelt in this location, would provide access to the public, and would also remedy the deficiency

identified in the map.

- (5) would provide increased connectivity with existing or planned parks or recreational amenities.

True – This parkland would increase connectivity and accessibility (on this section) for the long-planned Williamson Creek Greenbelt, which has recently been added to in the Central section; the long term vision is to provide a greenbelt connection from Oak Hill to Dove Springs and beyond.

Further, the applicant has stated that their primary motivation in making the appeal is that they do not want to allow for public access to the parkland through their site. Public access is an integral aspect of parkland, and is highlighted in several Code sections:

25-1-603 (A)

(1) Parkland must be easily accessible to the public and open to public view so as to benefit area residents, enhance the visual character of the City, protect public safety, and minimize conflicts with adjacent land uses.

(2) On-street and off-street connections between residential neighborhoods shall be provided, wherever possible, to provide reasonable access to parks and open space areas.

14.3.7. (A)

(5) Parkland should be accessible to those in the neighborhood, either by walking or by the provision of parking.

Per Code, public access to the greenbelt is required as part of the site plan. The site at 4802 S. Congress provides the only feasible entry and exit point to this section of the Central Williamson Creek Greenbelt, and will help fulfill the Council goal that a park be within walking distance (1/4 mile) of all residents of Austin. Adjacent sites have steep topography and would not be able to provide accessible entry points to the trail.

In other cases, PARD has required trail access as part of parkland dedication. This access, typically, would be exclusively parkland, dedicated by deed, and would provide pedestrian and maintenance access. Although a separate trail facility, deeded as parkland is seen as ideal, this design would have a large impact on the proposed project, reducing units and parking. In an effort to not impact the development, PARD instead required a public access easement, which achieves the purpose of allowing the public to reach the parkland, and also overlaps and fulfills other City requirements.

Please contact PARD reviewer Scott Grantham with any questions at scott.grantham@austintexas.gov.

SUMMARY COMMENTS ON SITE PLAN:

The 5.5 acre subject property is located along South Congress Avenue and backs up to a bend of Williamson Creek, approximately 0.8 miles south of U.S. Highway 290. The property is the site of a former car lot that is now vacant. The site plan proposes a building towards the front of the property, and the large area to the rear is proposed as open space with private amenities. This

section will be fenced off from the parkland that is under discussion in this appeal.

A decision from Planning Commission will allow the applicant to move forward with either dedication of parkland or payment of fee in lieu, following PARD's process for whichever is decided. A decision for parkland dedication will allow the applicant to proceed with an Environmental Site Assessment, survey, and getting assistance from the City's Real Estate group. A decision for fee in lieu will direct PARD to invoice the applicant for the calculated amount.

PROJECT INFORMATION

TOTAL SITE AREA	239,406 square feet	5.496 acres	
EXISTING ZONING	CS-MU-CO-NP		
WATERSHED	Williamson Creek Watershed		
TRAFFIC IMPACT ANALYSIS	Not required		
CAPITOL VIEW CORRIDOR	None		
PROPOSED ACCESS	South Congress Avenue		
	Allowed	Existing	Proposed
FLOOR-AREA RATIO	1:1	0.01:1	0.14:1
BUILDING COVERAGE	80%	1%	14%
HEIGHT	60'	25'	60'
NUMBER OF UNITS	-	0	125

SURROUNDING CONDITIONS (ZONING/ LAND USE)

North: CS-MU-CO-NP / Veterinary Office, Pawn Shop

South: CS-MU-CO-NP / Auto Repair Shop

East: South Congress Ave, then CS-MU-CO-NP / Multifamily

West: P-NP / Williamson Creek Greenbelt

NEIGHBORHOOD ORGANIZATIONS:

Homeless Neighborhood Association

Neighborhood Empowerment Foundation

Austin Neighborhoods Council

Austin Independent School District

Go Austin! Vamos Austin!

South Congress Combined Neighborhood Plan

Battle Bend Springs Homeowners Association

Onion Creek Homeowners Assoc

Preservation Austin

South Austin Neighborhood Alliance (SANA)

Wilder
Sierra Club, Austin Regional Group
Bike Austin
Friends Of Austin Neighborhoods

SP-2019-0600C

5

CASE MANAGER: Randall Rouda
Senior Planner
Randall.Rouda@austintexas.gov

PARKS AND RECREATION DEPARTMENT STAFF:
Scott Grantham
Principal Planner
Scott.Grantham@austintexas.gov

EXHIBITS:

- A. Slide Presentation
- B. Correspondence with Applicant
- C. Correspondence with Interested Parties

Austin Parks and Recreation Department

Appeal of the Parkland Dedication Requirements for 4802 S. Congress (SP-2019-0600C)

Planning Commission
March 2021

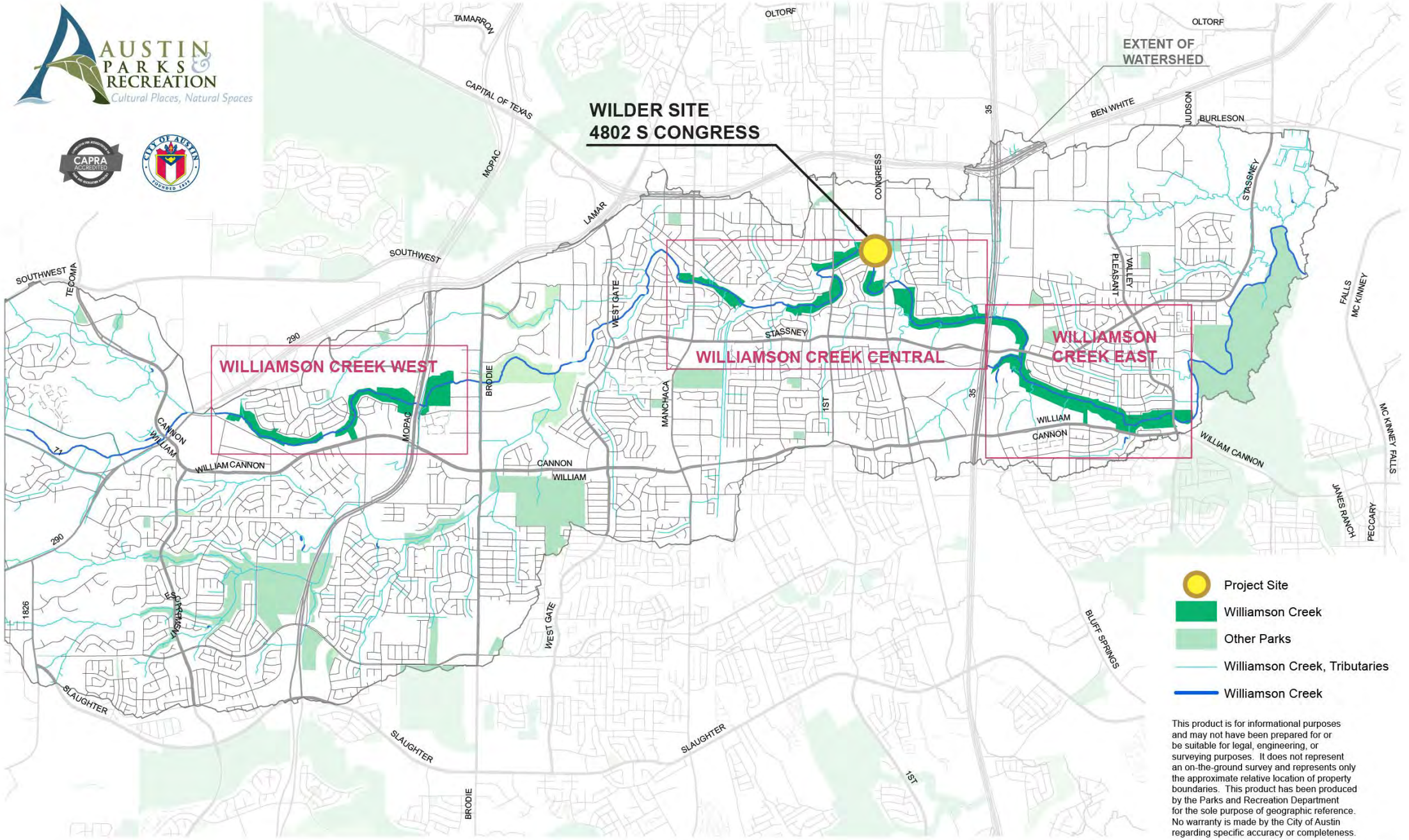
Scott Grantham Principal Planner Parks and Recreation Department

Overview

- Consider an Appeal by an Applicant. **PARD is requiring land dedication. The developer is asking to pay fee in lieu.**
- On Jan 26, 2021, Parks Board heard the item and voted to support PARD's request for land dedication and deny the applicant's request to pay fee in lieu.
- **PARD Recommendation to Planning Commission: Support PARD's request for land dedication and deny the applicant's request, to pay fee in lieu for this site plan.**
 - Code Context
 - Site Plan Context
 - Application of Code Criteria
 - Other Factors
 - Recommendation

Code Context

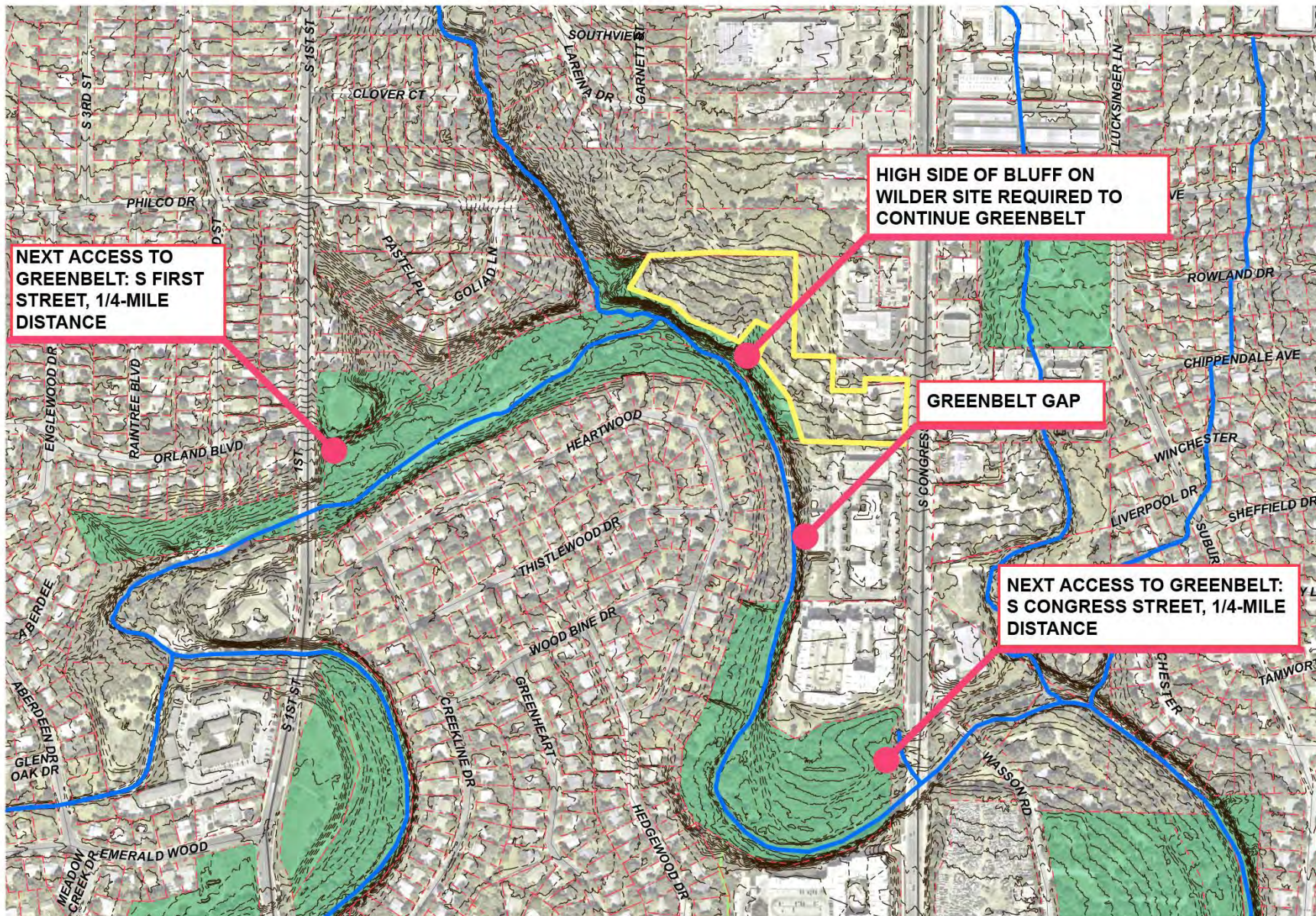
- City Code 25-1-605 (B) lists **criteria** for PARD's requirement to dedicate parkland vs. pay fee in lieu.
- City Code 25-1-605 (F) indicates that PARD's decision may be **appealed** to Planning Commission, and that PARD shall first present the case to the Parks Board for a recommendation. Applicant has appealed the decision.
- On Jan 26, Parks Board voted to support PARD's requirement and to deny the applicant's request to pay fee in lieu.
- Planning Commission makes the final decision.



-  Project Site
-  Williamson Creek
-  Other Parks
-  Williamson Creek, Tributaries
-  Williamson Creek

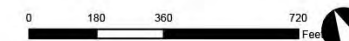
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- WILDER SITE DEVELOPMENT
- CITY PARKLAND
- CREEK
- 2-ft ELEVATION

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Application of Code Criteria

City Code 25-1-605 (B)

1. is located within the Deficient Park Area Map;
2. is adjacent to existing parkland;
3. has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;
4. is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map; or
5. would provide increased connectivity with existing or planned parks or recreational amenities.

Based on these criteria, PARD must require land, and does not have the authority to accept fee in lieu.

Application of Code Criteria

City Code 25-1-603 (A) Standards for Dedicated Parkland

“...land to be dedicated must meet the requirements of this subsection.”

(1) Parkland must be **easily accessible to the public** and open to public view so as to benefit area residents, enhance the visual character of the City, protect public safety, and minimize conflicts with adjacent land uses.

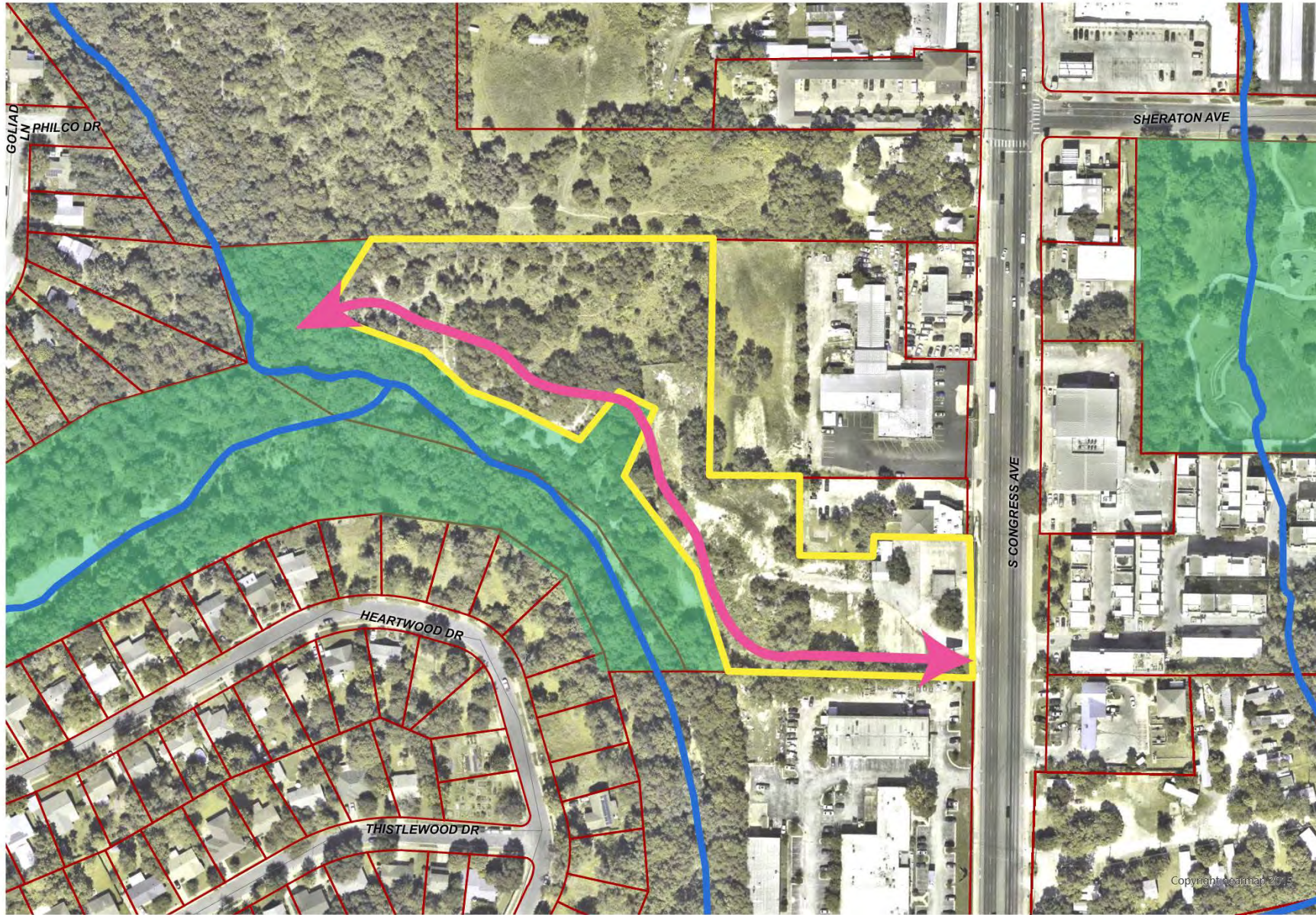
(2) **On-street and off-street connections** between residential neighborhoods shall be provided, **wherever possible**, to provide reasonable access to parks and open space areas.

Application of Code Criteria

PDOP Supplemental Park Design Standards 14.3.7.A:

- (1) The interior of a park should be visible from an existing or proposed public right-of-way. Exceptions to the recommended frontage may be acceptable to accommodate ...; **a park that serves mainly as a greenbelt;....**
- (5) Parkland should be accessible to those in the neighborhood, either by walking or by the provision of parking.

Parkland should be accessible to the public. In order to achieve that, it must be connected to the ROW.



- PROPOSED TRAIL
- WILDER SITE DEVELOPMENT
- CITY PARKLAND
- CREEK

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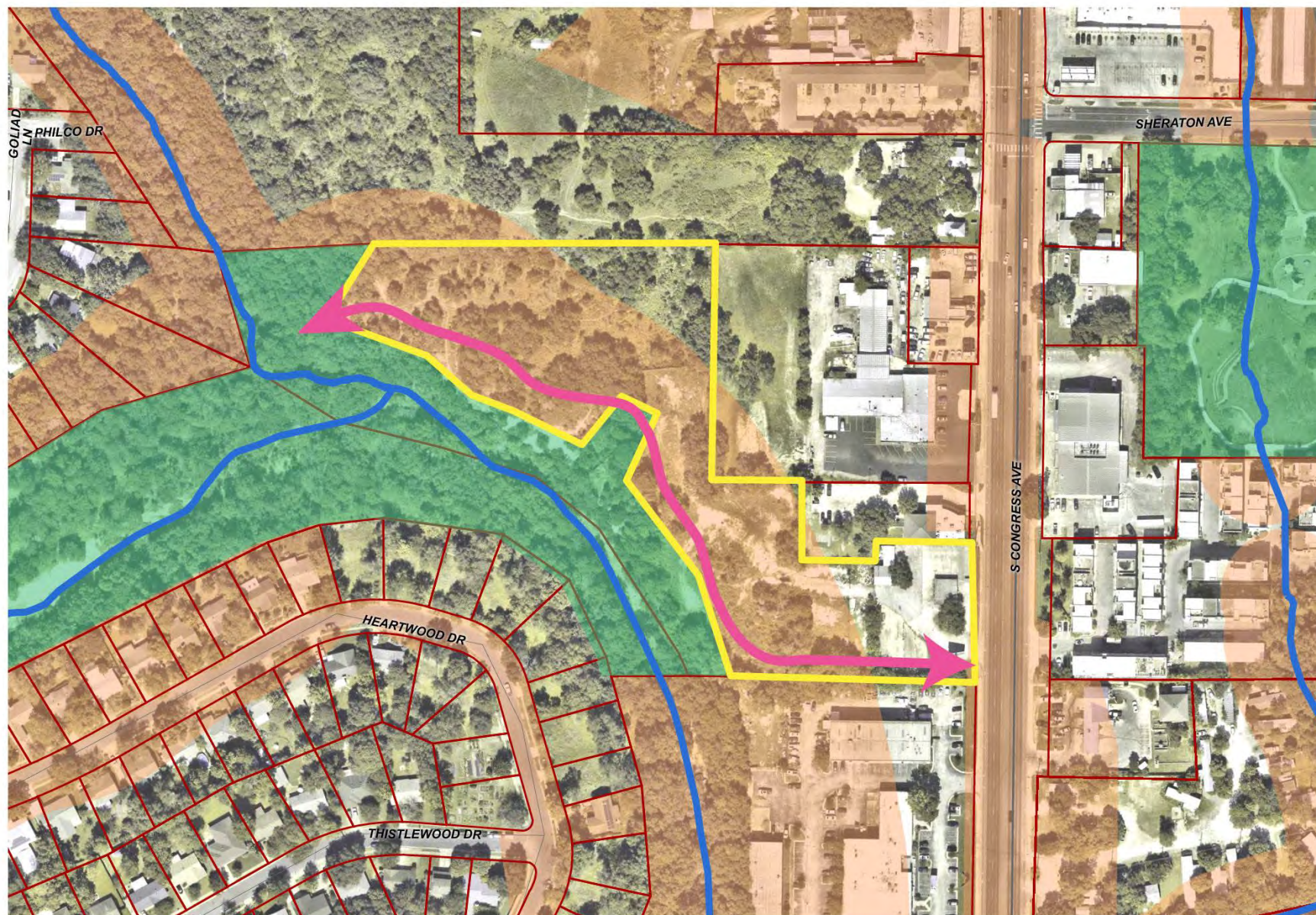
11 January 2021 RowlinsonT

- PROPOSED TRAIL
- WILDER SITE DEVELOPMENT
- CITY PARKLAND
- PARK DEFICIENCY
- CREEK

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25 January 2021 RowlinsonT



WILDER DEVELOPMENT Parkland Concept

-
- LANDSCAPE CALCULATION LIST**
- | STREET YARD | Required | Provided |
|--|------------|------------|
| Total Site Area | 235,403 SF | 235,403 SF |
| Total Street Yard Area (S. CONGRESS AVE) | 1,124 SF | 1,124 SF |
| Street Yard Landscape (20%) | 224 SF | 224 SF |
| Trees (whole-year) | 8 | 8 |
- Existing Trees Credit**
- | 2" diameter to 6" diameter | 6" diameter to greater | 1" diameter to greater |
|----------------------------|------------------------|------------------------|
| 0 | 1 | 1 |
| 0 | 1 | 1 |
| 0 | 1 | 1 |
- Proposed Trees (street-yard)**
- | 1" diameter to greater | 6" diameter to greater |
|------------------------|------------------------|
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
- Replacement Trees**
- | Required | Provided |
|----------|----------|
| 8 | 8 |
| 0 | 0 |
| 0 | 0 |
- Notes:**
- *New plantings marked with "30" will have 1.5" caliper inches counted toward street-yard landscape and the remaining 3.5" or 1.5" counted toward replacement, as shown above.
 - ISLANDS, MEDIAN, OR PENINSULAS: Division: Required: Provided
 - Street-yard area (100' x 12' x 12')
 - Non-street-yard area (100' x 12' x 12')
 - REPLACEMENT POINTS: Required: 407, Total Provided: 1512
- PRIVATE COMMON OPEN SPACE:**
- TOTAL SITE AREA: 235,403 SF
5% OF TOTAL SITE AREA REQUIRED: 11,770 SF
22,096 SF PROVIDED
- MINIMUM PLANT LIST**
- | SYMBOL | QTY | BOTANICAL NAME | COMMON NAME | REMARKS |
|--------|-----|-------------------|-------------|---|
| 5 | 1 | Cercis canadensis | Redbud | Single Trunk, Dark Green, Full Canopy, Matured, B&B |
- TREE TABLE**
- | TREE TYPE | DIAMETER | C.R.Z. | NOTES |
|---------------|---------------|--------|---|
| LIVE OAK | 12" | 20' | |
| LIVE OAK | 12" | 18' | |
| LIVE OAK | 12", 12", 12" | 100' | HERITAGE MULTITRUNK PROPOSED MULTITRUNK |
| LIVE OAK | 12", 10", 8" | 40' | |
| LIVE OAK | 8" | 18' | |
| CHINA DOGWOOD | 8" | 18' | |
- Green outline roughly shows PARD's requirement for Parkland, as a Fee Simple Dedication.**
- Blue outline roughly shows PARD's requirement for a Public Access Easement**

Other aspects

- Fire Lane: “This easement is acceptable to AFD, provided that one sentence be changed to indicate that there shall be no modifications to the fire lane in the future.” – Constantino Mendoza, Austin Fire Department
- Urban Trails Master Plan – Identified as a Tier II Trail; emphasizes connections to public sidewalks. Sidewalks + Urban Trails = Complete Pedestrian Network.
- Central Williamson Creek Greenway Plan – community engagement resulting in recommendations for accessibility and connectivity.
- Previous parkland donation occurred in 1977, prior to any Parkland Dedication Ordinances, and unrelated to this residential site plan.

Similar Cases

- **1515 S. Lamar (SP-2018-0595C)** – Code requires safe access to a trail to the rear of the site, achieved with a Public Access easement that runs along an existing sidewalk. Access doesn't have to be wide or change appearance; ensures that the trail is not alienated from the public in this location.
- **1311 S. Lamar – (SP-2018-0296C)** – Similar to above. Access to primary trail along Union Pacific railroad via a Public Access Easement to South Lamar; access from ROW also serves as a pedestrianized driveway. Varied surfacing serves as traffic calming for pedestrians. Code applied to site plan review individually, not dependent on other sites.
- **Tech Ridge (SP-2019-0262C – 12217 N. IH 35)** – Parkland dedication satisfied by deeded land and a park easement that will provide the community with a needed connection between ROW and a Park.
- **Cameron Rd Park – (SP-2019-0416C – 5900 Cameron Rd)** – Site configuration will involve two separate parks, and a Public Access easement. Applicant has agreed to the easement and project is moving forward.

PARD Recommendation

- Recommend to support PARD's request for land dedication and deny the applicant's request to pay fee in lieu of land dedication for 4802 S. Congress (SP-2019-0600C).

From: [Mike McHone](#)
To: [Flores, Yvette - BC](#); [Leighton-Burwell, Don - BC](#); ["bc-Joao"](#); [Schneider, Robert - BC](#); [Howard, Patrick - BC](#); [Llanes, Carmen - BC](#); [Azhar, Awais - BC](#); [Hempel, Claire - BC](#); [Shaw, Todd - BC](#); [Shieh, James - BC](#); [Seeger, Patricia - BC](#); [Thompson, Jeffrey - BC](#); bc-robert.mendoza@austintexas.gov
Cc: [Rivera, Andrew](#)
Subject: FW: 4802 S. Congress; SP-2019- 0600C; Fee -in-Lieu of Parkland Dedication
Date: Tuesday, March 2, 2021 3:09:38 PM

*** External Email - Exercise Caution ***

Dear Planning Commissioner,

The purpose of this communication is to set forth the request for the 125 unit condominium project at 4802 S. Congress. The project has a Building Permit that is ready to be released pending approval of the Site Plan, which **needs** the PARD comment cleared.

I filed for Fee-in- Lieu of Parkland Dedication as the only means of getting a hearing by the Planning Commission. The motion I would like **from** the Planning Commission is:

Deny the Applicant's request for Parkland Dedication, and direct PARD **not to** require a Public Access Easement.

The project has never objected to providing land to supplement the Williamson Creek Greenbelt. The issue is PARD's insistence for a Public Access Easement. This easement is at the sole liability and maintenance of the property owner. The only space on this very unusual site is the 25ft., two way, 260 ft long driveway which is the only vehicular access to the project.

We think PARD is not properly applying LDC 25-1-603 Standards for Dedicated Parkland, section (A) (2) "On-street and off-street connections between residential neighborhoods shall be provided, WHEREVER POSSIBLE, TO PROVIDE REASONABLE ACCESS to parks and open space areas." (emphasis added)

Sending pedestrians down this driveway is not "reasonable access." It is not possible **because it is potentially dangerous and creates a significant liability for the owner.**

This two way drive has double duty even without the requested easement. This drive is the AFD required Fire Lane. They reluctantly agreed to PARD's request provided AFD could add language to the easement insuring that it was built and maintained as shown on the Site Plan which they had approved.

The **driveway** is required to be where it is **in order** to comply with the LDC design requirements. At the Park and Recreation Board meeting **in February of 2021** , PARD represented that the liability would be limited by State Statute 75.002 Limited Liability. They also presented 4 examples of projects which had allowed Public Access easements along a Fire lane.

I asked our attorney to do a closer examination of the State Limited Liability Statute. He found several cases in which this statute did not provide protection from liability especially when the

“hazard” was known. In the 4802 South Congress situation, one [could](#) reasonably conclude that [having](#) pedestrians walk in a two way [driveway](#) / service drive was a “known” hazard. Austin’s LDC 25-1-21 Definitions (36) DRIVEWAY means a surfaced area providing vehicular access between a street and an off-street parking or loading area.” The ATD Criteria Manual 4.20 SIDEWALK REQUIREMENTS; 4.2.1 General Requirements (3rd paragraph) “Sidewalks shall be constructed in accordance with the City of Austin Standards and the City of Austin Standard Specifications and in accordance with applicable provisions of the Americans With Disabilities Act. Given these requirements, putting a sidewalk in the driveway would violate both the AFD and the ATD requirements. This demonstrates that the “wherever possible” clause of 25-1-603, (A) (2) is clearly applicable [to this case where access is not reasonably “possible.”](#)

Other issues raised by PARD;

The 4 examples of Public Access Easements in a Fire Lane:

1. 1515 S. Lamar: 3.8975 acres (all buildable) easement is on sidewalk adjacent to driveway (fire lane) and direct access off Evergreen Street (Not a good comparison due to multiple Streets and buildable site.
2. 12217 N IH 35: 13.9 acres; Driveway on frontage road, total land useable for project. Fire lane separate and around project, so use as Public Access easement not a problem.
3. 5900 Cameron Rd: site all useable for project. Small pocket park created with access off Cameron Rd. Site has large frontage on both Cameron and Clayton. Large Driveway with sidewalks on side. [Park access directly from sidewalks on public streets.](#)
4. 1311 S. Lamar (project withdrawn).

Access to Williamson Greenbelt:

PARD identified two access points, but that [is](#) not the whole picture. From the east side of Congress there are only two cross walks, the north at Sheraton St. and Stassney on the south. Neighbors east of Congress have a neighborhood park at Sheraton and S. Congress and direct access from the neighborhood streets to the Williamson Greenbelt that has a developed trail where Williamson Creek turns east and goes under S. Congress.

Parkland Deficiency:

PARD was not completely transparent. They provided a west side Williamson Creek Greenbelt map showing the Greenbelt in green, the 4802 S. Congress contribution in red and a lot of brown on the west side of Williamson Creek. The brown lots are the properties the COA has purchased because of flooding. The newly adopted FEMA map indicates properties within 600 ft of the creek bed are in the flood plain. The 20 lots already purchased along Heartwood Dr., at over 9,500 sq ft per lot, would add 4.36 acres to the Williamson Creek Greenbelt.

I reached out to the owner of 4930 S. Congress (the property adjacent to the south) for a possible purchase. This tract is around 5 acres and is almost a square in shape. On February 12th the owners responded and stated the tract was not for sale as it is a development site which they plan to begin in 2024. They will need to begin the Site Plan in late 2022 or early 2023. A proper Public Access easement would then be required for this site.

In summary, It is simply not possible to provide reasonable and safe access to the expanded Williamson Creek Greenbelt through the 4802 S. Congress Project. Reasonable access is available from the west via the COA owned properties on Heartwood Dr. The project at 4930 S. Congress is imminent and will provide direct access. Requiring a Public Use Access Easement at 4802 S. Congress will create review problems with ATD and potentially AFD due to conflicting ordinance requirements.

123 of 125 units have sales contracts and want a home.

I can provide backup for the issues outlined in this letter and I will be happy to provide it to each of you and to Andrew.

Best regards,

Mike

Cell ; 512-554-8440

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Paul T. Morin: *BOARD CERTIFIED – Civil Trial Law*

February 8, 2021

Mike McHone
Applicant for Congress 4802, LLC

via email: *mchone1234@sbcglobal.net*

RE: 4802 S. Congress, SP-2019-0600C PARD Public Access Easement

Liability analysis of a Public Access Easement on a 225 ft. long, 25 ft. wide Driveway/Fire Lane in a 125 unit condo project—**The Wilder**

Dear Mr. McHone:

In connection with your work for the land/project owner, **Congress 4802, LLC**, for The Wilder condominium project (new construction) located at 4802 S. Congress, Austin, Texas, you have asked for an analysis of the landowner's liability arising from the use by the general public of a public access easement that the City of Austin Parks and Recreation Department is requiring the landowner to grant on this 125 unit condo project's 225 ft. long, 25 ft. wide Driveway/Fire Lane in order to give the general public access to the Williamson Creek Greenbelt. It is my understanding that you will share this analysis with the City of Austin Planning Commission.

It is my understanding that in your meeting with the Parks and Recreation Board on January 26, 2021, the Board (and/or staff and/or City legal staff), in response to your concerns about the public access easement creating liability for the landowner to the general public, mentioned that the Texas Recreational Use Statute would protect the landowner. Consequently, on behalf of the landowner, you have asked me for this analysis.

The Texas Recreational Use Statute and the case law:

Texas Civil Practice Remedies Code Chapter 75 discusses limitations on a landowner's liability arising from a third party's recreational use of the landowner's property (the **Texas Recreational Use Statute** or "RUS"). Specific to this discussion, sections 75.002 and 75.003 pertain to the private, non-agricultural land that is used for recreational purposes. The RUS defines recreational activity broadly, including hunting, fishing, swimming, boating, camping, hiking, exploring, bicycling, dog-walking, and "pleasure driving", among other activities. Additionally,

soccer,¹ diving,² and playing on playground equipment³ have been held to be recreation within the meaning of the statute.

Under the Texas RUS, a landowner who gives permission for others to enter their property for recreational purposes does not assure that the property is safe and does not owe their guest any greater duty than they would owe to a trespasser. Similarly, the landowner cannot be held liable for any injuries that are caused by the guest while on their property.

However, if someone is injured on another's property, and their injury was due to the landowner's gross negligence, bad faith, or intentional conduct, then the RUS will not bar the accident victim's recovery. This exception can apply in situations where a landowner knows about a dangerous hazard on their property but fails to act to correct the hazard.

While the Texas RUS can present a problem for some injury victims, there are many ways to get around its application because of a landowner's various duties in certain situations, such as the duty to warn, the duty to make safe, and the duty to inspect.

Under the common law, a person who visits for recreational purposes with consent of the owner would be classified as a licensee or invitee, meaning the owner has a duty to warn or make safe dangerous conditions, and in the case of invitees, a duty to inspect for the presence of dangerous conditions. The RUS raises the burden of proof for recreational users by requiring proof of gross negligence, willful or wanton acts, malicious intent, or bad faith on the part of the owner.

Although the statute provides that a landowner does not owe a duty of care to recreational visitors,⁴ nevertheless, a landowner who fails to warn or make safe hidden dangers may be guilty of gross negligence. In the case of *State v. Shumake*,⁵ a young girl tubing the river in a state park was swept into a submerged culvert and drowned. The landowner was aware that other people had nearly drowned at the same spot. The plaintiffs alleged that because the danger was hidden to the public and known to the landowner, the owner was grossly negligent in not warning them or eliminating the danger. The court defined "gross negligence" as used in the RUS to be the traditional, commonly accepted meaning of the term: An act or omission involving subjective awareness of an extreme risk of serious injury or death, indicating conscious indifference to the

¹ *Garcia v. City of Richardson*, 2002 WL 1752219 (Tex. App. — Dallas 2002, rev. den., not designated for publication).

² *Howard v. East Texas Baptist University*, 122 S.W.3d 407 (Tex. App. — Texarkana 2003).

³ *City of Bellmead v. Torres*, 89 S.W.3d 611 (Tex. 2002); *Kopplin v. City of Garland*, 869 S.W.2d 433 (Tex. App. — Dallas 1993, writ den.); *Flye v. City of Waco*, 50 S.W.3d 645 (Tex. App. — Waco 2001).

⁴ Civ. Prac. & Rem. Code Sec. 75.002.

⁵ *State v. Shumake*, 199 S.W.3d 279 (Tex. 2006).

rights, safety, or welfare of others. The court held that failure to warn of a hidden, dangerous artificial condition can constitute gross negligence when the landowner is aware of both the presence of visitors and the hidden danger. Therefore, it was proper for the trial court to deny the state's motion that attempted to dismiss the case on sovereign immunity grounds.

Similarly, in *City of Houston v. Cavazos*, the court held the city was grossly negligent for not warning the public of a hidden drop off at a concrete slab in a popular fishing spot on land controlled by the city.⁶

In *City of Waco v. Kirwan*,⁷ the city had constructed a low wall obstructing access to a cliff in a city park and posted signs reading "For your safety do not go beyond wall." A college student proceeded past the wall and past the signs and was sitting on the edge of the cliff when the ground gave way beneath him and he fell to his death. The court held that under the RUS a landowner does not generally owe a duty to visitors to protect or warn against the dangers of natural conditions on the land. In this case, because the dangers of the cliff were open and obvious, the city had no duty to warn or protect park visitors against them or otherwise refrain from gross negligence with respect to the cliff. However, the court expressly left open the possibility that a landowner may have some duty of care when the landowner knows of a hidden and dangerous natural condition in an area frequented by recreational users, the landowner is aware of deaths or injuries related to that condition, and the danger is something a reasonable recreational user would not expect to encounter on the property. This is very similar to the standard announced by the court in *Shumake* for manmade hazards.

The court also issued a reminder that a duty may be imposed on a landowner who has undertaken affirmative acts to make a natural hazard safe, and negligently carried out that undertaking.⁸

Attractive Nuisance. The attractive nuisance doctrine is intended to protect children who are too immature to appreciate the dangers presented by manmade objects or conditions. A place or object may be an attractive nuisance to a preschooler, but not to a teenager, due to the different levels of maturity.⁹ The attractive nuisance doctrine does not apply to naturally occurring hazards, such as rivers and trees. An object need not be attractive or a nuisance in the usual sense of the words to qualify as an attractive nuisance. When an attractive nuisance exists, the landowner must take reasonable steps to locate dangerous artificial conditions and eliminate the danger or otherwise protect children. In order to establish liability under the attractive nuisance doctrine, a

⁶ *City of Houston v. Cavazos*, 811 S.W.2d 231 (Tex. App. — Houston 14th 1991 writ dismissed).

⁷ 298 S.W.3d 618 (Tex. 2009).

⁸ See also *Wilson v. Tex. Parks & Wildlife Dept.*, 8 S.W.3d 634 (Tex. 1999). (Department installed flood warning sirens, which failed to alert the decedents of a flood.)

⁹ Compare *Banker v. McLaughlin*, 208 S.W.2d 843 (Tex. 1948) to *Massie v. Copeland*, 233 S.W.2d 449 (Tex. 1950) (flooded sand pits).

four-part test must be met: 1) The child, because of age, cannot realize or appreciate the dangerous condition; 2) The landowner knew or should have known that children frequented the area;¹⁰ 3) The landowner knew or should have known that the dangerous condition presented an unreasonable risk of death or serious injury to children; and 4) The benefit to the landowner from the dangerous condition was slight, compared to the probability of injury to children.¹¹ The RUS eliminates the doctrine of attractive nuisance but only as to trespassers on agricultural land that are over the age of 16.¹² The attractive nuisance doctrine is still in effect as to all other child trespassers, which would apply to the easement on The Wilder condo property and to the city-owned Williamson Creek Greenbelt parkland.¹³

How does the above statutory and case law discussion apply to this case?

There are safer alternatives for parkland access given the existence of land on the west side of Williamson Creek that cannot be built upon for residential or commercial purposes, but that can be acquired with fee payments in lieu of parkland dedication.

Forcing the public to walk in a driveway, that is also a fire lane, in order to access parkland is an accident waiting to happen. Consider this scenario: Two members of the public—child and parent—who are not residents in the Wilder project, walking down the subject driveway to get to the park, child breaks free from parent's grasp and darts in front of moving vehicle whose driver does not have time to react to avoid hitting the child because of the suddenness of the child's movement and the close proximity of the vehicle proceeding along the driveway. Parent files a lawsuit against landowner (either the current landowner or the future condo association depending on date of accident) for the child's injuries (or worse, death). Even if landowner might have defenses, the landowner is still embroiled in costly litigation. Even if landowner has liability insurance that covers such claim, the landowner's future insurance premiums will increase with every incident of this nature (to say nothing of the increased insurance premium in the first year because of this additional risk existing on the property). In this lawsuit, the parent also sues the City of Austin for requiring a dangerous access to the parkland, especially when a safer alternative access can be provided on the west side of Williamson Creek. And what will be this plaintiff's exhibit #1 against the City? All of the records concerning this public access easement discussion between the landowner and the City, including this letter (and other landowner submittals to the

¹⁰ Compare *Burk Royalty Co. v. Pace*, 620 S.W.2d 882 (Tex. Civ. App. — Tyler 1981) to *Vista Petroleum Co. v. Workman*, 598 S.W.2d 721 (Tex. Civ. App. — Eastland 1980) (oilfield pumping units).

¹¹ *Texas Utilities Electric Co. v. Timmons*, 947 S.W.2d 191 (Tex. 1997).

¹² Civ. Prac. & Rem. Code Sec. 75.003(b)

¹³ I wish to thank Boyd Kennedy for a significant part of the above discussion on case law authorities and the attractive nuisance doctrine. See his Texas Bar Journal article, *Landowner Liability for Recreational Activities*, (May 2010), at:

www.texasbar.com/AM/Template.cfm?Section=Home&Template=CM/ContentDisplay.cfm&ContentID=9395

City) warning the City of the dangers of this particular public access and advising the City of safer alternative access to the parkland.

Providing warning signs along the public access easement/fire lane might provide some sort of defense to the landowner and the City, but who is going to pay for the signs, for the installation of the signs, and for the future maintenance of the signs?

When one looks at the nature of the different uses of the driveway, the heightened liability risk to the landowner from this proposed Public Access Easement becomes more apparent. The use of the driveway as a driveway by the condo owners is a far different and lesser liability risk to the landowner than the continual, repeated use by the general public walking in the driveway, dodging two-way vehicular traffic.


The Fire Lane issue:

As if the concept of a driveway being used by the pedestrian general public does not itself raise a host of liability concerns, there is the added complication of the driveway being designated as the fire lane for the condo project. The letter of February 2, 2021 from the City of Austin Fire Marshal (included in your package) raises more questions than it answers. The Marshal states that “at no time can the Fire Lane be altered or obstructed”. Who has the authority to remove an obstruction? Can the landowner (current or future) enforce and physically have an “obstruction” removed from the Fire Lane, or, if it is also a Public Access Easement, would the police be required to do any and all enforcement?

CONCLUSION:

Simply put, the requirement that a driveway be used by the pedestrian general public raises grave landowner liability issues (and potential liability issues for the City of Austin) and is not something that I would recommend as a solution to the problem of public access to the Williamson Creek Greenbelt, particularly given the availability of a safer alternative for public access that exists across the creek from The Wilder project.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. T. Morin', with a stylized, cursive script.

Paul T. Morin

Grantham, Scott

From: Mike McHone <>
Sent: Thursday, December 3, 2020 10:47 AM
To: Grantham, Scott
Cc: Scott, Randy; 'Mike McHone'
Subject: 4802 S Congress; SP 2019-0600 C

Follow Up Flag: Follow up
Flag Status: Flagged

*** External Email - Exercise Caution ***

Dear Mr. Grantham,

This email shall serve as the required notification of the above project's request for the payment of a "Fee-in-Lieu" payment as compliance with the Parkland Dedication requirement. This site is very irregular with most of the property located behind existing lots on Congress Ave. and adjacent to the existing Williamson Creek Greenbelt. This project's frontage on Congress is limited and this is the only buildable area.

LDC 25-1-603 (A) (1) & (2) requires public accessibility and public view; and on and off street connections between residential neighborhoods to be provided whenever possible to provide reasonable access.

This project cannot meet these requirements and is therefore requesting the fee-in-lieu option as provided by the LDC.

Best regards,

Mike McHone, authorized agent

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.



City of Austin

Parks and Recreation Department
200 South Lamar Blvd, Austin, TX 78704

January 8, 2021

Michael McHone
Authorized Agent
mchone1234@sbcglobal.net

Dear Mr. McHone:

The Parks and Recreation Department (PARD) is in receipt of your December 3, 2020 request to pay a fee in lieu of dedicating parkland in connection with the pending site plan for the property located at 4802 S. Congress Avenue (Wilder SP-2019-0600C) (the "Site Plan") This letter serves as a denial of your request.

City Code § 25-1-605 governs the Parks and Recreation Department's (PARD) determination of whether to allow payment in fee in lieu of the dedication of parkland. Specifically,

(A) The director [of PARD] may require or allow a subdivision or site plan applicant to deposit with the City a fee in-lieu of parkland dedication under Section 25-1-605 (*Dedication of Parkland*) if:

(1) the director determines that payment of a fee in-lieu of dedication is justified under the criteria in Subsection (B) of this section; and

(2) the following additional requirements are met:

(a) less than six acres is required to be dedicated under Section 25-1-602 (*Dedication of Parkland*); or

(b) the land available for dedication does not comply with the standards for dedication under Section 25-1-603 (*Standards for Dedicated Parkland*).

Because the land to be dedicated is less than six acres, the Site Plan satisfies the requirements of § 25-1-605(A). Therefore, the question is whether it also satisfies the requirements of § 25-1-605(B):

(B) In determining whether to require dedication of land under Section 25-1-602 (*Dedication of Parkland*) or allow payment of a fee in-lieu of dedication under this section, the director shall consider whether the subdivision or site plan:

(1) is located within the Deficient Park Area Map;



City of Austin

Parks and Recreation Department
200 South Lamar Blvd, Austin, TX 78704

- (2) is adjacent to existing parkland;
- (3) has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;
- (4) is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map; or
- (5) would provide increased connectivity with existing or planned parks or recreational amenities.

With regard to the Site Plan, the answer to each of these criteria is “yes”: the Site Plan is located within the Deficient Park Area Map; is adjacent to existing parkland; has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures; is needed to address a critical need for parkland or to remedy a deficiency; and would provide increased connectivity with existing or planned parks or recreational amenities. In sum, none of the criteria justifies a decision by PARD to allow payment of a fee in lieu as to this Site Plan, and PARD thus does not have the authority to allow such payment. Rather, the only thing that the Code authorizes PARD to do is to require the dedication of parkland.

Please be advised that you are entitled to appeal PARD’s decision deny your request to pay a fee in lieu:

If the director rejects a request to pay a fee in-lieu of dedication under Subsection (B) of this section, the applicant may appeal the director's decision to the Land Use Commission consistent with the procedures in Article 7, Division 1 (*Appeals*) of this chapter. Before the Land Use Commission considers the appeal, the director shall present the case to the Parks Board for a recommendation, but failure by the Parks Board to act shall not prohibit the Land Use Commission from considering the appeal.

City Code § 25-1-605(f). The appeals procedure that both parties must follow is set forth in §§ 25-1-181 through 25-1-192. Please note that § 25-1-182 provides that you have 20 days from the date of this letter to initiate an appeal and § 25-1-183 describes the information you must include in your appeal.

Best regards,

Scott Grantham, PARD, Principal Planner
Cc: Randal Scott, PARD, Program Manager

Notice of Appeal of Administrative Decision of "payment of Fee-in-Lieu of Parkland for 4802 S. Congress Ave; SP-2019-0600C as notified by letter dated 1/8/2021 from Parks and Recreation Dept. (PARC)

Per Land Development Code (LDC) 25-1-183:

I (Michael R. McHone) am the authorized representative for the above referenced project also known as (Wilder). The required information for this appeal of this administrative decision is as follows:

1. Michael R. McHone (mike McHone Real Estate)

P. O. Box 8142

Austin, TX 78713-8142

Phone: 512-554-8440

2. Wilder (project name)

4802 S. Congress

3. Denial of Fee-in-Lieu of Parkland (LDC 25-1-605)

4. Administrative letter of 1/8/2021

5. Consultant retained to negotiate PARC issues.

6. Reasons appellant (McHone) believes the decision does not comply with the requirement of this title:
a) A Deficient Park Area Map was not provided; however, the attached Tax map (TCAD) was submitted with the application indicating park land near the site. (See exhibit 1)

b) Additional dedication of land is not the issue as much of the site is in the critical water quality zone of Williamson Creek. The project cannot reasonable comply with the Public Access Easement (LDC 25-1-603 (A) (1), (2)). The site is very irregular the buildable area is too limited in size, shape, and street frontage to be an acceptable Public Access easement.

PARC has stated that the easement maintenance will be a project expense and responsibility. PARC has not been able to provide and liability insurance indemnifying Wilder from any accident or claim arising from an "incident" that might occur in the Public Access Easement that PARC is proposing. PARC proposes to use the narrow driveway to the required off street parking garage which is also the require Fire Lane for the Public Access Easement: Wilder believes such a Public Access Easement places an unacceptable liability on the project and the subsequent condominium owners.

c) The site has sufficient acreage for partial dedication which PARC will accept along with a cash payment for the balance. As stated in (b) the disagreement is the Public Access Easement. Historically the Wilder site donated 2.4 acres of land in exchange for rezoning the property. These 2.4 acres established an original segment of the Williamson Creek Greenbelt.

d) As stated in (a) the applicant has not seen any "official" PARC map identifying this area as "Parkland Deficient".

e) The connectivity will not be increased as the proposed dedication will simply add width to the previously gifted 2.4 acres. (See exhibit 2) Connectivity currently exists along Williamson Creek to the north and west all the way to South First Street. An additional 9 acres was dedicated by anew project to the south which extend all the way to S. Congress and Ramble Lane.

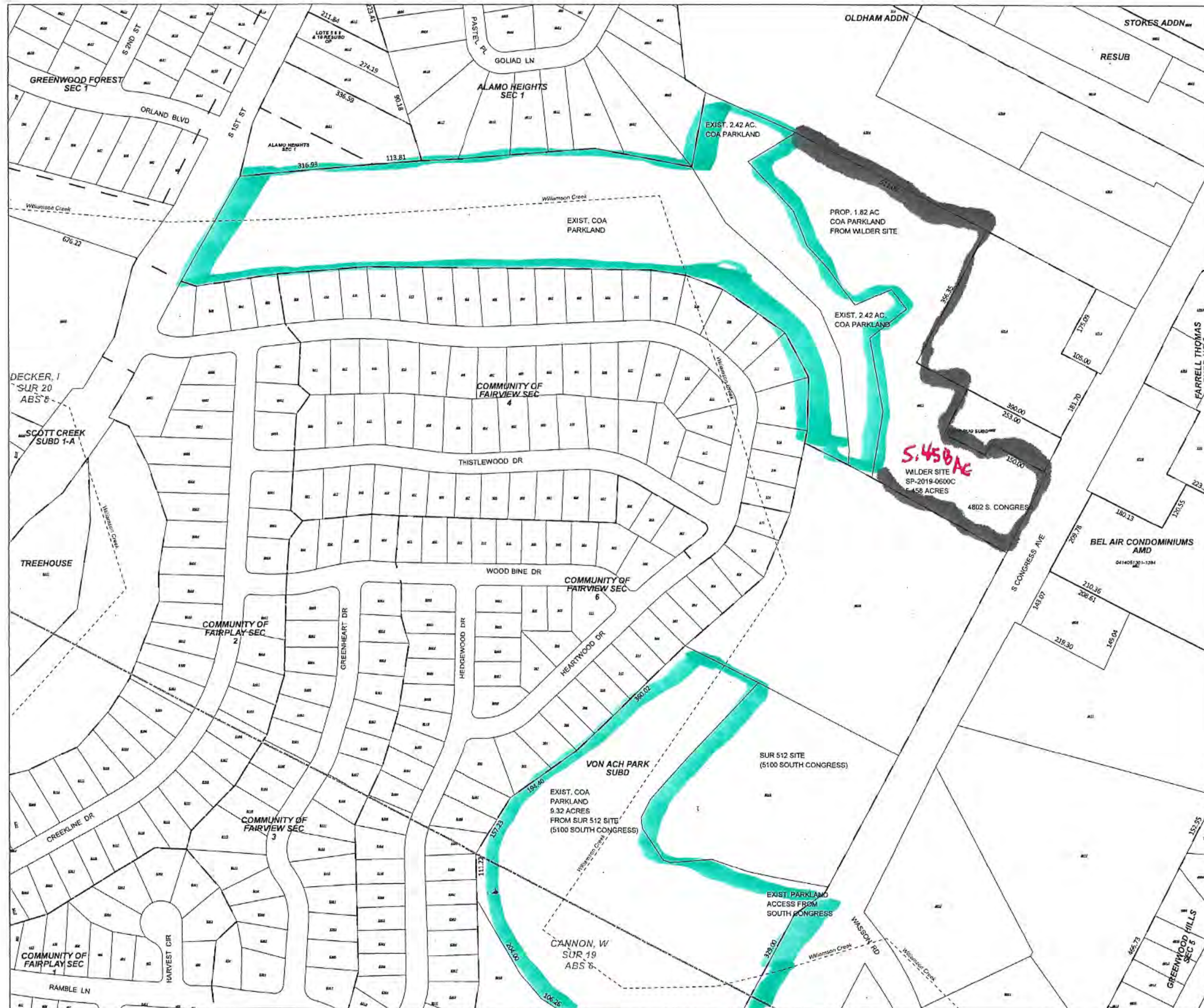
This letter shall serve as our request to appear at a public hearing of the City of Austin Parks Board on January 26, 2021.

Respectfully,

A handwritten signature in blue ink, appearing to read "Michael R. McHone". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael R. McHone, Authorized agent

EXHIBIT 1

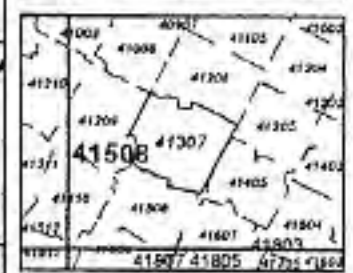


Travis Central Appraisal District
 8314 Cross Park Drive
 Austin, Texas 78754
 Internet Address: www.travisappraisal.org
 Main Telephone Number (512) 854-9317
 Appraisal Information (512) 854-9318
 TDD (512) 854-9328

This tax map was compiled solely for the use of TCAD. Areas depicted by these digital products are approximate, and are not necessarily accurate to mapping, surveying or engineering standards. The TCAD makes no claims, promises or warranties about the accuracy, reliability or completeness of this information and expressly disclaims liability for any errors and omissions. The mapped data does not constitute a legal document.

NAD, 1983, StatePlane,
 Texas Central, FIPS 4203, Feet
 Projection: Lambert Conformal, Conic

Ratio = 100 scale map
 Thin = 100 scale map
 Bold = 400 scale map

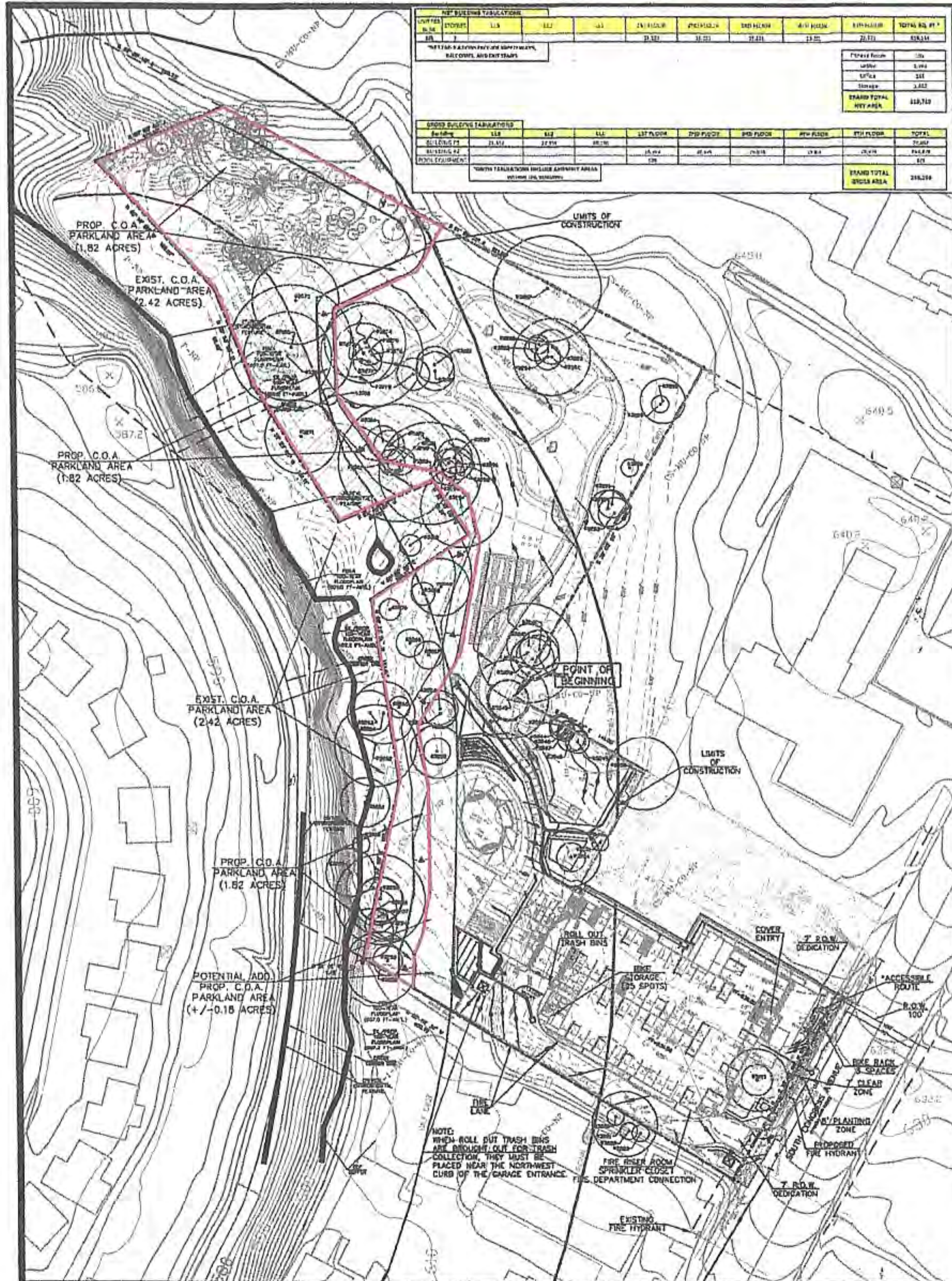


0 120 Feet

Revision Date:
 7/11/2019

41307

EXHIBIT 2 Area in Red Proposed Parkland From 4802nd Congress



BUILDING SUMMARY	
EXISTING	PROPOSED
EXISTING USE	VACANT CAR LOT
PROPOSED USE	TO BE DEMOLISHED
NUMBER OF STORIES	ONE
GARAGE (3 LEVELS)	2,156 S.F. (894 S.F.)
FIRST FLOOR	N/A
SECOND FLOOR	N/A
THIRD FLOOR	N/A
FOURTH FLOOR	N/A
FIFTH FLOOR	N/A
POOL EQUIPMENT	N/A
GROSS FLOOR AREA*	2,156 S.F. (894 S.F.)
FAR	0.01 : 1
BUILDING COVERAGE	2,156 SF (1%)
BUILDING HEIGHT	25'
MAX. BUILDING HEIGHT	UNKNOWN
BUILDING MATERIAL	UNKNOWN
BUILDING TYPE	BUILDING 1 (GARAGE): 79,097 SF, BUILDING 2 (APARTMENTS) IS CONSTRUCTION TYPE IIA.
TOTAL SITE AREA: 5.496 AC. (239,400 SF) NET SITE AREA: 5.496 AC. (239,400 SF)	
IMPERVIOUS COVER: 53,500 SF (22%)	
ZONED: CS-MU-CO-NP (SOUTH CONGRESS COMBINED NEIGHBORHOOD PLANNING AREA)	
BUILDING COVERAGE ALLOWED: 80%	
F.A.R. PERMITTED: 1:1	

*GROSS FLOOR AREA AND TOTAL GROSS FLOOR AREA ARE THE SAME AS THERE IS ONLY ONE BUILDING. NET FLOOR AREA IN PARENTHESES. NET FLOOR AREA EXCLUDES BREEZEWAYS, BALCONIES, AND EOT STAIRS.

SITE NOTES:

1. THE USE OF HIGHLY REFLECTIVE SURFACES, SUCH AS REFLECTIVE GLASS AND REFLECTIVE METAL ROOFS, WHOSE PITCH IS MORE THAN A RUN OF SEVEN (7) TO A RAISE OF TWELVE (12), WILL BE PROHIBITED. (SECTION 25-2-100.7)
2. THE NOISE LEVEL OF MECHANICAL EQUIPMENT WILL NOT EXCEED 70 DBA AT THE PROPERTY LINE ADJACENT TO RESIDENTIAL USES. (SECTION 25-2-100.7)
3. EVERY ACCESSIBLE PARKING SPACE MUST BE IDENTIFIED BY A SIGN CENTERED AT THE HEAD OF THE PARKING SPACE. THE SIGN MUST INCLUDE THE INTERNATIONAL SYMBOL OF ACCESSIBILITY AND STATE RESERVED OR EQUIVALENT LANGUAGE. CHARACTERS AND SYMBOLS ON SUCH SIGNS MUST BE LOCATED 60" MINIMUM ABOVE GROUND SO THAT THEY CANNOT BE OBLSCURED BY A VEHICLE PARKED IN THE SPACE.
4. FIRE LINES SHALL BE PAINTED RED AND LABELED "FIRE LANE" "NO PARKING ZONE"
5. ALL LANDSCAPED AREAS TO BE PROTECTED BY SIX-FOOT WHEEL CURBS, WHEELSTOPS OR OTHER APPROVED BARRIERS AS PER LCM 2.4.7.
6. ALL ACTIVITIES WITHIN CDP'S SETBACK MUST COMPLY WITH LAND DEVELOPMENT CODE 25-8-201(C)(2), WHICH STATES THAT THE NATURAL VEGETATIVE COVER MUST BE RETAINED TO THE MAXIMUM EXTENT PRACTICABLE. CONSTRUCTION IS PROHIBITED, AND WASTEWATER DISPOSAL AND IRRIGATION IS PROHIBITED.
7. NO SWIMMING POOL, TENNIS COURT, BALL COURT, OR PLAYGROUND WILL BE CONSTRUCTED WITHIN 50 FEET OR LESS FROM ADJOINING PROPERTY USED OR ZONED AS SF-5 OR MORE RESTRICTIVE ZONING.
8. NO SOLID FENCE ALONG THE PROPERTY LINE WILL EXCEED AN AVERAGE OF SIX FEET OR A MAXIMUM OF SEVEN FEET.
9. EACH COMPACT PARKING SPACE/ANGLE WILL BE SIGNED "SMALL CAR ONLY".
10. AN EXTERIOR DOOR MUST BE PROVIDED FOR THE RISER ROOM.
11. A MINIMUM VERTICAL CLEARANCE OF 11'4" MUST BE PROVIDED AT ACCESSIBLE PARKING LOADING ZONES AND ALONG VEHICLE ACCESS ROUTES TO SUCH AREAS FROM SITE ENTRANCES.
12. A MINIMUM OF 80" MUST BE PROVIDED FOR VAN ACCESSIBLE PARKING SPACES AND ALONG THE VEHICLE ROUTE THEREIN. THIS APPLIES TO THE PARKING GARAGE.
13. EACH PARKING SPACE IS TO BE LEASED SEPARATELY FROM THE RESIDENTIAL UNIT.

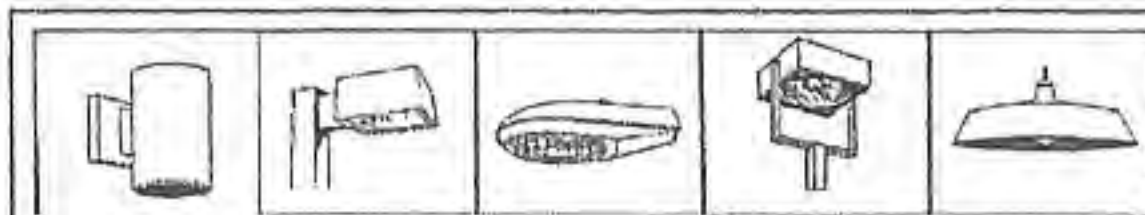


Figure 34:
Examples of fully-shielded light fixtures.

* Ground surfaces along accessible routes must be stable, firm, and slip resistant. (ANSI 302.1). Provide a callout of the type of surface or indicate the surface texture as a symbol within the legend.

MINIMUM SITE AREA TABLE			
MINIMUM SITE AREA (1,000 SF 1BR/1BA) x 65	65,000 SF	1.49 ACRES	
MINIMUM SITE AREA (1,200 SF 2BR/2BA) x 60	72,000 SF	1.65 ACRES	
MINIMUM SITE AREA TOTAL	137,000 SF	3.14 ACRES	
TOTAL SITE AREA OF PROPERTY	239,400 SF	5.50 ACRES	

CONTRACTOR WARNING:

THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATIONS AND/OR ELEVATIONS OF EXISTING UTILITIES AS INDICATED ON THESE PLANS IS BASED PARTIALLY ON RECORDS OF THE CITY OF AUSTIN. WHERE POSSIBLE, MEASUREMENTS WERE TAKEN IN THE FIELD TO VERIFY LOCATIONS OF WATER, WASTEWATER AND STORM SEWER LINES. THE INFORMATION IS NOT SPECIFICALLY ACCURATE. THE CONTRACTOR MUST CONTACT THE APPROPRIATE UTILITY AT LEAST 48 HOURS BEFORE ANY EXCAVATION TO REQUEST THE EXIST FIELD LOCATIONS AS REQUIRED. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO RELOCATE ALL EXISTING UTILITIES WHICH CONFLICT WITH THE LOCATION OF PROPOSED UTILITIES AS SHOWN ON THE PLANS. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO ADJUST THE PROPOSED UTILITIES AS REQUIRED TO ALLOW THE DESIGN TO BE CONSTRUCTED. (SEE SEQUENCE OF CONSTRUCTION)

PARKING SUMMARY				
MULTI-FAMILY	# BEDROOMS PER UNIT	PARKING SPACES REQ' PER UNIT	# OF UNITS	SPACES REQUIRED
MULTI-FAMILY	0	1	1	1
MULTI-FAMILY	1	1.5	64	96
MULTI-FAMILY	2	2	60	120
SUBTOTAL			125	217
TOTAL REQUIRED WITH REDUCTIONS (10% REDUCTION FOR TREE PRESERVATION)				
ACCESSIBLE SPACES REQUIRED				
ACCESSIBLE SPACES PROVIDED				
REGULAR SPACES PROVIDED				
COMPACT SPACES PROVIDED				
TOTAL PARKING SPACES PROVIDED				
BICYCLE PARKING REQUIRED (5% OR 5 MINIMUM)				
BICYCLE PARKING PROVIDED*				

* BICYCLE PARKING LOCATED IN PARKING GARAGE WITH 3 SPACES NEAR SOUTH CONGRESS ENTRY.

LEGEND	
	PROPOSED GRADING
	DRAINAGE AREA
	HIGH POINT
	LOW POINT
	PROPOSED CURB INLET
	PROPOSED AREA INLET
	DRAINAGE AREA BOUNDARY
	FIRE LANE

NOTE:
ORIGINAL PROPERTY AND TREE SURVEY PREPARED ON FEBRUARY 23, 2012, BY PRECISE LAND SURVEYING, INC. PROPERTY BOUNDARY, TOPOGRAPHIC & TREE SURVEY UPDATED ON JUNE 1, 2020 BY EAGLE EYE CONSTRUCTION LAYOUT, LLC, AND REPRODUCED HEREIN. CONTOUR INFORMATION SUPPLIED BY CITY OF AUSTIN TOPOGRAPHIC DATA.

NOTE:
APPROVAL OF THESE PLANS BY THE CITY OF AUSTIN INDICATES COMPLIANCE WITH APPLICABLE CITY REGULATIONS ONLY. APPROVAL BY OTHER GOVERNMENTAL ENTITIES MAY BE REQUIRED PRIOR TO THE START OF CONSTRUCTION. THE APPLICANT IS RESPONSIBLE FOR DETERMINING WHAT ADDITIONAL APPROVALS MAY BE NECESSARY.

SITE PLAN RELEASE NOTES:

- a) A DEVELOPMENT PERMIT MUST BE ISSUED PRIOR TO AN APPLICATION FOR BUILDING PERMIT FOR NON-CONSOLIDATED BUILDING PERMIT OR PLANNING COMMISSION APPROVED SITE PLANS.
- b) THE REQUIRED VEGETATIVE BUFFER YARD ADJACENT TO THE MULTIFAMILY RESIDENTIAL IS REQUIRED TO BE BUILT AT THE TIME OF ANY EXPANSION TO THE SITE.
- c) EACH COMPACT PARKING SPACE/ANGLE WILL BE SIGNED "COMPACT ONLY". LOC 25-6-475.
- d) EVERY ACCESSIBLE PARKING SPACE MUST BE IDENTIFIED BY A SIGN, CENTERED AT THE HEAD OF THE PARKING SPACE. THE SIGN MUST INCLUDE THE INTERNATIONAL SYMBOL OF ACCESSIBILITY AND STATE RESERVED OR EQUIVALENT LANGUAGE. CHARACTERS AND SYMBOLS ON SUCH SIGNS MUST BE LOCATED 60" MINIMUM ABOVE THE GROUND SO THAT THEY CANNOT BE OBLSCURED BY A VEHICLE PARKED IN THE SPACE. (EC 110.1, ANSI 302.7).
- e) NO CERTIFICATE OF OCCUPANCY MAY BE ISSUED FOR THE PROPOSED RESIDENTIAL CONDOMINIUM PROJECT UNTIL THE OWNER OR OWNERS OF THE PROPERTY HAVE COMPLIED WITH CHAPTER 61 AND 62 OF THE PROPERTY CODE OF THE STATE OF TEXAS OR ANY OTHER STATUTES ENACTED BY THE STATE CONCERNING CONDOMINIUMS.
- f) A CONDITIONAL LETTER OF APPROVAL, IS REQUIRED BY AUSTIN ENERGY GREEN BUILDING PROGRAM PRIOR TO BUILDING PERMIT.
- g) THE FIRE LANE MARKING SHALL READ FIRE LANE/TOW AWAY ZONE.

COMPATIBILITY STANDARDS NOTES:

- a) All exterior lighting will be full cut-off and fully shielded in compliance with Subchapter E 2.5 and will be reviewed during building plan review. Any change or substitution of lamp/light fixtures shall be submitted to the Director for approval in accordance with Section 2.5.2.E.
- b) All dumpsters and any permanently placed refuse receptacles will be located at a minimum of twenty (20) feet from a property used or zoned as SF-5 or more restrictive.
- c) The use of highly reflective surfaces, such as reflective glass and reflective metal roofs, whose pitch is more than a run of seven (7) to a rise of twelve (12), will be prohibited.
- d) The noise level of mechanical equipment will not exceed 70 dba at the property line adjacent to residential uses.
- e) Exterior lighting above the second floor is prohibited.
- f) Screening for solid waste collection and loading areas shall be the same as, or of equal quality to, principal building materials.

SITE PLAN RELEASE

File Number: **SP-2019-0600C** EXPIRATION DATE: **12/23/19**
 CASE MANAGER: **RANDALL ROUDA** APPLICATION DATE: **12/23/19**
 APPROVED ADMINISTRATIVELY ON: **N/A**
 APPROVED BY PLANNING COMMISSION ON: **N/A**
 under Section **112** of Chapter **25-3** of the Austin City Code.
 Director, Development Services Department
 DATE OF RELEASE: **12/23/19** Zoning: **CS-MU-CO-NP**
 Rev. 1: **Correction 1**
 Rev. 2: **Correction 2**
 Rev. 3: **Correction 3**

RELEASE OF THIS APPLICATION DOES NOT CONSTITUTE A VERIFICATION OF ALL DATA. INFORMATION AND CALCULATIONS SUPPLY BY THE APPLICANT. THE ENGINEER OR RECORD IS SOLELY RESPONSIBLE FOR THE COMPLETENESS, ACCURACY AND ADEQUACY OF HIS/HER SUBMITTAL, WHETHER OR NOT THE APPLICATION IS REVIEWED FOR CODE COMPLIANCE BY CITY ENGINEERS.

DESIGNED BY: **SWT**
 DRAWN BY: **SWT**
 CHECKED BY: **SWT**
 DATE: **SEPTEMBER 2020**
 SCALE: **AS NOTED**
 REVISION BY: **SWT**
 DATE: **12/23/19**

RIVERA ENGINEERING
 11111 RIVERA DRIVE, SUITE 100
 AUSTIN, TEXAS 78745
 (512) 444-1111

WILDER
 4802 SOUTH CONGRESS
 AUSTIN, TEXAS 78745
SITE PLAN

ALL RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER WHO PREPARED THEM. IN REVIEWING THESE PLANS, THE CITY OF AUSTIN MUST RELY UPON THE ADEQUACY OF THE WORK OF THE DESIGN ENGINEER.



PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

A zoning ordinance amendment may include a conditional overlay which would include conditions approved by the Land Use Commission or the City Council. If final approval is by a City Council's action, there is no appeal of the Land Use Commission's action.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (it may be delivered to the contact listed on a notice); or
- appearing and speaking for the record at the public hearing; and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 14 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: www.austintexas.gov/devservices.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: SP-2019-0600C

Contact: Scott Grantham, (512) 974-9457

Public Hearing: Planning Commission, February 9, 2021

Norman L Rice's Katherine R Dittmore

Your Name (please print)

4801 Congress Avenue #24

Your address(es) affected by this application

Katherine R Dittmore

Signature

Daytime Telephone: 512 707 0455

Date

2/1/2021

☐ I am in favor
☒ I object

Comments: Appeal denied

We must dedicate parkland

No fee in lieu.

We need parkland in this area of town

If you use this form to comment, it may be returned to:

City of Austin

Scott Grantham

P. O. Box 1088

Austin, TX 78767-1088

Grantham, Scott

From: Katerina Dittmore <>
Sent: Monday, February 1, 2021 11:06 AM
To: Grantham, Scott
Cc: Norman Rice; 'Faye Beck'
Subject: Case SP-2019-0600C Appeal denied
Attachments: Appeal denied 4802.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

*** External Email - Exercise Caution ***

Goo morning Mr Grantham

I am responding to the Notice of Public Hearing Site Plan Appeal Case SP-2019-0600C

Please record in the official public hearing comments that I object to the appeal.

Specifically, I agree with the recommendation of the Parks Commission to dedicate parkland as part of this development project. We badly need more greenspace in this area of town.

Please contact me with any questions. 512/707-0455

Thank you

Katerina R Dittmore

4081 S Congress Ave Unit R-4

Austin, TX 78745

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Grantham, Scott

From: Pam Lynn <>
Sent: Monday, February 1, 2021 1:03 PM
To: Grantham, Scott
Subject: Exemption Case #SP-2019-0600C OBJECTION

Follow Up Flag: Follow up
Flag Status: Flagged

*** External Email - Exercise Caution ***

Mr. Grantham,

In the matter of Exemption Case #SP-2019-0600C, I wish to let you know that I **OBJECT** to the exemption.

I live opposite (across the greenbelt) of the proposed development at 4802 South Congress. As the Congress corridor continues to grow in density, I think park land near the development is necessary to the health and wellbeing of nearby citizens.

Thank You,
Pamela Lynn
4605 Goliad Ln.
Austin TX

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Grantham, Scott

From: Jacob Noack <>
Sent: Monday, February 1, 2021 7:30 PM
To: Grantham, Scott
Subject: 4802 Congress Ave Objection

*** External Email - Exercise Caution ***

Hi Scott,

I object to the exemption application for 4802 Congress Ave (case # SP-2019-0600C). As a homeowner in the West Congress (Fairview) neighborhood and a native Austinite, I strongly believe the greenbelts should be open and inclusive of everyone.

Jacob Noack
jacobnoack@me.com
830-385-6863

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Grantham, Scott

From: James Millard <>
Sent: Monday, February 1, 2021 9:13 PM
To: Grantham, Scott
Subject: Objection to Exemption, Case SP-2019-0600C

Follow Up Flag: Follow up
Flag Status: Flagged

*** External Email - Exercise Caution ***

Hi Scott,

I object to the developer's application for an exemption on case # SP-2019-0600C. Green space is not only vital to the neighborhood, but to maintaining the surrounding Williamson Creek area and green belt, especially with further development on the horizon.

Please let me know if you need anything else from me.

James Millard

Sent from my iPhone

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DATE: February 2, 2021

TO: Scott Grantham Scott.Grantham@austintexas.gov

CC: Pio.Renteria@austintexas.gov

Case Number SP-2019-0600C District-2.

FROM: South Congress Combined Neighborhood Plan Contact Team – SCCNPCT

Re: SCCNPCT - Requesting Postponement Planning Commission February 09, 2021

Re: Notice of Public Hearing Site Plan Appeal for 4802 South Congress Avenue

Applicant: Mike McHome

Parks Department: Scott Grantham Scott.Grantham@austintexas.gov

.
Dear Scott Grantham,

We, the SCCNPCT are requesting postponement February 9, 2021 Planning Commission for Case Number SP-2019-0600C 4802 South Congress Avenue to March 9, 2021 Planning Commission.

We the SCCNPCT will need time to communicate with the applicant Mike McHone for this Notice of Public Hearing Site Plan Appeal. We will consult with Scott Grantham from the Parks Department and the applicant as to the intent and specifics of this appeal for 4802 South Congress Avenue.

Thank you,
Mario Cantu, Keena Miller & SCCNPCT.

Grantham, Scott

From: kevin mackie <>
Sent: Thursday, February 4, 2021 1:11 AM Grantham,
To: Scott
Subject: case # SP-2019-0600C

*** External Email - Exercise Caution ***

Hello Scott Grantham - I object to the exemption for case # SP-2019-0600C - Kevin Mackie (Mockingbird Lane)

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Grantham, Scott

From: Elizabeth Birns <>
Sent: Wednesday, February 3, 2021 9:30 PM
To: Grantham, Scott
Subject: NO to the exemption for SP-2019-0600C

*** External Email - Exercise Caution ***

Scott

As a resident on Hedgewood Drive, near Williamson Creek AND 4802 S. Congress, I wanted to let you know that I am very much opposed to the exemption for case # SP-2019-0600C.

If you allow the park land access exemption in this case, you will be setting a horrible precedent. Allowing this exemption tells all future developers that they can promise whatever they need to in order to get approval for a permit to build. And they know that they won't be held accountable and will only have to pay a fine to essentially do whatever they wanted to do in the first place. This is simply not acceptable, so please vote NO! on this exemption.

Thank you for your time.

Sincerely,

Elizabeth Burns

Sent from my iPhone

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Grantham, Scott

From: Clare Branson <>
Sent: Wednesday, February 3, 2021 8:48 AM
To: Grantham, Scott
Subject: 4802 Congress Ave Development

*** External Email - Exercise Caution ***

I object to the developer's application for exemption to provide park land in the project for Case # SP-2019-0600C.

Clare Branson
215 Lareina
Austin, TX 78749

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Confidential information may be sent to us securely via our free online banking service available at www.AmericanBank.com. You may contact us with questions or concerns at (361) 992-9911 or email to info@AmericanBank.com.

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Grantham, Scott

From: Daniel <>
Sent: Wednesday, February 3, 2021 9:01 AM
To: Grantham, Scott
Subject: SP-2019-0600C

*** External Email - Exercise Caution ***

Hi Scott,

My name is Daniel Sullivan, and I'm a resident of the East Congress neighborhood in South Austin (812 Sheraton Ave).

I'm writing to you today to urge the city to reject the developer's appeal to forego the requirement for a public easement leading to the Williamson Creek Greenbelt. The requirement for a public easement is hardly onerous, and would ensure that this part of the city progresses in its development towards being more vibrant and pedestrian friendly.

Thanks for your time. I hope you take this into consideration.

Best,
Daniel Sullivan

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