



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 53
AGENDA DATE: Thu 11/17/2005
PAGE: 1 of 1

SUBJECT: Set a public hearing on an appeal by Lumbermen's Investment, Inc. of the Zoning and Platting Commission's decision to deny site plan approval of the Village of Western Oaks, Section 20, located at 5301 Davis Lane (site plan no. SPC-05-0005C). This appeal concerns development in an area subject to the Save Our Springs Initiative, Chapter 25-8 of the City Code. (Suggested date and time: December 1, 2005, at 6:00 p.m., City Hall Council Chambers, 301 West 2nd Street)

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Watershed Protection and **DIRECTOR'S**
DEPARTMENT: Development Review **AUTHORIZATION:** Joe Pantalion

FOR MORE INFORMATION CONTACT: George Zapalac, 974-2725; Sue Welch, 974-3294; Joan Esquivel, 974-3371

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: Site plan approval was denied by the Zoning and Platting Commission.

The applicant is requesting approval of a site plan, The Village of Western Oaks, Section 20. The project proposes 49,200 sq. ft. of retail with associated detention/water quality pond, parking, and related improvements for a total impervious coverage of 38,152 sq. ft. (18.54%). The site plan required Commission approval because of an associated subdivision plat note. This tract is located in the Barton Springs Zone, which is subject to the Save Our Springs Initiative, Chapter 25-8 of the City Code.

The applicant has requested grandfathering to the preliminary plan. There are restrictions associated with the preliminary plan that were part of the Municipal Utility District (MUD) land use plan at the time. It has been determined that those restrictions to land use and square footage apply to the site plan if the applicant proposes to develop the property according to the preliminary plan. Staff did not recommend approval of this site plan because the proposed site plan did not comply with these restrictions.

The Zoning and Platting Commission heard the case on September 20, 2005 and upheld staff's recommendation to deny the site plan approval (8-1). City Code allows for Commission decisions on site plans to be appealed to the City Council.

Lumbermen's Investments is appealing the Zoning and Platting Commission's decision to deny the site plan on the basis that the Commission misapplied State law and the Austin Zoning Code.

**VILLAGE OF WESTERN OAKS, SECTION 20
SITE PLAN APPEAL OVERVIEW**

Proposed Development:

- The Applicant proposes to construct two 2-story buildings totaling 49,200 sq. ft. of retail uses.
- The Site Plan requires Commission approval, because of an associated plat note. The Commission's decision is appealable to Council.
- The tract is located in the Williamson Creek watershed in the Barton Springs Zone – Recharge Zone.
- This tract was originally included in the Village of Western Oaks Municipal District, which was annexed in 1998 and subsequently zoned GR-CO (General Retail with a Conditional Overlay).

Development Restrictions:

- The associated preliminary plan restricts development to “retail uses” with a limitation of 21,100 sq. feet.
- The final plat contains note 11 requiring development in accordance with the Village at Western Oaks MUD Land Plan, which provides for retail on the tract.
- The retail restriction and square footage restrictions apply to the Site Plan if the Applicant proposes to develop the property under regulations in affect on the application date of the preliminary plan.

Applicant Request:

- Permit development of the tract with retail uses but allow grandfathering to the preliminary plan application date.
- Approve the proposed Site Plan with note 21 permitting all “GR” uses. The applicant originally proposed office/retail for this site.

Staff's Recommendation:

- Deny the Applicant's request, because it does not comply with restrictions on the Preliminary and approved plat.
- Approve a Site Plan with retail limitations on this tract and remove Applicant's note 21 if the Applicant continues to seek grandfathering.
- If the Applicant chooses to develop a different project, Applicant must submit a new Site Plan, which complies with current Code requirements, SOS.

Zoning and Platting Commission Action:

- On September 20, 2005, ZAP upheld staff's recommendation, and voted to deny the Site Plan approval. (8-1).

Council Request for Action:

- The Applicant is appealing the Commission's decision and seeks approval of the Site Plan as submitted with note 21.
- Applicant contends that it is entitled to develop office uses on the tract but maintain grandfathering to 1985 regulations.

**ZONING AND PLATTING COMMISSION SITE PLAN
SITE PLAN REVIEW SHEET**

CASE NUMBER: SPC-05-0005C **ZAP COMMISSION DATE:** Sept. 20, 2005
August 16, 2005
CITY COUNCIL: December 1, 2005

PROJECT NAME: Village of Western Oaks, Section 20

ADDRESS: 5301 Davis Lane

WATERSHED: Williamson Creek (Barton Springs Zone – Recharge Zone)

AREA: 4.24 Acres

EXISTING ZONING: GR-CO

PROPOSED USE: The project proposes to construct two 2-story retail buildings with associated parking, water quality, access drive and other associated improvements. The applicant is requesting approval of a site plan because of a plat note (see attached page 9 for a copy of plat note #12) on the associated plat, C8-84-58.01.3(85), which requires site plan approval by the Land Use Commission.

APPLICANT: Lumberman's Investments (Robert Mann)
1300 S. Mopac (P.O. Box 2030)
Austin, Texas 78768

AGENT: Vaughn & Associates (Rick Vaughn)
707 W. 10th Street
Austin, Texas 78701
Phone: (512) 708-8891

NEIGHBORHOOD ORGANIZATION:

- 137 – Village of Western Oaks Neighborhood Association
- 217 – Tanglewood Forest Neighborhood Association
- 298 – Oak Hill Association of Neighborhoods (OHAN)
- 384 – Save Barton Creek Association
- 385 – Barton Springs Coalition
- 428 – Barton Springs/Edwards Aquifer Conservation District
- 651 – The New Villages at Western Oaks Owners Association, Inc.
- 705 – OHAN 78735
- 706 – OHAN 78736
- 707 – OHAN 78737
- 708 – OHAN 78738
- 709 – OHAN 78739
- 943 – Save Our Springs Association
- 967 – Circle C Neighborhood Association

AREA STUDY: N/A

APPLICABLE WATERSHED ORDINANCE: Williamson Creek Ordinance

CAPITOL VIEW: Not in View Corridor

T.I.A.: A Traffic Impact Analysis was submitted and approved with a previous approved 1998 site plan for this tract. The assumptions were for Office (24,070 sq. ft.) and Retail (24,070).

SUMMARY STAFF RECOMMENDATION: Staff does not recommend approval of the site plan because it does not comply with the restrictions that apply. There is a plat note #11 stating that the property shall be developed in accordance with the South Austin MUD #1 Land Use Plan (see attached page 10 for a copy of the MUD plan). The MUD Land Use Plan shows "Retail" uses for this tract and an FAR restriction of .3:1. The applicant has requested Chapter 245 grandfathering to the application date of the preliminary plan for the Village at Western Oaks, C8-84-85.01 (see attached page 7 for a copy of the preliminary plan). The proposed site plan also shows two buildings for a total of 49,200 sq. ft. There are restrictions associated with the preliminary plan that were part of the Municipal Utility District (MUD) land use plan at the time. It has been determined that those restrictions to land use and square footage apply to the site plan if the applicant proposes to develop the property according to the preliminary plan. The preliminary plan shows the use for this tract to be retail use only and shows a limit of 21,000 sq. ft. for the building square footage (see attached page 8).

While the applicant is showing two 2-story retail buildings, they are not willing to prohibit office use. Note #21 on the proposed site plan would allow all GR uses, including office use. To allow all GR uses, the plat would need to be vacated to remove plat note #11, referring to the MUD Land Use Plan which shows retail. Vacating the plat would subject the project to current code, which requires compliance with SOS ordinance. The proposed site plan does not comply with the restrictions of land use and square footage limits of the preliminary plan, nor does it comply with SOS. The preliminary plan application is subject to the Williamson Creek Ordinance which allows 65% impervious coverage. Current code (SOS) would only allow 15%.

DEPARTMENT COMMENTS: This site is located in the Williamson Creek Watershed over the Edwards Aquifer Recharge Zone, which is classified as the Barton Springs Zone. The applicant is requesting approval of a site plan because of a plat note #12 on the associated plat, C8-84-58.01.3(85), which requires site plan approval by the Land Use Commission. The Land Use Commission role is to determine if the site plan follows the applicable rules and regulations.

There are two other associated plat notes that affect this site. Plat note #11 states "This property shall be developed and maintained in accordance with the agreement concerning the creation and operation of the South Austin MUD No. 1, now called the Village at Western Oaks MUD. Land Use shall conform with the referenced Land Plan." The MUD Land Use Plan designated retail use on this site. The MUD Land Use Plan also restricted the FAR to .3:1.

The other plat note #16, references a restrictive covenant that stated no building is to be approved until units 5&6 at the Williamson Creek Wastewater Treatment Plant (WCWWTP), or the Onion Creek Wastewater Treatment Plant (OCWWTP) are complete and operational. The WCWWTP was a temporary facility that was fully constructed and later dismantled. The restrictive covenant could automatically be terminated by the Director of Water and Wastewater Department by certifying the completion of the above-referenced plants. The OCWWTP has since become the South Austin Regional Wastewater Treatment Plant and is operational and capable of handling the flow from this site.

ZONING AND PLATTING COMMISSION ACTION:

August 16, 2005 Postponed by Applicant to 9/28/05 (7-0)

September 20, 2005 Approved Staff's Recommendation To Deny The Site Plan. (8-1)

CASE MANAGER: Sue Welch, 974-3294Sue.Welch@ci.austin.tx.us**PREVIOUS APPROVALS:** SP-98-0178C, Village of Western Oaks, Section 20

August 18, 1998 – Postponed to 8/25/1998 by staff (7-0)

August 25, 1998 (7-0 approved) – A site plan for this tract was previously approved under an interim development ordinance, which exempted it from SOS. Under the Interim Development Ordinance the final date for plans to receive building permits was October 2, 1998. The site plan was approved by PC on 8/25/1998, and released by staff on October 1, 1998. The site plan expired on October 2, 1998 before building permits could be issued.

PROJECT INFORMATION:**ALLOWED F.A.R. (per MUD) :** .30:1**MAX. IMPERV. CVRG.:** 65%**ALLOWED BLDG SQ. FT:** 21,000 sq. ft.***MAX. HEIGHT:** 60'**REQUIRED PARKING:** 179**SUBDIVISION STATUS:** Village of Western Oaks, Section 20, Lot 2

*limited per Preliminary Plan

PROPOSED F.A.R.: .27:1**PROPOSED IMP. CVRG.:** 63% (116,318 sf)**PROPOSED BLDG SQ. FT.:** 49,200 sq. ft.**PROPOSED HEIGHT:** 40'**PROPOSED PARKING:** 196**A COMPARISON OF THE APPROVED PROJECT WITH CURRENT REGULATIONS:**

COMPREHENSIVE WATERSHEDS ORDINANCE: The applicant has received Chapter 245 grandfathering to the application date of the preliminary plan for the Village at Western Oaks, (C8-84-85.01) which is required to comply with the Williamson Creek Ordinance. The site falls within the Barton Springs Drinking Water Protection Zone. If it were under current regulations (SOS), a more restrictive impervious cover would have limited the development to 15% and current water quality would be required for the increased capture with the non-discharge (re-irrigation). Additional tree replacement would also have been required.

SUMMARY COMMENTS ON SITE PLAN:

LAND USE: Site is currently zoned GR-CO, with a proposed use of two 2-story retail buildings. The city annexed the MUD, and was zoned in April, 1998. The zoning conditional overlay are: maximum FAR (floor to area ratio) allowed is .5 to 1.0, maximum height to 40 feet, the minimum street side yard setback and interior side yard setback allowed is 10 feet, and no hard liquor sales are allowed on the property. The applicant is complying with the conditions of zoning.

ENVIRONMENTAL: The site is located entirely within the recharge zone of the Edwards Aquifer. There is one Critical Environmental Features on this site and it is identify on the site plan. At the time of construction, the contractor will contact the engineer to locate the environmental feature and relocate parking islands if necessary.

TRANSPORTATION: The site will take access to Davis Lane and La Cresada. A traffic impact analysis was submitted and approved with the 1998 site plan for this tract. The TIA showed office (24,070 sq. ft) and retail (24,070 sq. ft.). Currently the applicant is proposing 49,200 square feet of retail. Staff is not recommending the 49,200 of retail because of the preliminary plan restrictions of 21, 100 sq. feet. If the applicant complies with the 21,100 sq. feet of retail, the TIA assumptions are valid. If the site plan is approved for 49,200 sq. feet of retail, the applicant will be required to submit an addendum to the TIA, and comply with any recommendations proposed in the addendum.

SURROUNDING CONDITIONS:

Zoning/ Land Use

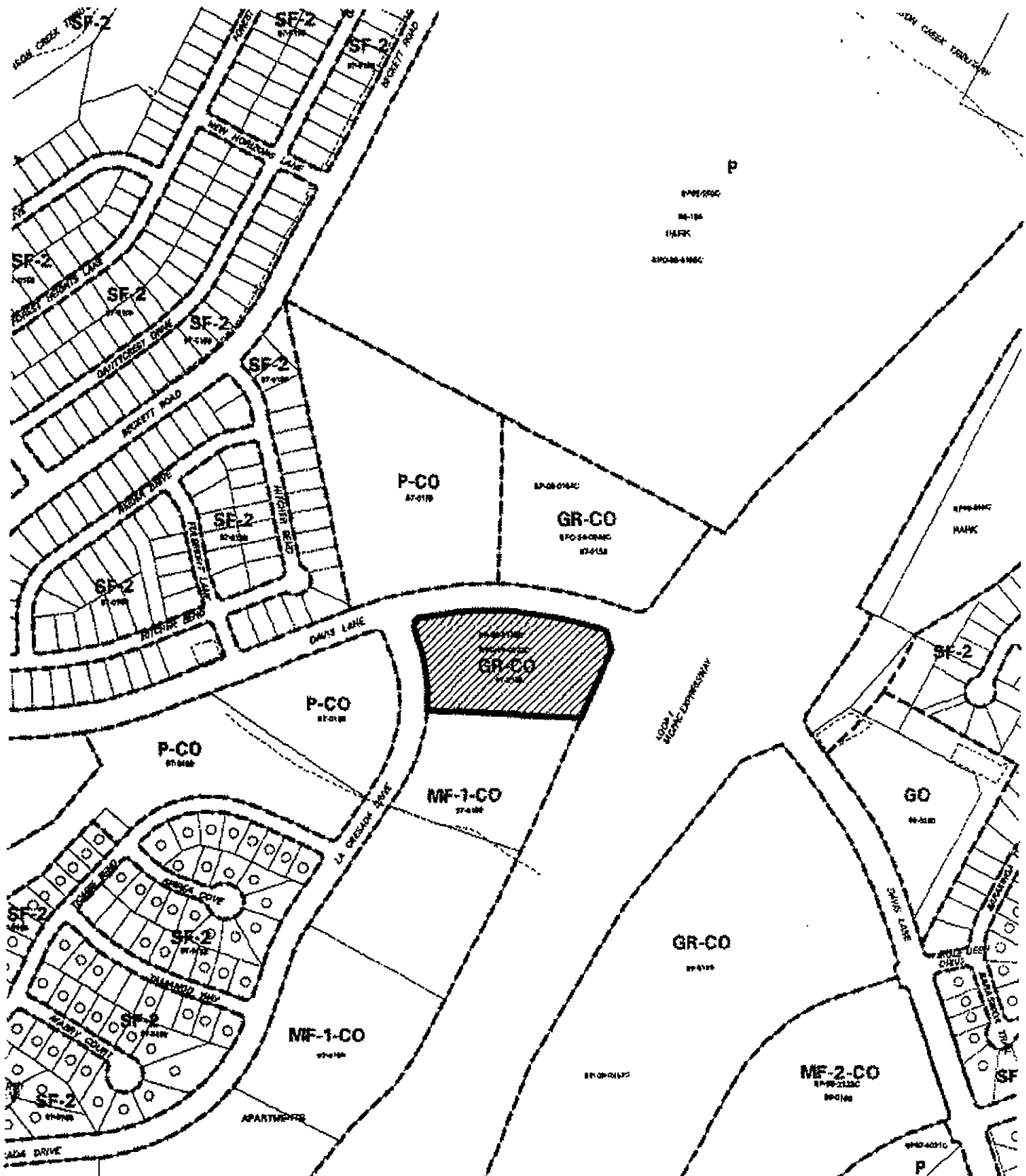
North: Davis Lane ROW, then GR-CO & P-CO, undeveloped




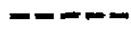
South: MF-1-CO, apartments

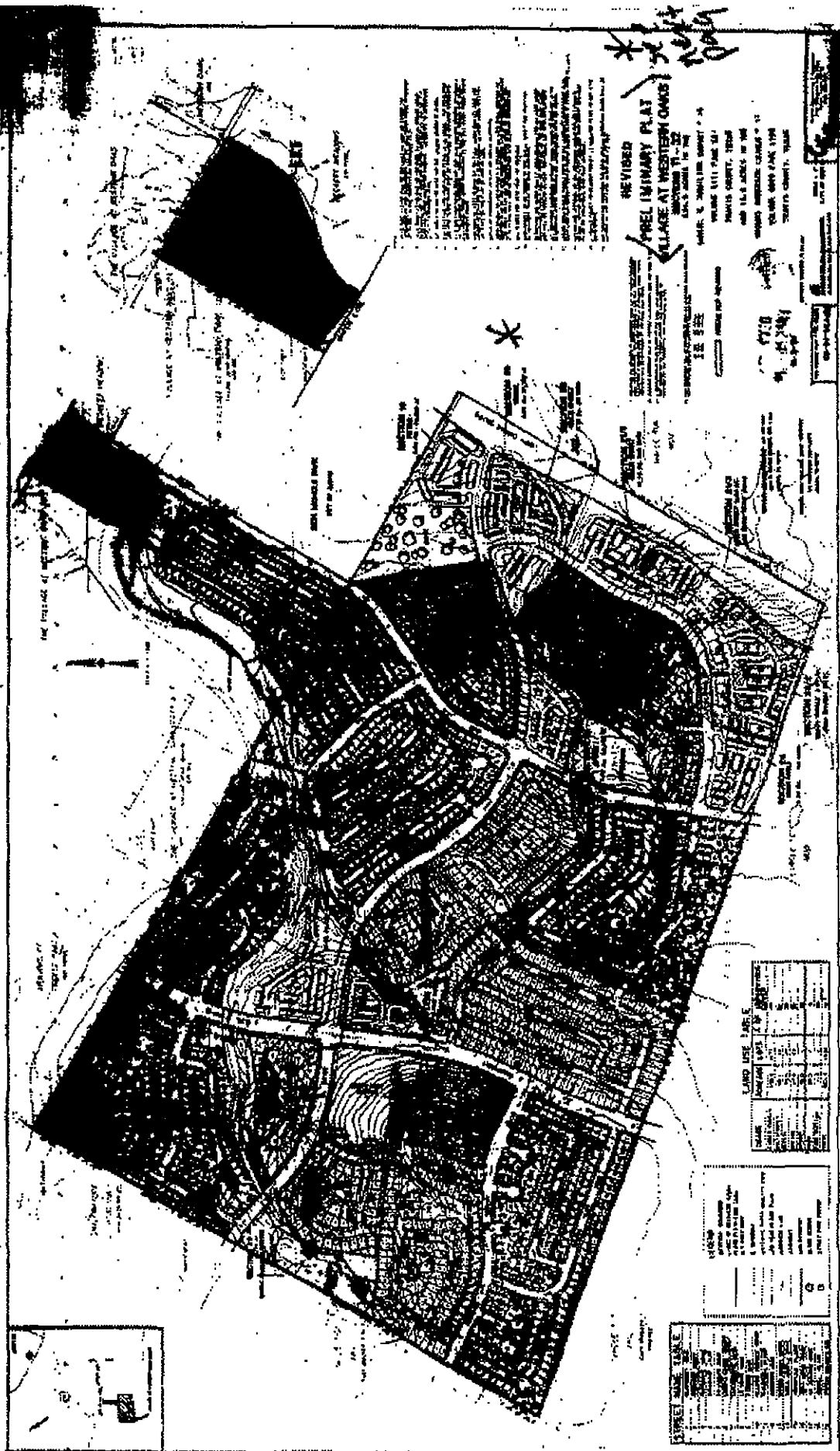
East: Mopac ROW

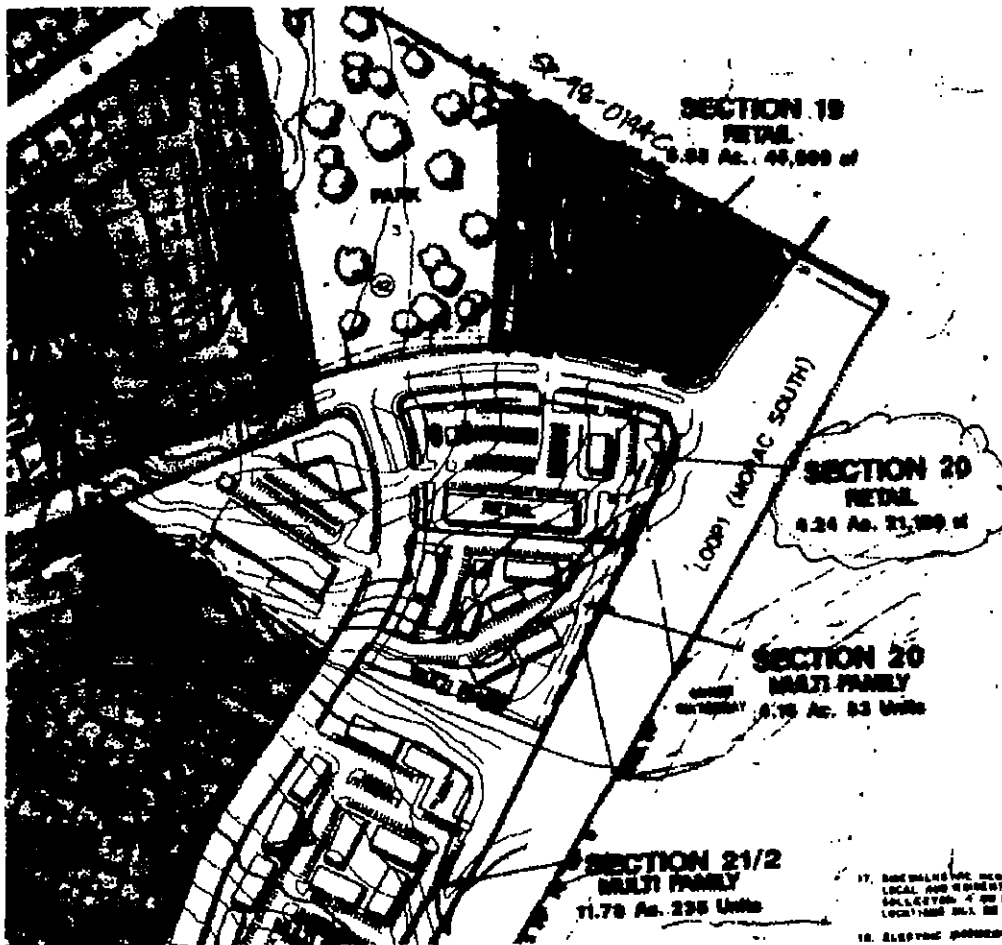
West: La Cresada ROW, then P-CO, undeveloped

<u>STREET:</u>	<u>R.O.W.</u>	<u>SURFACING</u>	<u>CLASSIFICATION</u>
Davis Lane	90'	2@27'	Major Arterial
La Cresada	100'	2@27'	Major Arterial



 1" = 400'	SUBJECT TRACT	  	SITE PLAN CONSOLIDATED		CITY GRID REFERENCE NUMBER C17
	PENDING CASE		CASE #: SPC-05-0005C	DATE: 05-08	
	ZONING BOUNDARY		ADDRESS: 5301 DAVIS LANE	INTLS: 5M	
	CASE MGR: S. WELCH		SUBJECT AREA (acres): N/A		





NOTES

1. THIS SITE REQUIRES AS GIVE
2. THIS SITE STANDS CLASH WITH C
3. ALL RAC
4. THE EN: 100-YE
5. CITY ST 12. THE WILLIAM TREATY
6. PORT OF HERBY (3-3-4)
7. BASIS C
8. DEVELOP CHARTER AND SHI SITE PL
9. ALL SEE
10. OPEN SP OF ADJ
11. DETENT: THAR S AND BIL
12. ALL BRY TRIANGLE
13. ACCESS DAVIS LI
14. REVIEW RETAIL PRIOR
15. A TRAY: DEVELOP
16. ANY EXC DITION

17. BASED ON THE RESEARCH IN UNDERGROUND WITH CITY OF NORTH STANBARD'S LOCAL AND REGIONAL COLLECTED PROPERTY A AND B. THE RESEARCH COLLECTION A AND B ARE SITES AND AREALS C AND D. THE ACTUAL LOCATION WILL BE DETERMINED AT THE FINAL PLAT STAGE.
18. ALL OTHERS SHOWN WILL BE PROVIDED AS NECESSARY WITH THE FINAL PLATS

PR

preliminary plan

EXAS,
ONOUGH-
ANCE
OF
HE
LACED
CRE-
TRETS
IN-
VES-
V AS
OF

AT

O
D.,

h

DAY

EXAS

4 THE
ATION
AND
ORDS

DATE

EXAS

NOTES

1. THE SUBDIVISION SHALL BE DEVELOPED, CONSTRUCTED, AND MAINTAINED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF CHAPTER 13-3 (WILLIAMSON CREEK ORDINANCE 80-1218-M) OF THE AUSTIN CITY CODE OF 1981, AS AMENDED AND WITH THE VARIANCES GRANTED.
2. ANY BUILDINGS, FENCES, LANDSCAPING OR OTHER OBSTRUCTIONS THAT MAY IMPAIR THE FLOW OF WATER IN THE DRAINAGE EASEMENT ARE PROHIBITED.
3. ALL DRAINAGE FACILITIES, INCLUDING RETENTION AND WATER QUALITY PONES LOCATED ON PRIVATE PROPERTY, SHALL BE MAINTAINED BY THE PROPERTY OWNER.
4. THE MAINTENANCE REQUIRED ABOVE SHALL BE TO THE STANDARD AND SPECIFICATIONS CONTAINED IN CHAPTER 13-3, AUSTIN CITY CODE OF 1981, AS AMENDED, AND OTHER ORDINANCES AND REGULATIONS OF THE CITY AND SHALL REMAIN THE DUTY OF THE CITY FOR EACH DESIGN FEATURE OR PART OF A PLAN OR PLAN COVERED BY THESE PROVISIONS.
5. ONLY AUTHORIZED AGENTS OF THE VILLAGE AT WESTERN OAKS HUD AND ALL APPROPRIATE COMMISSION AGENCIES SHALL HAVE THE RIGHT OF ENTRY ON THE LAND OR PREMISES WHERE DRAINAGE FACILITIES ARE LOCATED ON PRIVATE PROPERTY AT REASONABLE TIMES, FOR THE PURPOSES OF INSPECTION AND IF REQUIRED, MAINTENANCE AS SPECIFIED IN APPLICABLE ORDINANCE OR H.U.D. CONTRACT.
6. NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO PUBLIC WATER AND WASTEWATER SYSTEMS.
7. DEVELOPMENT IN THESE AREAS SHOWN HEREON AS CRITICAL WATER QUALITY AREAS SHALL BE SUBJECT TO THE RESTRICTION CONTAINED IN CHAPTER 13-3-133, THE AUSTIN CITY CODE OF 1981, AS AMENDED.
8. DRIVEWAY ACCESS SHALL BE LIMITED TO ONE DRIVEWAY PER EACH LOT ON LA CRESA DRIVE. LOT 3 SHALL BE LIMITED TO ONE DRIVEWAY ON DAVIS LANE. LOCATION TO BE APPROVED BY COUNTY ENGINEER.
9. A TRAVIS COUNTY DEVELOPMENT PERMIT IS REQUIRED PRIOR TO ANY CONSTRUCTION ON ANY LOT IN THIS SUBDIVISION.
10. DEVELOPMENT OF THESE LOTS SHALL CONFORM TO CHAPTER 9-10 OF THE CITY OF AUSTIN CODE (SITE DEVELOPMENT ORDINANCE) AND SHALL OBTAIN ALL REQUIRED PERMITS PRIOR TO CONSTRUCTION.
11. THIS PROPERTY SHALL BE DEVELOPED AND MAINTAINED IN ACCORDANCE WITH THE AGREEMENT CONCERNING THE CREATION AND OCCUPATION OF THE SOUTH AUSTIN HUD NO. 1 HUD CALLED THE VILLAGE AT WESTERN OAKS HUD. SAID USE SHALL CONFORM WITH THE REFERENCED LAND PLAN.
12. PRIOR TO SITE DISTURBANCE OR CONSTRUCTION, SITE PLAN APPROVAL BY THE CITY PLANNING COMMISSION IS REQUIRED. THE PROPERTY SHALL BE DEVELOPED AND MAINTAINED IN A MANNER CONSISTENT WITH THE APPROVED SITE PLAN.
13. WATER AND WASTEWATER SYSTEM SERVING THIS SUBDIVISION SHALL BE DESIGNED AND INSTALLED IN ACCORDANCE WITH THE CITY OF AUSTIN AND STATE HEALTH DEPARTMENT PLANS AND SPECIFICATIONS. PLANS AND SPECIFICATIONS SHALL BE SUBMITTED TO THE CITY OF AUSTIN FOR REVIEW.
14. INTERVUE COVER OF BOUNDARY STREETS AND ARTERIALS WILL BE DIVIDED BETWEEN THE ADJACENT TRACT ALONG THE CENTER LINE. FOR INTERVUE COVER COMPUTATION PURPOSES, ONE HALF OF THE R.O.W. ADJACENT TO A TRACT WILL BE INCLUDED AS PART OF THAT TRACT.
15. THIS SUBDIVISION WILL BE DESIGNED TO MEET THE ALTERNATE URBAN STANDARDS WITH ARTERIALS MEETING THE ACCEPTED URBAN PLAN.
16. ISSUANCE OF BUILDING OR PLUMBING PERMITS IS RESTRICTED PURSUANT TO THE RESTRICTIVE COVENANTS RECORDED IN VOLUME 254 PAGE 940, TRAVIS COUNTY, TEXAS.
17. PRIOR TO CONSTRUCTION OF ANY LOT IN THIS SUBDIVISION, DRAINAGE PLANS SHALL BE SUBMITTED TO THE CITY OF AUSTIN AND/OR TRAVIS COUNTY ENGINEER FOR APPROVAL. RAINFALL MANOFF SHALL BE HELD TO THE PROVISIONS OF EXISTING CONDITIONS THROUGH FLOODING OR OTHER APPROVED METHOD.
18. SIDEWALKS SHALL BE INSTALLED ON BOTH SIDES OF DAVIS LANE AND LA CRESA DRIVE.
19. OFF-STREET LOADING AND UNLOADING FACILITIES SHALL BE PROVIDED ON EACH NON-RESIDENTIAL SITE.
20. THE 100 YEAR FLOOD PLAIN IN THE ADJACENT WATERWAYS WILL BE CONTAINED WITHIN THE DRAINAGE EASEMENTS SHOWN. (SEE MAP REFERENCED) TRAVIS COUNTY, TEXAS. MAP EXHIBIT NO. 281972-0155-0.

I, SCOTT A. SHILEY, CERTIFY THAT THIS PLAN IS COMPLETE AND ALL THE TECHNICAL DATA CONTAINED HEREON ARE ACCURATE AND IS IN COMPLIANCE WITH CHAPTER 13-3 OF THE AUSTIN CITY CODE AS AMENDED.

Scott A. Shiley
SCOTT A. SHILEY

DATE: 6/14/85

Plat notes

33-000-22
33-000-22
33-000-22

33-000-22
33-000-22
33-000-22

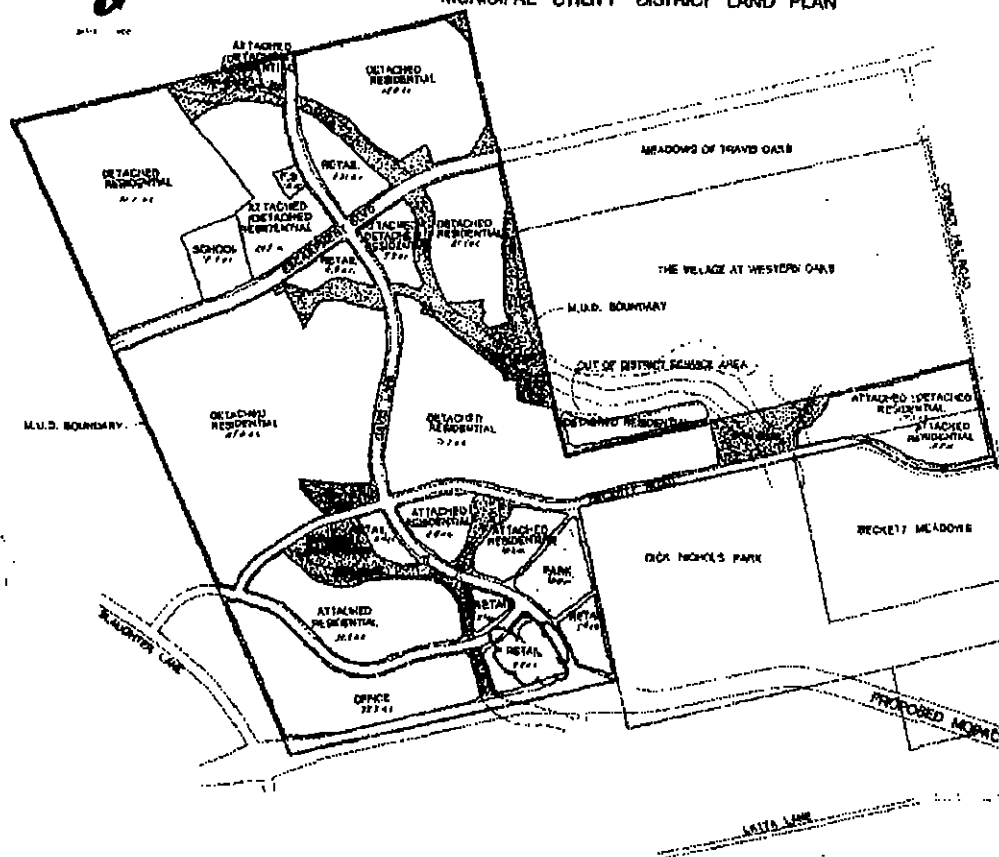
33-000-22
33-000-22
33-000-22

33-000-22
33-000-22
33-000-22

33-000-22
33-000-22
33-000-22

33-000-22

Q

[illegible][illegible][illegible]

Turner College & Braden Inc.
• turnercollege.com

Mud Plan



Vaughn & Associates

July 7, 2005

Ms. Sue Welch, Case Manager
Watershed Protection and Development Review
City of Austin
505 Barton Springs Road
Austin, TX 78704

Re: Village at Western Oaks, Sec. 20, SPC-05-0005C

Dear Sue,

The above site plan has been cleared informally by staff at this point, except for the question of the FAR (square footage) of the buildings as shown. The original MUD plan showed 21,000 sq. ft. of building on section 20. This represented the footprints as shown on the plan. The MUD documents stated that Sec. 20 had a maximum allowable building height of 40-feet. This indicates that a two-story structure was approved for this property.

At the time this MUD was dissolved the City annexed the property and the land plan was replaced by City zoning. Section 20 was zoned "GR-CO" with no restrictions to the square footage or FAR. If this would have been a concern at the time the Council annexed and zoned the property a conditional overlay could have been put in place to restrict the FAR. This type of restriction was common for properties that the staff or Council had issues with. In fact, neither City staff, Planning Commission or Council restricted the sites FAR to other than what is allowed for this zoning district.

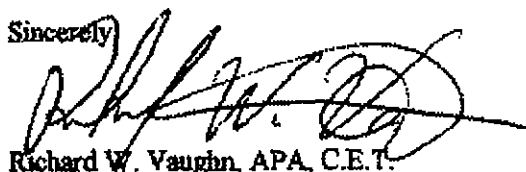
Under the Williamson Creek Ordinance the plan, as presented, complies with the impervious cover and water quality requirements set out in the ordinance.

In 1998 the City processed and approved a site plan for the exact square footage shown on the current plan. In fact the plan is exactly as shown on the 1998 submission except for slight modifications requested by City staff during the processing of this application. The allowable square footage as shown complies with the intent as well as the letter of the regulations, as it relates to impervious cover, FAR and water quality as set out in the zoning and Williamson Creek Ordinance.

We respectfully request that this plan be presented to the Platting and Zoning Commission for consideration and approval.

If you have any questions please feel free to contact me at your convenience.

Sincerely

A handwritten signature in black ink, appearing to read "Richard W. Vaughn", written over a horizontal line.

Richard W. Vaughn, APA, C.E.T.
Principal

Cc: Terry Irion
Barry Alison
Brian Rider
Bobby Mann
Gary Chancellor
Betty Baker

IRION ♦ SLADE, PLLC
ATTORNEYS AND COUNSELORS

2224 Walsh Station
Suite 210
Austin, Texas 78746

TELEPHONE (512) 347-3577
FAX (512) 347-7085

September 28, 2005

VIA FACSIMILE: 974-3010

Mr. Joe Pantalion
Director
Watershed Protection
Development Review Department
City of Austin
P.O. Box 1088
Austin, Texas 78767

Re: Village of Western Oaks Section 20

Dear Joe:

Enclosed please find the Notice of Appeal filed by Lumbertmen's Investments, Inc. as Site Plan Applicant appealing the decision of the Zoning & Platting Commission on September 20, 2005, which decision denied site plan approval on Case SPC-05-0005C. This appeal is being initiated in accordance with the provisions of Section 25-1-182, Code of the City of Austin. Please schedule a public hearing before the Austin City Council for the first available meeting for which notice of the meeting can be timely provided.

Thank you for your attention to this matter.

Sincerely,


Terence L. Irion

TLL:lm
Enclosure

NOTICE OF APPEAL

Date Appeal Filed: 9/28/05 Case No.: SPC-05-0005CProject Name: Village of Western Oaks Section 20Project Address: 5301 Davis Lane, Austin, TexasSignature: Your Name: Terrence L. Irion
Agent for Lumbermen's Investment CorporationAddress: 2224 Walsh Tarkon, Suite 210
Austin, Texas 78746
(512) 347-9977
(512) 347-7085-fax

I qualify as an interested party because (check one of the following):

☐ I mailed a letter to the Watershed Protection Development and Review Department within the appropriate time limits requesting registration as an interested party and stating my concerns about the project.☒ I am an applicant/agent.☒ I appeared before a Board or Commission.☐ I sent a written communication to a Board or Commission (attach copy).Specify Board or Commission: Zoning & Platting CommissionDate of Appearance/Communication: 9/20/05

Decision to be appealed (check one of the following):

☒ Zoning & Platting Commission Decision - Date of Decision: 9/20/05☐ Administrative Approval/Denial - Date of Approval/ Denial _____

Please state clearly why you believe the decision does not comply with applicable requirements of the Austin City Code:

The Zoning & Platting Commission ("ZAPCO") misapplied applicable State law and Austin Zoning Code to conclude that the SOS Ordinance controls the development of the site plan for this commercial lot development, when in fact, the applicable regulation for the development of the site is the Williamson Creek Ordinance No. 80-1218-W, based upon the following:

1. Ordinance No. 80-1218-W was the environmental ordinance in effect on the date the Project, known as the Village of Western Oaks, a 634.8 acre mixed use development, including single family residential, multi-family residential, parkland, school land and commercial development as both office and retail was initiated by the filing of the Preliminary Subdivision Application in 1984 in Subdivision Case File No. C8-84-58.
2. The Preliminary Subdivision Plan document included Municipal Utility District ("MUD") Land Plan information on it at the request of the City of Austin. Included in the Land Plan information was the proposal to develop Section 20, Lot 2 as "retail", "21,100 sq. ft."
3. MUD Land Plans are planning documents to guide the development of the MUD lands by mutual agreement of the MUD land owners, the MUD District, and the City in whose extra territorial jurisdiction ("ETJ") the MUD land is located. No change to a MUD Land Plan can be made without the consent of all three parties.
4. The City of Austin has participated in many MUD consent agreements and has regularly participated in numerous land plan amendments without declaring the approved established MUD a "new project" because of a minor change to the Land Plan.
5. The Village of Western Oaks mixed use development project has constructed 100% of the subdivision infrastructure, including the construction of all streets, water and wastewater utilities, electric utilities, gas utilities, telephone utilities, street lights, sidewalks, drainage and detention facilities, water quality ponds, parks and the recording of final plats configuring each of the residential, multi-family, and commercial lots in the project.
6. The City of Austin approved many minor Land Plan amendments for the Village of Western Oaks between 1984 and December 1997, when it annexed the MUD and dissolved it.
7. On April 16, 1998, the City of Austin made a minor change to the "Land Plan" for Section 20, Lot 2, by zoning it "GR-CO".
8. The "GR-CO" zoning amended the Land Plan by clarifying the designation "retail" and "21,100 sq. ft." on Lot 2 Section 20 to state that, (a) the maximum F.A.R. (floor-to-area ratio) allowed is 0.5/1.0, (b) the maximum building height allowed is 40-feet, (c) the minimum street side yard setback allowed is 10-feet, (d) the minimum interior side yard setback allowed is 10-feet, (e) that no hard liquor sales would be allowed on the property, (f) that the lot must submit an IPM (integrated pest management) plan at the time of site plan approval, and (g)

that except as limited above, Lot 2, Section 20 "may be developed and used in accordance with the regulations established for the respective base districts (in this case, "GR") and other applicable requirements of the Land Development Code."

9. Ordinance No. 98-0416-Q (the "Permanent Zoning Ordinance") was not a mutually agreed upon Land Plan amendment pursuant to the Consent Agreement, but a unilateral legislative action of the City of Austin following a change of regulatory jurisdiction effected by the action of the Austin City Council annexing the area.
10. Ordinance No. 98-0416-Q superseded and supplanted Austin's consent to the South Austin Municipal Utility District No. 1's Land Plan.
11. The "GR" Community Commercial District defines the permitted uses within the zone. "Retail" is not a defined term, but various types of office uses, including medical office, professional office, administrative and business office are defined permitted uses within the zone. The zoning and conditional overlay imposed on the subject Lot 2, Section 20, defines the height, setback, F.A.R., and impervious cover very specifically and replaces the vague, confusing and undefined reference to "retail" "21,100 sq. ft.", which does not explain whether the square foot reference is to impervious cover, building square footage or building foot print.
12. Plat Note No. 1 on the final plat of the Village of Western Oaks, Section 20 states that the subdivision "shall be developed, constructed and maintained in accordance with terms and conditions of the Williamson Creek Ordinance." Plate Note No. 10 of the final plat of the Village of Western Oaks, Section 20 states that development of lots within Section 20 "shall conform to Chapter 9-10 of the City of Austin Code" (Site Development Ordinance). Plat Note No. 11 on the final plat of the Village of Western Oaks, Section 20 states that lots "shall be developed and maintained in accordance with the Agreement Concerning Creation and Operation of the South Austin MUD No. 1, now called the Village of Western Oaks Municipal Utility District. Land use shall conform to the referenced Land Plan."
13. Watershed Protection Development Review Department ("WPDRD") staff and ZAPCO misinterpreted Note 11 to conclude that appellant's site plan application is a unilateral and major change to the declared project as understood and approved by the Austin City Council, when in fact the City of Austin, by unilateral legislative action canceled the Consent Agreement and Land Plan and replaced it with Zoning Ordinance No. 98-0416-Q.
14. The City of Austin staff and Planning Commission understood that Zoning

Ordinance No. 98-0416-Q replaced the Land Plan and that an office park would be a permitted use on Lot 2, Section 20, when staff recommended and Planning Commission approved an office park site plan with 49,200 square feet in Site Plan No. SP-98-0178C filed May 1, 1998 after the adoption by the City Council of the City of Austin of Zoning Ordinance No. 98-0416-Q replacing the Land Plan.

14. On May 1, 1998, when the prior office site plan (now expired) was approved for the site, there was not in effect a State vesting statute (HB 1704). HB 1704 had been inadvertently repealed in September 1997 and was not re-adopted until May 11, 1999. The staff and Planning Commission made the decision to approve the office site plan for this site, not based upon any interpretation of State law, but based on its own understanding of the enforceability of the recorded plat notes and the effect the annexation and adoption of permanent zoning had on the old superseded MUD Land Plan.
15. State law does, however, provide useful guidance to the City Council in determining what are the applicable regulations for site development of this lot. Section 245.002(d), Local Government Code provides that an owner may take advantage of recorded subdivision plat notes required by a regulatory agency that enhance or protect the project after the date the application for the permit was made without forfeiting any rights under Chapter 245. Accordingly, even if the City Council were to conclude that the filing of a site plan application for an office development on this 4.24 acre platted and developed lot, which represents less than 1% of the land area of the Village of Western Oaks, which is not fully built out, constitutes an original application for a new project and is thus subject to current environmental site development ordinances by application of the provisions of Section 245.002(a), Subsection 245.002(d) provides that notwithstanding any such provision of Chapter 245, the owner may elect to develop in accordance with the plat notes. This was the ruling of the Texas Court of Appeals, Third District at Austin in December 2003 in Cause No. 03-03-00307-CV; *City of Austin, Appellant v. Eli J. Garza and Provident Realty Advisors, Inc. Appellees*, where the Court concluded that even though the applicant had initiated the project by filing a first application during the pendency of an interim ordinance, the applicant was entitled to take advantage of a plat note permitting site development in accordance with the Comprehensive Watershed Ordinance. In this case, applicant's plan is in full accord with the plat notes of Section 20, including Plat Note No. 11 regarding compliance with the Land Plan unilaterally amended by the Austin City Council by Ordinance No. 98-0416-Q.