

**CITY COUNCIL REVIEW SHEET OF  
AN APPEAL OF PLANNING COMMISSION  
APPROVAL OF AN EXTENSION**

**CASE NUMBER:** SPC-2007-0439C(XT2) **PLANNING COMM'N DATE:** 2-9-2010

**PROJECT NAME:** Western Oaks Retail Center

**ADDRESS:** 4625 W. William Cannon Drive

**WATERSHED:** Williamson Creek (BSZ)

**AREA:** 15.44 Acres

**LEGAL:** Lot 15, Section 1-G, Western Oaks Subdivision

**EXISTING ZONING:** LR, Neighborhood Commercial, GR-CO, Community Commercial-Conditional Overlay

**PROPOSED USE:** Office, Financial Services, Personal Improvement Services, Restaurant

**REQUEST:** Appeal of a 4 Year extension of site plan (Approved to 8-10-2015)  
(Not subject to Project Duration)

**APPLICANT:** AVG-Austin, L.P. (Doug Jaguay)  
9595 Wilshire Bv., Ste. 710  
Beverly Hills, CA 90212

**AGENT:** Land Strategies, Inc. (Paul Linehan)  
1010 Land Creek Cv., Ste. 100  
Austin, TX 78746

**APPELLANT:** Andrew Hawkins  
Save our Springs Alliance  
221 E. 9<sup>th</sup> Street, Ste. 300  
Austin, TX 78701

**NEIGHBORHOOD ORGANIZATION:**

943- Save Our Springs Alliance  
428- Barton Springs/Edwards Aquifer Conservation District  
384- Save Barton Creek Association  
385- Barton Springs Coalition  
89- Westcreek Neighborhood Association  
967- Circle C Neighborhood Association  
298- Oak Hill Association of Neighborhoods  
705- OHAN 78735  
706- OHAN 78736  
707- OHAN 78737  
708- OHAN 78738  
709- OHAN 78749  
786- Home Builders Association of Greater Austin

**APPLICABLE WATERSHED ORDINANCE:** 1977 Creek Ordinance

**CAPITOL VIEW:** Not in View Corridor

**T.I.A.:** Done in 2002 as part of the site plan review; assumptions are basically unchanged.

**SUMMARY STAFF RECOMMENDATION:** To deny the appeal

**PLANNING COMMISSION ACTION:** 1-26-10, Postponed to 2-9-10 w/ Public Hearing closed (Commission) 9-0; 2-9-10, Approved staff recommendation 6-2

**CASE MANAGER:** Lynda Courtney Telephone: 974-2810

[Lynda.Courtney@ci.austin.tx.us](mailto:Lynda.Courtney@ci.austin.tx.us)

**PROJECT INFORMATION:**

**EXIST. ZONING:** LR, GR-CO (CO prohibits certain uses)

**EXISTING & PROPOSED USE:** Office, Personal Improvement Services, Restaurant

**LIMITS OF CONSTRUCTION:** 1.48 Acres **OVERALL SITE:** 15.44 Acres

**EXIST. BLDG. COVERAGE:** 32571 sf **PROP. BLDG. CVR:** 64199 sf

**EXISTING IMPERV. CVRG.:** 161377 sf **PROPOSED IMP. CVR:** 300871 sf (44.8%)

**EXISTING PARKING:** 436 **PROPOSED PARKING:** 436

**EXISTING & PROPOSED F.A.R.:** .11

<u>Street</u>	<u>R.O.W.</u>	<u>Surfacing</u>	<u>Classification</u>
William Cannon Drive	Varies	6 lane divided	Arterial
Brush Country Drive	74'	24-30'	Arterial, Minor

**SUMMARY COMMENTS:**

The applicant received Planning Commission approval on February 9, 2010 of a four year extension under the rules of LDC 25-5-63 (Extension of Released site Plan by the Land Use Commission) to continue the construction of Phase III and IV of the Western Oaks Retail Center.

Mr. Andrew Hawkins, representing the Save Our Springs Alliance (SOS) filed an appeal of the Planning Commission decision based on his assertion that the "extension violates site plan expiration and extension provisions of the LDC; project duration provisions of the LDC; and the Save Our Springs Ordinance of the LDC". The appeal was file on February 22, 2010, and was received within 14 days of the date of the decision of Planning Commission, in accordance with LDC 25-1-182. *(See sheets 23-26 in support material)*

Western Oaks Retail site plan consists of 6 buildings with 2 one-story office buildings, one two-story fitness center health club, 2 restaurants (one destination-type, and one fast-food) and one bank with drive-through facilities. Phase I and II infrastructure, parking, landscaping, the fitness center and the destination restaurant are constructed. The office building, the fast food restaurant and the bank have not been constructed although all drives, parking, pad sites, and infrastructure are in place.

This parcel was zoned in 1976 to LR with LO and SF-3 buffers by zoning case C14-75-81 *(See sheets 16-18 in support material)*. A conceptual land use plan *(See sheet 14)* was included with this zoning case. A restrictive covenant *(See sheets 19-21)* was also included that required a special permit be presented to the Land Use Commission to ensure that development on the site was consistent with the conceptual plan.

A special permit, C14P-84-024 (*See sheet 22*), was heard by the Planning Commission and approved on January 16, 1986. A waterway development permit, 85-03-1860, was issued in association with this special permit on September 6, 1985. The waterway development permit and the special permit were determined to be consistent with the conceptual plan attached to the zoning. Those plans showed 60% gross site area impervious cover. The waterway development plan was a plan that did not expire, but the land use plan special permit did expire on July 20, 1986. A new conditional use permit (CUP) was required in order to complete the project, and site plan SPC-02-0023C was submitted. The 1704 determination (*See sheet 15*) was that the review would be according to the rules and regulations in effect in 1977, with the stipulation that the Serendipity Cave, which had not been previously protected, would be reviewed and protected under current code.

This 2002 CUP site plan, which was approved by Planning Commission on October 10, 2002, determined that the plan remained consistent with the intent of the original conceptual plan, although the impervious cover was reduced from 65% to 44%. There have been 14 corrections and 2 revisions to the site plan, but the intent and integrity of the 2002-approved CUP site plan has been maintained. Phase I of the project was constructed between June 2005 and February 2007. A new site plan was submitted in May, 2007 to complete Phase II of the project. A determination letter (*See sheet 13*) was issued by the Assistant Director of the Watershed Protection and Development Review Department reiterating that the project was subject to 1977 regulations. The site plan was brought back to Zoning and Platting Commission for another review and approval of the Conditional Use Permit in 2007.

This site plan is not subject to Project Duration requirements listed in LDC 25-1-535 because the project began before 1997. Therefore Council has the authority to grant additional extensions of the expiration date.

**Transportation:** Complies with all transportation requirements with regards to the Land Development Code.

**Environmental:** This site is located in the Williamson Creek watershed, in the Barton Springs Zone, and complies with all rules and regulations in effect in 1977. The Critical Environmental feature, Serendipity Cave, is protected under much more stringent current code requirements than originally required.

### **SURROUNDING CONDITIONS:**

**Zoning/ Land use:** LR- Office, GR-CO-Restaurant, Personal Improvement Services (fitness club)

**North:** Townhomes, Retail, SF-6, GR-CO

**East:** PUD

**South:** SF-3, Single Family

**West:** SF-3, Single Family

# LAND STRATEGIES INC.

PAUL LINEHAN & ASSOCIATES

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December 21, 2009

Attn: Review Team (Lynda Courtney, Case Manager)  
City of Austin  
Watershed Protection & Development Review  
505 Barton Springs Road, 4<sup>th</sup> Floor  
Austin, Texas 78704

Re: Western Oaks Retail Center: SPC-07-0439C  
4-year Planning Commission Approval Site Plan Extension Request

Dear Review Team:

Land Strategies, Inc., on behalf of the landowner AVG-Austin, LP, respectfully request a four-year Planning Commission approval extension to the approved site plan SPC-07-0439C for the Western Oaks Retail Center project, a 15.44-acre tract located at 4625 W. William Cannon Drive, in the full-purpose jurisdiction of the City of Austin, Travis County, Texas. Note that the City of Austin's Legal Department has already determined that this project is "grandfathered" to 1977, and is not subject to Project Duration.

The following information provides a **brief project history** for your reference.

- Special Use Permit approved in 1984;
- Waterway Development Permit (WWDP 85-03-1860) approved in 1985 and revised in 1986;
- HB 1704 protection approved in 2001;
- Site Development Permit SPC-02-0023C approved in 2003;
- License Agreement approved in 2004 for traffic calming device through One Oak neighborhood;
- Site Plan Revision for 24 Hour Fitness and office building approved in 2004;
- Zoning change (C14-03-0178) approved in 2004 to allow for 24 Hour Fitness Center;
- Site construction of all parking areas and utilities in 2005;
- 24 Hour Fitness constructed in 2005 and 2006, and construction of Panera Bread Company in 2007 and 2008;
- There have been various inquiries from prospective users for the remainder of the project. There continues to be active negotiations associated with the project today.

The developer has been aggressively pursuing development opportunities for this site. However, the slow-down in the economy over the last year has made it necessary for us to request a site plan extension to allow additional time to complete the project. **The following information provides justification for this site plan extension request.**

DEVELOPMENT, DESIGN AND PLANNING CONSULTANTS

SCANNED

1010 LAND CREEK COVE, SUITE 100 • AUSTIN, TEXAS 78746 • (512) 328-6050 • FAX: (512) 328-6172

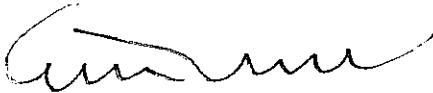
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1. As the national economy has worsened over the last two years, the local economic markets have also started to feel the downturn. Though portions of the overall development have been completed (24 Hour Fitness, Panera Bread Company), the remainder of the site has not been completed, except for all parking spaces, driveways, landscaped areas, the perimeter wall, the water quality pond for the project, and overall project signage. These improvements were constructed in anticipation of the entire development. Currently undeveloped portions of the overall site appear as vacant lots, giving the site an unfinished and discontinuous appearance. Therefore, additional time is needed to continue marketing the individual undeveloped areas within the site, and to finalize construction on the entirety of the development.
  2. The site, consisting of 15.44 acres, is divided into six (6) development pods comprising a mix of land uses, including a fitness center, restaurant areas, and office areas.
  3. Development on the project began with the construction of the entire infrastructure system and overall site improvements, as stated above in item #1. Note also that all necessary tree removal has been completed for the proposed office, fast-food and restaurant uses, as approved on the current site plan.
  4. The overall project has been continually developed as allowed by the market over the last several years. With additional time, we may continue to develop the entirety of the site in accordance with the approved site development permit.
  5. The developer and the neighborhood association have worked closely in the past, and continue to discuss development changes as they may affect the adjacent landowners, as well as the quality of the overall development. Note that the License Agreement, described above, included the installation of a traffic calming device, pursuant to the request of the adjacent neighbors. We permitted and installed an extended vegetated median to allow for only right-out movement from One Oak Road onto Brush Country Road.
  6. The neighborhood has embraced the proposed development, and representatives have stated that they appreciate the uses this development brings to their area. Based on an initial meeting with neighborhood representatives on May 28<sup>th</sup>, as well as follow-up discussions with these representatives, we have neighborhood support for the Western Oaks Retail Center development, including the extension of four years for the approved site development permit.

At the request of the City of Austin's Legal Department, we have processed and received approval for a one-year administrative site plan extension for this project (please see the attached approval letter), and are now requesting this additional four year site plan extension, which is anticipated for Planning Commission approval on January 12, 2010.

SCANNED

Please feel free to contact me should you have any questions or need additional information. We appreciate your understanding of the economic slow-down as the main reason for this extension request. We believe this request is extremely reasonable given today's economic conditions, and hope that you concur with your recommendation to the Planning Commission.

Best regards,



Paul W. Linehan, ASLA  
President

*Mitch Wright for  
Paul Linehan*

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PWL:enw

cc: Peter Gilbert, AVG-Austin, LP

# LAND STRATEGIES INC.

PAUL LINEHAN & ASSOCIATES

December 11, 2009

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Attn: Lynda Courtney  
City of Austin  
505 Barton Springs Road, 4<sup>th</sup> Floor  
Austin, Texas 78704

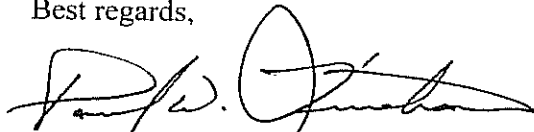
Re: Western Oaks Retail Center  
SPC-2007-0439C  
Site Plan Extension Request Modification

Dear Lynda:

Thank you for speaking with me this morning regarding the Western Oaks Retail Center site plan extension request. Per our conversation, with this letter I formally request a one-year administrative site plan extension, effective immediately, for the site plan. I will follow up shortly with a new site plan extension application for a four-year extension, which will require Planning Commission approval. This request modification is based on the actions of the City of Austin Legal Department on December 8<sup>th</sup>, prior to Planning Commission, to require us to exhaust the one-year administrative extension requirement of the City code. I anticipate that the four-year site plan extension will be up for approval by Planning Commission on January 12, 2010. I appreciate your assistance in helping expedite both of these site plan extension requests.

Please feel free to contact me should you have any questions or need additional information.

Best regards,



Paul W. Linehan, ASLA  
President

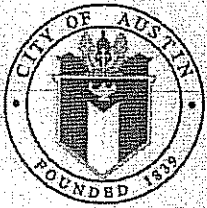
PWL:enw

cc: Peter Gilbert, AVG Partners

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DEVELOPMENT, DESIGN AND PLANNING CONSULTANTS

1010 LAND CREEK COVE, SUITE 100 • AUSTIN, TEXAS 78746 • (512) 328-6050 • FAX: (512) 328-6172



## City of Austin

Founded by Congress, Republic of Texas, 1839  
Watershed Protection and Development Review Department  
One Texas Center, 505 Barton Springs Road  
P.O. Box 1088, Austin, Texas 78767

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December 15, 2009

Paul Linehan  
Land Strategies, Inc.  
1010 Land Creek Cove, Ste. 100  
Austin, TX 78746

RE: SPC-2007-0439C (XT)- Western Oaks Retail Center

Dear Mr. Linehan:

The City of Austin has approved your request for an one-year administrative site plan extension: from 8-10-2010 to 8-10-2011 for your released site plan SPC-2007-0439C(XT). This administratively approved extension approval is granted in compliance with the LDC Section 25-5-62. Any further extension requests will be heard by Planning Commission under the requirements of LDC Section 25-5-63.

This project is not subject to project duration, but is subject to and is in compliance with the restrictive covenants filed with the site plan associated with zoning case C14-75-81 and with the 1984 rezoning and special permit C14P-84-024. The project is substantially developed in compliance with these past requirements and agreements; all infrastructure, parking and landscaping is installed and established. The remaining three uses (four structures) have reserved cleared pads on the site and only require building permits for vertical construction.

If you have further questions or need assistance, you may call the Case Manager, Lynda Courtney, at 974-2810 or by email [Lynda.Courtney@ci.austin.tx.us](mailto:Lynda.Courtney@ci.austin.tx.us)

Sincerely,

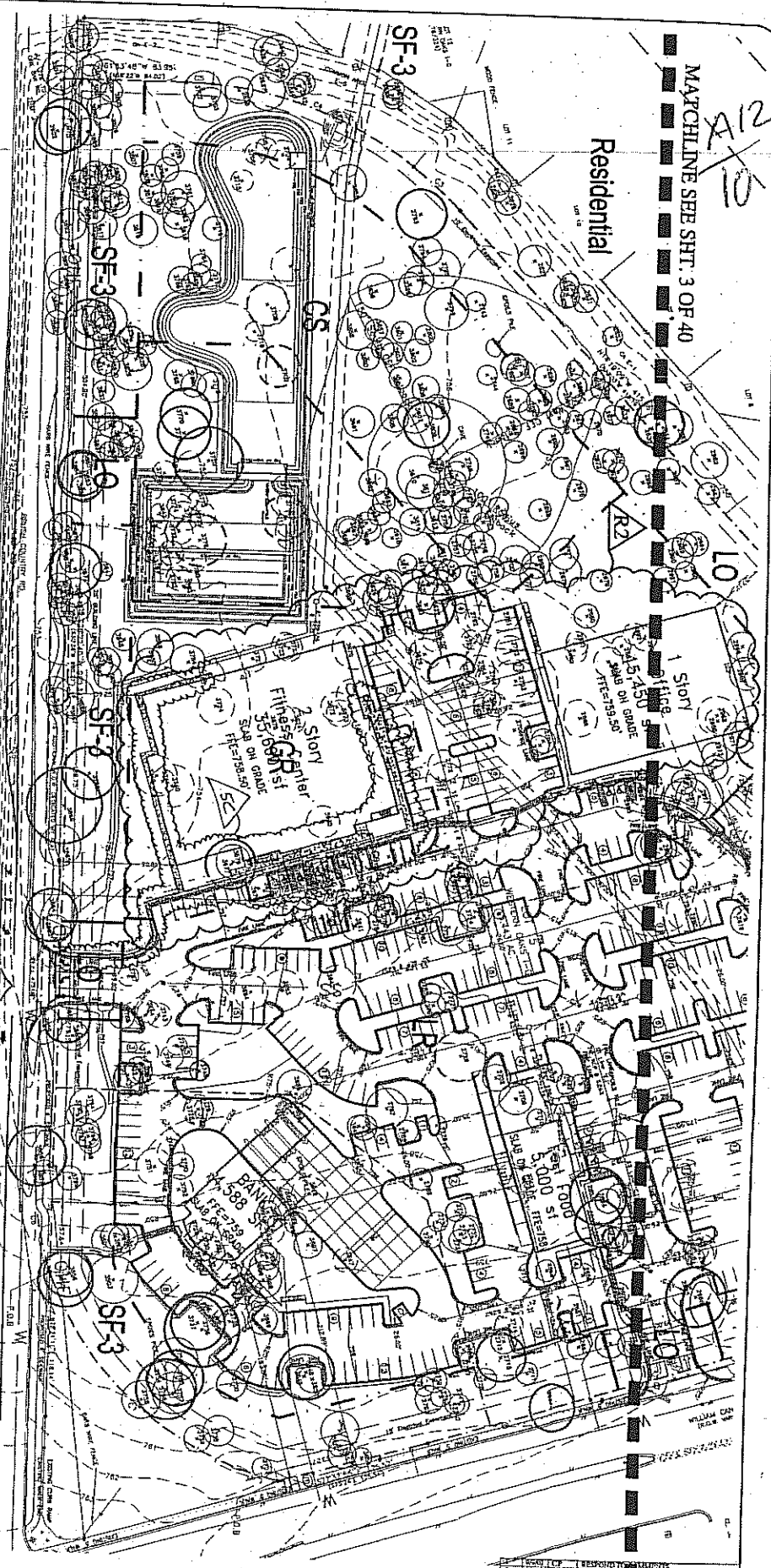
Greg Guernsey, Director  
Planning and Development Review Department



MATCHLINE SEE SHT. 3 OF 40

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Residential



LINE TABLE

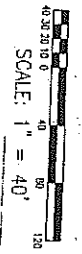
LINE NO.	DESCRIPTION	START	END	LENGTH
1	1/2" REBAR FOUND	100.00	100.00	0.00
2	1/2" REBAR W/ CAP SET	100.00	100.00	0.00
3	FIRE HYDRANT	100.00	100.00	0.00
4	WATER VALVE	100.00	100.00	0.00
5	POWER POLE	100.00	100.00	0.00
6	CLAY WIRE	100.00	100.00	0.00
7	LIGHT POLE	100.00	100.00	0.00
8	STREET SIGN	100.00	100.00	0.00
9	PK WALL/F	100.00	100.00	0.00

DECK TABLE

DECK NO.	DECK NAME	DECK TYPE	DECK AREA	DECK PERIMETER
1	DECK 1	DECK 1	100.00	100.00
2	DECK 2	DECK 2	100.00	100.00
3	DECK 3	DECK 3	100.00	100.00
4	DECK 4	DECK 4	100.00	100.00
5	DECK 5	DECK 5	100.00	100.00
6	DECK 6	DECK 6	100.00	100.00
7	DECK 7	DECK 7	100.00	100.00
8	DECK 8	DECK 8	100.00	100.00
9	DECK 9	DECK 9	100.00	100.00
10	DECK 10	DECK 10	100.00	100.00
11	DECK 11	DECK 11	100.00	100.00
12	DECK 12	DECK 12	100.00	100.00
13	DECK 13	DECK 13	100.00	100.00
14	DECK 14	DECK 14	100.00	100.00
15	DECK 15	DECK 15	100.00	100.00
16	DECK 16	DECK 16	100.00	100.00
17	DECK 17	DECK 17	100.00	100.00
18	DECK 18	DECK 18	100.00	100.00
19	DECK 19	DECK 19	100.00	100.00
20	DECK 20	DECK 20	100.00	100.00
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22	DECK 22	DECK 22	100.00	100.00
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28	DECK 28	DECK 28	100.00	100.00
29	DECK 29	DECK 29	100.00	100.00
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34	DECK 34	DECK 34	100.00	100.00
35	DECK 35	DECK 35	100.00	100.00
36	DECK 36	DECK 36	100.00	100.00
37	DECK 37	DECK 37	100.00	100.00
38	DECK 38	DECK 38	100.00	100.00
39	DECK 39	DECK 39	100.00	100.00
40	DECK 40	DECK 40	100.00	100.00

LEGEND

- 1/2" REBAR FOUND
- 1/2" REBAR W/ CAP SET
- FINE HYDRANT
- WATER VALVE
- POWER POLE
- CLAY WIRE
- LIGHT POLE
- STREET SIGN
- PK WALL/F
- TELEPHONE UTILITY
- TELEPHONE MANHOLE
- CABLE TV RISER
- GAS LINE WORKER
- ELEC. MANHOLE
- ELEC. UTILITY
- WATER METER
- TRAFFIC SIGNAL
- CALCULATED POINT



SPC-07-0439C

LAND STRATEGIES INC.  
PAUL LINDEMAN & ASSOCIATES

Western Oaks Retail Center  
4625 W. William Cannon Dr.  
Site Plan

OWNER INFORMATION:  
AVG-Austin, L.P.  
Doug Jaquey  
9593 Wilshire Boulevard, Ste. 230  
Beverly Hills, CA 90212

REVISION BLOCK:

NO.	DATE	BY	COMMENTS
1	01/11/01	AVG	INITIAL DESIGN
2	01/11/01	AVG	REVISIONS
3	01/11/01	AVG	REVISIONS
4	01/11/01	AVG	REVISIONS
5	01/11/01	AVG	REVISIONS
6	01/11/01	AVG	REVISIONS
7	01/11/01	AVG	REVISIONS
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36	01/11/01	AVG	REVISIONS
37	01/11/01	AVG	REVISIONS
38	01/11/01	AVG	REVISIONS
39	01/11/01	AVG	REVISIONS
40	01/11/01	AVG	REVISIONS



**Exhibit D**  
**PROJECT APPLICATION H.B. 1704/Chapter 245 DETERMINATION**  
**(Chapter 245, Texas Local Government Code)**

(This completed form must accompany all subdivision and site plan applications.)

File # Assigned: <u>98C-2007-0939C(XT2)</u>	FOR DEPARTMENTAL USE ONLY
Original Application Date: <u>NA</u>	Date Filed: <u>12/21/09</u>
Comments: <u>per letter from T. Williamson dated July 20, 2007</u>	Signature: <u>[Signature]</u> Date: <u>12/22/09</u>
<u>Insufficient Information to establish Chapter 245 rights. Project duration does not apply</u>	

Proposed Project Name: Western Oaks Retail Center

Address / Location: 4625 W. William Cannon Drive, Austin, Texas 78749

Legal Description: Lot 15 Western Oaks I-G Subdivision

A. ☐ The proposed application is for a New Project and is submitted under regulations currently in effect.

**NOTE: If A is checked above, proceed to signature block below.**

B. ☐ The proposed application is for an ongoing project not requesting House Bill 1704 consideration. The choice of this option does not constitute a waiver of any rights under Chapter 245.

C. ☐ The proposed application is for a project requesting review under regulations other than those currently in effect, but not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here:

D. ☒ The proposed application is for a project requesting review under a specific agreement, not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: Restrictive covenants through C14-75-0081, C14-84-162, WWDP 85-03-1860, C14P-84-024

E. ☐ Original Application Filing Date: \_\_\_\_\_ File #: \_\_\_\_\_

The proposed application is submitted as a Project in Progress under Chapter 245 (HB 1704) and should be reviewed under the applicable regulations pursuant to state law. The determination will be based on information submitted on and with this form.

**The following information is required for Chapter 245 Review:**

Attach supporting documentation, including a summary letter with a complete project history from the Original Application to the present, with a copy of the original subdivision or site plan approval by the City and subsequent application approvals. Specify project information for date claiming 1704 grandfathering; include a copy of the relevant permit upon which Chapter 245 vesting is claimed.

Project Application History	File #	Application Date	Approval Date
Annexation/zoning (if applicable to history)			
Preliminary Subdivision	<u>C8S-77-303</u>	<u>1977</u>	<u>1977</u>
Final Subdivision Plat			
Site Plan / Devel. Permit			

Proposed Project Application (check one): Preliminary Subdivision \_\_\_\_\_ Final Plat \_\_\_\_\_ Site Plan (EXT) X

Proposed Project Land Use: Specify acreage in each of the following land use categories:

Single Family / Duplex _____	Townhouse / Condo / Multi-family _____	Office _____
Commercial _____	Industrial / R&D _____	Other (Specify) <u>Multi-use Retail Center ±15.44 ac</u>

Total acreage: ±15.44 Watershed Williamson Creek Watershed Classification BSZ

This proposed project application will still be reviewed under those rules and regulations that are not subject to Chapter 245, such as those to prevent imminent destruction of property or injury to persons, including regulations dealing with stormwater detention, temporary erosion and sedimentation controls, and regulations to protect critical/significant recharge features.

Signature - Property Owner (or Agent) [Signature] Date: 12/19/09

Printed Name Paul W. Linehan (Land Strategies, Inc.) Phone / Fax 328-6050 / 328-6172

**SCANNED**



# City of Austin

Founded by Congress, Republic of Texas, 1839  
Watershed Protection and Development Review Department  
P.O. Box 1088, Austin, Texas 78767

July 20, 2007

Jeffrey S. Howard  
McLean & Howard, LLP  
1004 Mopac Circle, Suite 100  
Austin, Texas 78746

Austin, TX 78746

Subject: Western Oaks Retail; Chapter 245 request for determination  
Site Plan No. SPC-07-0318C-

SP-2007-0439C

Dear Mr. Howard:

This is in response to your Chapter 245 request for the application referenced above. The City's decision is to allow the proposed development to proceed generally under the rules and regulations in effect on December 21, 1977, the filing date of the Western Oaks I-G Subdivision.

This decision is not based on the City's conclusion that what is now proposed is the same project as that originally contemplated at the time the final plat was filed and approved. In fact, the City concludes that the proposed development is a new project for purposes of Chapter 245.

The decision is based instead on the City's recognition that there are issues in dispute and that it is in the best interest of the City and the applicant to offer this resolution. This decision is limited to the specific development and location proposed in the above-referenced site plan. This decision does not establish precedent for future cases.

This development is also subject to two restrictive covenants approved in zoning cases C14-75-081 and C14-84-162 and filed in the Travis County Public Records as Volume 5418, Page 1213 and Volume 9178, Page 0265, including the requirement for Land Use Commission approval of the site plan. The development must also comply with current technical codes and current regulations adopted to prevent imminent destruction of property or injury to persons.

If you have questions, feel free to contact me directly at 974-3056.

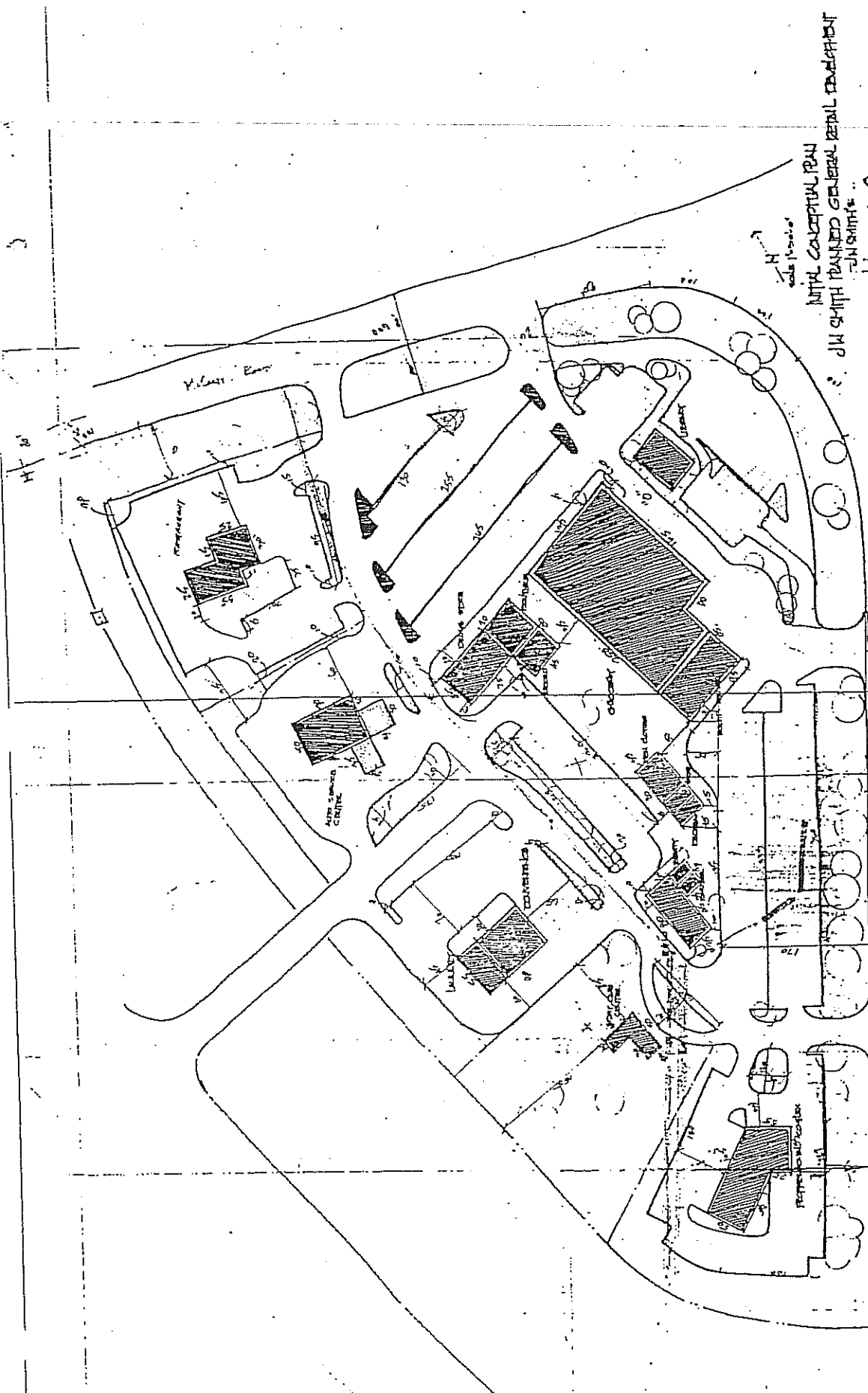
Sincerely,

Tammie H. Williamson, AICP, Assistant Director  
Watershed Protection and Development Review Department

cc: Paul Linahan, Land Strategies, Inc.  
Deborah Thomas, Assistant City Attorney  
Susan Scallon, WPDRD  
Dana McGehee, WPDRD

*The City of Austin is committed to compliance with the Americans with Disabilities Act.  
Reasonable modifications and equal access to communications will be provided upon request.*

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INITIAL CONCEPTUAL PLAN  
 DW SMITH PLANNED GENERAL RETAIL DEVELOPMENT  
 IN QUINCY  
 WESTERN CHURCH  
 PLANNED RESIDENTIAL COMMUNITY  
 1000' 1500' 2000' 2500' 3000' 3500' 4000' 4500' 5000' 5500' 6000' 6500' 7000' 7500' 8000' 8500' 9000' 9500' 10000'

Exhibit "B"

A12  
 14

THIS PLAN WAS MADE FROM THE BEST COPY AVAILABLE  
 IT IS IN THE PUBLIC DOMAIN OF THE BUREAU OF LAND MANAGEMENT

614-75-081

City of Austin Development Review and Inspection Department  
Development Assistance Center 499-6370

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**Completeness Check H.B.1704 Review (Ch. 245, Tex.Loc.Gov't Code)**  
(This is not a Permit.)

Project Name Western Oaks Retail Center  
Location Wm Cannon Dr. West @ Brush Country  
Case Type Conditional Use Site Plan  
Completeness Check Tracking # 171197 Date 1/29/01  
Project Manager Lackey Review Team 4  
Primary Contact Steve Ihnen Phone 254-2400

In accordance with House Bill 1704 (Ch.245, Tex.Loc.Gov't Code) and based on the information submitted with this Completeness Check:

☒ The proposed application will be reviewed under certain rules and regulations in effect ~~on~~ in 1977 \*, the filing date of Western Oaks I-G Subdivision File # 85-77-303

The application will still be reviewed under those rules and regulations that are not subject to Chapter 245, such as those to prevent imminent destruction of property or injury to persons, including regulations dealing with stormwater detention, temporary erosion and sedimentation controls, and regulations to protect critical/significant recharge features.

\* Comments: \* subject to 2 restrictive covenants established through zoning cases C14-75-081 & C14-84-162, including PC approval of Land Use Site Plan consistent with conceptual site plan shown in C14-75-081, (see WWDP # 85-03-1860 & C14P-84-024) except that

☒ ~~The application will be reviewed under the rules and regulations in effect at the time the application was filed.~~  
protection of CEF (cave) will be protected under current code.  
(see attached letter from Sylvia)

Note: This Completeness Check review is an advisory opinion only, is good ~~only~~ only at this time, and is based upon the information supplied by you. The actual determination of the applicable rules and regulations will be made at the time of filing. A Project Application H.B. 1704 Determination Form must be filed with the application.

Staff Authorization:

Duncan

Date

2/27/01

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CITY OF AUSTIN, TEXAS

APPROVED RECEIVED

MAY 20 1976

ORDINANCE NO. 760415-B

PLANNING DEPT.

Exhibit "A"

AN ORDINANCE ORDERING A CHANGE IN USE AND CHANGING THE USE MAPS ACCOMPANYING CHAPTER 45 OF THE AUSTIN CITY CODE OF 1967 AS FOLLOWS:

TRACT 1: A 13.96 ACRE TRACT OF LAND, SAVE AND EXCEPT A FIFTY FOOT STRIP OF LAND AROUND THE PERIMETER OF THE ENTIRE SAID 13.96 ACRE TRACT WHICH SHALL REMAIN ZONED "A" RESIDENCE, FIRST HEIGHT AND AREA DISTRICT, FROM "A" RESIDENCE DISTRICT TO "LR" LOCAL RETAIL DISTRICT; AND,

TRACT 2: A 6.90 ACRE TRACT OF LAND, FROM "A" RESIDENCE DISTRICT TO "BB" RESIDENCE DISTRICT;

ALL OF SAID PROPERTY BEING LOCATED AT 4613-4717 McCARTY LANE, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1. Chapter 45 of the Austin City Code of 1967 is hereby amended to change the USE designations on the property described in File C14-75-081, to-wit:

TRACT 1: From "A" Residence District to "LR" Local Retail District, SAVE AND EXCEPT a fifty foot strip of land around the perimeter of the entire 13.96 acre tract of land which shall remain zoned "A" Residence, First Height and Area District.

A 13.96 acre tract of land in the Thomas Anderson Survey No. 17, in Travis County, Texas, being a portion of two tracts of land as follows: (1) A tract of land containing 78.13 acres conveyed to J. W. Smith by a warranty deed of record in Volume 5079, at Page 307, of the Deed Records of Travis County, Texas; and (2) a tract of land containing 139.00 acres conveyed to J. W. Smith by warranty deed of record in Volume 5079, at Page 294, of the Deed Records of Travis County, Texas; and being all of a 1.99 acre tract conveyed to J. W. Smith by warranty deed of record in Volume 5079, at Page 307, of the Deed Records of Travis County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING for reference at an iron pin found in the existing westerly right-of-way of McCarty Road at the P. C. of a curve;

THENCE, N 59° 22' W 15.00 feet to the Point of Beginning in the proposed right-of-way of said McCarty Road; and from said beginning point the following courses and distances:

THENCE, S 30° 38' W 843.00 feet to a point;

THENCE, N 59° 22' W 84.00 feet to a P. C.;

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CITY OF AUSTIN, TEXAS

THENCE, N 12° 03' W 511.41 feet to a point;

THENCE, N 03° 29' W 227.24 feet to a P. C.;

THENCE, along a curve to the right with a 468.38 foot radius whose longchord bears N 05° 01' E 138.46 feet to the P. T.;

THENCE, N 13° 31' E 100.00 feet to a point;

THENCE, S 76° 29' E 260.00 feet to a point;

THENCE, N 13° 31' E 50.00 feet to a point;

THENCE, S 76° 29' E 371.10 feet to a point in a curve;

THENCE, on a subcurve to the right with a 257.73 foot radius whose subchord bears S 24° 44' 26" E 301.01 feet to a point;

THENCE, S 30° 38' W 86.64 feet to the POINT OF BEGINNING; and,

TRACT 2: From "A" Residence District to "BB"  
Residence District.

A 6.90 acre tract of land in the Thomas Anderson Survey 17, in Travis County, Texas; being a portion of two tracts of land conveyed to J. W. Smith as follows: (1) A 139.00 acre tract of record in Volume 5079, at Page 294, of the Deed Records of Travis County, Texas; and (2) a 78.13 acre tract of record in Volume 5079, at Page 307, of the Deed Records of Travis County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING, at an iron pin set in the proposed right-of-way of McCart Road and from said beginning point the following courses and distances:

THENCE, S 76° 29' E 185.00 feet to a point;

THENCE, S 13° 31' W 150.00 feet to a P. C.;

THENCE, along a curve to the left with a 518.38 foot radius and whose longchord bears S 05° 01' W 153.24 feet to the P. T.;

THENCE, S 03° 29' E 230.98 feet to a point;

THENCE, S 12° 03' E 515.15 feet to a P. C.;

THENCE, along a curve to the left with a 306.64 foot radius and whose longchord bears S 35° 42' E 246.10 feet to the P. T.;

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CITY OF AUSTIN, TEXAS

THENCE, S 30° 38' W 185.00 feet to a P. C.;

THENCE, along a curve to the right with a 15.00 foot radius and whose longchord bears S 75° 38' W 21.21 feet to the P. T.;

THENCE, N 59° 22' W 69.00 feet to a P. C.;

THENCE, along a curve to the right with a 506.64 foot radius and whose longchord bears N 35° 42' W 406.61 feet to the P. T.;

THENCE, N 12° 03' W 415.19 feet to a P. C.;

THENCE, along a curve to the right with a 1,561.64 foot radius and whose longchord bears N 00° 44' E 691.07 feet to the P. T.;

THENCE, N 13° 31' E 10.00 feet to a P. C.;

THENCE, along a curve to the right with a 15.00 foot radius and whose longchord bears N 58° 31' E 21.21 feet to the POINT OF BEGINNING,

all of said property locally known as 4613-4717 McCarty Lane, in the City of Austin, Travis County, Texas.

PART 2. It is hereby ordered that the USE maps accompanying Chapter 45 of the Austin City Code of 1967 and made a part thereof shall be changed so as to record the change ordered in this ordinance.

PART 3. The rule requiring that ordinances shall be read on three separate days is hereby suspended, and this ordinance shall be effective ten (10) days following the date of its passage.

PASSED AND APPROVED

April 15 1976

APPROVED:

Acting City Attorney

Y  
Y  
Y  
Y

ATTEST:

City Clerk

15APR76

JM:vs

JUN-22-2001 09:45

LAND STRATEGIES

512 328 6172  
1700-18

P:02/01

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REC'D

MAY 18 1976

C14-75-081

PLANNING DEPT.

THE STATE OF TEXAS

COUNTY OF TRAVIS

APR 23 1976 5457 \* 350

1-29-9933

Exhibit "C"

WHEREAS, J. W. Smith is the owner of that certain tract or parcel of land lying and being situated in the City of Austin, Travis County, Texas, and more particularly described as follows, to-wit:

Being 13.96 acres of land in the Thomas Anderson Survey #17 in Travis County, Texas, and being a portion of two tracts of land described as follows: (1) A tract of land containing 78.13 acres conveyed by A. L. Brodie and wife, Winnie Pearl Brodie, to J. W. Smith, by deed dated December 20, 1974, of record in Volume 5079, Page 307, Deed Records of Travis County, Texas; (2) A tract of land containing 139.00 acres conveyed by Olla Belle Dahlstrom, a widow, to J. W. Smith, by deed dated December 20, 1974, of record in Volume 5079, Page 294, Deed Records of Travis County, Texas; and being all of a 1.99 acre tract conveyed by A. L. Brodie and wife, Winnie Pearl Brodie, to J. W. Smith, by deed dated December 20, 1974, of record in Volume 5079, Page 307, Deed Records of Travis County, Texas, said 13.96 acre tract being more particularly described by metes and bounds as follows:

BEGINNING for reference at an iron pin found in the existing westerly right of way of McCarty Road at the P.C. of a curve;

THENCE N 59° 22' W 15.00 feet to the POINT OF BEGINNING in the proposed right of way of said McCarty Road; and from said beginning point the following courses and distances:

THENCE S 30° 38' W 843.00 feet to a point;

THENCE N 59° 22' W 84.00 feet to a P.C.;

THENCE along a curve to the right with a 256.64 foot radius whose longchord bears N 35° 42' W 205.97 feet to the P.T.;

THENCE N 12° 03' W 511.41 feet to a point;

THENCE N 3° 29' W 227.24 feet to a P.C.;

THENCE along a curve to the right with a 468.38 foot radius whose longchord bears N 5° 01' E 138.46 feet to the P.T.;

THENCE N 13° 31' E 100.00 feet to a point;

THENCE S 76° 29' E 260.00 feet to a point;

THENCE N 13° 31' E 50.00 feet to a point;

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1-29-9334

THENCE S 76° 29' E 371.10 feet to a point in a curve;

THENCE on a subcurve to the right with a 257.73 foot radius whose subchord bears S 24° 44' 26" E 301.01 feet to a point;

THENCE S 30° 38' W 86.64 feet to the POINT OF BEGINNING as computed by Jeryl Hart & Associates in January 1975.

WHEREAS, as a condition to the rezoning of the subject property to "LR" Local Retail, First Height and Area, and for the better development of said property above described, the City Council of Austin, Texas, desires that J. W. Smith, and he has heretofore agreed to, make, execute and deliver for the benefit of said property and for the City of Austin, a Municipal corporation, a restrictive covenant relating to the above described property; and

WHEREAS, said restrictive covenant will benefit the said J. W. Smith and also the City of Austin, a Municipal corporation, by requiring the owner to request and obtain a special permit prior to construction as set out below, and in order to affect the same this written instrument is made and entered into, NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That I, J. W. Smith, of Travis County, Texas, the owner of the hereinbefore described property, do hereby place and charge said hereinbefore described property with the following restrictive covenant, which shall be deemed and considered as a covenant running with the land, and which shall be binding upon me, my heirs, executors, administrators and assigns, to-wit:

\* I. A special permit, as such term is presently used and defined in the Code of the City of Austin, Texas, on the date hereof, shall be requested by the owner of the aforescribed property and shall be obtained from the City of Austin prior to construction of any improvement on such property for which "LR" Local Retail zoning classification is required. The schematic plan submitted with the owner's application for such special permit shall be consistent with the schematic plan submitted to the Planning Commission and City Council of the City of Austin, Texas, with zoning case 014-75-001. Any improvement built or carved from any portion of the heretofore described property shall have this restrictive covenant applicable thereto. In the event the City of Austin shall at any time fail or refuse for any reason, to consider and act on such application for a period of sixty days following the filing of an application for

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1-29-9335

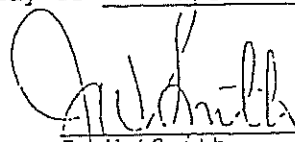
or any part thereof, then in such event, such special permit filed by the then owner shall be deemed and considered as approved by the City of Austin.

If any person or persons shall violate or attempt to violate the foregoing restriction and covenant, it shall be lawful for the City of Austin, a Municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against the person or persons violating or attempting to violate such restriction of covenant, and either to prevent him or them from so doing or to collect damages for such violation.

The failure at any time to enforce this restrictive covenant by the City of Austin, or by any other person, firm or corporation having a right to do so, whether such violations are of knowledge or not, shall not constitute a waiver or estoppel of the right to do so.

This agreement may be modified, amended or terminated only by a majority vote of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and by the then owner of the above described property at the time of such modification, amendment or termination.

EXCUTED this the 5th day of April, 1976.

  
J. W. Smith

THE STATE OF TEXAS     X  
                              I  
COUNTY OF TRAVIS     X

BEFORE ME, the undersigned authority, on this day personally appeared J. W. Smith, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 5th day of

April, 1976.

**PROJECT SUMMARY:**



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February 22, 2010

Ms. Victoria Li  
Director, Watershed Protection  
505 Barton Springs Road  
PO Box 1088  
Austin, TX 78767-8835

Mr. Greg Guernsey  
Director, Planning & Development Review  
505 Barton Springs Road  
PO Box 1088  
Austin, TX 78767-8835

Via hand-delivery & email

Re: SPC-2007-0439(C)(XT2); Western Oaks Retail Center Site Plan Extension

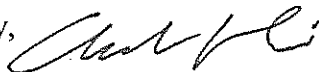
Dear Ms. Li and Mr. Guernsey,

Pursuant to the Austin City Code, Save Our Springs Alliance hereby appeals to City Council the granting of a 4-year site plan extension for the above-referenced case. This extension was granted by the Planning Commission on February 9, 2010. Enclosed is our completed site plan appeal form, signed by SOS Alliance Executive Director Bill Bunch.

Save Our Springs Alliance, through staff attorney Andrew Hawkins, submitted a letter in opposition to the extension request to the Planning Commission on January 26, 2010 (attached). Mr. Hawkins also spoke during the public hearing at the January 26<sup>th</sup> Planning Commission meeting, and the previous Planning Commission where the extension was considered, on October 27, 2009.

In addition to violating the LDC's site plan and project duration provisions, we believe that the extension cannot be granted in light of past and ongoing procedural and substantive violations of the Save Our Springs ordinance.

Thank you your consideration, and please call me at 512-477-2320 ext. 17, or email me at [andrew@sosalliance.org](mailto:andrew@sosalliance.org), if you have any questions.

Sincerely, 

Andrew Hawkins

Enclosures  
cc: Lynda Courtney

**Save Our Springs Alliance**

P.O. Box 684881 • Austin, Texas 78768  
221 East 9th Street, Suite 300 • Austin, Texas 78701

<http://www.sosalliance.org>  
email: [sosinfo@sosalliance.org](mailto:sosinfo@sosalliance.org)

(512) 477-2320 voice  
(512) 477-6410 fax



City of Austin Watershed Protection and Development Review Department  
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

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## SITE PLAN APPEAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Planning Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SPC-2007-0439C(XT2) DATE APPEAL FILED 2/22/2010  
PROJECT NAME Western Oaks YOUR NAME Bill Bunch  
Retail Center SIGNATURE [Signature]  
PROJECT ADDRESS 4625 W. William Cannon Dr. YOUR ADDRESS PO Box 68488  
APPLICANT'S NAME AVG-Austin, L.P. YOUR PHONE NO. (512) 477-2320 WORK  
CITY CONTACT Lynda Courtney (512) 784-3749 HOME

**INTERESTED PARTY STATUS:** Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☐ I am the applicant or agent representing the applicant
- ☐ I communicated my interest by speaking at the Planning Commission public hearing on (date) \_\_\_\_\_
- ☒ I communicated my interest in writing to the Director or Planning Commission prior to the decision (attach copy of dated correspondence).

**In addition to the above criteria,** I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- ☐ I am the record owner of property within 500 feet of the subject site.
- ☒ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

**DECISION TO BE APPEALED\*:** (Check one)

- ☐ Administrative Disapproval/Interpretation of a Site Plan
- ☐ Replacement site plan
- ☐ Planning Commission Approval/Disapproval of a Site Plan
- ☒ Waiver or Extension
- ☐ Planned Unit Development (PUD) Revision.
- ☐ Other: \_\_\_\_\_

Date of Decision: \_\_\_\_\_  
Date of Decision: \_\_\_\_\_  
Date of Decision: \_\_\_\_\_  
Date of Decision: 2/9/2010  
Date of Decision: \_\_\_\_\_  
Date of Decision: \_\_\_\_\_

\*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

**STATEMENT:** Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

The extension violates site plan expiration and extension provisions of the LDC; project duration provisions of the LDC; and the Save Our Springs ordinance of the LDC.  
(Attach additional page if necessary.)

Applicable Code Section: 25-1 et seq.; 25-5 et seq.; 25-8 et seq.



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January 26, 2010

Re: Agenda Item #6, Site Plan Extension Request Western Oaks Retail Center

Dear Chair Sullivan and Commissioners:

I am writing to urge you to deny the 4-year site plan extension that is being requested for the Western Oaks Retail Center (item #6 on your agenda tonight). I previously expressed my concerns about this proposed site plan extension at your October 27, 2009 meeting, and my concerns have not really changed since that time.

The first reason that you should reject the extension request is that this project cannot be considered "grandfathered." The July 20, 2007 letter doesn't establish grandfathering but rather the opposite, stating: "the City concludes that the proposed development is a new project for the purposes of Chapter 245." You would thus be approving a site plan extension for a project that violates the SOS ordinance by currently being at 34% impervious cover on the recharge zone, and which is set to increase to approximately 45% impervious cover.

The second reason that you should reject this extension request is that it cannot be granted under the project duration provisions found in Article 12 of Austin's Land Development Code. For DWPZ site plans submitted after September 6, 1997 (which is what we would submit this is), the project duration provisions limit applicants to a 1-year extension. See LDC 25-1-535. If the DWPZ project does not meet the project duration limits (no matter what the reason), the project expires and the applicant must re-file under current regulations.

Even if this project was properly considered grandfathered (it is not), it is very important to note that Chapter 245 grandfathering does not provide an exemption from the City's project duration provisions. As far as I am aware, the view that you can be grandfathered from project duration is incorrect and not supported by City legal.

Furthermore, even if we were to accept the view (we do not) that the site plan before you is somehow the same as a conceptual site plan that dates back to the late 1970's-early 1980's, this would not matter either. For pre-1987 site plans, the project duration provisions only allow applicants to proceed under original regulations "if all building permits are approved and a notice of construction is filed before September 6, 1998." LDC 25-1-534. This is obviously not the case here, where the applicant has building permits yet to obtain.

**Save Our Springs Alliance**

(512) 477-2320 voice  
(512) 477-6410 fax

P.O. Box 684881 • Austin, Texas 78768  
221 East 9th Street, Suite 300 • Austin, Texas 78701

<http://www.sosalliance.org>  
email: [sosinfo@sosalliance.org](mailto:sosinfo@sosalliance.org)

Again, we urge you all to reject this site plan extension request, as approving the request would not comport with applicable law and City policy.

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Thank you for your consideration.

Sincerely,



Andrew Hawkins  
Staff Attorney  
Save Our Springs Alliance  
(512) 477-2320, ext. 17