

ORDINANCE NO.

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

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

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

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

1 protections than would apply if a commercial or residential project were
2 approved under 1984 regulations.

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

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

11 **A. General Conditions & Limitations.**

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

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

20 The Marbridge Farms PCA includes only the following properties:

- 21 (1) An approximately 41-acre parcel located at 2636 Bliss Spillar Road, as
22 more specifically described in Exhibit A-1, which is hereafter referred to
23 as the “Exchange Tract.”
24 (2) An approximately 12-acre property located at 12501 Hewitt Lane, as
25 more specifically described in Exhibit B-1, which is hereafter referred to
26 as the “Brodie Lane Property.”
27 28

29 **C. Incorporation of Staff Findings.**

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

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

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

7
8 **D. Regulatory Waivers for the Brodie Lane Property.**

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

12 (1) ***Impervious Cover Restrictions.*** Notwithstanding the requirements of
13 City Code Chapter 25-8, including Section 25-8-392 (*Uplands Zone*),
14 maximum impervious cover for development of the Brodie Lane
15 Property is limited to 7.9 acres.

16 (2) ***Critical Water Quality Zone (“CWQZ”).*** Notwithstanding the
17 requirements of City Code Chapter 25-8, including Section 25-8-92
18 (*Critical Water Quality Zones Established*), Section 25-8-261 (*Critical*
19 *Water Quality Zone Development*), and Section 25-8-262 (*Critical Water*
20 *Quality Zone Street Crossings*):

21 (a) the CWQZ is reduced to approximately 1.7-acres and the
22 boundaries modified, as depicted in Exhibit B-2;

23 (b) a crossing for vehicles and pedestrians is permitted from Hewitt
24 Lane, in the northwest corner of the property, and a crossing for
25 vehicles and pedestrians is permitted in the interior of the property,
26 both of which are generally described in Exhibit B-2;

27 (c) water quality and detention ponds are permitted within the CWQZ,
28 but otherwise must comply with all applicable regulations.

29 (3) ***Floodplain Modifications.*** Notwithstanding the requirements of City
30 Code Section 25-8-364 (*Floodplain Modification*), floodplain
31 modifications are allowed for the development generally described in
32 Exhibit B-3. These improvements include, but are not limited to,

1 culverts, water quality/detention facilities, vehicular crossings, and
2 parking areas.

3 (4) ***Drainage Easements.*** Notwithstanding the requirements of City Code
4 Section 25-7-152 (*Dedication of Easements and Right-of-Way*),
5 development within the drainage easement required for the 100-year
6 floodplain is allowed as shown in Exhibit B-3. These improvements
7 include, but are not limited to, culverts, water quality/detention facilities,
8 vehicular crossings, and parking areas.

9 (5) ***Administrative Variances.*** Notwithstanding the requirements of City
10 Code Section 25-8-42 (*Administrative Variances*), the director may grant
11 a variance to allow no more than 10 feet of cut and fill under Section 25-
12 8-341 (*Cut Requirements*) and Section 25-8-342 (*Fill Requirements*).
13 Section 25-8-42(D)(4) is modified so that the cut and fill is not located on
14 a slope with a gradient of more than 15 percent or within the proposed
15 CWQZ.

16 (6) ***Heritage Tree Protections.*** Notwithstanding the property's location in
17 the extraterritorial jurisdiction, the five heritage trees depicted in Exhibit
18 B-4 must be preserved in accordance with the requirements of City Code
19 Chapter 25-8, Subchapter B (*Tree and Natural Area Protection;*
20 *Endangered Species*).

21 (7) ***Rights under Section 43.002 of the Texas Local Government Code.***
22 Based on platting that has occurred to date, subsequent annexation and
23 zoning of the property will not prohibit construction of a food sales and
24 accessory use project that may include an incidental service station use.

25 (8) ***Zoning & Platting Commission ("ZAP") Recommendation.*** To reflect
26 ZAP's motion recommending approval of the PCA, it is noted that no
27 fuel tanks are allowed within the 100-year floodplain under applicable
28 floodplain regulations. By specifically noting this requirement, the PCA
29 does not waive any other applicable floodplain regulations.

30 (9) ***Commercial Design Standards & Sidewalks.*** Compliance with Chapter
31 25-2, Subchapter E (*Design Standards and Mixed Use*) is not required,
32 but sidewalks of at least six feet in width are required along the frontage

1 of Hewitt Lane and Brodie Lane, at a location determined in site
2 development review.

- 3 (10) ***Height Restriction.*** The food sales and accessory use project, which
4 may include an incidental service station use, described in Subsection
5 (A) of this PCA is limited to 60-feet in height.
6

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

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

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

