

Late Backup

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May 1, 2014

Mayor Lee Leffingwell
Mayor Pro Tem Sheryl Cole
Council Member Chris Riley
Council Member Mike Martinez
Council Member Kathie Tovo
Council Member Laura Morrison
Council Member Bill Spelman
City of Austin
P.O. Box 1088
Austin, Texas 78767

Re: Vested Development Rights Ordinance; Item 72 on May 1, 2014 Council Agenda

Dear Mayor and Council Members:

My practice includes representing landowners and others regarding vested rights under Chapter 245 of the Texas Local Government Code so I have experience with the current City of Austin Chapter 245 Determination procedures. I support the Council's effort to establish a more formal process for Chapter 245 Determinations because the current process is chaotic and seemingly ad hoc. Unfortunately, the staff recommended ordinance falls short of establishing a predictable and fair process and fails to address vested rights under Section 245.002(d).

I am currently representing individuals who have purchased residential lots where they hope to build their homes. Since they purchased their lots issues have been raised about the allowable impervious cover on their lots. I mention my clients because the staff recommended ordinance does not clearly address single family subdivisions and the construction of residential buildings. For example, although not applicable to my clients' lots, Section 25-1-544(H) only mentions projects requiring a site plan.

My clients' lots are subject to a number of plat notes required by a MUD Consent Agreement, including one that establishes allowable impervious cover. In addition to vested development rights for a "project," Section 245.002(d) creates distinct vested rights that are not linked to a "project," but stem from plat notes, public restrictive covenants and the right to develop under subsequently adopted regulations. The staff recommended ordinance makes no specific mention of these distinct rights. For example, Section 25-1-541(B), which describes the

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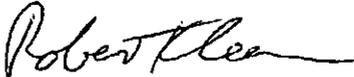
actions that the Director may take in response to a petition, does not include the option of a project complying with current regulations except for modifications stated in a plat note or restrictive covenant. Additionally, Section 25-1-536(B)(1) does not include a fair notice application for a Section 245.002(d) vested right. Likewise, Sections 25-1-541(D)(2) and (3) do not appear to contemplate or cover a claim for a Section 245.002(d) right.

Another aspect of the staff recommended ordinance that needs revision is the determination procedures in Section 25-1-541(E) that do not afford an applicant a fair and reasonable opportunity to have his or her application considered. I have a pending Chapter 245 determination that is technically in its fourth round of argument and review because the facts are so complicated. Whether a "project" or a piece of land has a vested right under Chapter 245 is a legal and complicated question. Limiting the process to a single reconsideration will deny many applicants a relatively quick and affordable administrative remedy to establish their rights under Chapter 245. The number of reconsiderations should not be limited.

Regardless of whether the number of Director reconsiderations is limited, the ordinance should authorize a right to appeal a Director's decision to the City Manager. Precedence for an appeal to the City Manager can be found in Section 25-1-82(B). If the Council provides for an appeal to the City Manager, then the City Manager's designee should be limited to people who do not work for or are supervised by the Director.

Thank you for your consideration of my comments.

Sincerely,


Robert Kleeman

RJK/dm