

CENTRAL WEST AUSTIN NEIGHBORHOOD PLAN CONTACT TEAM

**PUBLIC
COMMENT**

Organized 2010

January 12, 2016

"To facilitate the implementation of the Central West Austin Combined Neighborhood Plan."

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City of Austin Planning Commission
c/o Stephen Oliver (Chair)
City Hall
301 West 2nd Street
Austin, Texas 78701

Re: Code Amendment: C20-2015-014 - Planned Unit Development Zoning

Honorable Members of the Planning Commission:

The Central West Austin Neighborhood Plan Contact Team has voted to support the proposed code amendment being proposed tonight as "Item C-13" at the Planning Commission to allow for the equal treatment of land, zoned and unzoned, being considered for PUD zoning. We believe that the current code protections for zoned property (requiring a super majority council vote to approve a PUD application which is denied by a board or commission) should also apply to unzoned land (which under current code requires only a simple council majority of votes for approval). As recommended by staff, the proposed amendment will help level the playing field for all PUDs and thereby encourage meaningful and substantive good faith negotiations by all parties.

As one of Austin's most established and stable neighborhood planning areas, the Central West Austin Neighborhood Plan Contact Team is especially supportive of the PUD protections being proposed because there are large tracts of unzoned land in our planning area, including the State Supported Living Center which includes 95 acres, most of which is unzoned.

For the foregoing reasons, the Central West Austin Neighborhood Plan Contact Team supports staff recommendation to approve the proposed ordinance to require an affirmative vote of three-fourths of the members of City Council to approve any proposed PUD district zoning for unzoned or interim zoned property when the Land Use Commission recommends denial of an application to zone a property to a Planned Unit Development.

Thank you for your consideration.

Sincerely,

Michael Rocco Cannatti

Central West Austin Neighborhood Plan Contact Team, Chair

January 11, 2016

PUBLIC
via email **COMMENT**

Mr. Steve Oliver, Chair
Planning Commission
City of Austin
505 Barton Springs Blvd.
Austin, Texas 78704

RE: Item No. C. 13 on the January 12, 2016 Planning Commission Agenda;
Statement of Opposition

Dear Mr. Oliver:

I am writing on behalf ARG Bull Creek, Ltd. ("ARG"), the owner of the approximately 76 acre tract located generally at the intersection of 45th Street and Bull Creek Road in Austin, Texas (the "Property"). ARG has filed a Planned Unit Development ("PUD") zoning request on such property, commonly known as "The Grove Shoal Creek". The Property was previously owned by the State of Texas and is currently un-zoned. The PUD zoning application filed by ARG is, therefore, an initial "zoning" of request for the Property as provided in Section 25-2-241(A) of the Austin City Code and is not a "re-zoning". For the reasons that follow, I am writing to state ARG's opposition to the item.

1. Summary of Opposition

ARG opposes the Item No. C.13 for the following reasons:

- The proposed Code amendment is illegal as it violates Section 211.007(f) of the Texas Local Government Code by applying super-majority voting requirements to cases of initial zoning
- No other city in Texas is known to have applied super-majority requirements to cases of initial zoning
- The City Code was written to expressly be consistent with state law and is not some "mistake" or "oddity"
- The proposed amendment is being rushed through City amendment propose to "move the goal posts" for a single zoning case already in process and not being conducted in a thoughtful manner with stakeholders involved to address a City-wide issue
- Changing the voting rules for a project already in process creates a potential due process violation and is not fair, transparent or consistent
- Un-zoned lands are **very** different from lands already zoned and are not only entitled to different treatment under state law but there are very good reasons to that they should be treated differently
- Un-zoned lands, according to the City, do not allow **any** use. There is no underlying zoning for a landowner to fall back
- Un-zoned lands do not have pre-existing zoning that sets expectations for neighboring properties

- As such un-zoned lands represent an opportunity for the City by a majority of its elected representatives to implement policy priorities, and not have those priorities defeated by a small majority of Council
- Un-zoned lands do not give the landowner an opportunity to force a super-majority vote on a negative zoning decision. That is, the landowner is subject to the same simple majority requirements with respect to an adverse decision
- Most significantly, the proposed amendment will discourage the State of Texas from pursuing PUD zoning (and providing superiority and required affordable housing that goes along with it)

2. Planning Commission Should Recommend that the Proposed Amendment Not be Approved

Item C.13 is a proposed City Code amendment to amend Section 25-2-284 of the Austin City Code to require the affirmative vote of three-fourths of the members of the City Council to approve a proposed "**zoning or rezoning**" if the Land Use Commission recommends denial of an application to zone or rezone a property to a PUD. Essentially, the proposed Code amendment would extend the current $\frac{3}{4}$ -majority vote requirement for recommended denials of a PUD zoning to cases of initial "zoning" and not just to cases of "re-zoning". That is, the Code amendment would extend the $\frac{3}{4}$ -majority vote requirement to The Grove at Shoal Creek (which has been in the formal City process for over 10 months) and to other State owned lands that are currently un-zoned.

This proposed change would create a new, major procedural obstacle for approval of PUDs on such properties that has not previously existed. I am aware of no other jurisdiction that has applied a $\frac{3}{4}$ -majority vote to cases of initial zoning. This Code amendment, which would be unique to the City of Austin, is being done for the simple reason of "moving the goal posts" on The Grove at Shoal Creek PUD.

Specifically, in the case of The Grove at Shoal Creek, it represents a major change in the applicable procedural rules after ARG has spent an enormous amount of money and over a year in pursuit of a PUD zoning that was specifically suggested by Council members and community members so that the City could lawfully require development "superiority" and affordable housing. In fact, this proposed amendment is apparently being sought, and rushed through the City amendment process for the sole purpose of changing the rules applicable to The Grove at Shoal Creek. However, other State owned lands will also likely be requested to pursue a PUD for the same reasons, and this Code amendment will, therefore, have major policy implications beyond The Grove at Shoal Creek.

a. The Proposed Code Amendment is Illegal

The current City Code on this issue applies only to a "re-zoning" case and was written in accordance with the Texas Local Government Code to apply only to re-zonings and not to cases of original zoning. Section 211.006(f) of the Texas Local Government Code only authorizes a $\frac{3}{4}$ -majority vote in circumstances like this for a "proposed **change**" to zoning regulations and boundaries. Texas courts have interpreted this to mean re-zonings and not cases of initial zoning. This distinction has been consistently and correctly followed by the City of Austin for over 30 years. The current code is written in a way that is consistent with this clear state law. The change to the code proposed by Item No. C.13 will not comply with state law.

b. The Proposed Code Amendment is Bad Process

ARG is concerned that the proposed Code amendment is not being initiated to address a city-wide concern but is instead an attempt to instigate a City-wide code change now in an apparent reaction to a single zoning case which is already in process and nearing the point of commission and Council consideration. If so, this has major due process concerns and undermines the public's faith in a fair, transparent and consistent public process. If this is truly not an effort to target The Grove at Shoal Creek, then the Planning Commission should recommend that the Code amendment not apply to projects that are already in process, so that the City can live by its stated goals of having a fair, transparent and consistent development process. Moreover, this change should not be unfairly applied to a project that has filed a PUD zoning case at the suggestion of Council members and community members that wanted development "superiority" and required affordable housing, has spent a huge amount of money in pursuing that PUD zoning, and has formally been in process in connection with PUD zoning for 10 months.

c. The Proposed Code Amendment is Bad Policy

There are clear legal and factual distinctions between "zoning" and "re-zoning" cases that warrant the separate treatment of such cases under both the Texas Local Government Code and the City Code. Re-zoning cases involve land that already has zoning. That is, the landowner already has a zoning entitlement it can rely on, and the neighborhood has some expectation regarding what uses are possible. That pre-existing zoning status does not exist with un-zoned lands. The policy considerations for each case are, therefore, very different. A simple majority of council is and should be free to implement its policy priorities, with full and fair input from stakeholders, in such cases. In addition, for re-zoning cases, if a super-majority is required, a landowner that has existing zoning can fall back on that existing zoning if a small minority of council exercises its veto power. For un-zoned property, a landowner does not have that option. Finally, in the case of a re-zoning, a landowner could also require a super-majority vote to avoid an adverse result through protest. In this case, if the code amendment passes, a landowner could be left with no zoning and no way to oppose adverse zoning.

Most importantly, the proposed code change will be a major disincentive for this applicant and future applicants of un-zoned property to seek PUD zoning. Without PUD zoning for these types of cases, the City will not be able to require development "superiority" or affordable housing. After all, Council members and community members that suggested that ARG pursue PUD for those reasons might want PUD zoning for other State owned lands for similar reasons. Such PUD zoning would be effectively discouraged, and the state would look to alternatives to PUD zoning to entitle property that might be for sale.

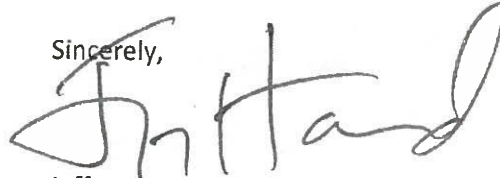
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3. Conclusion

For the reasons set forth above, ARG requests that, upon considering this item, that the Planning Commission either recommend that the Code amendment does not apply to projects that are already in process, or that the Code amendment should not be adopted.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Howard", written over the word "Sincerely,".

Jeffrey S. Howard

cc: Planning Commissioners
Greg Guernsey
Jerry Rusthoven
Brent Lloyd
Garrett Martin
Ron Thrower



TEXAS GENERAL LAND OFFICE
GEORGE P. BUSH, COMMISSIONER

PUBLIC COMMENT
- STATE

January 12, 2016

Mr. Greg Dutton
Planning and Zoning Department
City of Austin
505 Barton Springs Blvd.
Austin, Texas 78704

via email greg.dutton@austintexas.gov

RE: City File No. C20-2015-014; Item No. C. 13 on the January 12, 2016 Planning Commission Agenda

Dear Mr. Dutton:

On behalf the Texas General Land Office ("GLO"), for the reasons that follow, I am writing to respectfully state the GLO's opposition to above-referenced City of Austin Code Amendment.

The GLO understands that the proposed code amendment would extend the current $\frac{3}{4}$ -majority vote requirement for recommended denials of "PUD" zoning to cases of initial "zoning" and not be limited to cases of "re-zoning". The code amendment is specifically aimed at "un-zoned" lands in the City of Austin, but would also apply to newly annexed land as well.

The GLO is the oldest state agency in the State of Texas. Its core mission is the management of state lands and mineral-rights properties totaling over 12.5 million acres. These property interests are held in trust for the Permanent School Fund and proceeds from managing these interests are used to benefit the schoolchildren of Texas.¹ Additionally, the Legislature often designates GLO to assist other state agencies in the disposition of their state-owned lands.

It appears that state-owned lands in the City of Austin are among the "un-zoned" properties targeted by the proposed ordinance. The GLO is very concerned that the proposed code amendment could make any potential disposition of state-owned lands more difficult and may reduce the monetary return to the State of Texas from any such disposition as a result. The proposed amendment will make the entitlement process more difficult and much less certain if only 3 out of a possible 11 council members could defeat a proposed zoning case. Those difficulties would likely have a detrimental impact on potential purchasers of state-owned land, thereby causing them to lower their offers or refuse to bid at all on state-owned lands in Austin.

¹ The Permanent School Fund is a perpetual endowment fund created to support and maintain an efficient system of public free schools for present and future generations of Texas school children. Tex. Const. art. VII, §§ 2, 5. The Permanent School Fund consists of the surface and mineral estates in public land that the Texas Constitution and the Texas Legislature dedicated for the support of the Texas public schools. Tex. Educ. Code Ann. § 43.001(a).

Mr. Greg Dutton
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This uncertainty could force the GLO to elect to pursue approvals under Section 31.165 of the Texas Natural Resources Code and avoid the City's zoning process altogether. For these reasons, GLO respectfully requests that that the code amendment not be adopted. Please kindly distribute copies of this letter to all City of Austin Planning Commissioners and City Council Members.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "B. S. Carter", followed by a long horizontal line extending to the right.

Brian S. Carter
Sr. Deputy Director, Asset Enhancement
Texas General Land Office

cc: Russell May, GLO
Jeff Gordon, GLO

Dear Planning Commission Members:

PUBLIC COMMENT

Please support Agenda Item C-13, the land use code amendment that will treat all PUD applications the same regardless of previous zoning.

The state law on municipal zoning is very simple. It reads: "The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied." [Local Government Code, Municipal Zoning Authority, Sec. 211.006(f)]

The City of Austin—like every other major city in Texas I know of—has chosen to implement this provision. The only oddity in the Austin version is that it exempted lands being zoned for the first time. This makes no sense, and is not good policy. The amendment would correct this.

Allow me to explain why this has come up at this time. For the first time anyone can remember, the State of Texas sold a 75-acre tract of land in the middle of Austin—fronting on Bull Creek Road between 45th and 39th streets, and backed up to Shoal Creek. The tract had never been zoned, although it was annexed more than 80 years ago, has been overseen by various state agencies with various buildings, and has received all city utilities and services like any other property within the city limits. It is totally surrounded by residential developments of several decades.

So now we have this otherwise very ordinary development process going on, except that this development will NOT have to meet the same standards as other PUD developments. It will not matter what the city staff, the Zoning and Platting Commission (ZAP) or the neighbors have to say. The developer only needs six votes on the City Council to get what he wants.

There are some very good reasons that the Texas Municipal League and cities all over Texas strongly support this state law: (1) City councils do not have time to work out the details of complicated zoning cases and wanted the thorny issues settled before they reach the council; (2) they wanted developers to have an incentive to work with city professional staff, neighbors and appointed commissioners; and (3) as elected officials, they wanted to distance themselves from any appearance that they might be swayed by powerful, moneyed developers.

But look at it also from the standpoint of the PC or ZAP: it doesn't matter what the previous zoning was. What matters in your deliberations is whether the proposed PUD is appropriate and meets the superiority standards expected of a PUD.

The threat of that up-hill challenge encourages developers to work with city professional staff and neighbors to come to compromises before the issue comes to the City Council, and this incentive has worked well at encouraging compromise in Austin. PUD proposals on previously

unzoned land should be treated exactly the same way, and should have these same incentives or compromise.

It is in the City Council's best interest to have disagreements settled before a PUD application reaches the Council, and it is only good policy to treat all PUD developments equally.

Thank you for your consideration.

Sincerely,

Sara Speights

President

Bull Creek Road Coalition (including the following neighborhood associations: Ridgelea, Allandale, Rosedale, Bryker Wood, Oakmont Heights, Highland Park West, and Westminster Manor)