



February 18, 2020

Melissa Neslund
Development Manager
Stratus Properties
212 Lavaca St, Ste. 300
Austin, TX 78701

Re: Project Consent Agreement & SOS Amendment for 7415 Southwest Parkway

Ms. Neslund,

Thank you very much for continuing to speak with us regarding your proposed project at 7415 Southwest Parkway, which is part of the overall development otherwise known as “Lantana.” As I’m sure you can imagine, given the history of this site and the request for an amendment to the Save Our Springs Initiative Ordinance (“SOS Ordinance”), it has generated quite a bit of conversation at the Save Our Springs (“SOS”). We appreciate that Stratus has continually demonstrated a willingness to engage in dialogue surrounding their projects and their willingness to incorporate community benefits into their projects. This letter is intended to continue that dialogue so that we can help reach a reasonable resolution to allow the project to occur, while still furthering the City of Austin’s and SOS’s missions to improve the overall water quality of the Barton Springs Zone and the Edwards Aquifer.

History and Dialogue re: Lantana Project

To help explain how we got to our current position, we thought it would be helpful to provide some context with a brief description of key facts. As you are aware, the Lantana Letter Agreement arose out of a dispute over vested rights alleged to be applicable to a 1986 preliminary plan. This Letter Agreement (which was never approved by the City Council) has been interpreted by the City to grandfather projects in the area to pre-SOS Ordinance regulations, which has enabled Stratus (and other landowners to which Stratus sold land) to develop much of the land without SOS-water quality ponds and well over the impervious cover limits established to protect water quality. SOS has continually questioned the validity of the Letter Agreement and has advocated for projects within the area to be developed under current environmental regulations.

Last summer, the site plan approved for 7415 Southwest Parkway was set to expire by its own terms. As a result, Stratus requested an extension from the Planning Commission. SOS raised objections to this site plan extension, because we received notice that Stratus intended to change the proposed use of Phase 5 of the site plan from “office” to “multi-family”. A “change of use” such as the one envisioned would typically be an indication that there is a **new project** under normal circumstances for vested rights determinations, and thus, the new project would be subject to **current code**. SOS met with Stratus, and after some conversation about potential improvements that could be made for water quality and reductions in impervious cover, SOS withdrew its objection to the site plan extension.

Because the “change of use” is indeed a new project, Stratus has now requested a **project consent agreement**, which is a tool adopted in the City Code for “determining applicable regulations where the extent of a project’s vested rights are unclear and for incentivizing projects with clearly

established vested rights to achieve greater compliance with current regulations.” In October of last year, SOS met with Stratus again. Stratus explained that it could not make improvements to the water quality pond and that it did not intend to reduce the impervious cover of the multi-family project itself. Because the proposal represented no real positive benefit for the environment, SOS explained that we could not support the proposal but were open to continued dialogue and would not outright oppose it from the start. We also explained that we had many questions regarding the overall status of the Letter Agreement and whether development limitations might apply to land Stratus considered adding to its site plan as mitigation.

Problem: Lack of Tracking of Impervious Cover Entitlements

After looking further into the Lantana Project, SOS raised a problem to Stratus and the City of Austin that neither entity is tracking the ongoing entitlements that have been used pursuant to the Letter Agreement. The Letter Agreement establishes aggregate development entitlements applicable to multiple properties with the subject area, intended to limit the impact of the overall development on water quality. However, unless these entitlements are actively tracked and reviewed, there is no way to know whether the aggregate caps have been exceeded. This is not meant to point fingers; rather, it is highlighting a serious concern that we have raised with several development agreements.

In January 2020, SOS consulted with Susan Scallon, who recently retired from the City of Austin, as its Chapter 245 coordinator, to help look into status of the Lantana Project and assess the extent to which its impervious cover entitlements have been used under the Letter Agreement. Based on Susan’s research and our own legal review of the Letter Agreement, we still have some significant concerns.

Impervious Cover Entitlements – Used up?

The letter between the City of Austin and Stratus, dated July 10, 2001, which is the most recent and controlling document for the Letter Agreement, includes two important aggregated maximums for impervious cover entitlements applicable to the Lantana Project:

“For commercial tracts, the calculated impervious cover shall not exceed forty (40) percent of net site area in the uplands zone, exclusive of adjacent right-of-way impervious cover within the Williamson Creek Watershed.”; and

“For the portion of Lantana Southwest Preliminary Plan (C8-84-102.03) covered by this document, the calculated impervious cover shall not exceed twenty-five (25) percent of net site area in the uplands zone.” (emphasis added)

Stratus has previously argued that these aggregate maximums are inapplicable to the subject property. We disagree. While we acknowledge that the letter is horribly written and should never have been treated as a controlling document for land development regulations, those decisions were made long ago. The subject line of the document and the introductory paragraph make it very clear that the 2001 letter is applicable to the entire Lantana project. It has also been suggested that exclusions provided in the first sentence of item 1 excluded the application of these impervious cover limits to certain sites, but such a reading would be illogical; under such an interpretation, the 40% NSA cap would only apply to a single property. More fundamentally, it is evident by the use of the phrase “covered by this document” (underlined above) that the aggregate impervious cover limit was meant to apply to entirety of the preliminary plan, not just a subset.

The subject property (7415 Southwest Parkway) was subdivided out of the referenced preliminary plan, C8-84-102.03. However, even if the subject property were excluded from analysis, the total amount of impervious cover laid in the area would already exceed the 25% NSA maximum. Below is a table listing the site plans and subdivisions that have been approved from the lots shown on C8-84-102.03 (excluding the entirety of C8-84-102.03.1A, which is the applicable subdivision for the subject property), along with their respective impervious cover entitlements used.

As you will see, the total impervious cover used totals an estimated 57.77 acres out of a possible ~186 acres of net site area. This amount of impervious cover represents, at a minimum, 30.97% net site area made impervious.

Case Number	GSA	NSA	Used	NSA IC%	GSA IC%
SP-00-2484C	13.4	13.4**	5.62	41.94%	41.94%
C8-84-102.03.3A-6A*	142.079	137	47.76	34.86%	33.62%
C8-84-102.03.2A	69.05	21.007	0	0.00%	0.00%
SP-2014-0317	7.416	7	0	0.00%	0.00%
SP-2014-0071C	6.074	6.074**	2.96	48.73%	48.73%
SP-2015-0571C	9.107	8.47	4.15	49.00%	45.57%
SP-2013-0111C	7.33	7	2.9	41.43%	39.56%
	241.056	186.551	57.77	30.97%	23.97%

**A full accounting of net site area transfers is provided on C8-84-102.03.6A. The impervious cover data came from the Watershed Department.*

*** Because two site plans (highlighted in yellow) were inexplicably approved using Gross Site Area calculations and do not detail the total Net Site Area, the more conservative Gross Site Area figure was used. This results in a more generous estimate of the total amount of net site area paved. If Net Site Area calculations were provided for these site plans, the 30.97% figure would be much higher.*

Even without including the subject property included, the impervious cover total exceeds what was allowed by 25% cap within the Letter Agreement by over 11 acres of pavement. If the subdivision for the subject property were included, as well, the overall impervious cover used skyrockets. Each of the site plans approved on land subdivide by C8-84-102.03-1A exceeds 25% NSA: (i) SP-06-0757C uses 25.92% NSA; (ii) SP-00-2416C uses 35.19% NSA; (iii) and SP-2014-0262C uses 54.12% NSA.

We also believe the 40% NSA has been exceeded, as well. However, because the 40% NSA impervious cover cap applies only to the Williamson Creek watershed and some of the applicable site plans were approved under Gross Site Area calculations, not Net Site Area, it is much more difficult for us to provide an accurate assessment of the status the impervious cover used as it relates to that maximum. We would encourage the City of Austin to do a proper impervious cover survey for both impervious cover caps.

Concerns about PCA Proposal

By raising the history of the Letter Agreement and the figures we have regarding the status of the impervious cover entitlements already used, we attempt to highlight our underlying concerns with the proposed Project Consent Agreement and related SOS Ordinance amendment. While we appreciate that Stratus has identified land to mitigate the increase in its impervious cover resulting from the proposed project, we are concerned that the land identified does not actually result in any impervious cover “savings”. Assuming, from our perspective, that the impervious cover aggregate caps apply to this land, the result would simply be shifting permissible impervious cover from one site to another within the applicable area. And, that may be impervious cover that already exceeds what has been agreed to.

Furthermore, even if one ignores our concerns and the impervious cover maximums are inapplicable, the Comprehensive Watersheds Ordinance (CWO) would apply. Under the CWO, multi-family is restricted to 40% NSA, unlike the approved office use, which would have been permitted to use 60% NSA. By our calculations, the shift in use reduces the total allotted impervious cover on the site by approximately 2 acres to 17.66 acres of impervious cover permissible. This is essentially what is proposed by the Project Consent Agreement, and thus results in no “greater compliance with environmental regulations” as required by the PCA code. The City of Austin would gain nothing from the approval of this Project Consent Agreement that would not have already been required.

SOS Recommendation

In the spirit of compromise and to seek a resolution that would benefit both Stratus and water quality, SOS would like to make the following recommendations, and if agreed to by the application, would result in our support for the project:

1. Stratus has offered to dedicate ~3 acres of land (in addition to the 3 acres required for HCRO compliance) as parkland, near the southeastern edge of the development. Because this is land subject to the overall aggregate impervious cover maximums, we do not see an immediate benefit for water quality. Instead, we would propose that an equivalent amount of “net site area” (e.g. 3 acres) be preserved out of Lot 1, Block 1, which is located to the north of the project on Southwest Parkway and is also owned by Stratus. This land is located in the Barton Creek watershed and would be a higher priority (in our perspective) for land conservation. (Or, alternatively, Stratus could agree to develop the entirety of that lot subject to current environmental regulations/SOS Ordinance (e.g., SOS water quality ponds and 20% impervious cover NSA); **AND**
2. Prior to the approval of any more permits approved under the Letter Agreement, an impervious cover survey should be performed by the City of Austin to assess the status of the agreement and any remaining aggregate impervious cover amounts remaining. To the extent the impervious cover entitlements have been exceeded, appropriate mitigation methods should be pursued; **AND**
3. Any development of parkland within the area should be done in accordance with the SOS Ordinance.

Again, we thank you tremendously for the continued dialogue, and we hope that these recommendations might provide a way forward that will allow you to continue to proceed with your

multi-family project. If you have any questions or want to meet in person to discuss further, please do not hesitate to give us a call.

Best regards,

/s/ Bobby Levinski

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