

May 26, 2020

Item C.1

Request to Rescind Prior Planning Commission Action on Simon-Caskey Preliminary Plan

Commissioners James Shieh and Patricia Seeger are requesting that the Commission rescind and reconsider the Simon-Caskey preliminary plan that was approved by the Commission. We believe reconsideration of this item is warranted by several items of incomplete or inaccurate information available to the Commission at the prior hearing, as follows:

Information about the Prior Item

At the April 28th Planning Commission meeting, the Commission voted to approve the Simon-Caskey preliminary plan that was presented to us as Item 10, as follows:

10. [Preliminary Plan: C8-2019-0114 - Simon-Caskey Tract Preliminary Plan](#); District 8
Location: 7715 West SH 71, Williamson Creek Watershed-Barton Springs Zone; West Oak Hill NP Area Owner/Applicant: Ridgelea Properties, Inc. (Adams Caskey) Agent: Bill E. Couch (Carlson, Brigrance & Doering, Inc.) Request: Approval of Simon-Caskey Tract Preliminary Plan which will develop 16.664 acres of previously unplatted property by creating 26 lots for single-family, multi-family, commercial, ROW and parkland uses. Staff Rec.: Recommended Staff: Joey de la Garza, 512-974-2664, joey.delagarza@austintexas.gov Development Services Department

The vote followed a public hearing in which the Commission had significant technical issues and difficulty with the public hearings.

Following the April 28th action, several pieces of information were brought to the attention of the Commission which raised concern about the prior action and whether all of the information pertinent to the case and responsive to the questions raised by Commissioners at the hearing had been provided to the Commission and had been accurate and complete.

As a result, at the May 12th Planning Commission meeting, a request to consider rescission of the April 28th action and reconsideration of the case was made by Commissioners Shieh and Seeger. Action on this request is item C.1. on this agenda.

Planning Commission is authorized to rescind prior actions and reconsider said actions under the Commission's *Rules and Procedures*. Rule 5.000 sets forth the procedures the Commission must follow to reconsider a prior action. The rule states:

5.000 REVISION OR AMENDMENT OF PREVIOUS ACTIONS

5.100 Upon the discovery of new information that was not previously presented to the Commission, the Commission may use its discretion to rescind or amend a previous action at the request of two or more Commissioners. Such a request must be made at the first meeting after the meeting where the Commission took the action sought to be rescinded.

5.200 After a request to rescind is made, staff shall post the item on the next Commission agenda.

5.300 A request to rescind must be based on new evidence that may better inform the Commission. The decision to rescind or amend shall be effected by an affirmative vote of a two-thirds majority of the Commission.

In the Simon-Caskey preliminary plan case, the issue at hand concerns the extension of Little Deer Crossing Road to a narrow, existing residential street and whether the extension must be approved by the Commission or can be altered. New information about this issue that was not presented to us at the hearing has come to the attention of members of the Commission, and said members are requesting that the Commission rescind the April 28th vote and rehear and reconsider this item at its meeting at the June 9, 2020, meeting.

Information Creating the Need for Rescission and Reconsideration

Several issues, questions, and new information led to the request to rescind and reconsider.

1. There were technical issues during the hearing and the Commission's prior procedure of not allowing speakers to remain connected to the meeting to address follow-up question from Commissioners during deliberation which prevented the Commissioners from receiving responses from one of the speakers who had information about an alternative to the proposed alignment of Little Deer Crossing set forth in the preliminary plan.
2. There were questions from the Commission about whether an emergency gate could be installed at the part of the extension that connects to the existing, narrow neighborhood street, and those questions were not answered by any of the hearing participants. \
3. Several Commissioners asked several questions of City Staff and the Assistant City Attorney concerning whether the connection of the new street was a requirement of City Code and were told that it was and that any plan that did not show the connection would require a variance request from the applicant. We believe this information was inaccurate.

Section 25-4-151 of the City Code provides that such a connection is required UNLESS the Commission finds the connection to be undesirable for one or more of a set of listed reasons.

4. Several Commissioners asked both City Staff and the City Attorney whether the Commission had any authority to deny a street connection and were told that no such authority existed. We believe this information was also inaccurate. Section 25-4-151 of the City Code states that the Commission can reject a street connection if the Commission determines that such the connection is undesirable.

It is worth noting that the applicant's attorney himself submitted a letter stating that the Commission does possess the authority to reject the connection and that the connection is only a code requirement *if, and only if*, the Commission finds it to be acceptable.

In addition the applicant argues that the project is subject to Section 13-3-81 of the 1988 City Code, by virtue of an old restrictive covenant. And, Section 13-3-81 of said code states that "*Streets of new subdivisions shall be in line with existing streets in adjoining property except where, in the opinion of the Planning Commission, the master plan, topography, requirements of traffic circulation, or other considerations make it desirable to depart from such alignment.*"

5. After being told the Commission had no authority to address the roadway connection, Commissioners asked City Staff whether the issue of this roadway connection would be brought before the commission again at a later stage of the process for further discussion, and the staff said that it *would* be brought back at the Final Plat stage. This information was incorrect. Under the 25-4-59 of the City Code, a roadway approved in a preliminary plan is committed to by the City at the time it is approved in the preliminary plan and, therefore, cannot be later unilaterally altered or removed by the City. Had the Commissioners been given this information, the Commission may have insisted that the staff provide additional information that night about the case and the connection or may have postponed action on the application to allow additional investigation into the issues and questions being asked.
6. There was information provided by City Staff in response to a question from a Commissioner that the existing neighborhood street would be widened later to cause it to conform to the wider new street that the applicant proposes to connect to the neighborhood street. This information was not accurate or (at best) was speculative,

since there is no evidence that widening of the neighborhood street (which could involve condemnation of residential property) is proposed, planned, or funded by the City.

For these reasons, we believe the item should be reconsidered.