

218 S LAMAR BLVD (SCHLOTZSKY PUD) REZONING (C814-2018-0121)
COMMENTS FROM ZILKER NEIGHBORHOOD ASSOCIATION
(July 24, 2020)

LDC CHAPTER 25-2, SUBCHAPTER A, ARTICLE 2, § 25-2-144
(PLANNED UNIT DEVELOPMENT DISTRICT DESIGNATION)

LDC Chapter 25-2 Subchapter A § 25-2-144 provides four basic principles for designating a planned unit development district:

- (A) Planned unit development (PUD) district is the designation for a large or complex single or multi-use development that is planned as a single contiguous project and that is under unified control.
- (B) The purpose of a PUD district designation is to preserve the natural environment, encourage high quality development and innovative design, and ensure adequate public facilities and services for development within a PUD.
- (C) A PUD district designation provides greater design flexibility by permitting modifications of site development regulations. Development under the site development regulations applicable to a PUD must be superior to the development that would occur under conventional zoning and subdivision regulations.
- (D) A PUD district must include at least 10 acres of land, unless the property is characterized by special circumstances, including unique topographic constraints.

Unlike the PUD standards contained in Subchapter B that can be modified by the City Council if they choose, these four principles are required of every PUD. The proposed PUD at 218 South Lamar violates each one of these principles.

(A) The proposed development is neither large (other than the one building) nor complex.

With each small PUD, the City is ceding its ability to plan comprehensively. The Butler Shores sub-district, which contains the primary access to Zilker Park, iconic restaurants, the proposed Dougherty Arts Center, and 2000+ residents, is in dire need of a comprehensive plan. The ability to preserve the character of our parks, provide park and trail access, minimize traffic, maintain compatibility between various land uses and development projects, and provide affordable housing will suffer without a comprehensive plan. An oversize office building in a potentially prime location for residential-mixed use is questionable planning. Allowing a single building to function as its own PUD, separate from the adjacent properties, negates the whole notion of “unified control” and planning specified in the code.

(B) The proposed PUD will not preserve the natural environment and does little to encourage high quality development or ensure adequate facilities.

The height restrictions of the Butler Shores Waterfront Overlay and the associated CS zoning were intended to preserve the natural environment of the parkland and public enjoyment of it. With the requested increase in height, the building will loom over the adjacent parkland. The open space that is provided is separated from the parkland by a loading zone, preventing unimpeded connection to the parkland and the Zach Theatre Plaza.

New buildings in the Waterfront Overlay are required to be constructed of natural materials such as those in the downtown library, Palmer Events Center, and City Hall so they fit in with the natural environment. The appearance of this PUD building is overwhelmingly glass (see Exhibit F) and does not preserve the natural environment.

The project is removing 113 caliper inches of trees and replacing them with only 40 caliper inches, hardly preservation of the natural environment. In addition, because of the project design and location of the underground garage, 13% of the critical root zone of the heritage tree located on parkland (adjacent to and just north of the Schlotzsky property) will be destroyed in constructing the underground garage. While this may be allowed, it certainly does not contribute to preserving the natural environment.

Other than a small art gallery, the development is not providing any additional facilities that would not otherwise be provided using the base CS zoning.

(C) The proposed PUD is not providing significantly superior development through greater design flexibility and modification of site development regulations and is producing inferior development in several cases.

The proposed design is not significantly superior, as demonstrated in Exhibit C. In addition, goals in the Town Lake Corridor Study, which the Waterfront Overlay is intended to implement, are being ignored. For example, the Town Lake Corridor Study states that an office complex is "not appropriate" in the Butler Shores sub-district.

In trying to shoehorn a large building onto a small tract of land, the developer needs many variances, as demonstrated in Exhibits A and B, leading to an inferior development, not a superior one.

If this site and other development within Butler Shores are not coordinated, the traffic engineering analysis for Zilker Park, Barton Springs Road, and Azie Morton Road will be incomplete and lead to unintended consequences. The most recent Traffic Impact Analysis failed to include the Taco PUD hotel and the Carpenter Hotel restaurant. According to the TIA, 69% of the traffic to the site will come from north of the river. (see Exhibit D) It makes little sense to construct an office building south of the river when it's serving clientele who come from the north over an already congested Lamar bridge.

It's illogical to support elimination of residential parking requirements and the reduction of commercial parking minimums to achieve a modal shift to public transit and then support an office building in a congested area that has more parking than is required. The oversized, 625-space garage will induce traffic and is contrary to the logic of Project Connect. The best solution for this situation is to locate any excess parking capacity outside of the congested area and connect it with a circulator option so it doesn't create more congestion from people driving into it.

(D) The proposed PUD will not include at least 10 acres of land and is, in fact, significantly (87%) smaller than 10 acres.

Council's authority to approve a PUD smaller than 10 acres lies solely with a finding that the property is characterized by "special circumstances, including unique topographic constraints." "Special circumstances" are physical characteristics of the property such as topography or shape, not the protections offered by the Waterfront Overlay, as the Applicant is claiming. The property at 218 South Lamar has no legitimate special circumstances. If this PUD were to be passed on the weak rationale that its location within the Waterfront Overlay constitutes a special circumstance, the protections of the Waterfront Overlay would be greatly diminished throughout its entirety.

A Planned Unit Development is clearly intended to promote superior development on large tracts of land. It is not intended to avoid zoning regulations on small individual parcels just because the owner does not like the requirements. Continuing to approve PUDs on small tracts of land amounts to spot zoning and will lead to numerous tall buildings throughout the Butler Shores Waterfront Overlay, a situation that the Waterfront Overlay was intended to prevent.

**LDC CHAPTER 25-2 SUBCHAPTER B, ARTICLE 2, DIVISION 5
(PUD GENERAL PROVISIONS AND STANDARDS)**

The applicant is seeking four specifically requested variances (see Exhibit A) and six implicit variances (see Exhibit B) and is using the provisions of this division to obtain these variances to both the PUD requirements and the Waterfront Overlay requirements. ZNA views these variances as rendering the project inferior to the development that would otherwise occur in the current base zoning. Providing superiority and community benefit must be a major component in approving a PUD, but the applicant has very few true superiority items (see Exhibit C).

The Waterfront Overlay (not to mention the City Council's latest planning directives) values multifamily residential structures over office buildings. ZNA's research over the last two years has determined that redevelopment projects along South Lamar are producing an average of 80 dwelling units per acre. Therefore, a building with zero residential units and almost 100% office space does not meet even the minimum planning goals for Butler Shores or the South Lamar Corridor, and it cannot possibly be considered superior.

The 2008 PUD Ordinance gives Council the authority to override the enumerated PUD standards and Waterfront Overlay requirements if strict conditions are met, including superiority. However, the superiority items claimed for this PUD are mostly what any project would be required to do, or what most developers would do to anyway in terms of streetscapes, drainage, landscaping, 3-star building, Dark Skies, etc.

The PUD does not provide even the required Tier One 20% minimum open space, much less the Tier Two superior requirement of 30%.

In addition to exceeding the Waterfront Overlay limits for height and FAR, the affordable housing fee-in-lieu contribution of \$350,000 has been calculated incorrectly and should be over \$510,000. This contribution is still much smaller than what a VMU project would provide, and paltry compared to the Taco PUD's \$2.5 million contribution for affordable housing.

EXHIBIT A

SPECIFICALLY REQUESTED VARIANCES

Based on the “Proposed Zoning” section on page 4 of the City’s latest Zoning Change Review Sheet, the staff seems to specifically enumerate four variances that the applicant is requesting although ZNA believes there are actually more variances being requested (see Exhibit B). The four specifically requested variances are identified below with ZNA comments regarding each.

	Requested Variance	ZNA Comment
1	Increase the maximum building height from 60’ height to 96’.	<p>The existing code states “The maximum height is: (1) for structures located north of Barton Springs Road, the lower of 96 feet or the maximum height allowed in the base zoning district” [<i>Waterfront Overlay Regulations – LDC § 25-2-733 (H)(1)</i>].</p> <p>The maximum height limit of 96 feet in the Waterfront Overlay Regulations was intended to limit base zoning that would otherwise allow heights greater than 96 feet in the waterfront overlay. It was not intended to be used in reverse to allow heights limited to less than 96 feet in the base zoning to exceed the base zoning.</p> <p>In ZNA’s view, allowing the height to exceed the height limitation of the base zoning violates the intent of the Waterfront Overlay and in fact makes this an inferior project to development that would otherwise occur in the current base zoning.</p>
2	Elevator equipment can exceed height by 20%.	<p>Elevator equipment can exceed the base zoning district height limits by a maximum of 15% [<i>LDC § 25-2-531 (C)(1)</i>] .</p> <p>The project is already requesting a variance to increase the maximum height to 96 feet. This elevator variance would allow increasing the height another 19 feet, to slightly over 115 feet, adding insult to injury.</p>

3	<p>Reduce all ground floor building setbacks to 0'. Different setbacks for building above ground floor to be determined.</p>	<p>The existing CS base zoning district require a 10-foot front setback in the front and street side yard [<i>LDC § 25-2-492 (D)</i>].</p> <p>ZNA understands that applicant desires a zero-foot setback below ground to accommodate an underground parking garage. If it does not conflict with existing utilities, ZNA would not be opposed. However, there is no need to extend this zero-foot setback to the ground floor building, nor to the above ground floors. The City Council should not even be considering rezoning if the setbacks are “to be determined” later.</p>
4	<p>Administrative/business office use not to exceed 50% of ground floor uses.</p>	<p>The Waterfront Overlay rules for the Butler Shores Subdistrict requires not less than 50% pedestrian oriented uses on the ground floor [<i>LDC § 25-2-733 (H)(1)</i>]. The definition of pedestrian-oriented uses do not include administrative/business offices [<i>LDC § 25-2-733 (H)(1)</i>].</p> <p>ZNA is puzzled by this request and concerned that the staff’s phrasing is a backhanded way of allowing administrative/business office use as a pedestrian-oriented use. Otherwise, this statement has no impact or real meaning if the pedestrian-oriented uses as defined in the Waterfront Overlay are still required to be met. Administrative/business office must not be included as a pedestrian-oriented use, if that was the intent.</p>

EXHIBIT B

IMPLICIT VARIANCES

The proposed PUD fails to comply with at least eight requirements in the Land Development Code related to Planned Unit Developments (PUDs) and the Waterfront Overlay. If the City Council approves this PUD rezoning, it is implicitly granting additional variances to the specific ones requested by the applicant (see Exhibit A).

	Requirement	Deficiency
1	<p><u>PUD Size</u></p> <p>“A PUD district must include at least 10 acres of land, unless the property is characterized by special circumstances, including unique topographic constraints.” <i>[PUD Regulations – LDC § 25-2-144 (D) and Chapter 25-2 Subchapter B § 2.3.1 (L)]</i></p>	<p>The proposed site is 1.26 acres. This is a full 87% smaller than the minimum requirement. It isn't even close to the minimum requirement. The special circumstances exceptions were intended for physical issues related to the site such as topography or shape constraints, not zoning. The application does not have any special circumstance that would qualify it for being so much smaller. The fact that the Waterfront Overlay prohibits development from exceeding the base zoning height is not a special circumstance. This is exactly what the Waterfront Overlay was intended to do when it was enacted. The proposed building does not meet the PUD requirements.</p>
2	<p><u>Town Lake Corridor Study Goals</u></p> <p>“Decisions by the accountable official and city boards regarding implementation of this Division shall be guided at all stages by the goals and policies of the Town Lake Corridor Study, including but not limited to the following: . . .</p> <p>(C) Recognize the potential of the waterfront as an open space connector, form-shaper of urban development, and focal point for lively pedestrian-oriented mixed uses as defined by the subdistrict goals of the Town Lake Corridor Study.” <i>[Waterfront Overlay Regulations – LDC § 25-2-710 - GOALS AND POLICIES.]</i></p>	<p>From page 35 of Part 1 of the Town Lake Corridor Study related to the area located on the south shore of Town Lake [Lady Bird Lake] and bounded by Barton Creek on the west, Barton Springs Road and Riverside Drive east of their intersection on the south, and East Bouldin Creek on the east, the study states: <i>“Large office complexes, industrial uses and highway oriented commercial uses are not appropriate for this area.”</i></p> <p>This project does not meet the goals of the Town Lake Corridor Study and hence does not meet the Waterfront Overlay requirements.</p>
3	<p><u>Screening of Loading Area</u></p> <p>“Trash receptacles, air conditioning or heating equipment, utility meters, loading areas, and external storage must be screened from public view.” <i>[Waterfront Overlay Regulations – LDC § 25-2-721 (G)]</i></p>	<p>The loading area sits right between the “plaza” of the PUD and the Zach Scott Theatre. It is not screened from public view. In fact, it appears that anything that is loaded and unloaded will have to be transported through the public plaza. The proposed building does not meet the Waterfront Overlay requirements.</p>

4	<p><u>Distinctive Building Top</u></p> <p>“Except in the City Hall subdistrict, a distinctive building top is required for a building that exceeds a height of 45 feet. Distinctive building tops include cornices, steeped parapets, hipped roofs, mansard roofs, stepped terraces, and domes. To the extent required to comply with the requirements of Chapter 13-1, Article 4 (Heliports and Helicopter Operations), a flat roof is permitted.” <i>[Waterfront Overlay Regulations – LDC § 25-2-721 (E)(2)]</i></p>	<p>The proposed rooftop is flat and does not have a helipad. It may have vegetation on 30% of the rooftop area, but this is not one of the distinctive building tops included in the code. The proposed building does not meet the Waterfront Overlay requirements.</p>
5	<p><u>Building Materials</u></p> <p>“Except for transparent glass required by this subsection, natural building materials are required for an exterior surface visible from park land adjacent to Town Lake.” <i>[Waterfront Overlay Regulations – LDC § 25-2-733 (E)(3)]</i></p>	<p>From the artists rendering of this building, the exterior surface has no natural building materials. It appears to be entirely glass. The proposed building does not meet the Waterfront Overlay requirements.</p>
6	<p><u>Open Space</u></p> <p>“All PUDS must provide a total amount of open space that equals or exceeds 10 percent of the residential tracts, 15 percent of the industrial tracts, and 20 percent of the nonresidential tracts within the PUD”<i>[Chapter 25-2 Subchapter B § 2.3.1 (C)]</i></p>	<p>The area of the site is 54,890 sf and is proposed to be entirely nonresidential. Therefore, it must provide 20% open space or 10,978 sf. Page 4 of the staff report states that the applicant is providing "8,000 square foot public plaza at street level." Case manager Heather Chaffin has indicated in an email that this is the "open space". In the Comparison Table on page 83 of the staff report, it states that 5,000 sf open space will be provided on the ground floor plaza and 2,500 sf open space will be provided on the roof top for a total 7,500 sf open space or 14% of the tract. It is not clear whether 8,000 sf or 7,500 sf is correct. In either case, the project doesn't meet the minimum 20% requirement for a PUD.</p>

<p>7</p>	<p><u>Bonus FAR</u></p> <p>“In the WO combining district, a structure may exceed the maximum floor area permitted in the base district as provided by this section. (1) Additional floor area under Subsection (B) is limited to 60 percent of the base district maximum. (2) Additional floor area under Subsection (C), (D), (E), (F), (G), (H), or (I) is limited to 20 percent of the base district maximum. (3) Total additional floor area under this section is limited to 60 percent of the base district maximum.”[<i>Waterfront Overlay Regulations – LDC § 25-2-714 (A)</i>]</p>	<p>Section (1) only allows additional residential FAR. Since no residential uses are being proposed, no additional FAR is allowed under Section (1). Therefore, additional FAR is allowed only under Section (2) with a limit of 20% per subsection bonus item. Based on the site plan, this project qualifies for additional floor area as follows:</p> <p>Subsection C (Pedestrian-Oriented Uses) = 2,612 sf Subsection E (Underground Parking) = 21,956 sf Subsection I (Impervious Cover < Max) = 7,363 sf for a total bonus area of 31,931 sf. See Exhibit E for details of these calculations</p> <p>The tract size is 54,890 sf. Since the base FAR ratio for CS is 2.0, the base FAR for this site is 109,780 sf. With bonus FAR included, the maximum FAR should be 141,711 sf or a maximum FAR ratio of 2.58, not the 3.55 that the applicant is requesting. The applicant is requesting 53,149 sf in excess of what is allowed by the waterfront overlay.</p>
<p>8</p>	<p><u>Affordable Housing Fee-in-Lieu</u></p> <p>“The director shall provide an estimate of the property's baseline entitlements in the project assessment report. If an alternate baseline is recommended by the director, the director shall include any assumptions used to make the estimate baseline entitlements.” [<i>Chapter 25-2 Subchapter B § 1.3.3 (D)</i>]</p> <p>“Development in a PUD may exceed the baseline established under Section 1.3.3 (Baseline for Determining Development Bonuses) for maximum height, maximum floor area ratio, and maximum building coverage if . . . the developer . . . for developments with no residential units, provides the amount established under Section 2.5.6 (In Lieu Donation) for each square foot of bonus square footage above the baseline to the Affordable Housing Trust Fund” [<i>Chapter 25-2 Subchapter B § 2.5.2 (B)(2)</i>]</p>	<p>The director never provided an estimate of the property’s baseline entitlements in a project assessment report as required by the code, so we are left to assume the baseline is the current CS-V zoning based on the applicant’s requested baseline of CS zoning.</p> <p>The dollar amount per square foot is supposed to be recalculated by NHCD every year (but it has been stuck at \$6 for a long time). The fee-in-lieu should be based on the most recent \$/sf number at the time of the site plan approval, which could be several years after the PUD approval.</p> <p>The Director is supposed to determine how many square feet the property is entitled to develop under the current zoning. The fee-in-lieu will be paid only on the square feet above that baseline number.</p> <p>Based on CS zoning, the allowable FAR is 2:1. This gives the site a baseline of 109,780 sf FAR. Increasing the FAR to the requested 3.55 (194,860 sf) would result in an additional 85,080 sf, times \$6, = \$510,477 fee-in-lieu. Staff's fee-in-lieu estimate is \$350,00, which is \$160,477 short of the requirement.</p>

EXHIBIT C

EVALUATION OF APPLICANT'S SUPERIORITY ITEMS

The first and second column in the table on the following pages is taken from the Applicant's Presentation (Slides 36, 37, and 38) in the backup information for the Planning Commission Hearing. They are the items that the Applicant claims makes the PUD superior to other projects that would be built without the change in zoning. The third column is ZNA's response to these claims of superiority.

Many of the items of supposed "superiority" should be dismissed and can be placed in one of five groups:

1. The first group consists of items that are currently being implemented in other similarly situated office buildings to be competitive in the market. It should be remembered that the superiority items in the PUD ordinance are from 2008, twelve years ago when there was a less competitive marketplace. The design choices available to a developer are not binary (i.e., only minimum or superior). There are the minimum requirements, there are typical industry-standard designs which exceed the minimum requirements, there are competitive market-driven designs which exceed the industry-standard designs, and finally there are superior designs which might include such things as LEED certification. An example of simply meeting competitive market standards is Item #2. Going from a 2-star to a 3-star is just meeting market demand created by competition and therefore is not "superior" to any other market-driven design.
2. The second group consists of items that can essentially be classified as "bait and switch." An example of this is Item #11 where the project simply increases the caliper of the trees but does not increase the required mitigation. It simply decreases the number of trees required to satisfy the required mitigation.
3. The third group consists of items that are really only one item, but have been divided up to give the illusion of being multiple "superior" items. Examples of these are Items #9, #10, and #13.
4. The fourth group of items is simply a function of the design of the building that is desired. An example is Item #18 where exceeding the required minimum 6" of soil depth was not done to purposely exceed the requirement but is a resultant of how the depth of the below grade parking garage was set; it did not drive the design. For an item to be more than what would have been necessary anyway (in this case, by setting the depth of the parking garage), the item should be a programming element that drives the resultant design, not just an afterthought characterized as an element of "superiority".
5. A final group consists of items that are ambiguous, so it is unclear what exactly is being proposed or if we are actually getting anything. An example of this is Item #14. Not only does this item appear to fit into group 3 above, it is providing no immediate benefit. To be superior, it should be an item that has value the day the building is opened.

	Applicant's Claimed Superiority	Response
1	40% open space: exceeds Tier 1 and 2 requirements	The site is 54,890 sf (20%=10,978 sf; 30%=16,467 sf). Page 4 of the staff report states that the applicant is providing "8,000 square foot public plaza at street level." Case manager Heather Chaffin has indicated in an email that this is the "open space". Page 83 of the Staff report says that 5,000 sf will be provided on the ground floor plaza and 2,500 sf will be provided on the roof top for a total 7,500 sf of 14% of the tract. It is not clear whether 8,000 sf or 7,500 sf is correct. In either case, it is unclear how the applicant arrived at the 40%. The project doesn't even meet the minimum 20% requirement of Tier One, much less the 30% needed to demonstrate open space as a superiority item. This is certainly not a superior item.
2	Achieve AEGB 3-star rating, at a minimum	Going from 2-star to 3-star certified as a green building is indeed a higher level than the minimum requirement in the code, but this is not really superior to what many buildings in non-PUD zoning are already doing to save energy costs. It should not be considered a superior item.
3	Dark Skies compliant	Section 2.5.2.B of the Subchapter E Design Standards already requires fully shielded or full cut-off light fixtures for all new development (including CS-V), which is the main component of Dark Skies. In the 04 Dec 2019 presentation to the Environmental Commission, the applicant even acknowledges that the "Full cut-off or shielded" lights element of the Dark Skies Initiative is already a requirement of the existing code. This is not a superior item.
4	Minimum street yard landscape requirements exceeded by 35%	The 35% number is misleading. The applicant is required to provide landscaping in 20% of the street yard landscape and is actually providing 28.9%, with 12.8% of the landscaping in the street yard existing under the building overhang. It may be a challenge to maintain native landscaping that is completely and constantly shaded. Landscaping that is not under the building overhang occupies only 16.1% of the street yard.
5	Landscaping to utilize 100% Native and adaptive plants/trees	Section 2.4.4.A already requires 90% Native and adaptive plants/trees for all projects. In addition, use of completely native and adaptive plants/trees is now good and common practice if one wants the vegetation to survive without excessive maintenance costs. It should be pointed out that requiring 100% native plants will preclude some decorative plants, even in small quantities. While 100% is slightly higher than 90%, it shouldn't be considered a superior item.

6	Construction of 10-foot two-way bicycle track along S. Lamar with a 15 -foot sidewalk/landscape zone	The bicycle track is in the City ROW and is simply the bicycle lane along South Lamar that is planned as part of the South Lamar Corridor Improvements. It will be constructed regardless of what project is developed on this site. Any project developed on this site would be required to meet requirements for a sidewalk/landscape zone as part of the South Lamar Corridor Improvements. This is not a superior item.
7	Contribution of \$25,000 for cycle track improvements	This is just a restatement of Item #6 above with the cost included. Is this an unsolicited voluntary contribution above and beyond the \$255,000 TIA mitigation requirement or is it part of a re-negotiation of the required mitigation fee with ATD? It does not appear to be a superior item.
8	Contribution of \$27,800 for bus stop improvements	This is part of the required TIA mitigation fee. Virtually any substantial project on the site would be required to make a similar contribution as a result of the TIA. Other projects along South Lamar, including normal VMU projects, have been required to contribute mitigation fees. Some of the mitigation fees for VMU projects even exceed the mitigation fee required for this PUD. This is not a superior item.
9	<p>Provides water quality controls above Code</p> <ul style="list-style-type: none"> • Green water quality controls for at least 75% of volume • Rainwater harvesting of rooftops and vertical structures • Rainwater cisterns designed for WQ treatment and stormwater detention 	Items #9, #10, #13 (Water Quality/Drainage, Landscape Irrigation, and Integrated Pest Management) are essentially the same and should just be one: 75% Green Stormwater infrastructure. Providing Green Stormwater infrastructure results in the capture and release through rainwater cisterns to irrigate the landscape (i.e., #10) and Integrated Pest Management (#13) is a City Code requirement when utilizing Green Stormwater infrastructure. Items #9, #10, and #13 are really just one item. This may be a superior item, but it is only one item and should not be separated into three distinct items. Additionally, it is not clear that minimum water quality controls are actually being provided. To quote the City Water Quality Reviewer from the 29 Jun 2020 Master Comment Report for the Site Plan, “It is unclear how the proposed cistern will meet the water quality and detention requirements for this site.”
10	100% of landscape irrigated by capturing A/C condensate, rainwater harvesting or stormwater runoff	See #9. This is not a superior item by itself but is a condition of Item #9.

11	Shade trees will be a minimum of 3” caliper trees	<p>The minimum requirement is 1.5" but the diameter of an <u>individual</u> tree is not the critical factor. Planting 3" trees just means they have to plant 50% fewer trees to meet the mitigation requirements. If the builder was providing more mitigation (i.e., more total inches), then maybe one could argue this is superior. As it is, they are removing 113.5 caliber inches of existing trees according to the tree survey and replacing with <u>only</u> 40 inches of new trees according to the verbal staff presentation at the Planning Commission. This is hardly superior and arguably inferior to the existing tree mass. Based on even this minimal mitigation, if they planted 1.5” caliper trees, they would have to plant a total of 27 trees. There is likely not enough room to plant this many trees, so planting thirteen 3” caliper trees is simply a function of and necessitated by the limited planting space they have created with this project. This is not a superior item.</p>
12	Shade trees will have a minimum of 1,000 cubic feet soil volume per tree soil	<p>There is no minimum requirement for soil volume per tree in the code. Providing 1000 cubic feet of soil per tree is just good practice (and well-documented in the literature) if one wants a healthy medium-sized tree. Simply implementing good practice should not be considered a superiority item. All projects should follow good practice. In addition, as a result of excavating the entire site for the sub-surface garage, they have to import soil to place on top of it anyway. This is not a superior item.</p>
13	Create an Integrated Pest Management plan	<p>See #9. This is not a superior item by itself but is a condition of Item #9.</p>
14	Connect to Reclaimed Water/Purple Pipe system when available	<p>The applicant is claiming this as a superiority item only because the City of Austin has not completed extension of its reclaimed water system to this area, estimated to be completed in approximately six years. Any building constructed six years from now, zoned PUD or otherwise, would be required to install a reclaimed water system and connect to the City’s system.</p> <p>In addition, the purple pipe system is a necessary part of the planned Green Infrastructure (Item #9). It has to be installed to provide the proposed landscape irrigation and should not be considered as a separate superior item.</p>
15	Provide a landscaped rooftop	<p>The Waterfront Overlay requires that the rooftop be distinctive and not flat. [§25-2-721(E)(2)] According to the code, distinctive building tops include cornices, steeped parapets, hipped roofs, mansard roofs, stepped terraces, and domes. Flat roofs are not allowed, and the code does not include landscaped roofs as being distinctive. While this roof is partially landscaped, it is still flat. In addition, only a small portion of the rooftop is actually being landscaped (28.6%), and the “publicly accessible” area is an even smaller portion of the rooftop and is limited to nonprofits by reservation only. The rooftop does not meet the requirements of §25-2-721(E)(2), so it cannot be a superior item.</p>

16	Provide electric vehicle charging within the parking garage	This is not a superior item by itself but is simply one of the many components of achieving the 3-star energy rating. In addition, the use of the charging station will only be available to the public after the public pays a fee to park in the parking garage.
17	Exceed minimum street yard landscape requirements of code by 35%	This is redundant and simply restating #4. This is not a superior item.
18	Exceed street yard landscape soil depth requirements by 6 inches	Exceeding the required minimum soil depth of 6 inches by 6 inches for a minimum of one foot of soil depth is out of necessity. The additional soil depth is necessitated by the fact that the applicant is digging out all of the soil on the site to build a subsurface parking garage and must then cover the subsurface garage. Besides, the tree planting areas are required to have one foot of soil. This is not a superior item.
19	Coordination with Art in Public Places for an art piece in a prominent location on the property	This does not seem to be the free 1000 sf art gallery space promised in various presentations by the applicant but hopefully this is what is intended by this item.
20	Underground structured parking available to the public and for Zach Theater employees and patrons	The amount of parking being provided is based on §26-2 Appendix A and the minimum base requirements. In fact, the project is also taking allowable parking reductions in order to reduce the amount of parking provided. No additional parking spaces are being provided, and even if they were, ATD is against any excess parking being determined as superior according to their comment ATD3 in the Master Comment Report. The parking for the public and Zach Theater patrons is being provided as pay-to-park spaces after office hours. This is simply an operational element and business decision to provide additional income for the building owner. Any project, not just a PUD, could avail itself of this opportunity. In addition, when Zach Theater built their theater and flytower, they promised the City Council that they did not need any additional parking. Providing parking after-hours will only increase the amount of traffic in the area that was not addressed in the TIA. This is not a superior item.
21	Bicycle parking 120% of LDC requirements	The applicant is only providing 20% more bicycle parking than the minimum requirement. This is only 6 bicycle spaces. Additionally, the City Transportation Reviewer Jaron Hogeson indicated in comment TR8 of the Master Comment Report that city staff does not agree that increased bicycle racks achieves superiority. This is not a superior item.
22	Payment of fee-in-lieu for affordable housing	Any project would be required to provide a fee-in-lieu payment for affordable housing requirement if they are not providing affordable housing. The applicant originally proposed to “donate” money to the Housing Assistance Fund, which seemed to indicate something more than the required minimum. It is not clear what happened to this proposed commitment. It appears that they are only going to meet the minimum requirement. In any case, it is not anywhere close to the \$2,500,000 commitment made by Taco PUD. This is not a superior item.

23	4 ADA-accessible showers provided for tenants	The applicant is installing the showers to obtain a reduction in the required parking requirements. To obtain this reduction, the standard code requires four showers (two for each sex) in a building greater than 100,000 sf. The standard code requires all installed showers to be ADA-compliant. This parking reduction would be available even if the site remained zoned as CS-V, and the associated requirements would be identical. This is not a superior item.
24	Storage space for Zach Theater	Although Zach Theater is a nonprofit, it is still a private corporation and not a public entity. This is merely an arrangement between private parties. This is not a superior item.

EXHIBIT D

TRANSPORTATION IMPACT ANALYSIS (TIA)

The TIA for this project is flawed for several reasons and should constitute grounds for disapproval of the zoning change request.

1) In addition to inclusion of the proposed project, the original TIA (August 2018) included two supplemental projects that were not included in the traffic count study that had previously been performed. These two projects were the Carpenter Hotel and the mixed-use Taco PUD project at the corner of South Lamar Boulevard and Riverside Drive. However, this TIA did not include the new Daugherty Art Center proposed for Toomey Road. To rectify this situation, the second TIA (January 2019) added the Daugherty Art Center. Unfortunately, it also removed the Taco PUD project at the same time. The reason given by Justin Good of the Austin Transportation Department was that the site plan case number (SP-2013-0290C) associated with that project had expired. Although it is true that this site plan had expired without being implemented, it was replaced by a new site plan (SP-2019-0056C) for a hotel which is currently under construction and will certainly add traffic. In addition, although both TIAs included the Carpenter Hotel rooms, neither TIA included the new Carpenter Hotel restaurant, which also generates traffic. Since the most recent TIA failed to include the Taco PUD hotel (The Loren) and the Carpenter Hotel restaurant, it significantly underestimates the traffic in the area. These two projects needed to be included in the TIA before this zoning change can be approved.

2) The City is ignoring the impact of this project on the neighborhood. The May 8, 2019 ATD memo concerning the Jan 2019 TIA discusses “Significant Results” (see Attachment 1). It notes that the average traffic delay increases from 69 seconds to 100 seconds (+59%) for the eastbound left turn at Toomey Rd and South Lamar Blvd (LOS=F) while the overall delay increases from 23 seconds to 26 seconds (+13%). This may be an acceptable level of service for the ATD, but it is not acceptable for the neighborhood residents along Toomey Road. Further, the City apparently rejected any improvements or timing changes to the Toomey Rd/South Lamar Blvd intersection to compensate for this project in order to prioritize vehicle progression along South Lamar (see Attachment 2). This project will be constructed at the expense of the existing residents and businesses along Toomey Rd.

3) Subsequent to the January 2019 TIA, the entrance/exit along South Lamar Blvd was eliminated. On January 24, 2020, a TIA update letter was prepared based on this new configuration. Unlike the January 2019 TIA, this letter failed to provide any tables showing what the delays would be for the “Mitigations” scenario. This is the most important scenario because it is the one that is planned to be implemented. Further, it is curious why the AM southbound through/right turn delay would decrease by 14% from 51.4 seconds to 44.4 seconds (see Attachment 2) when there is more traffic slowing down and turning right at this intersection as a result of the closure of the South Lamar entrance. Finally, in the January 31, 2020 ATD memo concerning the January 24, 2020 TIA update letter, ATD conveniently removes any reference to the eastbound left turn traffic delays at Toomey Rd and South Lamar Blvd in the discussion

of “Significant Results” (see Attachment 3). This obscures the impact of this project on residents and businesses along Toomey Rd.

4) The January 31, 2020 ATD memo notes that the vehicle queue is expected to extend past the proposed driveway location (and even past Jessie St) due to the additional site traffic but that most of the queuing related to site traffic would occur primarily within the site parking garage. If the vehicles in the garage should have difficulty turning left onto Toomey Road even when the Toomey Rd/South Lamar Blvd light turns green, neighborhood residents are concerned that a security officer will be used to stop eastbound traffic on Toomey Rd to allow cars to leave the garage, similar to what now happens on Barton Springs Rd between Bouldin Ave and South First St and downtown along Guadalupe St. This will further increase the delays for neighborhood residents along Toomey.

5) The TIA indicates that 69% of the traffic that enters and exits the site will come from north of the river across the South Lamar Bridge (see Attachment 4). If that distribution is correct, it makes little sense to approve construction of an office building south of the river when it is serving a workforce and its clientele that lives mostly north of the river, especially when the primary access is over an already congested bridge.

6) The projected traffic flow (see Attachment 5) is unreasonable. Even if only 8% of the trips to and from the site utilize Barton Springs Rd (west), and this seems like an extremely low number of trips, cars are very unlikely to take the path that is projected in the TIA, especially when leaving the site. Virtually no one is going to turn left onto Toomey, right onto South Lamar, and then right onto Barton Springs Rd. Instead, they will turn right onto Toomey, left onto Jessie or Sterzing, and then right onto Barton Springs, thus avoiding two signals and the South Lamar traffic.

With so many problems associated with the TIA, the zoning change should be denied.

Attachment 1 (from 08 May 2019 ATD Memo)

Assumptions:

1. Transit and Active reductions of 15% for office trips and 10% for restaurant.
2. Based on TxDOT AADT volume data, a four (4) percent annual growth rate was assumed to account for the increase in background traffic.
3. Considerations were made for the following projects in the analysis:
 - a. The Carpenter (SP-2016-0073C)
 - b. Dougherty Arts Center (TBD)

Significant Results:

The proposed site causes minimal impact to the existing vehicle operations. One area to highlight is the eastbound left at Toomey Road and South Lamar Boulevard where the average vehicle delay increases from 69 seconds to 110 seconds. However, the overall average vehicle delay only increases from 23 second to 26 seconds. ATD has determined that this increase in delay is acceptable.

Improvements have been identified to account for pedestrians and bikes. Sidewalk gaps and pedestrian crosswalks on Toomey Road have been identified. Additionally, contribution will be made to the south Lamar Bond corridor improvements, which include sidewalk and bike lane improvements.

There is an existing transit stop at the northwest corner of Toomey Road and South Lamar Boulevard. The bus stop has been identified to be relocated to the south side of Toomey Road to better address CapMetro's safety and operation concerns.

Staff Recommendations:

1. The Applicant shall design and construct 100% of the following improvements as part of their first site development application. Note: Cost estimates **should not** be assumed to represent the maximum dollar value of improvements the applicant may be required to construct.
 - a. Sidewalk (450 feet by 5 feet) on the south side of Toomey Rd. from Barton Place Trail to Jessie Street.; installation of curb ramps across Jessie Street on the south side of Toomey; and crosswalk striping across Jessie Street and Toomey Rd.
 - b. Designated dock-less vehicle parking area at the northwest corner of the Barton Pl. Trail Crosswalk and Toomey Rd.
2. Fee in-lieu contribution to the City of Austin shall be made for the improvements identified in Table 2, totaling \$255,000.00, before third reading.

Attachment 2 (from 24 Jan 2020 TIA Update Letter)

Justin Good, PE, City of Austin Transportation Department

January 24, 2020

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Build Conditions Operations

Table 4 shows the average vehicle delay, 95th percentile queue length, and volume-to-capacity (v/c) ratio for each movement and the overall intersection for both locations during the AM peak hour. **Table 5** shows the same information for the PM peak hour. As shown, there is minimal change as a result of the driveway elimination. The additional outbound vehicles are all right-turning vehicles at South Lamar Boulevard, which add minimal delay to the intersection.

Eastbound queues on Toomey Road specifically are expected to extend beyond Jessie Street. Mitigation options were evaluated for this intersection, which included:

- Signal timing adjustments for the (#7) South Lamar Boulevard / Toomey Road
- An additional eastbound left-turn lane on Toomey Road at South Lamar Boulevard
- The existing right-turn lane on Toomey Road could become a shared left-turn/right-turn lane

These improvements were not selected by ATD in order to prioritize vehicle progression along South Lamar Boulevard, as well as alternative modes (including transit stops and the off-street bicycle lanes). A conceptual design of the additional left-turn lane is included as **Attachment 3**. Synchro worksheets for both the 2019 and 2020 analyses are included as **Attachment 4**.

TABLE 4: TRAFFIC OPERATIONS ANALYSIS AT AFFECTED INTERSECTIONS – AM PEAK HOUR

Location / Movement	2019 Analysis				2020 Analysis			
	Delay	95 th Percentile Queue (feet)	V/C Ratio	LOS	Delay	95 th Percentile Queue (feet)	V/C Ratio	LOS
(#7) South Lamar Boulevard / Toomey Road								
Intersection	22.5	-	0.71	C	21.6	-	0.71	C
Eastbound Left-Turn	68.5	421	0.81	E	68.5	421	0.81	E
Eastbound Right-Turn	46.2	37	0.15	D	46.3	44	0.05	D
Northbound Left-Turn/U-Turn	4.3	9	0.13	A	4.6	9	0.14	A
Northbound Through	5.3	117	0.68	A	5.3	117	0.70	A
Southbound U-Turn	9.9	1	0.12	A	9.9	1	0.18	A
Southbound Through/Right-Turn	51.4	308	0.54	D	44.4	291	0.60	D
(#13) Toomey Road / Access Driveway								
Intersection	1.5	-	-	A	1.4	-	-	A
Eastbound Left-Turn/Through	0.8	1	0.02	A	1.2	2	0.03	A
Westbound Through/Right-Turn	0.0	-	0.16	A	0.0	-	0.53	A
Southbound Left-Turn/Right-Turn	12.6	9	0.10	B	18.6	21	0.22	C

Source: Wantman Group, Inc., 2020.

Attachment 3 (from 31 Jan 2020 ATD Memo)

Assumptions:

1. Transit and Active trip reductions of 15%
2. Based on TxDOT AADT volume data, a four (4) percent annual growth rate was assumed to account for the increase in background traffic.
3. Considerations were made for the following projects in the analysis:
 - a. The Carpenter (SP-2016-0073C)
 - b. Dougherty Arts Center (TBD)

Significant Results:

The proposed site causes minimal impact to the existing vehicle operations. One area to highlight is the eastbound approach at Toomey Road and South Lamar Boulevard where the vehicle queue is expected to extend past the proposed driveway location. This is due to a combination of existing traffic, which currently experiences queueing issues, and the additional site traffic. However, it is expected that most of the queueing related to site traffic would occur primarily within the site parking garage. The vehicles queueing in the garage would be allowed to exit when the light at Toomey Road/South Lamar Boulevard turned green.

Improvements have been identified to account for pedestrians and bikes. Sidewalk gaps and pedestrian crosswalks on Toomey Road have been identified. Additionally, contribution will be made to the south Lamar Bond corridor improvements, which include sidewalk and bike lane improvements.

There is an existing transit stop at the northwest corner of Toomey Road and South Lamar Boulevard. The bus stop has been identified to be relocated to the south side of Toomey Road to better address CapMetro's safety and operation concerns.

Staff Recommendations:

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 - a. Sidewalk (450 feet by 5 feet) on the south side of Toomey Rd. from Barton Place Trail to Jessie Street.; installation of curb ramps across Jessie Street on the south side of Toomey; and crosswalk striping across Jessie Street and Toomey Rd.
 - b. Designated dock-less vehicle parking area at the northwest corner of the Barton Pl. Trail Crosswalk and Toomey Rd.
2. Fee in-lieu contribution to the City of Austin shall be made for the improvements identified in Table 2, totaling \$255,000.00, before third reading.

Attachment 4 (from 24 Jan 2020 TIA Update Letter)

Justin Good, PE, City of Austin Transportation Department

January 24, 2020

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Project Trip Assignment

Attachment 2 shows the study area for the TIA. The locations shown in **Table 3** were assumed as the gateways for Project trips. The top section of Table 3 shows the assumed path for entering traffic for each gateway and whether there would be any change with the removal of the South Lamar Boulevard driveway. The bottom half of Table 3 shows the same information for exiting traffic.

TABLE 3: TRIP DISTRIBUTION – PATH CHANGES

Location	Distribution	Assumed Path to/from Project? ¹	Change for Project Traffic?
Entering Traffic			
Lamar Boulevard (north)	10%	SLB southbound to SLB driveway	Yes
South Lamar Boulevard (south)	11%	SLB northbound to Toomey and Toomey driveway	-
West 6 th Street	9%	SLB southbound to SLB driveway	Yes
West 5 th Street	15%	SLB southbound to SLB driveway	Yes
West Cesar Chavez Street (east)	16%	SLB southbound to SLB driveway	Yes
West Cesar Chavez Street (west)	19%	SLB southbound to SLB driveway	Yes
West Riverside Drive (east)	3%	SLB southbound to SLB driveway	Yes
Barton Springs Road (east)	9%	SLB northbound to Toomey and Toomey driveway	-
Barton Springs Road (west)	8%	Jessie Street to Toomey and Toomey driveway	-
Exiting Traffic			
Lamar Boulevard (north)	10%	Toomey driveway to Toomey and Northbound SLB	-
South Lamar Boulevard (south)	11%	SLB driveway to SLB southbound	Yes
West 6 th Street	9%	Toomey driveway to Toomey and Northbound SLB	-
West 5 th Street	15%	Toomey driveway to Toomey and Northbound SLB	-
West Cesar Chavez Street (east)	16%	Toomey driveway to Toomey and Northbound SLB	-
West Cesar Chavez Street (west)	19%	Toomey driveway to Toomey and Northbound SLB	-
West Riverside Drive (east)	3%	Toomey driveway to Toomey and Northbound SLB	-
Barton Springs Road (east)	9%	SLB driveway to SLB southbound	Yes
Barton Springs Road (west)	8%	SLB driveway to SLB southbound	Yes

Notes:

1. SLB = South Lamar Boulevard

Source: Wantman Group, Inc., 2020.

**PROJECTED TRAFFIC FLOW FROM SCHLOTZSKY PUD ONLY
(ONE ENTRANCE/EXIT)**

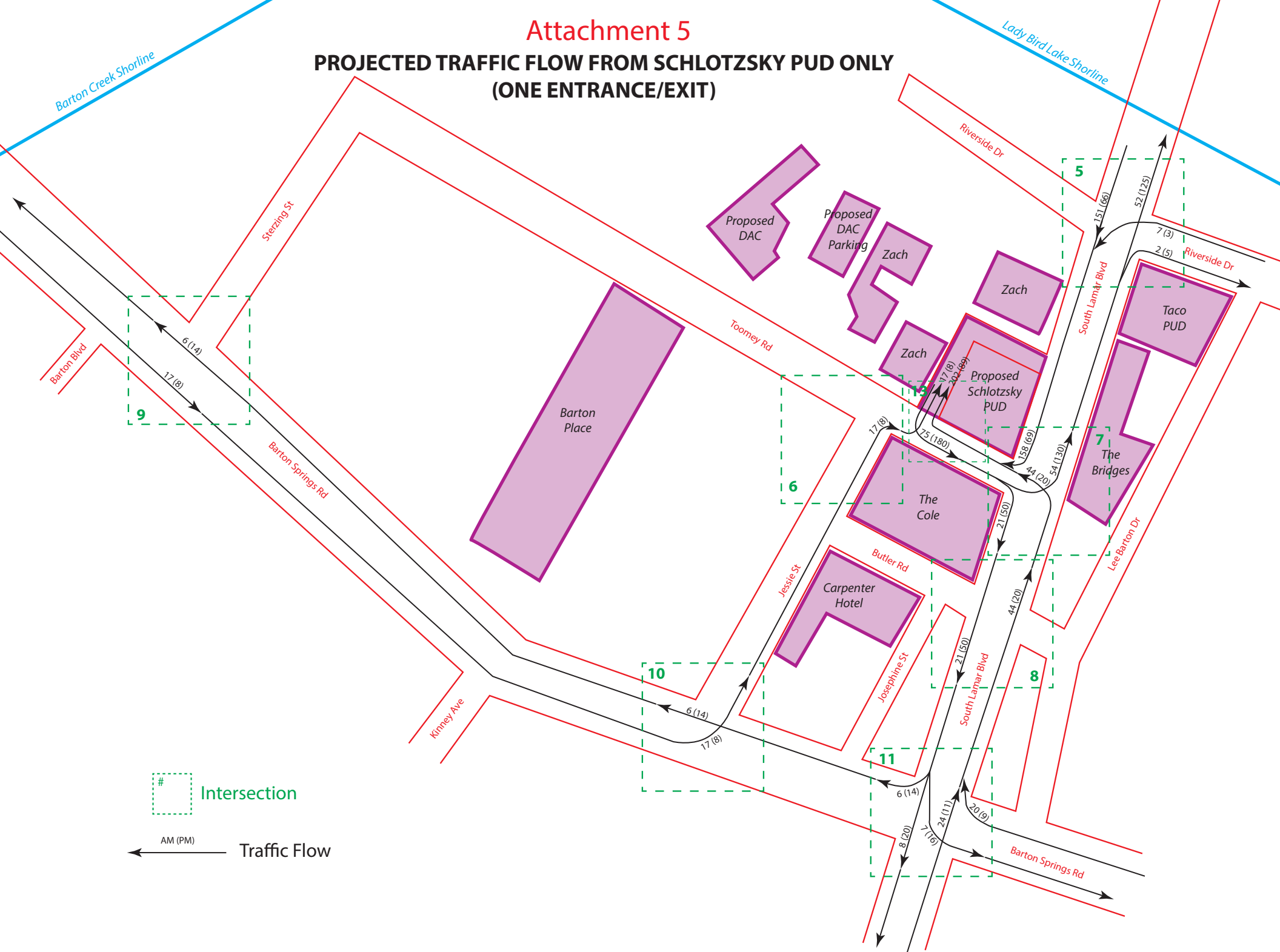


EXHIBIT E

ALLOWABLE FAR CALCULATIONS

Total site area = 54,890 sf

FAR limit for CS (2:1) = $54,890 \times 2 = 109,780$ sf

Summary of FAR Calculations allowed under LDC § 25-2-714

(see red-lines below for details)

A(1) 60% = 65,868 sf maximum for residential but 0 sf because there is no residential

A(2) 20% = 21,956 sf per bonus item

A(3) 60% = 65,868 sf total cap; this would equate to an overall project max of 175,648 sf, or FAR of 3.2:1, if the total of residential and all bonus items exceeded 60%

Bonus items found in submitted site plan

B, residential use: 0 sf

C, unimpeded pedestrian-oriented use: 2,612 sf

D, underground parking: 21,956 sf

E, restrictions due to trees: 0 sf

F, dedicated public access to the water: 0 sf

G, restricted public access to the water: 0 sf

H, area restricted to create scenic vista: 0 sf

I, impervious cover: 7,363 sf

Total floor area from bonus items = 31,931 sf

Total project FAR is limited to 109,780sf + 31,931 sf =141,711 sf, for a FAR of 2.58:1.

However, the applicant is requesting a FAR of 3.55:1 for a total of 194,860 sf, 53,149 sf in excess of what should be allowed by the waterfront overlay.

Waterfront Overlay floor area limits

§ 25-2-714 - ADDITIONAL FLOOR AREA.

(A) In the WO combining district, a structure may exceed the maximum floor area permitted in the base district as provided by this section.

(1) Additional floor area under Subsection (B) is limited to 60 percent of the base district maximum. **60% of 109,780 sf = 65,868 sf for residential (however, 0 sf because no residential is proposed in this PUD)**

(2) Additional floor area under Subsection (C), (D), (E), (F), (G), (H), or (I) is limited to 20 percent of the base district maximum. **20% of 109,780 sf = 21,956 sf per bonus item**

(3) Total additional floor area under this section is limited to 60 percent of the base district maximum. **109,780 sf (base) + 65,868 sf (60% of base) = 175,648 sf total maximum allowable for the combination of Subsection (B), (C), (D), (E), (F), (G), (H), and (I). In this case, the limitation is not reached.**

(B) For a structure in a neighborhood office (NO) or less restrictive base district, floor area for a residential use is permitted in addition to the maximum floor area otherwise permitted. **No residential uses are proposed**

(C) For a structure in a multifamily residence limited density (MF-1) or less restrictive base district, floor area for pedestrian-oriented uses is permitted in addition to the maximum floor area otherwise permitted, if the pedestrian-oriented uses are on the ground floor of the structure and have unimpeded public access from a public right-of-way or park land. The pedestrian-oriented uses required under Sections 25-2-692 (*Waterfront Overlay (WO) Subdistrict Uses*) and Subpart C (*Subdistrict Regulations*) are excluded from the additional floor area permitted under this subsection. **It's not clear how much of the project's pedestrian-oriented use is unimpeded public access. However, according to the site plan,**

the total ground floor area is 23,756 sf. The excluded floor area is 50% of the ground floor or 11,878 sf, and the total pedestrian-oriented uses being provided are 14,490 sf. Therefore, the project could claim 2,714 sf of additional floor area if all of the pedestrian-oriented use qualifies as unimpeded public access.

(D) Except in the North Shore Central subdistrict:

(1) an additional one-half square foot of gross floor area is permitted for each one square foot of gross floor area of a parking structure that is above grade; and

(2) an additional one square foot of gross floor area is permitted for each one square foot of a parking structure that is below grade.

The area of the underground parking is 236,940 sf in the site plan. Regardless, the maximum bonus allowed is 21,956 sf (20% of the allowable base FAR).

(E) Additional gross floor area is permitted for each existing Category A tree, as determined by the Watershed Protection and Development Review Department's tree evaluation system, that is either left undisturbed or transplanted under the supervision of the city arborist.

(1) A tree is considered undisturbed under this subsection if the area within a circle centered on the trunk with a circumference equal to the largest horizontal circumference of the tree's crown is undisturbed.

(2) A tree may be transplanted off-site if the Land Use Commission determines that the character of the site is preserved and approves the transplanting.

(3) The permitted additional gross floor area is calculated by multiplying the undisturbed area described in Subsection (E)(1) by the base district height limitation and dividing the product by 12.

No applicable tree issues

(F) Additional gross floor area is permitted for land or an easement dedicated to the City for public access to Town Lake or the Colorado River. The additional gross floor area is calculated by multiplying the square footage of the access area by the height limitation applicable to the property and dividing the product by 12. No easements dedicated for public access to the water

(G) Additional gross floor area is permitted for land that is restricted to create a side yard or restricted public access to Town Lake, the Colorado River, or a creek. The additional gross floor area is calculated by multiplying the square footage of the restricted area by the height limitation applicable to the property and dividing the product by 12. No restrictions related to public access to the water

(H) An additional one square foot of gross floor area is permitted for each one square foot of area restricted to create a scenic vista of Town Lake, the Colorado River, or a creek. No area restricted for scenic vistas

(I) For a proposal to develop less than the maximum allowable impervious cover, an additional one square foot of gross floor area is permitted for each one square foot of impervious cover less than the allowable maximum. According to the site plan, impervious cover will be 3,693 sf less than the maximum allowed. The underground parking, however, extends to the property line, and any area above an underground structure or water detention is supposed to be considered impervious cover.

Source: Section 13-2-703; Ord. 990225-70; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11.

EXHIBIT F
APPLICANT'S ARTIST'S RENDERING
OF PROPOSED BUILDING

