

Planning Commission Q & A Report

Question Commissioner Shaw / Staff Response

B1- 6311 South 1st Street

Is development already under construction-appears so based on photos? If so, is it already designed for VMU? **RESPONSE:** The subject property is undeveloped and the photos shown below are from another site in the South Congress neighborhood planning area.

How can City address safety concerns raised by the neighbors? **RESPONSE:** The safety concerns will be reviewed by Staff as part of the site plan and construction applications.

Did applicant agree to NPCT conditions?

1. Designated on-site pet area. **RESPONSE:** This is a private Restrictive Covenant item between the Applicant and the Staff, and cannot be placed in a zoning ordinance.
2. Following prohibited land uses: **RESPONSE:** Yes, the Applicant is agreeable to prohibiting the following uses. Please note that adult-oriented businesses is not a permitted use in the GR zoning district and therefore, cannot be listed as a prohibited use. Also, the Staff does not recommend prohibiting telecommunications tower due to the extensive siting restrictions already in Code.

- Adult-oriented businesses
- Alternative financial services (this includes payday loans)
- Bail bonds services
- Outdoor entertainment
- Outdoor Sports and Recreation
- Hotel-Motel
- Service Station
- Pawn Shop Services
- Telecommunication Tower (PC)

B2/B3 - 4908 Lott Avenue, 5000-5106 Lightfield Lane, & 1160-1166 Mason Avenue

Is there opposition to this item?

Response: Yes

B4 - 35 West 6th Street, Shoal Creek Watershed; Downtown Austin Plan

Why was the RC required in the first place? Did applicant get to waive certain regulatory requirements by providing the green roof and rainwater collection?

Response Staff:

When the applicant proposed to rezone the property from DMU to DMU-CURE in (Case # C14-2009-0151 in November 2009), the City negotiated “community benefits” in conjunction with the modification of building height from the DMU maximum of 120’ to DMU-CURE height of 350’. The Design Commission outlined several benefits related to project design including building a green roof (please refer to attached memo).

See, Exhibit Staff Response B-4 – Design Commission Memo

B11 - Street Right-of-Way Vacation Application for Chalmers Avenue

Has applicant agreed to all the conditions for approval from various City departments (e.g; Austin Water)?

Applicant Response: Yes, we will comply with all conditions. As with AE, they all just wanted to be covered by an easement, which the City will retain, and be paid for any relocations when the time comes.

AE denied approval “until overhead facilities are removed.” Has this been resolved?

Applicant Response: I was fairly sure I had a "conditional" approval email from Ms. Navarro at AE, but I can't locate it, so I have CC'd both Ms. Navarro and Ms. Henson on this email.

Back in June, Ms. Henson wrote "If you want to retain a portion of the road as a PUE and keep the light there, that's an option you can discuss with Office of Real Estate Services. You would need to show us how much you intend to keep. We would need a minimum of 7'6" around all structures and we would need enough retained so that we can reach the facilities."

We have established that the entire Chalmers ROW will be turned into a PUE, so all the AE infrastructure can stay in place for a while. Later this year when the residents are moved out of the old Chalmers West facilities and demolition of that site commences, we will request that the AE overhead lines be removed, but that is still quite a ways out. Since folks are still living there we couldn't put the request in early.

Additional information from Staff:

Approved With Conditions

Rosario Navarro

512-322-6754

11/13/2020

11/13/2020

Comments: Approved with the following condition - AE request the whole vacated area be retained for a PUE and Access easement.

B12 - Alley Right-of-Way Vacation Application for 2209 S. 1st Street (F#10350-2010)

Applicant Response in red.

Austin Energy required that PUE for electric utilities be maintained. Only a PUE for drainage is mentioned. Is a PUE for electric utilities also provided in the alley? **THAT IS CORRECT, A TEMPORARY PUE FOR ELECTRIC UNTIL THE SERVICES ARE REMOVED.**

Did applicant agree to Watershed Engineering Review requirements? **CORRECT, THERE WILL BE A DRAINAGE EASEMENT COVERING THE ALLEY AND ADJACENT LOTS.**

“WPD will approve the release of the ROW vacation with the following conditions: being that there is floodplain in the vicinity, the alley vacation will be approved so long as a new easement is dedicated that fully encompasses the fully-developed 100-year floodplain as part of the concept site plan this easement release case is the child of (SP-2020-0351C.CP).”

Did applicant agree to Austin Water requirements? **CORRECT.**

B15 - Wilder

Applicant states that the easement will pose a liability risk for him. Has PARD required similar type access easements like this one through properties? Is this unique in any way?

Yes, PARD has required similar easements – where there was a trail or greenbelt to the rear, and public access was needed. There have been no issues of liability that prevented the following sites from complying:

- **1515 S. Lamar (SP-2018-0595C)** – Code requires safe access to a trail to the rear of the site, achieved with a Public Access easement that runs along an existing sidewalk. Access doesn't have to be wide or change appearance; ensures that the trail is not alienated from the public in this location.
- **1311 S. Lamar – (SP-2018-0296C)** – Similar to above. Access to primary trail along Union Pacific railroad via a Public Access Easement to South Lamar; access from ROW also serves as a pedestrianized driveway. Varied surfacing serves as traffic calming for pedestrians. Code applied to site plan review individually, not dependent on other sites.
- **Tech Ridge (SP-2019-0262C – 12217 N. IH 35)** – Parkland dedication satisfied by deeded land and a park easement that will provide the community with a needed connection between ROW and a Park.
- **Cameron Rd Park – (SP-2019-0416C – 5900 Cameron Rd)** – Site configuration will involve two separate parks, and a Public Access easement. Applicant has agreed to the easement and project is moving forward.

This is not a unique site; however it has relatively narrow frontage on S. Congress. Recognizing this, PARD did not require a separated trail facility which would take up more frontage and could impact unit count. Rather, PARD made the requirement for Public Access, such that it could overlap with other City requirements (e.g. Fire Lane).

Applicant provided information:

1515 S Lamar : 30 plus feet to work with and all of site w/o environmental constraints

1311 S. Lamar; no site plan ever released/ no project
12217 N. IH. 5; huge site . lots of buildable area and street frontage
5900 Cameron Road; lots of street frontage and buildable area

See, Exhibit – B-15 – Applicant Mchone



AUSTIN DESIGN COMMISSION

February 15, 2010

BART WHATLEY
CHAIR
JUAN COTERA
DAVID KNOLL
ELEANOR
MCKINNEY
JAMES SHIEH
RICHARD WEISS
JEANNIE
WIGINTON

JORGE E. ROUSSELIN
STAFF LIAISON

RE: Shoal Creek Walk Project

The Design Commission thanks you for the opportunity to review and comment on the proposed Shoal Creek Walk Project located at 835 W. 6th Street. We understand that the Project Team is seeking a rezoning from Downtown Mixed Use (DMU) to DMU-CURE (Central Urban Redevelopment Combining District) 120 ft to 350 ft.

We recognize and appreciate the Community Benefits that have been committed to by the developers. Those benefits, totaling more than two million dollars, include the following:

- Green Building – 1 Star
- Lance Armstrong Bikeway – dedication of 5' East of Bowie Street
- Coordinate with City on West side of Bowie to include scope of bike lane in the project with City reimbursement
- Green roof on one of the two buildings
- Improvements to Shoal Creek hike and bike trail
- Shoal Creek channelization to reduce flooding
- Compliance with Parkland ordinance (\$650 per unit)
- Open Space – 30,000-35,000 sf/70-80% of an acre

As a follow up to our recent subcommittee meeting, we would like to suggest that the Project Team look at pulling back the parking building on the 6th Street pedestrian side in order to provide a secondary use in the future that can be retrofitted if parking is not needed.

The Design Commission respectfully requests the opportunity to review a more detailed layout of the Project as it is developed.

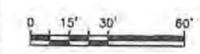
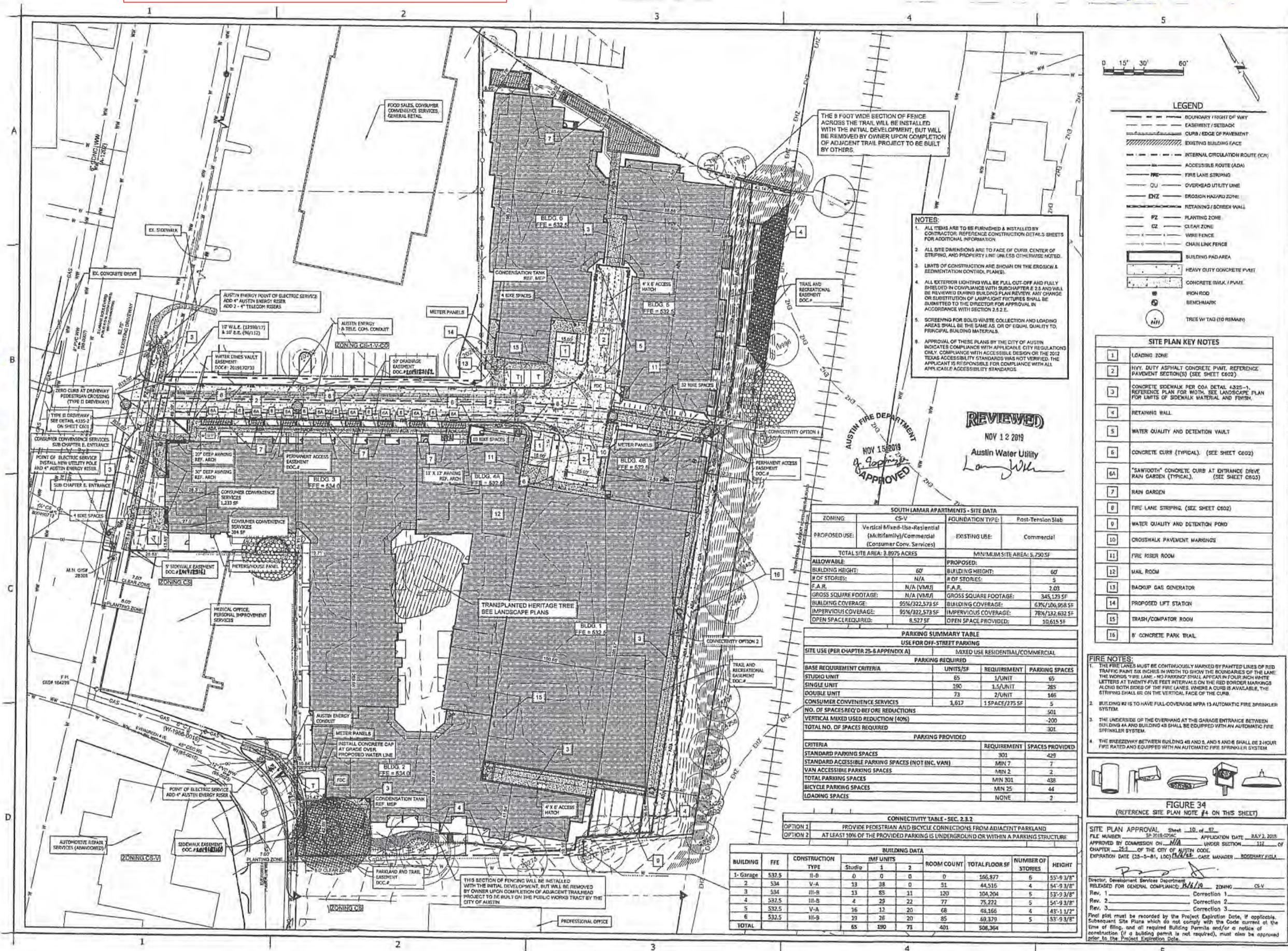
Again, thank you for your presentation to the Design Commission and allowing us the opportunity to comment on the Project.

Sincerely,

Bart Whatley
Chair, City of Austin Design Commission

1515 S LAMAR

1515 S LAMAR



LEGEND

- BOUNDARY / RIGHT OF WAY
- EASEMENT / SETBACK
- CURB / EDGE OF PAVEMENT
- EXISTING BUILDING FACE
- INTERNAL CIRCULATION ROUTE (ICR)
- ACCESSIBLE ROUTE (ADA)
- FFS LANE STRIPING
- OU OVERHEAD UTILITY LINE
- EHZ EROSION HAZARD ZONE
- RETAINING / SCREEN WALL
- PZ PLANTING ZONE
- CZ CLEAR ZONE
- WF WIRE FENCE
- CLF CHAIN LINK FENCE
- BLDG PAD AREA
- HCV HEAVY DUTY CONCRETE PAVT
- CONCRETE SWLK / PAVT
- IRON ROD
- BENCHMARK
- TREE W TAG (TO REMAIN)

NOTES:

- ALL ITEMS ARE TO BE FURNISHED & INSTALLED BY CONTRACTOR. REFERENCE CONSTRUCTION DETAILS SHEETS FOR ADDITIONAL INFORMATION.
- ALL SITE DIMENSIONS ARE TO FACE OF CURB, CENTER OF STRIPING, AND PROPERTY LINE UNLESS OTHERWISE NOTED.
- LIMITS OF CONSTRUCTION ARE SHOWN ON THE EROSION & SEDIMENTATION CONTROL PLANS.
- ALL EXTERIOR LIGHTING SHALL BE FULL CUT-OFF AND FULLY SHIELDED IN COMPLIANCE WITH SUBCHAPTER E 2.3 AND WILL BE REVIEWED DURING BUILDING PLAN REVIEW. ANY CHANGE OR SUBSTITUTION OF LIGHTING FIXTURES SHALL BE SUBMITTED TO THE DIRECTOR FOR APPROVAL IN ACCORDANCE WITH SECTION 2.5.2.E.
- SCREENING FOR SOLID WASTE COLLECTION AND LOADING AREAS SHALL BE THE SAME AS, OR OF EQUAL QUALITY TO, PRINCIPAL BUILDING MATERIALS.
- APPROVAL OF THESE PLANS BY THE CITY OF AUSTIN INDICATES COMPLIANCE WITH APPLICABLE CITY REGULATIONS ONLY. COMPLIANCE WITH ACCESSIBLE DESIGN OR THE 2012 TEXAS ACCESSIBILITY STANDARDS WAS NOT VERIFIED. THE APPLICANT IS RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE ACCESSIBILITY STANDARDS.

REVIEWED
NOV 12 2019
Austin Water Utility
Lang

APPROVED
NOV 15 2019
Austin Fire Department
St. Gopinath

SOUTH LAMAR APARTMENTS - SITE DATA

ZONING	CS-V	FOUNDATION TYPE:	Post-Tension Slab
PROPOSED USE:	Vertical Mixed-Use-Residential (Multi-family)/Commercial (Consumer Conv. Services)	EXISTING USE:	Commercial
TOTAL SITE AREA:	3.8975 ACRES	MINIMUM SITE AREA:	5,790 SF
ALLOWABLE:		PROPOSED:	
BUILDING HEIGHT:	60'	BUILDING HEIGHT:	60'
# OF STORIES:	N/A	# OF STORIES:	5
F.A.R.:	N/A (VMU)	F.A.R.:	2.03
GROSS SQUARE FOOTAGE:	N/A (VMU)	GROSS SQUARE FOOTAGE:	345,123 SF
BUILDING COVERAGE:	95%/322,573 SF	BUILDING COVERAGE:	63%/106,958 SF
IMPERVIOUS COVERAGE:	95%/322,573 SF	IMPERVIOUS COVERAGE:	78%/132,632 SF
OPEN SPACE REQUIRED:	8,527 SF	OPEN SPACE PROVIDED:	10,615 SF

PARKING SUMMARY TABLE
USE FOR OFF-STREET PARKING

SITE USE (PER CHAPTER 25-B APPENDIX A)	MIXED USE RESIDENTIAL/COMMERCIAL		
	PARKING REQUIRED	SPACES PROVIDED	
BASE REQUIREMENT CRITERIA	UNITS/SF	REQUIREMENT	PARKING SPACES
STUDIO UNIT	85	1/UNIT	65
SINGLE UNIT	190	1.5/UNIT	285
DOUBLE UNIT	73	2/UNIT	146
CONSUMER CONVENIENCE SERVICES	3,617	1 SPACE/275 SF	5
NO. OF SPACES REQ'D BEFORE REDUCTIONS			501
VERTICAL MIXED USED REDUCTION (40%)			-200
TOTAL NO. OF SPACES REQUIRED			301
PARKING PROVIDED			
CRITERIA	REQUIREMENT	SPACES PROVIDED	
STANDARD PARKING SPACES	301	429	
STANDARD ACCESSIBLE PARKING SPACES (NOT INC. VAN)	MIN 7	7	
VAN ACCESSIBLE PARKING SPACES	MIN 2	2	
TOTAL PARKING SPACES	MIN 301	438	
BICYCLE PARKING SPACES	MIN 25	44	
LOADING SPACES	NONE	2	

CONNECTIVITY TABLE - SEC. 2.3.2

OPTION 1 PROVIDE PEDESTRIAN AND BICYCLE CONNECTIONS FROM ADJACENT PARKLAND

OPTION 2 AT LEAST 10% OF THE PROVIDED PARKING IS UNDERGROUND OR WITHIN A PARKING STRUCTURE

BUILDING DATA

BUILDING	FFE	CONSTRUCTION TYPE	IMF UNITS		ROOM COUNT	TOTAL FLOOR SF	NUMBER OF STORIES	HEIGHT
			Studio	1				
1-Garage	532.5	II-B	0	0	0	166,877	6	55'-9 3/8"
2	534	V-A	13	38	0	44,516	4	54'-9 3/8"
3	534	III-B	13	85	11	104,204	5	53'-9 3/8"
4	532.5	III-B	4	29	22	75,222	5	54'-9 3/8"
5	532.5	V-A	16	12	20	48,166	4	43'-1 1/2"
6	532.5	III-B	19	26	20	69,379	5	53'-9 3/8"
TOTAL			65	190	73	401		

SITE PLAN KEY NOTES

- LOADING ZONE
- HVY. DUTY ASPHALT CONCRETE PAVT. REFERENCE PAVEMENT SECTION(S) (SEE SHEET C602)
- CONCRETE SIDEWALK PER COA DETAIL 4325-1, REFERENCE PLAN FOR WIDTH, SEE LANDSCAPE PLAN FOR LIMITS OF SIDEWALK MATERIAL AND FINISH.
- RETAINING WALL
- WATER QUALITY AND DETENTION VAULT
- CONCRETE CURB (TYPICAL). (SEE SHEET C602)
- "SAWTOOTH" CONCRETE CURB AT ENTRANCE DRIVE RAIN GARDEN (TYPICAL). (SEE SHEET C603)
- RAIN GARDEN
- FIRE LANE STRIPING. (SEE SHEET C602)
- WATER QUALITY AND DETENTION POND
- CROSSWALK PAVEMENT MARKINGS
- FIRE RISER ROOM
- MAIL ROOM
- BACKUP GAS GENERATOR
- PROPOSED LIFT STATION
- TRASH/COMPOSTOR ROOM
- 8" CONCRETE PARK TRAIL

FIRE NOTES:

- THE FIRE LANE MUST BE CONTINUOUSLY MARKED BY PAINTED LINES OF RED TRAFFIC PAINT SIX INCHES IN WIDTH TO SHOW THE BOUNDARIES OF THE LANE. THE WORDS "FIRE LANE - NO PARKING" SHALL APPEAR IN FOUR INCH WHITE LETTERS AT TWENTY-FIVE FEET INTERVALS ON THE RED BORDER MARKINGS ALONG BOTH SIDES OF THE FIRE LANE. WHERE A CURB IS AVAILABLE, THE STRIPING SHALL BE ON THE VERTICAL FACE OF THE CURB.
- BUILDING #2 IS TO HAVE FULL-COVERAGE NFPA 13 AUTOMATIC FIRE SPRINKLER SYSTEM.
- THE UNDERSIDE OF THE OVERHANG AT THE GARAGE ENTRANCE BETWEEN BUILDING 4A AND BUILDING 4B SHALL BE EQUIPPED WITH AN AUTOMATIC FIRE SPRINKLER SYSTEM.
- THE BREZZEWAY BETWEEN BUILDING 4B AND 5, AND 5 AND 6 SHALL BE 2-HOUR FIRE RATED AND EQUIPPED WITH AN AUTOMATIC FIRE SPRINKLER SYSTEM.



SITE PLAN APPROVAL Sheet 10 of 87
FILE NUMBER: SP-2018-0296C APPLICATION DATE: MAY 2, 2018
APPROVED BY COMMISSION ON: N/A UNDER SECTION: 112 OF CHAPTER: 253 OF THE CITY OF AUSTIN CODE.
EXPIRATION DATE (25-5-81, L50) CASE MANAGER: ROSEMARY EGLI

Director, Development Services Department
RELEASED FOR GENERAL COMPLIANCE: 10/16/19 ZONING: CS-V

Rev. 1 Correction 1
Rev. 2 Correction 2
Rev. 3 Correction 3

Final plot must be recorded by the Project Expiration date, if applicable. Subsequent Site Plans which do not comply with the Code current at the time of filing, and all required Building Permits and/or a notice of construction (if a building permit is not required), must also be approved prior to the Project Expiration Date.

WWW.BICREDDOG.COM
TEXAS REG. NO. F-15040

BICREDDOG
CONSULTING ENGINEERS

ENGINEERING CONSULTING
2021 L. BRN. ST., #200
AUSTIN, TEXAS 78702

512.669.5560

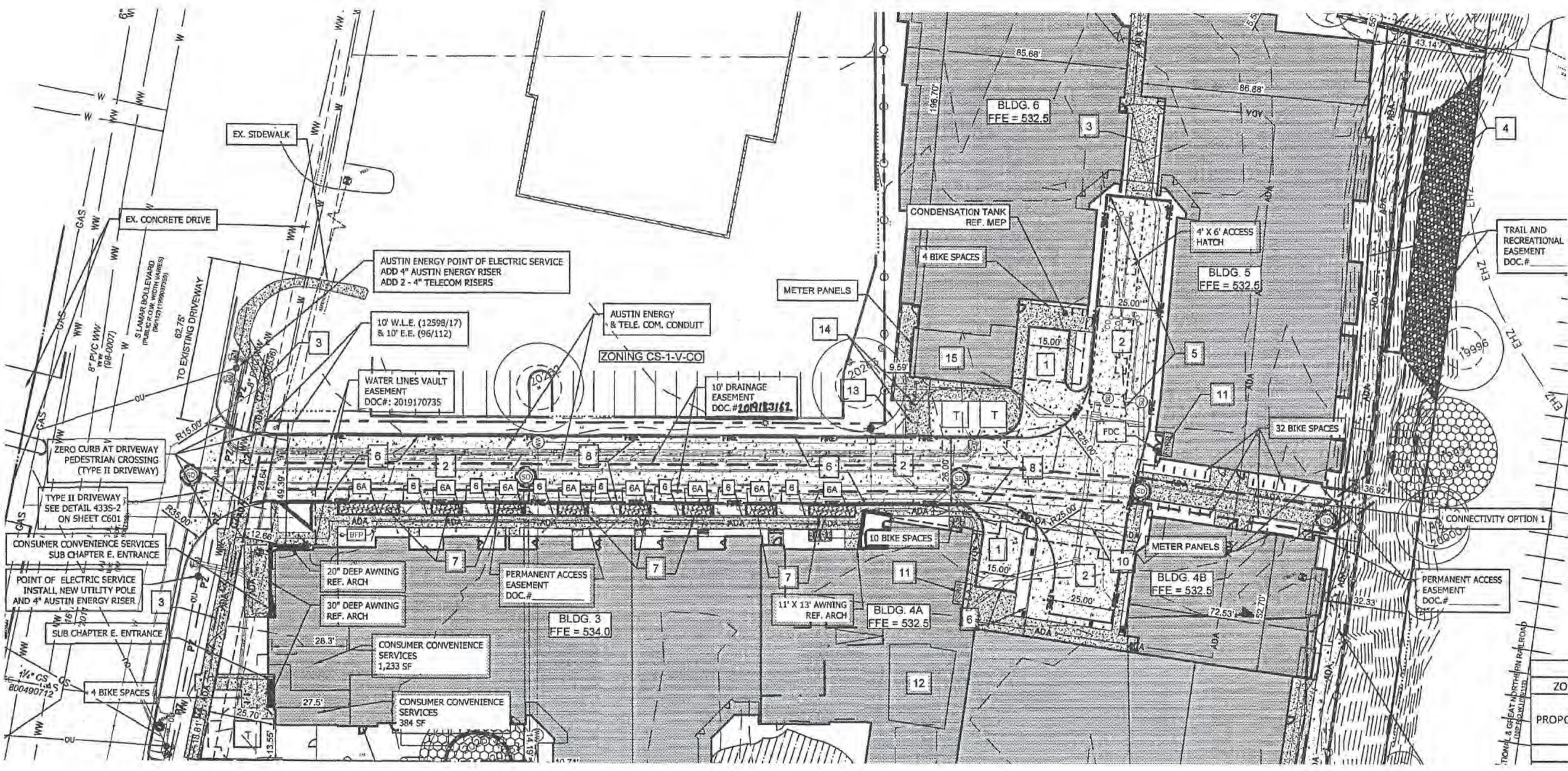
STATE OF TEXAS
MTC M. TRUJANO
19592
PROFESSIONAL ENGINEER

AUSTIN SOUTH LAMAR APARTMENTS
1515 SOUTH LAMAR
AUSTIN, TRAVIS COUNTY, TEXAS

SITE PLAN

SHEET
CS100
10 OF 87
SP-2018-0296C

1515 S LAMAR



TOWN & GREAT NORTHERN RAILROAD
ZONING
PROPOSED

12212
N.I.H35

REVISIONS			
No.	Revision Description	Prepared by:	Reviewed by:

STRUCTURE	ZONING	PROPOSED USE	STORIES	HEIGHT FT	FINISHED FLOOR ELEVATION	BUILDING INFORMATION TABLE		TOTAL FLOOR AREA RATIO		
						TOTAL SF BUILDING (SF)	TOTAL SITE (SF)	TOTAL FLOOR AREA (SF)	MAXIMUM F.A.R.	RATIO
BUILDING 1	MF-4	MULTIFAMILY	4	57'-1"	VARIABLE	33,308	607,769	126,312	0.75	0.61
BUILDING 2	MF-4	MULTIFAMILY	4	55'-1"	VARIABLE	34,180		127,287		
BUILDING 3	MF-4	MULTIFAMILY	3	43'-5"	VARIABLE	26,185		69,293		
BUILDING 4	MF-4	MULTIFAMILY	3	43'-5"	VARIABLE	17,625		48,954		
TOTAL						111,298	18%	371,848		

**APPENDIX Q-2
IMPERVIOUS COVER**

IMPERVIOUS COVER ALLOWED AT 20.00 % X GROSS SITE AREA 13.952 ACRES = 0.766 ACRES

PROPOSED TOTAL IMPERVIOUS COVER
TOTAL PROPOSED IMPERVIOUS COVER = 7.54 ACRES = 53.43 %

PROPOSED IMPERVIOUS COVER ON SLOPES

SLOPE CATEGORIES	ACRES	IMPERVIOUS COVER	
		BUILDING AND OTHER IMPERVIOUS COVER ACRES	DRIVEWAYS/ROADWAYS ACRES
0 - 15 %	13.952	2.42	5.12
15 - 25 %			
25 - 35 %			
OVER 35 %			
TOTAL SITE AREA	13.952		

NOTE: THERE ARE NO EXISTING NATURAL SLOPES OVER 15% ON THE PROPOSED SITE.

OPEN SPACE REQUIREMENT

OPEN SPACE TYPE	TOTAL GROSS SITE AREA	OPEN SPACE REQ. (5%)	OPEN SPACE PROVIDED
PRIVATE COMMON	607,769 SF	30,388 SF	38,756 SF



LEGEND

- PROPERTY LINE
- EASEMENT LINE
- EXISTING CURB
- PROPOSED 6" CURB
- HEADUP CURB
- SHOULDER LINE
- PROPOSED ADA ROUTE
- PROPOSED HEAVY DUTY ASPHALT (RE: 44 OF 77 FOR DTL)
- PROPOSED LIGHT DUTY ASPHALT (RE: 44 OF 77 FOR DTL)
- PROPOSED CONCRETE SIDEWALK/PAVEMENT (RE: 44 OF 77 FOR DTL)
- PARKING STALL COUNT
- BIKEWAY RAMP
- LANDSCAPE AREA

PARKING SUMMARY

UNIT TYPE	UNITS	PARKING SPACES (REQUIRED)	MIN. PARKING (REQUIRED)
TYPE A (1 BEDROOM)	204	1.5	306
TYPE B (2 BEDROOM)	91	2.0	182
TYPE C (3 BEDROOM)	18	2.5	45
TOTAL UNITS	311		
TOTAL MIN. REQUIRED PARKING SPACES = 528			

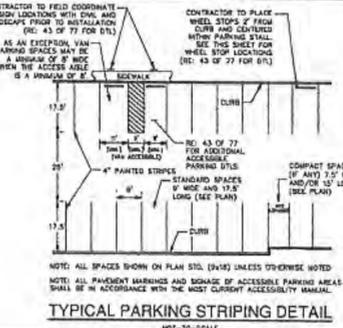
ADA PARKING SUMMARY

ADA SPACES REQUIRED (2% OF MIN REQ) = 13

BICYCLE PARKING SUMMARY

BICYCLE SPACES REQUIRED (5% OF MIN REQ) = 27

BICYCLE SPACES PROVIDED = 34 (17 BIKE RACKS)



NOTE: ALL SPACES SHOWN ON PLAN SHD. (PARK) UNLESS OTHERWISE NOTED.

SITE PLAN RELEASE

SITE PLAN APPROVAL SHEET 02 OF 77

FILE NUMBER: SP-2019-0262C APPLICATION DATE: JUNE 19, 2019

APPROVED BY COMMISSION: UNDER SECTION 112 OF CHARTER 25-3 OF THE CITY OF AUSTIN CODES

EXPIRATION DATE (25-5-1): LDC CASE MANAGER & DESIGNS

PROJECT EXPIRATION DATE (2019-01-01): DWPP DTP

DEVELOPMENT SERVICES DEPARTMENT

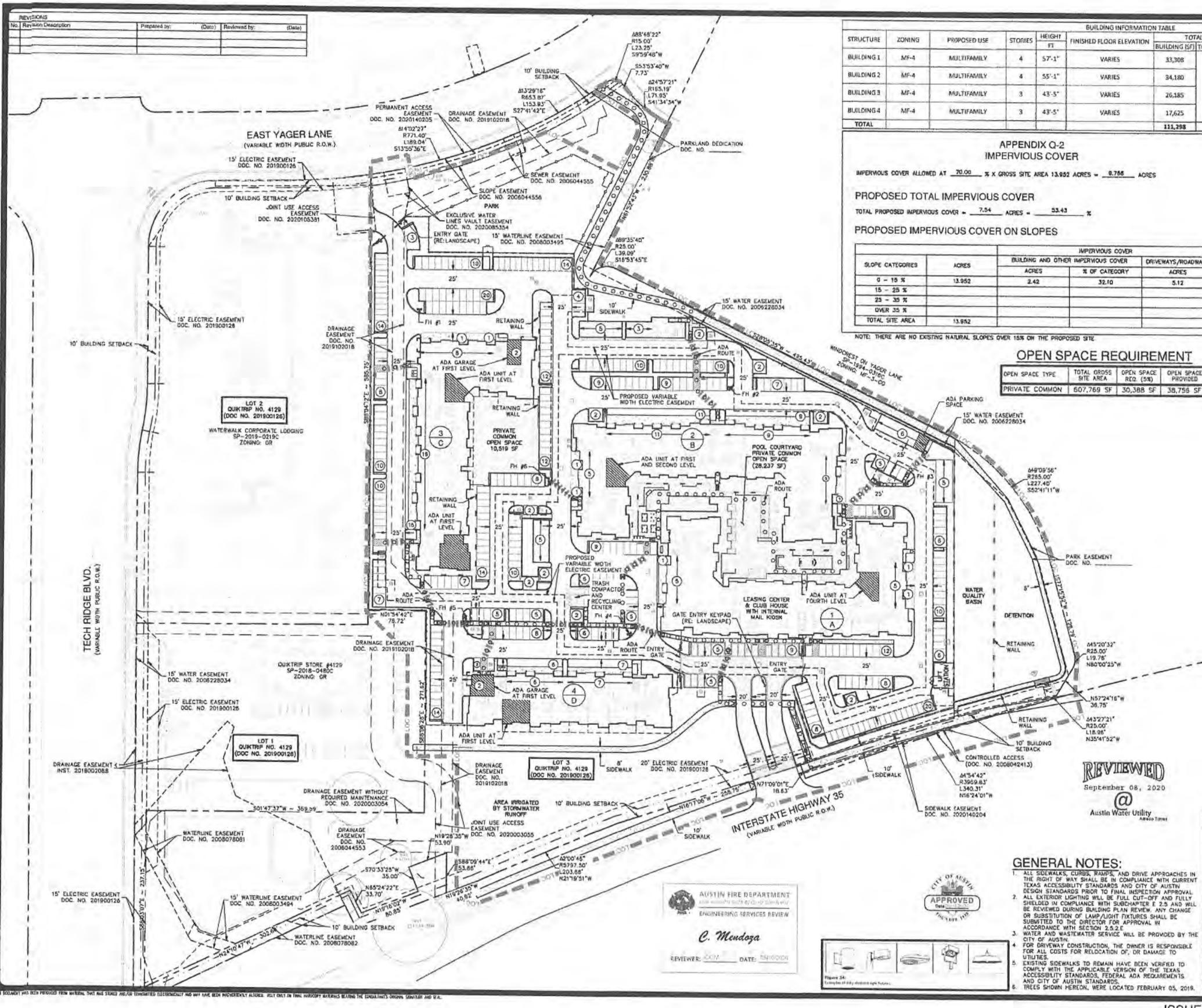
RELEASED FOR GENERAL COMPLIANCE: ZONING: MF-4

Rev. 1: Connection 1

Rev. 2: Connection 2

Rev. 3: Connection 3

- GENERAL NOTES:**
- ALL SIDEWALKS, CURBS, RAMPS, AND DRIVE APPROACHES IN THE RIGHT OF WAY SHALL BE IN COMPLIANCE WITH CURRENT TEXAS ACCESSIBILITY STANDARDS AND CITY OF AUSTIN DESIGN STANDARDS PRIOR TO FINAL INSPECTION APPROVAL.
 - ALL EXTERIOR LIGHTING WILL BE FULL CUT-OFF AND FULLY SHIELDED IN COMPLIANCE WITH SUBCHAPTER E 2.5 AND WILL BE REVIEWED DURING BUILDING PLAN REVIEW. ANY CHANGE OR SUBSTITUTION OF LAMP/LIGHT FIXTURES SHALL BE SUBMITTED TO THE DIRECTOR FOR APPROVAL IN ACCORDANCE WITH SECTION 2.5.2.
 - WATER AND WASTEWATER SERVICE WILL BE PROVIDED BY THE CITY OF AUSTIN.
 - FOR DRIVEWAY CONSTRUCTION, THE OWNER IS RESPONSIBLE FOR ALL COSTS FOR RELOCATION OF, OR DAMAGE TO UTILITIES.
 - EXISTING SIDEWALKS TO REMAIN HAVE BEEN VERIFIED TO COMPLY WITH THE APPLICABLE VERSION OF THE TEXAS ACCESSIBILITY STANDARDS, FEDERAL ADA REQUIREMENTS AND CITY OF AUSTIN STANDARDS.
 - TREES SHOWN HEREON, WERE LOCATED FEBRUARY 05, 2019.



AUSTIN FIRE DEPARTMENT
ENGINEERING SERVICES REVIEW

C. Mendoza
REVIEWER: CMM DATE: 8/13/2020



REVIEWED
September 08, 2020
Austin Water Utility
AUSTIN, TEXAS

DATE: _____

NO. REVISION: _____

8/13/2020

THOMAS MATTHEW CARTER
79272
PROFESSIONAL ENGINEER

PAPE-DAWSON ENGINEERS
AUSTIN | SAN ANTONIO | HOUSTON | FORT WORTH | DALLAS
10001 N. MOORE DR., SUITE 200 | AUSTIN, TX 78753 | 512-454-3771
100% FIRM REGISTRATION #00000001

TECH RIDGE APARTMENTS
12217 N IH 35 SVRD NB
AUSTIN, TEXAS

SITE AND PAVING PLAN

PLAT NO. 201900126

JOB NO. 51009-00

DATE: AUGUST 2019

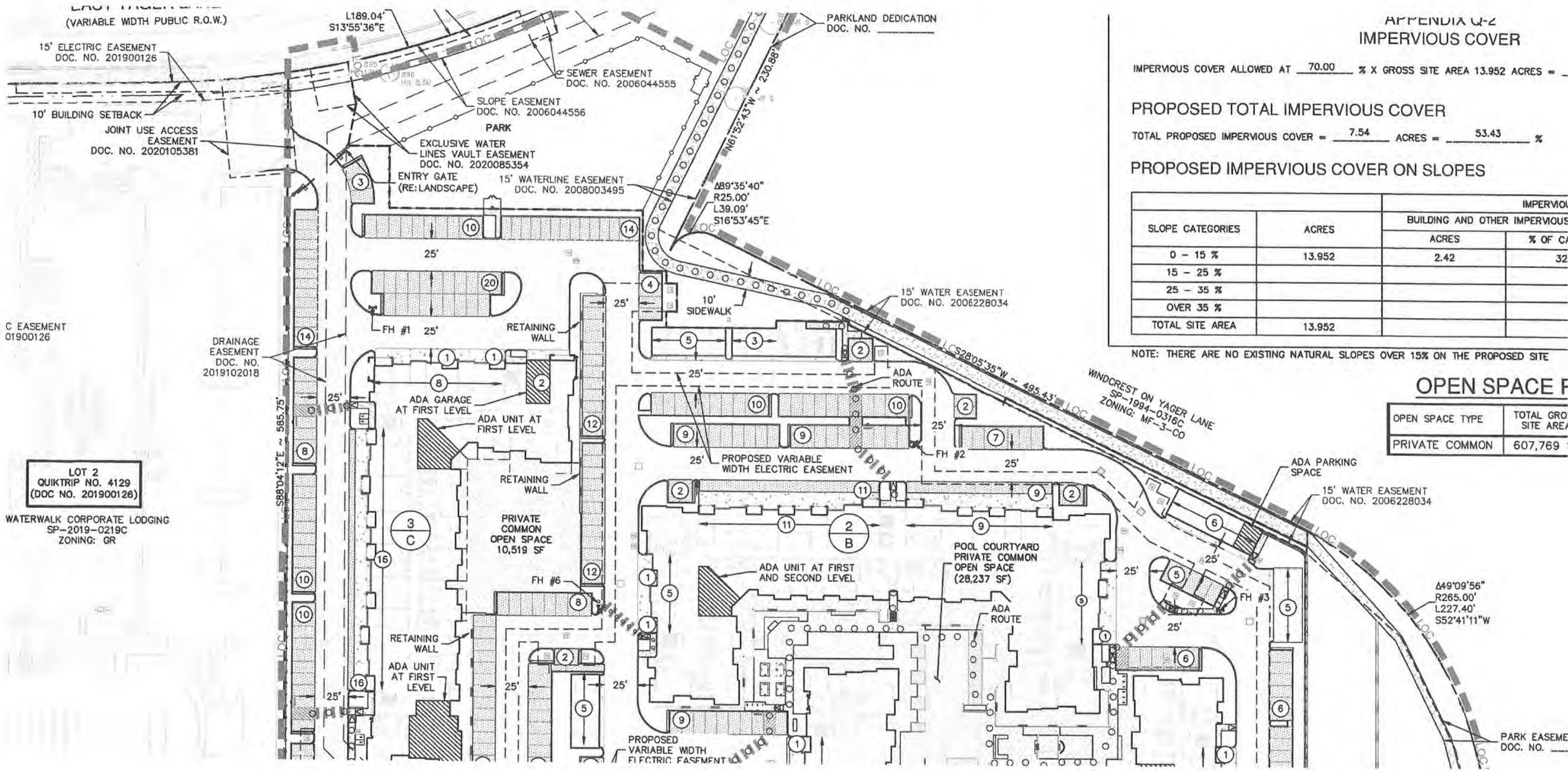
DESIGNER: DLS/KP

CHECKED: DRAWN: JS

SHEET 09 OF 77

Date: Aug 19, 2020, 1:50pm User: D. Jester
File: R:\Projects\2019\001\001\001\001\001.dwg

12217
N IH35



APPENDIX Q-2
IMPERVIOUS COVER

IMPERVIOUS COVER ALLOWED AT 70.00 % X GROSS SITE AREA 13.952 ACRES =

PROPOSED TOTAL IMPERVIOUS COVER

TOTAL PROPOSED IMPERVIOUS COVER = 7.54 ACRES = 53.43 %

PROPOSED IMPERVIOUS COVER ON SLOPES

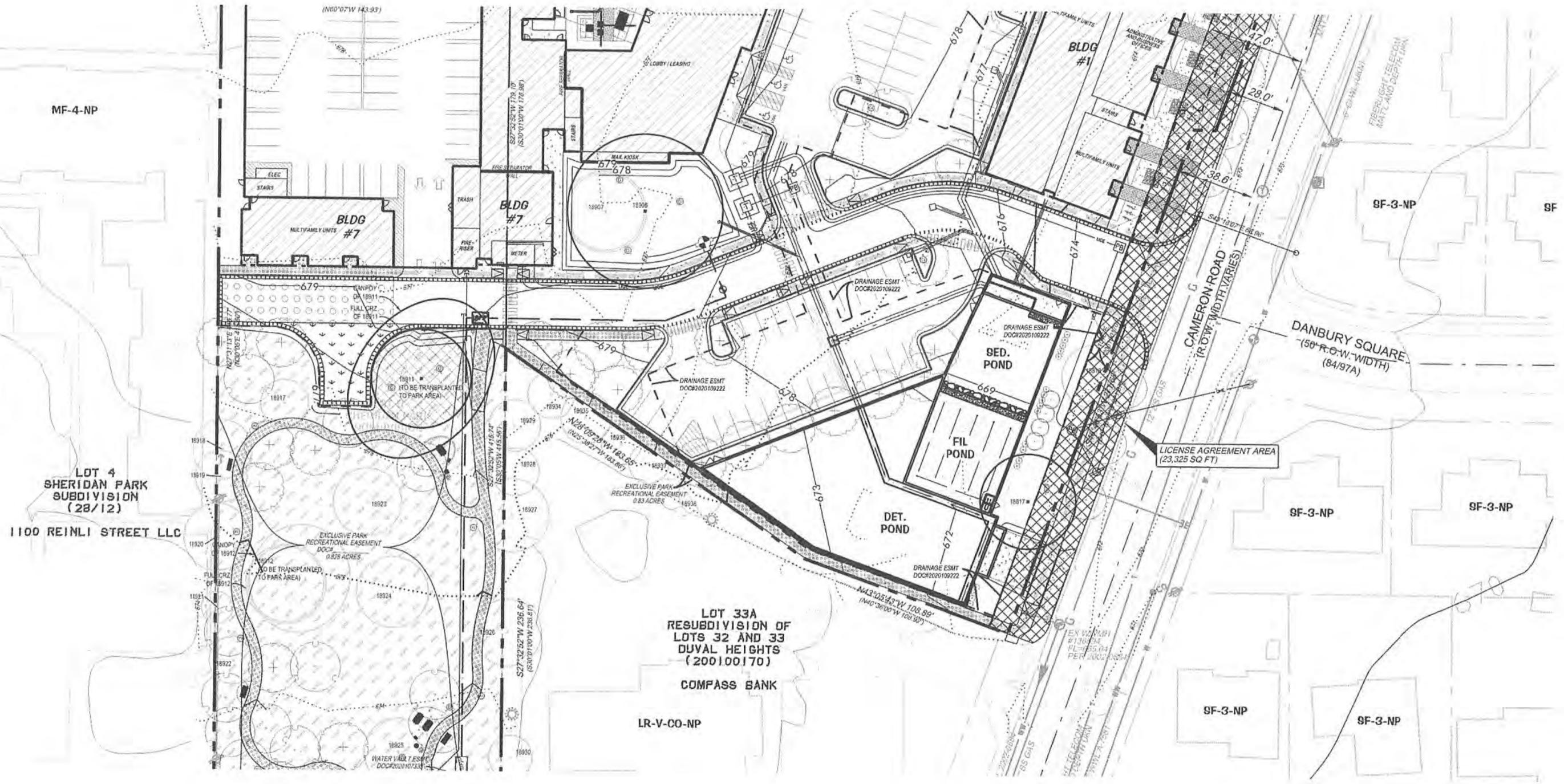
SLOPE CATEGORIES	ACRES	IMPERVIOUS BUILDING AND OTHER IMPERVIOUS	
		ACRES	% OF C/
0 - 15 %	13.952	2.42	32
15 - 25 %			
25 - 35 %			
OVER 35 %			
TOTAL SITE AREA	13.952		

NOTE: THERE ARE NO EXISTING NATURAL SLOPES OVER 15% ON THE PROPOSED SITE

OPEN SPACE F

OPEN SPACE TYPE	TOTAL GROSS SITE AREA
PRIVATE COMMON	607,769

1515 S
LAMAR





AUSTIN FIRE DEPARTMENT

PREVENTION 6310 WILHELMINA DELCO DR. AUSTIN, TX 78752 P:512.974.0160

February 2, 2021

Reference:

4802 S. Congress Ave

SP-2019-600C PARD Public Access Easement

The Austin Fire Department does not object to the use of the "Fire Lane" as an associated dual use easement for a joint access by PARD. Provided the easement and fire lane are constructed as indicated in the approved plan without modification. Austin Fire requires that language be added to easement indicating that at no time, can the fire lane be altered or obstructed in any manner.

Division Chief

Thomas J. Vocke

City of Austin Fire Marshal

PAUL T. MORIN

A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

911 Ranch Rd. 620, Ste. 204
AUSTIN, TEXAS 78734

TELEPHONE
(512) 499-8200
FAX (512) 499-8203

Paul T. Morin: *BOARD CERTIFIED – Civil Trial Law*

February 8, 2021

Mike McHone
Applicant for Congress 4802, LLC

via email: 1

RE: 4802 S. Congress, SP-2019-0600C PARD Public Access Easement
Liability analysis of a Public Access Easement on a 225 ft. long, 25 ft. wide
Driveway/Fire Lane in a 125 unit condo project—**The Wilder**

Dear Mr. McHone:

In connection with your work for the land/project owner, **Congress 4802, LLC**, for The Wilder condominium project (new construction) located at 4802 S. Congress, Austin, Texas, you have asked for an analysis of the landowner's liability arising from the use by the general public of a public access easement that the City of Austin Parks and Recreation Department is requiring the landowner to grant on this 125 unit condo project's 225 ft. long, 25 ft. wide Driveway/Fire Lane in order to give the general public access to the Williamson Creek Greenbelt. It is my understanding that you will share this analysis with the City of Austin Planning Commission.

It is my understanding that in your meeting with the Parks and Recreation Board on January 26, 2021, the Board (and/or staff and/or City legal staff), in response to your concerns about the public access easement creating liability for the landowner to the general public, mentioned that the Texas Recreational Use Statute would protect the landowner. Consequently, on behalf of the landowner, you have asked me for this analysis.

The Texas Recreational Use Statute and the case law:

Texas Civil Practice Remedies Code Chapter 75 discusses limitations on a landowner's liability arising from a third party's recreational use of the landowner's property (the **Texas Recreational Use Statute** or "RUS"). Specific to this discussion, sections 75.002 and 75.003 pertain to the private, non-agricultural land that is used for recreational purposes. The RUS defines recreational activity broadly, including hunting, fishing, swimming, boating, camping, hiking, exploring, bicycling, dog-walking, and "pleasure driving", among other activities. Additionally,

soccer,¹ diving,² and playing on playground equipment³ have been held to be recreation within the meaning of the statute.

Under the Texas RUS, a landowner who gives permission for others to enter their property for recreational purposes does not assure that the property is safe and does not owe their guest any greater duty than they would owe to a trespasser. Similarly, the landowner cannot be held liable for any injuries that are caused by the guest while on their property.

However, if someone is injured on another's property, and their injury was due to the landowner's gross negligence, bad faith, or intentional conduct, then the RUS will not bar the accident victim's recovery. This exception can apply in situations where a landowner knows about a dangerous hazard on their property but fails to act to correct the hazard.

While the Texas RUS can present a problem for some injury victims, there are many ways to get around its application because of a landowner's various duties in certain situations, such as the duty to warn, the duty to make safe, and the duty to inspect.

Under the common law, a person who visits for recreational purposes with consent of the owner would be classified as a licensee or invitee, meaning the owner has a duty to warn or make safe dangerous conditions, and in the case of invitees, a duty to inspect for the presence of dangerous conditions. The RUS raises the burden of proof for recreational users by **requiring proof of gross negligence, willful or wanton acts, malicious intent, or bad faith on the part of the owner.**

Although the statute provides that a landowner does not owe a duty of care to recreational visitors,⁴ nevertheless, a landowner who fails to warn or make safe hidden dangers may be guilty of gross negligence. In the case of *State v. Shumake*,⁵ a young girl tubing the river in a state park was swept into a submerged culvert and drowned. The landowner was aware that other people had nearly drowned at the same spot. The plaintiffs alleged that because the danger was hidden to the public and known to the landowner, the owner was grossly negligent in not warning them or eliminating the danger. The court defined "gross negligence" as used in the RUS to be the traditional, commonly accepted meaning of the term: An act or omission involving subjective awareness of an extreme risk of serious injury or death, indicating conscious indifference to the

¹ *Garcia v. City of Richardson*, 2002 WL 1752219 (Tex. App. — Dallas 2002, rev. den., not designated for publication).

² *Howard v. East Texas Baptist University*, 122 S.W.3d 407 (Tex. App. — Texarkana 2003).

³ *City of Bellmead v. Torres*, 89 S.W.3d 611 (Tex. 2002); *Kopplin v. City of Garland*, 869 S.W.2d 433 (Tex. App. — Dallas 1993, writ den.); *Flye v. City of Waco*, 50 S.W.3d 645 (Tex. App. — Waco 2001).

⁴ Civ. Prac. & Rem. Code Sec. 75.002.

⁵ *State v. Shumake*, 199 S.W.3d 279 (Tex. 2006).

rights, safety, or welfare of others. The court held that failure to warn of a hidden, dangerous artificial condition can constitute gross negligence when the landowner is aware of both the presence of visitors and the hidden danger. Therefore, it was proper for the trial court to deny the state's motion that attempted to dismiss the case on sovereign immunity grounds.

Similarly, in *City of Houston v. Cavazos*, the court held the city was grossly negligent for not warning the public of a hidden drop off at a concrete slab in a popular fishing spot on land controlled by the city.⁶

In *City of Waco v. Kirwan*,⁷ the city had constructed a low wall obstructing access to a cliff in a city park and posted signs reading "For your safety do not go beyond wall." A college student proceeded past the wall and past the signs and was sitting on the edge of the cliff when the ground gave way beneath him and he fell to his death. The court held that under the RUS a landowner does not generally owe a duty to visitors to protect or warn against the dangers of natural conditions on the land. In this case, because the dangers of the cliff were open and obvious, the city had no duty to warn or protect park visitors against them or otherwise refrain from gross negligence with respect to the cliff. However, the court expressly left open the possibility that a landowner may have some duty of care when the landowner knows of a hidden and dangerous natural condition in an area frequented by recreational users, the landowner is aware of deaths or injuries related to that condition, and the danger is something a reasonable recreational user would not expect to encounter on the property. This is very similar to the standard announced by the court in *Shumake* for manmade hazards.

The court also issued a reminder that a duty may be imposed on a landowner who has undertaken affirmative acts to make a natural hazard safe, and negligently carried out that undertaking.⁸

Attractive Nuisance. The attractive nuisance doctrine is intended to protect children who are too immature to appreciate the dangers presented by manmade objects or conditions. A place or object may be an attractive nuisance to a preschooler, but not to a teenager, due to the different levels of maturity.⁹ The attractive nuisance doctrine does not apply to naturally occurring hazards, such as rivers and trees. An object need not be attractive or a nuisance in the usual sense of the words to qualify as an attractive nuisance. When an attractive nuisance exists, the landowner must take reasonable steps to locate dangerous artificial conditions and eliminate the danger or otherwise protect children. In order to establish liability under the attractive nuisance doctrine, a

⁶ *City of Houston v. Cavazos*, 811 S.W.2d 231 (Tex. App. — Houston 14th 1991 writ dismissed).

⁷ 298 S.W.3d 618 (Tex. 2009).

⁸ See also *Wilson v. Tex. Parks & Wildlife Dept.*, 8 S.W.3d 634 (Tex. 1999). (Department installed flood warning sirens, which failed to alert the decedents of a flood.)

⁹ Compare *Banker v. McLaughlin*, 208 S.W.2d 843 (Tex. 1948) to *Massie v. Copeland*, 233 S.W.2d 449 (Tex. 1950) (flooded sand pits).

four-part test must be met: 1) The child, because of age, cannot realize or appreciate the dangerous condition; 2) The landowner knew or should have known that children frequented the area;¹⁰ 3) The landowner knew or should have known that the dangerous condition presented an unreasonable risk of death or serious injury to children; and 4) The benefit to the landowner from the dangerous condition was slight, compared to the probability of injury to children.¹¹ The RUS eliminates the doctrine of attractive nuisance but only as to trespassers on agricultural land that are over the age of 16.¹² The attractive nuisance doctrine is still in effect as to all other child trespassers, which would apply to the easement on The Wilder condo property and to the city-owned Williamson Creek Greenbelt parkland.¹³

How does the above statutory and case law discussion apply to this case?

There are safer alternatives for parkland access given the existence of land on the west side of Williamson Creek that cannot be built upon for residential or commercial purposes, but that can be acquired with fee payments in lieu of parkland dedication.

Forcing the public to walk in a driveway, that is also a fire lane, in order to access parkland is an accident waiting to happen. Consider this scenario: Two members of the public—child and parent—who are not residents in the Wilder project, walking down the subject driveway to get to the park, child breaks free from parent’s grasp and darts in front of moving vehicle whose driver does not have time to react to avoid hitting the child because of the suddenness of the child’s movement and the close proximity of the vehicle proceeding along the driveway. Parent files a lawsuit against landowner (either the current landowner or the future condo association depending on date of accident) for the child’s injuries (or worse, death). Even if landowner might have defenses, the landowner is still embroiled in costly litigation. Even if landowner has liability insurance that covers such claim, the landowner’s future insurance premiums will increase with every incident of this nature (to say nothing of the increased insurance premium in the first year because of this additional risk existing on the property). In this lawsuit, the parent also sues the City of Austin for requiring a dangerous access to the parkland, especially when a safer alternative access can be provided on the west side of Williamson Creek. And what will be this plaintiff’s exhibit #1 against the City? All of the records concerning this public access easement discussion between the landowner and the City, including this letter (and other landowner submittals to the

¹⁰ Compare *Burk Royalty Co. v. Pace*, 620 S.W.2d 882 (Tex. Civ. App. — Tyler 1981) to *Vista Petroleum Co. v. Workman*, 598 S.W.2d 721 (Tex. Civ. App. — Eastland 1980) (oilfield pumping units).

¹¹ *Texas Utilities Electric Co. v. Timmons*, 947 S.W.2d 191 (Tex. 1997).

¹² Civ. Prac. & Rem. Code Sec. 75.003(b)

¹³ I wish to thank Boyd Kennedy for a significant part of the above discussion on case law authorities and the attractive nuisance doctrine. See his Texas Bar Journal article, *Landowner Liability for Recreational Activities*, (May 2010), at:

www.texasbar.com/AM/Template.cfm?Section=Home&Template=CM/ContentDisplay.cfm&ContentID=9395

City) warning the City of the dangers of this particular public access and advising the City of safer alternative access to the parkland.

Providing warning signs along the public access easement/fire lane might provide some sort of defense to the landowner and the City, but who is going to pay for the signs, for the installation of the signs, and for the future maintenance of the signs?

When one looks at the nature of the different uses of the driveway, the heightened liability risk to the landowner from this proposed Public Access Easement becomes more apparent. The use of the driveway as a driveway by the condo owners is a far different and lesser liability risk to the landowner than the continual, repeated use by the general public walking in the driveway, dodging two-way vehicular traffic.

The Fire Lane issue:

As if the concept of a driveway being used by the pedestrian general public does not itself raise a host of liability concerns, there is the added complication of the driveway being designated as the fire lane for the condo project. The letter of February 2, 2021 from the City of Austin Fire Marshal (included in your package) raises more questions than it answers. The Marshal states that “at no time can the Fire Lane be altered or obstructed”. Who has the authority to remove an obstruction? Can the landowner (current or future) enforce and physically have an “obstruction” removed from the Fire Lane, or, if it is also a Public Access Easement, would the police be required to do any and all enforcement?

CONCLUSION:

Simply put, the requirement that a driveway be used by the pedestrian general public raises grave landowner liability issues (and potential liability issues for the City of Austin) and is not something that I would recommend as a solution to the problem of public access to the Williamson Creek Greenbelt, particularly given the availability of a safer alternative for public access that exists across the creek from The Wilder project.

Sincerely,



Paul T. Morin