

**APPEAL TO
PLANNING COMMISSION
PARKLAND REQUIREMENT
REVIEW SHEET**

CASE NUMBER: SP-2019-0600C **Parks Board:** January 26, 2021
Planning Commission: February 9, 2021 postponed
March 9, 2021, postponed
March 23, 2021

CASE NAME: Wilder

DISTRICT: 3

ADDRESS: 4802 South Congress Avenue

ZONING: CS-MU-CO-NP

APPELLANT: Mike McHone
APPLICANT: Rivera Engineering (Michael Rivera)
OWNER: 4802 LLC (Mitch Ely)

**NEIGHBOR-
HOOD**

PLAN: South Congress Combined (West Congress Neighborhood)

PARKS AND RECREATION BOARD ACTION:

January 26, 2021: Board Member Mason-Murphy made a motion to recommend to the Planning Commission to deny the applicant's request to pay fee in lieu of land dedication for 4802 S. Congress (SP-2019-0600C) and uphold staff's recommendation for the dedication of parkland; Board Member Morgan seconded the motion. The motion passed on a vote of 9-1 with Board Member Luca voting nay and Vice Chair Farasat absent.

PLANNING COMMISSION ACTION:

February 9, 2021: Commissioner Seeger made the motion to postpone the item to March 9, 2021 at the request of the neighborhood; Commissioner Azar seconded the motion. The motion passed on a vote of 11 – 0.

March 9, 2021: Commissioner Howard made the motion to postpone the item to March 23, 2021 at the request of the neighborhood; Commissioner Seeger seconded the motion. The motion passed on a vote of 10 – 0.

To be heard on March 23, 2021.

PROPOSED DEVELOPMENT:

The applicant is proposing to construct 125 multifamily units in a multi-story building with an underground multi-level parking garage, driveway to South Congress Avenue, on-site storm water quality and detention pond, and site utilities.

APPEAL REQUEST:

The Appellant filed an appeal of the Parks and Recreation Department (PARD) decision to require land for this site plan, and requested to pay fee in lieu. This action is described in Land Development Code 25-1-605 (F); the appeal is to the Planning Commission, who will make the final decision. The case has already been heard by Park and Recreation Board, and a recommendation made (see above).

SUMMARY STAFF RECOMMENDATION:

Staff recommends upholding PARD's original requirement to dedicate land as part of this site plan; and denial of the applicant's request to pay fee in lieu.

The criteria for the decision of whether to require land vs. fee in lieu are listed in 25-1-605.

(B). In determining whether to require dedication of land under Section 25-1-602 (Dedication of Parkland) or allow payment of a fee in-lieu of dedication under this section, the director shall consider whether the subdivision or site plan:

- (1) is located within the Deficient Park Area Map;
- (2) is adjacent to existing parkland;
- (3) has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;
- (4) is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map; or
- (5) would provide increased connectivity with existing or planned parks or recreational amenities.

These criteria are applied, and responded to below:

- (1) is located within the Deficient Park Area Map.

True - The great majority of the site is located with the Deficient Park Area map, particularly the area that PARD is requiring for dedication. This map is used to indicate the areas where the City is actively trying to acquire parkland, and is public on the City's Property Profile site.

- (2) is adjacent to existing parkland;

True – The site is adjacent to the Williamson Creek Greenbelt. The intent of the criterion is so that existing parkland may be built upon, and additional access provided.

- (3) has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;

True – the standard in the Parkland Dedication Operating Procedures is ¼ acre, and the standard can be met on this site.

- (4) is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map;

True – The parkland would address a critical need for a planned greenbelt in this location, would provide access to the public, and would also remedy the deficiency identified in the map.

- (5) would provide increased connectivity with existing or planned parks or recreational amenities.

True – This parkland would increase connectivity and accessibility (on this section) for the long-planned Williamson Creek Greenbelt, which has recently been added to in the Central section; the long term vision is to provide a greenbelt connection from Oak Hill to Dove Springs and beyond.

Further, the applicant has stated that their primary motivation in making the appeal is that they do not want to allow for public access to the parkland through their site. Public access is an integral aspect of parkland, and is highlighted in several Code sections:

25-1-603 (A)

(1) Parkland must be easily accessible to the public and open to public view so as to benefit area residents, enhance the visual character of the City, protect public safety, and minimize conflicts with adjacent land uses.

(2) On-street and off-street connections between residential neighborhoods shall be provided, wherever possible, to provide reasonable access to parks and open space areas.

14.3.7. (A)

(5) Parkland should be accessible to those in the neighborhood, either by walking or by the provision of parking.

Per Code, public access to the greenbelt is required as part of the site plan. The site at 4802 S. Congress provides the only feasible entry and exit point to this section of the Central Williamson Creek Greenbelt, and will help fulfill the Council goal that a park be within walking distance (1/4 mile) of all residents of Austin. Adjacent sites have steep topography and would not be able to provide accessible entry points to the trail.

In other cases, PARD has required trail access as part of parkland dedication. This access, typically, would be exclusively parkland, dedicated by deed, and would provide pedestrian and maintenance access. Although a separate trail facility, deeded as parkland is seen as ideal, this design would have a large impact on the proposed project, reducing units and parking. In an effort to not impact the development, PARD instead required a public access easement, which achieves the purpose of allowing the public to reach the parkland, and also overlaps and fulfills other City requirements.

Please contact PARD reviewer Scott Grantham with any questions at scott.grantham@austintexas.gov.

SUMMARY COMMENTS ON SITE PLAN:

The 5.5 acre subject property is located along South Congress Avenue and backs up to a bend of Williamson Creek, approximately 0.8 miles south of U.S. Highway 290. The property is the site of a former car lot that is now vacant. The site plan proposes a building towards the front of the property, and the large area to the rear is proposed as open space with private amenities. This section will be fenced off from the parkland that is under discussion in this appeal.

A decision from Planning Commission will allow the applicant to move forward with either dedication of parkland or payment of fee in lieu, following PARD's process for whichever is decided. A decision for parkland dedication will allow the applicant to proceed with an Environmental Site Assessment, survey, and getting assistance from the City's Real Estate group. A decision for fee in lieu will direct PARD to invoice the applicant for the calculated amount.

PROJECT INFORMATION

TOTAL SITE AREA	239,406 square feet	5.496 acres	
EXISTING ZONING	CS-MU-CO-NP		
WATERSHED	Williamson Creek Watershed		
TRAFFIC IMPACT ANALYSIS	Not required		
CAPITOL VIEW CORRIDOR	None		
PROPOSED ACCESS	South Congress Avenue		
	Allowed	Existing	Proposed
FLOOR-AREA RATIO	1:1	0.01:1	0.14:1
BUILDING COVERAGE	80%	1%	14%
HEIGHT	60'	25'	60'
NUMBER OF UNITS	-	0	125

SURROUNDING CONDITIONS (ZONING/ LAND USE)

North: CS-MU-CO-NP / Veterinary Office, Pawn Shop

South: CS-MU-CO-NP / Auto Repair Shop

East: South Congress Ave, then CS-MU-CO-NP / Multifamily

West: P-NP / Williamson Creek Greenbelt

NEIGHBORHOOD ORGANIZATIONS:

Homeless Neighborhood Association

Neighborhood Empowerment Foundation

Austin Neighborhoods Council

Austin Independent School District

Go Austin! Vamos Austin!
South Congress Combined Neighborhood Plan
Battle Bend Springs Homeowners Association
Onion Creek Homeowners Assoc
Preservation Austin
South Austin Neighborhood Alliance (SANA)
Sierra Club, Austin Regional Group
Bike Austin
Friends Of Austin Neighborhoods

CASE MANAGER: Randall Rouda
Senior Planner
Randall.Rouda@austintexas.gov

PARKS AND RECREATION DEPARTMENT STAFF:
Scott Grantham
Principal Planner
Scott.Grantham@austintexas.gov

EXHIBITS:

- A. Slide Presentation
- B. Correspondence with Applicant
- C. Correspondence with Interested Parties

Austin Parks and Recreation Department

Appeal of the Parkland Dedication Requirements for 4802 S. Congress (SP-2019-0600C)

Planning Commission
March 2021

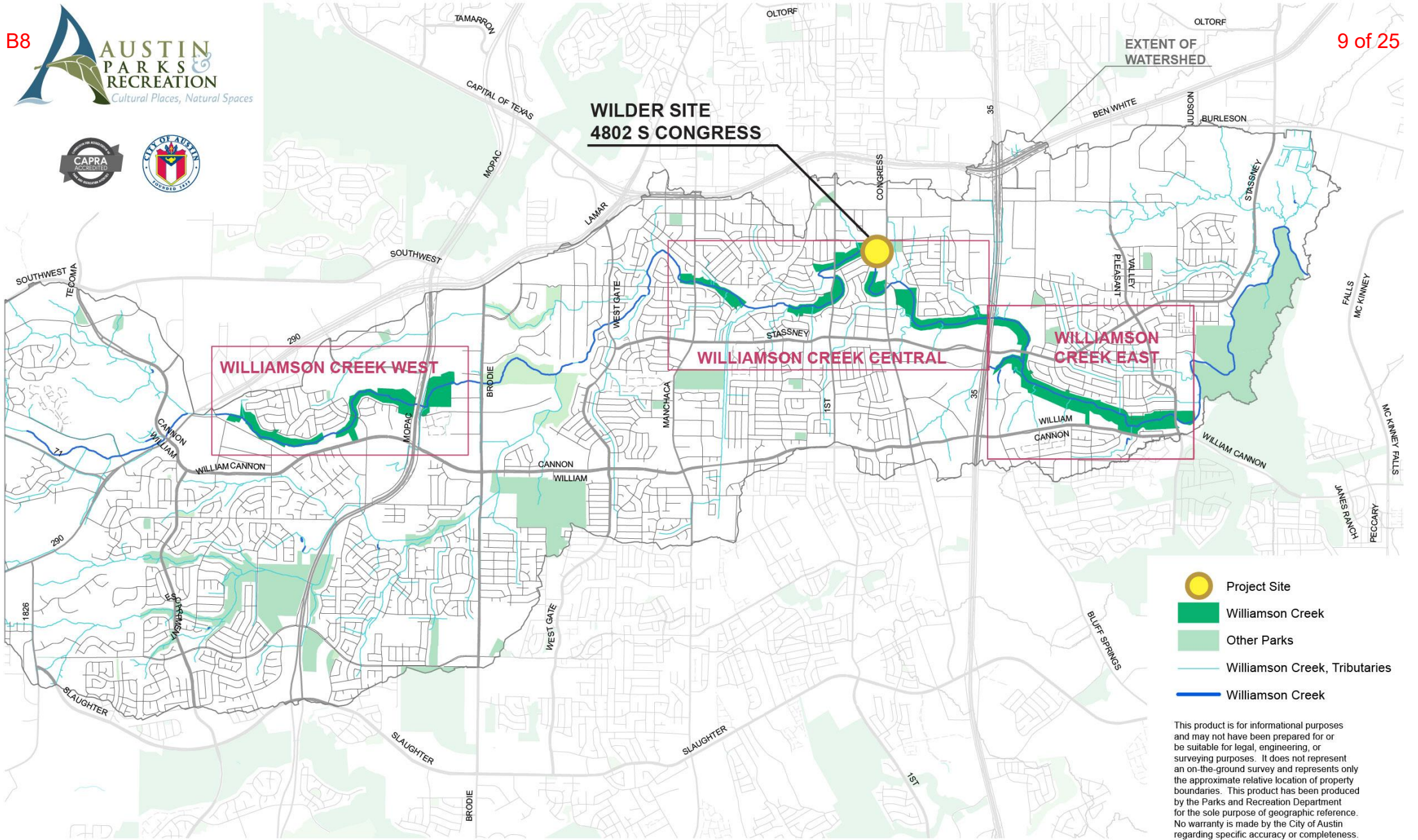
Scott Grantham Principal Planner Parks and Recreation Department

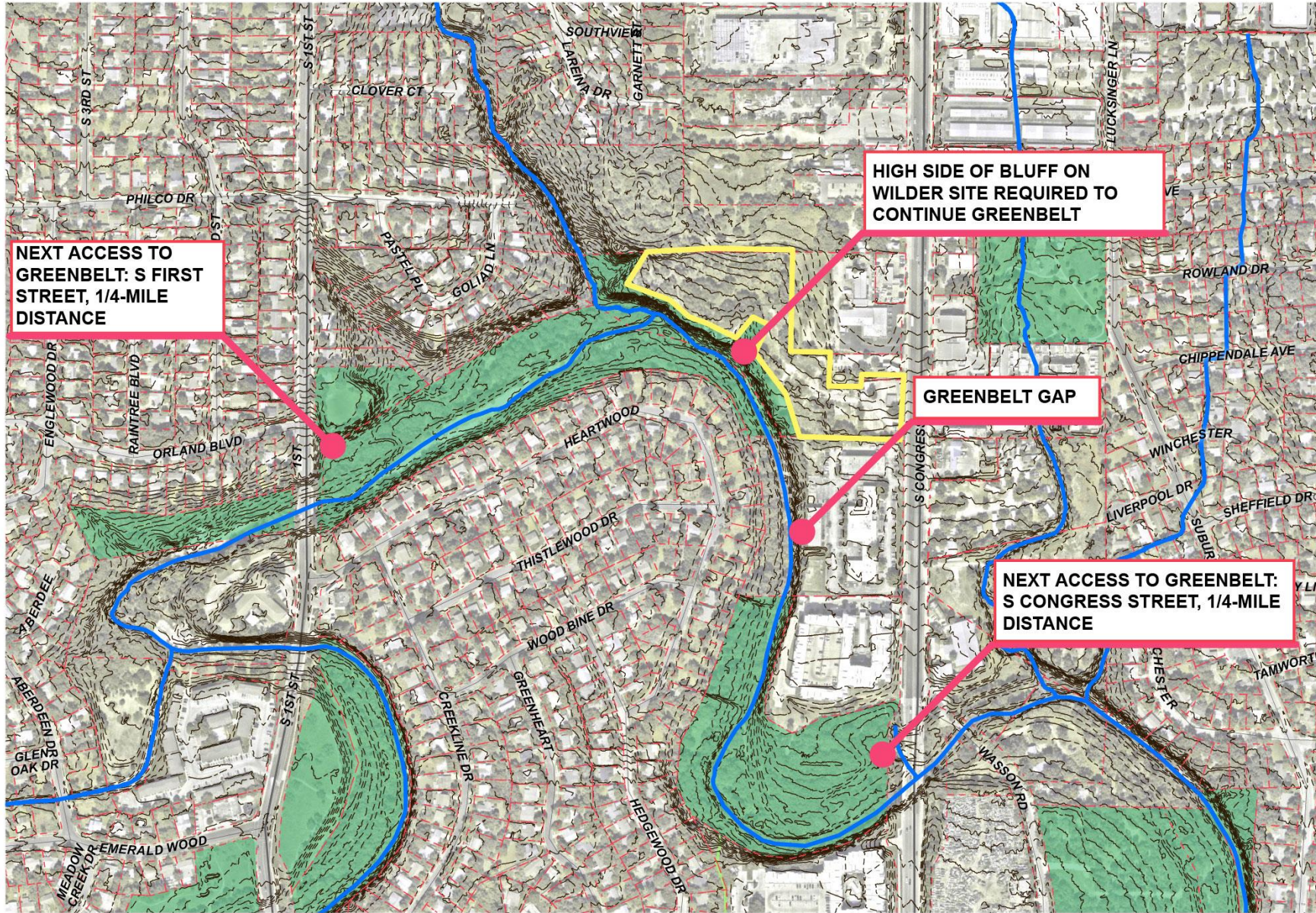
Overview

- Consider an Appeal by an Applicant. **PARD is requiring land dedication. The developer is asking to pay fee in lieu.**
- On Jan 26, 2021, Parks Board heard the item and voted to support PARD's request for land dedication and deny the applicant's request to pay fee in lieu.
- **PARD Recommendation to Planning Commission: Support PARD's request for land dedication and deny the applicant's request, to pay fee in lieu for this site plan.**
 - Code Context
 - Site Plan Context
 - Application of Code Criteria
 - Other Factors
 - Recommendation

Code Context

- City Code 25-1-605 (B) lists **criteria** for PARD's requirement to dedicate parkland vs. pay fee in lieu.
- City Code 25-1-605 (F) indicates that PARD's decision may be **appealed** to Planning Commission, and that PARD shall first present the case to the Parks Board for a recommendation. Applicant has appealed the decision.
- On Jan 26, Parks Board voted to support PARD's requirement and to deny the applicant's request to pay fee in lieu.
- Planning Commission makes the final decision.





- WILDER SITE DEVELOPMENT
- CITY PARKLAND
- CREEK
- 2-FT ELEVATION

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by the Parks and Recreation Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



Application of Code Criteria

City Code 25-1-605 (B)

1. is located within the Deficient Park Area Map;
2. is adjacent to existing parkland;
3. has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;
4. is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map; or
5. would provide increased connectivity with existing or planned parks or recreational amenities.

Based on these criteria, PARD must require land, and does not have the authority to accept fee in lieu.

Application of Code Criteria

City Code 25-1-603 (A) Standards for Dedicated Parkland

“...land to be dedicated must meet the requirements of this subsection.”

(1) Parkland must be **easily accessible to the public** and open to public view so as to benefit area residents, enhance the visual character of the City, protect public safety, and minimize conflicts with adjacent land uses.

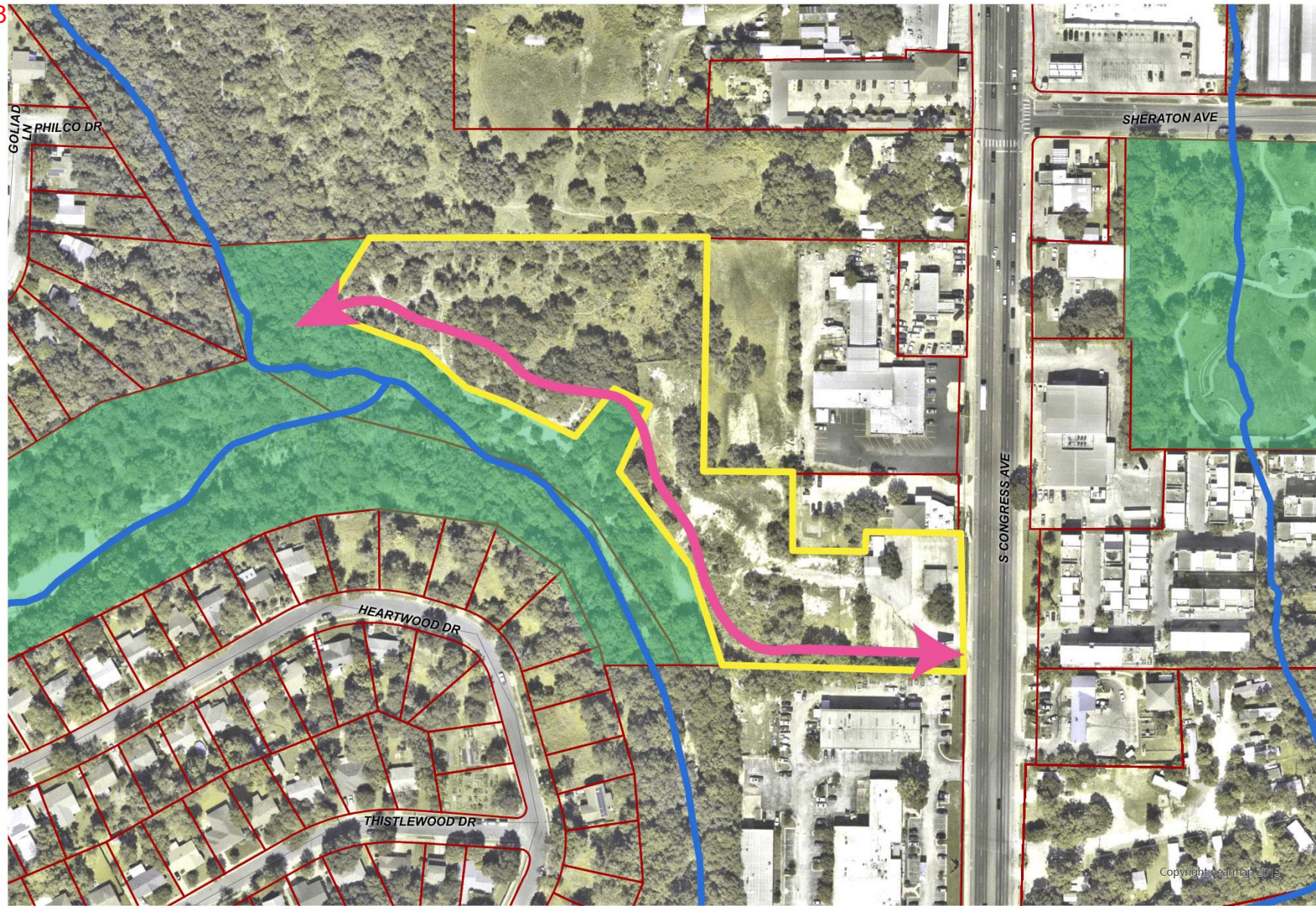
(2) **On-street and off-street connections** between residential neighborhoods shall be provided, **wherever possible**, to provide reasonable access to parks and open space areas.

Application of Code Criteria

PDOP Supplemental Park Design Standards 14.3.7.A:

- (1) The interior of a park should be visible from an existing or proposed public right-of-way. Exceptions to the recommended frontage may be acceptable to accommodate ...; **a park that serves mainly as a greenbelt;....**
- (5) Parkland should be accessible to those in the neighborhood, either by walking or by the provision of parking.

Parkland should be accessible to the public. In order to achieve that, it must be connected to the ROW.



- PROPOSED TRAIL
- WILDER SITE DEVELOPMENT
- CITY PARKLAND
- CREEK

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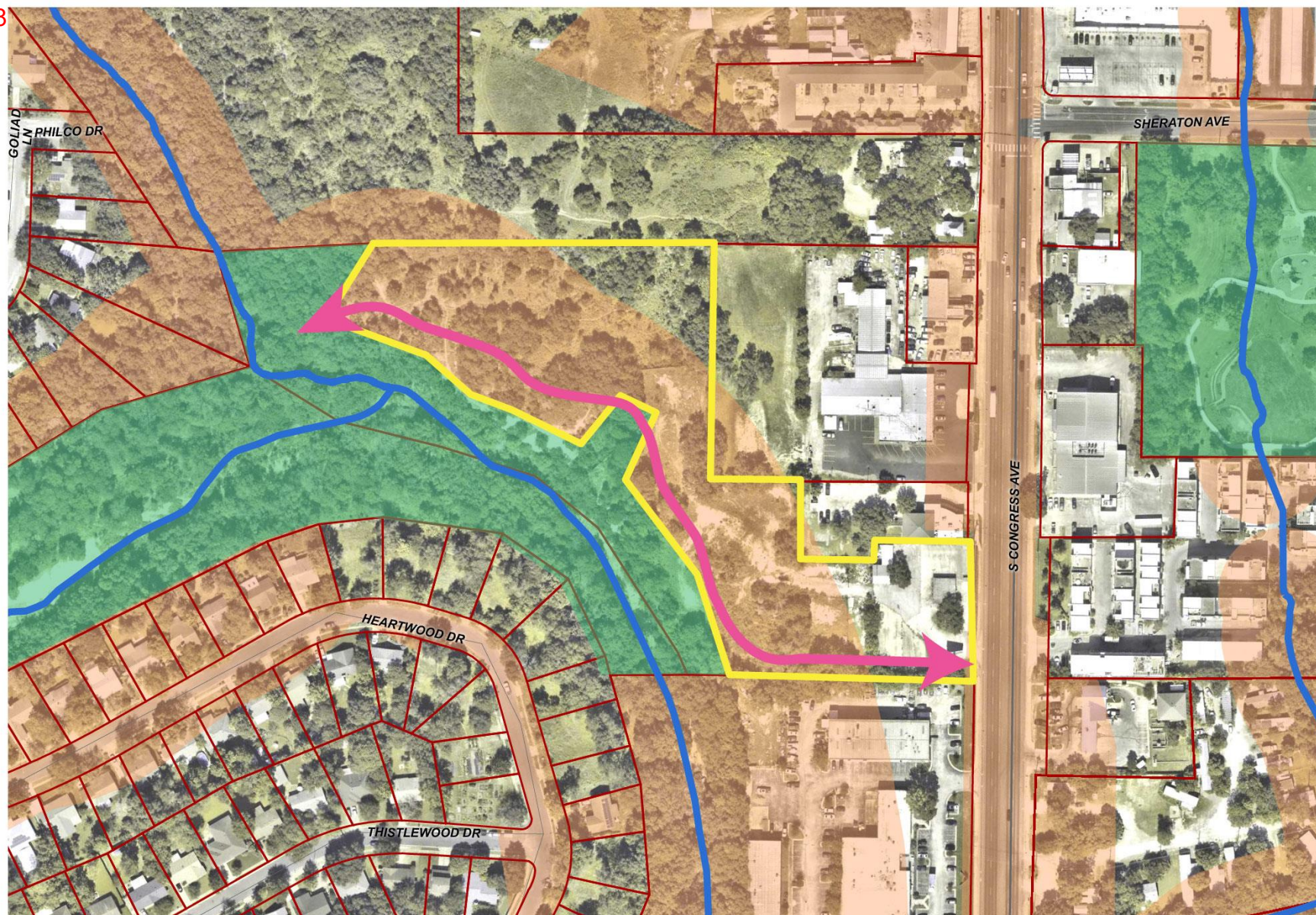


-  PROPOSED TRAIL
-  WILDER SITE DEVELOPMENT
-  CITY PARKLAND
-  PARK DEFICIENCY
-  CREEK

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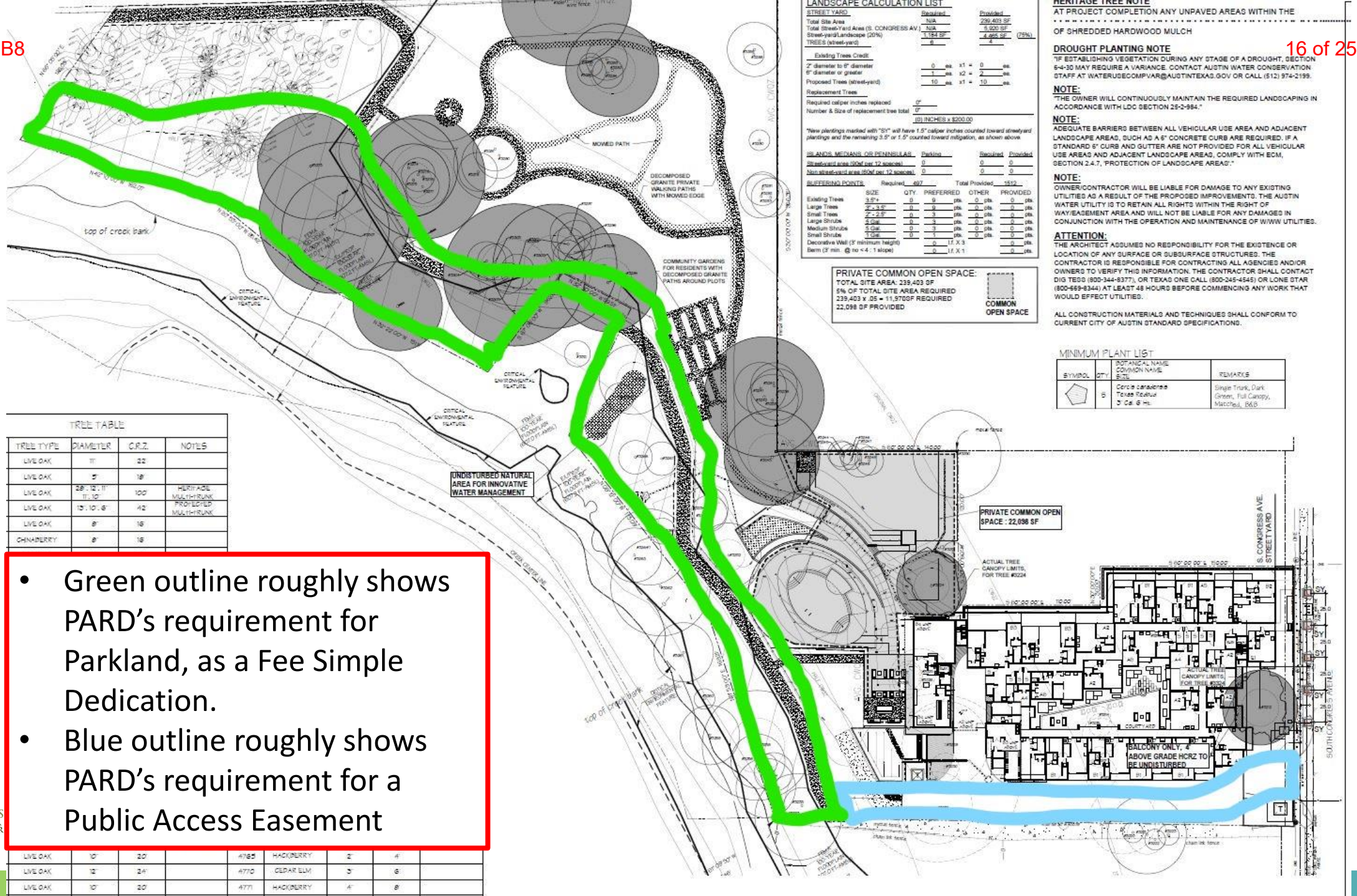
B8



WILDER DEVELOPMENT Parkland Concept



B8



16 of 25

- Green outline roughly shows PARD's requirement for Parkland, as a Fee Simple Dedication.
- Blue outline roughly shows PARD's requirement for a Public Access Easement

Other aspects

- Fire Lane: “This easement is acceptable to AFD, provided that one sentence be changed to indicate that there shall be no modifications to the fire lane in the future.” – Constantino Mendoza, Austin Fire Department
- Urban Trails Master Plan – Identified as a Tier II Trail; emphasizes connections to public sidewalks. Sidewalks + Urban Trails = Complete Pedestrian Network.
- Central Williamson Creek Greenway Plan – community engagement resulting in recommendations for accessibility and connectivity.
- Previous parkland donation occurred in 1977, prior to any Parkland Dedication Ordinances, and unrelated to this residential site plan.

Similar Cases

- **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.

PARD Recommendation

- Recommend to support PARD's request for land dedication and deny the applicant's request to pay fee in lieu of land dedication for 4802 S. Congress (SP-2019-0600C).

Grantham, Scott

From: Mike McHone <mchone1234@sbcglobal.net>
Sent: Thursday, December 3, 2020 10:47 AM
To: Grantham, Scott
Cc: Scott, Randy; 'Mike McHone'
Subject: 4802 S Congress; SP 2019-0600 C

Follow Up Flag: Follow up
Flag Status: Flagged

*** External Email - Exercise Caution ***

Dear Mr. Grantham,

This email shall serve as the required notification of the above project's request for the payment of a "Fee-in-Lieu" payment as compliance with the Parkland Dedication requirement. This site is very irregular with most of the property located behind existing lots on Congress Ave. and adjacent to the existing Williamson Creek Greenbelt. This project's frontage on Congress is limited and this is the only buildable area.

LDC 25-1-603 (A) (1) & (2) requires public accessibility and public view; and on and off street connections between residential neighborhoods to be provided whenever possible to provide reasonable access.

This project cannot meet these requirements and is therefore requesting the fee-in-lieu option as provided by the LDC.

Best regards,

Mike McHone, authorized agent

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

January 8, 2021

Michael McHone
Authorized Agent
mchone1234@sbcglobal.net

Dear Mr. McHone:

The Parks and Recreation Department (PARD) is in receipt of your December 3, 2020 request to pay a fee in lieu of dedicating parkland in connection with the pending site plan for the property located at 4802 S. Congress Avenue (Wilder SP-2019-0600C) (the "Site Plan") This letter serves as a denial of your request.

City Code § 25-1-605 governs the Parks and Recreation Department's (PARD) determination of whether to allow payment in fee in lieu of the dedication of parkland. Specifically,

(A) The director [of PARD] may require or allow a subdivision or site plan applicant to deposit with the City a fee in-lieu of parkland dedication under Section 25-1-605 (*Dedication of Parkland*) if:

(1) the director determines that payment of a fee in-lieu of dedication is justified under the criteria in Subsection (B) of this section; and

(2) the following additional requirements are met:

(a) less than six acres is required to be dedicated under Section 25-1-602 (*Dedication of Parkland*); or

(b) the land available for dedication does not comply with the standards for dedication under Section 25-1-603 (*Standards for Dedicated Parkland*).

Because the land to be dedicated is less than six acres, the Site Plan satisfies the requirements of § 25-1-605(A). Therefore, the question is whether it also satisfies the requirements of § 25-1-605(B):

(B) In determining whether to require dedication of land under Section 25-1-602 (*Dedication of Parkland*) or allow payment of a fee in-lieu of dedication under this section, the director shall consider whether the subdivision or site plan:

(1) is located within the Deficient Park Area Map;

- (2) is adjacent to existing parkland;
- (3) has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures;
- (4) is needed to address a critical need for parkland or to remedy a deficiency identified by the Deficient Park Area Map; or
- (5) would provide increased connectivity with existing or planned parks or recreational amenities.

With regard to the Site Plan, the answer to each of these criteria is “yes”: the Site Plan is located within the Deficient Park Area Map; is adjacent to existing parkland; has sufficient acreage to meet the standards for dedicated parkland under the Parkland Dedication Operating Procedures; is needed to address a critical need for parkland or to remedy a deficiency; and would provide increased connectivity with existing or planned parks or recreational amenities. In sum, none of the criteria justifies a decision by PARD to allow payment of a fee in lieu as to this Site Plan, and PARD thus does not have the authority to allow such payment. Rather, the only thing that the Code authorizes PARD to do is to require the dedication of parkland.

Please be advised that you are entitled to appeal PARD’s decision deny your request to pay a fee in lieu:

If the director rejects a request to pay a fee in-lieu of dedication under Subsection (B) of this section, the applicant may appeal the director's decision to the Land Use Commission consistent with the procedures in Article 7, Division 1 (*Appeals*) of this chapter. Before the Land Use Commission considers the appeal, the director shall present the case to the Parks Board for a recommendation, but failure by the Parks Board to act shall not prohibit the Land Use Commission from considering the appeal.

City Code § 25-1-605(f). The appeals procedure that both parties must follow is set forth in §§ 25-1-181 through 25-1-192. Please note that § 25-1-182 provides that you have 20 days from the date of this letter to initiate an appeal and § 25-1-183 describes the information you must include in your appeal.

Best regards,



Scott Grantham, PARD, Principal Planner
Cc: Randal Scott, PARD, Program Manager

Notice of Appeal of Administrative Decision of "payment of Fee-in-Lieu of Parkland for 4802 S. Congress Ave; SP-2019-0600C as notified by letter dated 1/8/2021 from Parks and Recreation Dept. (PARC)

Per Land Development Code (LDC) 25-1-183:

I (Michael R. McHone) am the authorized representative for the above referenced project also known as (Wilder). The required information for this appeal of this administrative decision is as follows:

1. Michael R. McHone (mike McHone Real Estate)
P. O. Box 8142
Austin, TX 78713-8142
Phone: 512-554-8440
2. Wilder (project name)
4802 S. Congress
3. Denial of Fee-in-Lieu of Parkland (LDC 25-1-605)
4. Administrative letter of 1/8/2021
5. Consultant retained to negotiate PARC issues.
6. Reasons appellant (McHone) believes the decision does not comply with the requirement of this title:
 - a) A Deficient Park Area Map was not provided; however, the attached Tax map (TCAD) was submitted with the application indicating park land near the site. (See exhibit 1)
 - b) Additional dedication of land is not the issue as much of the site is in the critical water quality zone of Williamson Creek. The project cannot reasonable comply with the Public Access Easement (LDC 25-1-603 (A) (1), (2)). The site is very irregular the buildable area is too limited in size, shape, and street frontage to be an acceptable Public Access easement.
PARC has stated that the easement maintenance will be a project expense and responsibility. PARC has not been able to provide and liability insurance indemnifying Wilder from any accident or claim arising from an "incident" that might occur in the Public Access Easement that PARC is proposing. PARC proposes to use the narrow driveway to the required off street parking garage which is also the require Fire Lane for the Public Access Easement: Wilder believes such a Public Access Easement places an unacceptable liability on the project and the subsequent condominium owners.
 - c) The site has sufficient acreage for partial dedication which PARC will accept along with a cash payment for the balance. As stated in (b) the disagreement is the Public Access Easement. Historically the Wilder site donated 2.4 acres of land in exchange for rezoning the property. These 2.4 acres established an original segment of the Williamson Creek Greenbelt.
 - d) As stated in (a) the applicant has not seen any "official" PARC map identifying this area as "Parkland Deficient".
 - e) The connectivity will not be increased as the proposed dedication will simply add width to the previously gifted 2.4 acres. (See exhibit 2) Connectivity currently exists along Williamson Creek to the north and west all the way to South First Street. An additional 9 acres was dedicated by anew project to the south which extend all the way to S. Congress and Ramble Lane.

This letter shall serve as our request to appear at a public hearing of the City of Austin Parks Board on January 26, 2021.

Respectfully,

A handwritten signature in blue ink, appearing to read "Michael R. McHone".

Michael R. McHone, Authorized agent



Additional backup may be found at the following link:

http://www.austintexas.gov/cityclerk/boards_commissions/meetings/40_1.htm