

Opposition to Case C814-2021-0099, Brodie Oaks PUD
AFFORDABLE HOUSING AGREEMENT AND PUD BONUS CALCULATIONS

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Over the three years that ZNA has been aware of this case, the affordable housing component has always come up at the end of the discussion, when everybody is ready to go home. If affordable housing is the Planning Commission's and City Council's top priority, however, the PUD requirements for affordable housing really should be examined more closely.

Last week, staff did not address Commissioner Schneider's question about "the 10 percent standard in typical bonus programs." They simply stated that the package met superiority. If the applicant did intend to develop on-site affordable units at the 10% standard, the PUD would be incorporating 170 affordable units (10% of 1,700) onsite, in addition to contributing an \$8.6 million fee-in-lieu to cover the nonresidential bonus area. Also, it should be noted that the new standard for bonus height programs is 12% of units (in this case 204 affordable units). Please ask staff to explain how the value of the land under an unfunded future affordable housing complex of only 100 units can be higher than the value of 170 affordable units onsite and a cash contribution of \$8.6 million to NHCD that could be used to support projects offsite immediately.

The "stand-alone" affordable apartment building offered in the Brodie PUD is not a gift, and it is not even a reliable commitment. To make a long story short, Austin cannot rely on speculative rezoning agreements to provide affordable housing in the short-term. The history of the tiny PUD at Riverside and South Lamar (Taco PUD) is instructive.

TACO PUD COMPARISONS

To summarize:

In 2013, when the Taco PUD consisted of a 175-unit luxury condo project on less than an acre, a vaguely defined fee-in-lieu of less than \$500,000 was deemed superior as an affordable housing contribution. The PUD ultimately delivered no housing and no fee-in-lieu.

In 2019, a fee-in-lieu of \$1.2 million was calculated for a redesigned PUD on the same site, with 108 hotel rooms and 27 luxury condos; plus, a direct, immediate cash donation was made to a deeply affordable 110-unit permanent supportive apartment project about one mile away from the PUD site. Construction on the nonprofit project began almost immediately, followed closely by the PUD hotel project, delivering \$3.7 million to Austin's affordable housing program.

2013 Taco PUD ordinance

The Affordable Housing section of the 2013 PUD ordinance for 1211 W. Riverside (211 S. Lamar) reads:

"PART 9. Affordable Housing Program.

The project will comply with the requirements for affordable housing options in accordance with the established PUD regulations. Participation will be provided by either providing on-site units or by paying a fee-in-lieu. The fee-in-lieu will be \$6 for each square foot of bonus square footage above the basehne. The baseline shall include F.A.R. that could be achieved under the existing zoning and existing applicable site development regulations, including additional F.A.R. that may be granted under Section 25-2-714 (Additional Floor Area). If rental housing is provided, dwelling units equal to at least 10 percent of the bonus area square footage within the PUD must be affordable. If owner occupied housing is provided, dwelling units equal to at least 5 percent of the bonus area square footage within the PUD must be affordable. Payment of the fee-in-lieu will be made prior to the site

plan being released. If the site plan is revised to increase square footage, the project will have to pay additional fees for the additional square footage above baseline.”

Note that the fee rate was locked in at a very low \$6 per square foot of bonus area, and the size of the bonus area was slashed by requiring that the baseline include “additional F.A.R. that may be granted under Section 25-2-714.” Because PUD fees were tied to permit approvals, the baseline FAR and the bonus square footage were not estimated, and the public never had the opportunity to compare the value of housing provided in a VMU project with the housing that would be expected from the PUD project. We were told that the fee-in-lieu would work out to something between \$250,000 and \$500,000. My own estimate, with incomplete data, was \$414,000.

Six years later, no site plan had been submitted, no market or affordable housing had been built, and no fees had been paid--demonstrating that the minimum affordable housing requirement under a typical PUD is, essentially, 0 units and \$0 in fees to NHCD.

2019 Taco Hotel PUD ordinance

If the 2019 hotel PUD had been approved under the baseline and bonus area methodology of the 2013 PUD, the baseline entitlement would have been about 193,000 square feet. In the end, the site plan submitted for the hotel had a gross floor area of 184,000 square feet, which works out to a bonus area of negative 9,000 sf. In other words, the project would be required to provide 0 affordable units and \$0 in fees to NHCD. That’s why the ZNA zoning committee worked to negotiate a substantial contribution to an off-site private nonprofit project separate from the PUD, with no strings attached to PUD baselines or bonus areas and no reliance on a site plan approval for a hotel that might never be built.

The result was the Foundation Communities project nearing completion today at 1508 S. Lamar, with 110 apartments affordable for income levels below 50% MFI. Because the land was purchased and transferred to Foundation Communities before the PUD was approved by City Council, we in ZNA did not pay much attention to the final wording in the PUD ordinance. The deal was already done. So, looking at the ordinance language last week, I was surprised and pleased to see that the terms of the affordable housing contribution were actually written into the ordinance, in a way that should serve as a model for future PUDs.

The Affordable Housing section of the 2019 PUD ordinance for 1211 W. Riverside (211 S. Lamar) reads:

“PART 8. Part 9 (Affordable Housing Program) of the Original Ordinance is deleted in its entirety and replaced with the following:

The community benefit package contains a total of \$3,700,000 devoted to affordable housing, to be contributed as follows:

- A. \$1,200,000 in cash shall be contributed to the Neighborhood Housing & Community Development Department on or before issuance of the Certificate of Occupancy for the Project; and
- B. \$2,500,000 in cash shall be donated to a non-profit organization that provides affordable housing ("Non-Profit"), or its designee, on or before 60 days from the effective date of this Ordinance, to be used by Non-Profit for the acquisition of the site located at 1508 South Lamar Boulevard, Austin, Texas, as required by agreement between the applicant and Non-Profit.

In addition to the cash donations described above, the applicant shall assign its rights to the purchase contract for the 1508 South Lamar Boulevard property to Non-Profit, or its designee, contemporaneously with the cash donation described in subsection B above. If for any reason Non-Profit notifies the applicant and the City in writing of its decision not to accept the cash donation described in subsection B above, or fails to acquire the site located at 1508 South Lamar Boulevard within 90 days of approval of this Ordinance, the applicant shall satisfy the requirement in subsection

B above by donating the \$2,500,000 in cash to the Neighborhood Housing & Community Development Department on or before 90 days from the effective date of this Ordinance.”

Note that there is no quibbling over baselines and bonus areas, rental or ownership, length of leases, on-site or off-site. The only part of the package that isn't pinned down is the timing of the \$1.2 million cash payment. It is dependent on the issuance of the Certificate of Occupancy. If the hotel project failed to complete construction, the payment to NHCD would be delayed, but the affordable project would not be affected.

Compare the 2019 Taco hotel PUD with the Brodie PUD proposal, and then ask staff how they could possibly call the Brodie proposal “superior.”

2019 Taco hotel PUD: 108-room hotel contributes \$3.7 million to affordable housing, resulting in a guaranteed 110-unit nonprofit project on a close-in corridor site in a high-opportunity area. versus

2022 Brodie PUD: a project with 3.1 million sf of space, including a 200-room hotel, 1,700 residential units, and 1.26 million sf of office space, contributes an undefined amount--to be determined in the distant future, depending on the phasing of building permits, and based on an unpredictable calculation of nonresidential bonus area above a baseline yet to be revealed--to a possible 100-unit nonprofit project on the edge of a remote environmentally sensitive area with high infrastructure and construction costs.

Excerpts from Exhibit C, Brodie Land Use Plan 6/15/2022, pp. 120-121 [my comments in brackets]:
NON-RESIDENTIAL BONUS AREA

To the extent any non-residential buildings exceed the base height established in this Exhibit C Brodie Land Use Plan (Page 4), the developer shall convey land to Foundation Communities for a standalone affordable housing project built on-site that must:

- Include a minimum of 130 [staff says this number has been reduced to 100] family-oriented units with a higher percentage of 3-bedroom units than the site wide average [if there are no 3-bedroom units on the rest of the site, the average will be 0];
- Be affordable to a household whose income is between 30 and 60 percent of the median family income in the Austin metropolitan statistical area;
- Remain affordable for 40 years [staff says this number has been increased to “perpetuity”] from the date a certificate of occupancy is issued; and
- Be eligible for federal housing choice vouchers.

ASSURANCES AND PHASING OF NON-RESIDENTIAL BONUS AREA

In recognition of these facts:

- Brodie will be constructed over time;
- A stand-alone Foundation Communities project will require additional tax credits and other funding sources for construction and operation that are likely but not certain and not within this developers control [see next page]; and
- The best site for a stand-alone affordable housing project is located in Phase II of the development, adjacent to the planned neighborhood park, along the South Lamar frontage, and adjacent to the planned transit stop [The PUD proposes to move the transit stop to the south of the one and only driveway, where it will be about three blocks away from the FC project and cut off from most pedestrian activity]. The affordable housing requirement attributed to nonresidential square footage may be constructed no later than 5 years after the first building permit in Phase II is granted a Certificate of Occupancy. In the event land has not been conveyed to Foundations Communities and a project is not in process by this time the developer will provide the amount established under Section 2.5.6 (In Lieu Donation) for each square foot of non-residential bonus square footage above the baseline [*] to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood

Housing and Community Development Department. The fee-in-lieu amount from Phase I and Phase II will be assessed at the time of building permit and tracked on each site plan in accordance with Exhibit H: Brodie Oaks Phasing Plan.

[* New wrinkle: Exhibit C includes a diagram and calculations of baseline heights within the Hill Country Roadway area. The calculations seem to indicate that the non-residential bonus area will have a negative value.]

Lessons learned from the Goodwill-Foundation Communities project in the Barton Springs Zone

In Exhibit C, the Brodie PUD applicant admits that “A stand-alone Foundation Communities project will require additional tax credits and other funding sources for construction and operation that are likely but not certain and not within this developers control.”

The stand-alone project will have to compete with other affordable housing projects for additional funding sources (in other words, public funding). Given the lengthy time-frame for redevelopment, dependence on the Certificate of Occupancy in Phase II, the use of questionable calculations of nonresidential bonus area to determine the dollar-amount of the contribution, and the increased construction costs dictated by the site restrictions, the affordable housing project is not likely to survive the competition for public funding.

ZNA learned this the hard way in 2013, with the Goodwill-Foundation Communities proposal at 2800 S. Lamar. This was an excellent project, but it had to compete with three other nearby projects. It failed to receive tax credits and was never revived. It is not just a coincidence that Goodwill sold this problematic site within the Barton Springs Zone and moved to a shopping center on the east side of South Lamar, directly across from Brodie Oaks. The old Goodwill building at 2800 S. Lamar is now abandoned and derelict, along with two affordable fourplexes behind it.

ZNA put that lesson to good use in 2019, when a new owner was seeking an amendment to the Taco PUD at S. Lamar and Riverside. We insisted that an appropriate site should be purchased for Foundation Communities, off-site but within the neighborhood, separate from the PUD rezoning and bonus area calculations. As a result, FC was able to close on a new property within the neighborhood before the PUD case was approved and to begin development of the affordable housing immediately. The 110 units of permanent supportive housing are nearing completion as I write this.

Based on ZNA’s real-world experience with affordable housing and PUD promises, I would expect the Brodie Oaks PUD to assist Foundation Communities in securing a site east of S. Lamar or within the Westgate neighborhood plan area large enough for the construction of at least 200 units of housing affordable at less than 60% MFI--on terms similar to those written into the 2019 Taco hotel PUD. Such housing is desperately needed for hospital employees, school employees, ACC students and employees, and other public service workers in the rapidly growing Ben White corridor east of Lamar.

Because of the environmental restrictions in the Barton Springs Zone, infrastructure and construction costs will be very high within the Brodie PUD, so it makes sense to permit more expensive market-rate housing on the site identified in Exhibit C, similar to the multifamily housing in the adjacent, heavily wooded Retreat complex, in two- or three-story structures with 4 to 8 dwellings each.

Thank you, Commissioners, for the opportunity to examine this one aspect of the PUD process in such detail. I hope you will recommend that the Brodie PUD be shelved until you and the City Council can revise the City’s PUD ordinance as proposed by the Austin Neighborhoods Council last month.

Thank you for your service,
Lorraine Atherton