

December 16, 2024

Via Electronic Delivery

Zoning and Platting Commissioners
301 West Second Street
Austin, TX 78701



Re: Problems with SPC-2023-0357C – Site Plan Must Be Denied

Chair Smith and Commissioners,

This letter is submitted on behalf of the Save Our Springs Alliance, Lake Austin Collective, Bull Creek Foundation, and the Lakewood Club, their respective members, and officers, and serves as a follow-up to the letter I submitted prior to the December 3, 2024, Zoning and Platting Commission meeting. After reviewing the SPC-2023-0357C closer, we have additional concerns about how this site plan has been processed and inconsistencies with the Land Development Code. In addition to sharing the identified concerns, I have also addressed some of the comments made in response to my previous letter. We request that the Zoning and Platting Commission deny this site plan and require the applicant to resubmit a site plan that is consistent with the Austin City Code and the subdivision upon which the site plan is based.

Based on our review of SPC-2023-0357C, we have identified the following violations of the City’s Land Development:

Wastewater Service

1. The Site Plan violates § 25-4-192(A) which requires that “[a] subdivision within 100 feet of a public wastewater system must be connected to the public wastewater system.”
2. The Site Plan violates § 25-4-192(B) which requires that “wastewater lines to serve each lot must be installed before a lot may be occupied.”
3. The Site Plan violates Plat Note #2 of the Champion 360 Subdivision which reinforces §25-4-192 and provides a publicly enforceable restriction on the project by requiring that the property connect to the City’s wastewater system.
4. The Site Plan violates §25-1-3 which clearly establishes that the requirements of Title 25 are cumulative of requirements that are imposed by ordinances, rules, or regulations, or by private easements, covenants, restrictions, or agreements. A site plan is not permitted to trump requirements (i.e., plat notes) of a subdivision.

Land Status Determination

5. The Site Plan violates §25-4-2 and Texas Local Government Code §212.004(a) by misapplying provisions related to the exceptions for subdivision (i.e., a Land Status Determination) on a lot that has already been subdivided.
6. The Site Plan violates Texas Local Government Code §212.004(a) by applying a Land Status Determination to a property that necessitates Right-of-Way Dedication to the Texas Department of Transportation to acquire access to the property.

Vested Rights Determination

7. The Site Plan violates §25-1-541 in applying vested rights without a proper Vested Rights Determination that includes findings of fact. Without such Vested Rights Determination, current code applies and all portions of the Site Plan not compliant with current code are violations of the current code.

Hill Country Roadway Ordinance

8. The Site Plan violates §25-6-415(A) which limits the number of access points to a Hill Country Roadway from a site to two.

9. The Site Plan violates §25-6-416(B)(4) which prohibits access to a portion of a Hill Country Roadway that has a grade of eight percent (8%) or more.
10. The Site Plan violates §25-2-1105 by not identifying waivers to the Hill Country Roadway Ordinance. If the Settlement Agreement does not apply, the 100 feet setback should be restored.
11. The Site Plan does not reflect height calculations for Hill Country Roadway Ordinance are included to ensure compliance with §25-2-1124.
12. The Site Plan does not reflect 40% natural area requirements pursuant to Sec. 2.7 of the Environmental Criteria Manual.
13. The Site Plan does not reflect revegetation criteria for a Hill Country Roadway site, pursuant to Section 5, Appendix A of the Environmental Criteria Manual.
14. The Site Plan does not reflect mitigation (restoration) requirements for Hill Country Roadway sites, pursuant to Sec. 3.5.4 of the Environmental Criteria Manual.

Lake Austin Ordinance

15. The Site Plan violates Sec. 9-10-394(b) of the Lake Austin Ordinance, which prohibits the placement of buildings on steep slopes greater than 35% grade. As reflected on Sheet 29, 1,184 square feet of building has been placed on slopes greater than 35%.
16. The Site Plan violates Sec. 9-10-392 of the Lake Austin Ordinance which requires overland sheet flow to be maintained wherever possible. The drainage system places the runoff into pipes rather than relying on overland.
17. The Site Plan violates Sec. 9-10-409, which limits cut and fill to no more than 4 feet. This occurs in the northwest corner of the property, both inside and outside of the area depicted as Dedicated R.O.W. (or R.O.W. donation on some sheets). This is not permitted under the Lake Austin Ordinance and would require a variance, with a recommendation from the Environmental Commission which has not occurred. Please note that a Land Status Determination cannot be used to dedicate right-of-way, and the 2023 Subdivision does not reflect this R.O.W. dedication.
18. The Site Plan violates Sec. 9-10-409, which limits cut and fill to no more than 4 feet, also in the area to be used as the water quality control pond. Even if the Settlement Agreement permits the cut and fill for the water quality control pond.

Explanations: Although verbose, we wanted to provide you with these verbal explanations for the record, and we'll be available tonight to answer questions.

I. Wastewater Services Explanation
(Related to Points 1-4 above)

The property has not been re-subdivided and therefore remains a single tract of land. This parcel is served by the City's sewer system, and the applicable code requires that the public wastewater service applies to the entire subdivision, including all lots. Allowing any portion of the property to be served by septic would violate the plat note and contradict the clear intent of the City's code, as outlined below:

1. **Violation of § 25-4-192(A):** The site plan fails to comply with the requirement that any subdivision within 100 feet of a public wastewater system must connect to that system.
2. **Violation of § 25-4-192(B):** The site plan does not meet the requirement that wastewater lines must be installed to serve each lot before any lot can be occupied.
3. **Violation of Plat Note #2 of the Champion 360 Subdivision:** Plat Note #2 explicitly requires that the property connect to the City's wastewater system, reinforcing § 25-4-192 and creating a publicly enforceable restriction on the project.
4. **Violation of § 25-1-3:** The site plan improperly seeks to override the cumulative requirements of Title 25, which include ordinances, regulations, and private restrictions (such as plat notes). A site plan cannot circumvent these requirements.

The site plan is in clear violation of multiple provisions of the City’s code and the subdivision plat note. Since the property remains one tract of land and is served by the City’s sewer system, permitting a portion of the property to rely on septic would undermine the requirements of the code and violate the enforceable plat note.

II. Still No Vested Rights Determination for SPC-2023-0357C
(Related to Point 7 above)

While not uploaded into the City’s permitting system, we understand that a **Vested Rights Determination has been issued only for SP-2022-0035C**. However, it is important to note that Chapter 25-1, Article 12 of the **Land Development Code requires a separate determination for each site plan before submission**. This distinction is important because permits based upon vested rights are subject to expiration. If the applicant’s project expires or the applicant changes its project, the new permit would be subject to current code and new fees would be applicable. The City’s priority should always be to ensure that all new projects comply with the current code to reflect modern regulations and standards.

For the present site plan, SPC-2023-0357C should be reviewed under the current code because there is no valid Vested Rights Determination to justify grandfathering under the Champions Settlement Agreement. **The 2022 email exchange from Christopher Johnson does not meet the requirements for a Vested Rights Determination** under Chapter 25-1, Article 12 of the Land Development Code, as it lacks findings of fact (§25-1-541(D)(2)) and a project description or vesting date (§25-1-542(D)(3)), and it pertains to a different site plan (SP-2022-0035C). This remains the only the documents pertaining to Vested Rights for SPC-2023-0357C, and they do not satisfy the Land Development Code’s requirements.

III. Project Initiated by the Prior Subdivision Has Already Been Completed
(Related to Points 5 and 6 above)

To the extent that the prior subdivision satisfied the terms of the Champions Settlement Agreement, **the current site plan is not a continuation of the project initiated by the 2003 Subdivision**. When an applicant receives vested rights, they are allowed to pursue a project to completion. They are not permitted to change that project and still take advantage of the old regulations. They are likewise not permitted to double-back by completing a second project on the same lot, based on the initial filing. The Settlement Agreement expressly states that permits submitted under the agreement would be subject to expiration dates. Neither the Settlement Agreement nor Chapter 245 of the Texas Local Government Code, which governs vested rights, envision perpetual rights for an applicant to submit infinite projects under 40-year-old Land Development Codes.

The property was subdivided through the **Champion 360 Subdivision** (Instrument No. 200300121, dated May 12, 2003) (the “2003 Subdivision”). This plat created a single legal lot: **“Lot 1, Block A,” a 20.972-acre tract**. This was an express requirement of the City of Austin when the subdivision was included, to include the entirety of the original tract:

“Section 25-4-481(c), of the Land Development Code, requires that an application for preliminary plan or final plat approval include all land constituting the original tract. It appears that this application does not include the entirety of the original tract. Therefore the balance of the tract should be included in your subdivision plat, or a waiver should be requested in writing to the Case Manager to exclude the balance, in accordance with Section 25-4-33 of the Land Development Code.”¹

The landowner then pursued a site plan under **SPC-04-0051C** on the lot, which was constructed, and the project was completed. Because the site plan applied to a single lot, that should be considered a **completed project** under the City’s vesting rules. The applicant is now attempting to double dip by initiating and completing a second project on the same lot.

¹ Master Comment Report for 2023 Subdivision, Note 10, available at <https://abc.austintexas.gov/citizenportal/app/folder-detail>

IV. Current Site Plan is Not Consistent with the 2003 Subdivision. Therefore, it is Change of Project and Not a Continuation of Such Project
(Related to Points 5 and 6 above)

SPC-2023-0357C is not a continuation of the project envisioned by the 2003 Subdivision. The subdivision is the first in the series of permits and establishes the framework for the project that would be pursued to completion. In our prior letter, we explained how that 2003 Subdivision was submitted with no intent to develop. While that is still true; perhaps the more obvious evidence of this site plan not being a continuation of the 2003 Subdivision is the fact that they applicant received a Land Status Determination to divide the lots, as reflected on Sheet 2 of the Site Plan.

A Land Status Determination serves as an exception to subdivision requirements. It is meant to honor historic configurations of properties. It cannot apply to a property that has already undergone subdivision, and **it cannot be used as an alternative to vacating the plat**, because the applicant wants to avoid the application of the current code and the recorded plat notes. This misuse undermines the applicant's premise and violates applicable laws and city codes governing subdivision and development.

Under **Section 212.004 of the Texas Local Government Code**, landowners are required to subdivide their land in accordance with municipal requirements whenever the land is divided into two or more tracts. However, **Section 212.004(a)** provides an exception to this rule, but only if the following conditions are met:

1. The resulting divisions are **greater than five acres each**;
2. Each part has **independent access to a public road**; and
3. **No public improvements** (e.g., roads, utilities) are being dedicated.

This process is reflected in **Austin Land Development Code § 25-4-2**, which governs subdivision procedures and exceptions. However, these exceptions do not apply to this property for two key reasons:

1. The property has already been subdivided under a prior subdivision plat.
2. The property does not have independent access without the dedication of a right-of-way to the Texas Department of Transportation (TxDOT).

The property was subdivided by **Champion 360 Subdivision Plat** (Instrument No. 200300121, dated May 12, 2003) (the "2003 Subdivision"). This plat created a single legal lot: "**Lot 1, Block A,**" a **20.972-acre tract**. As part of this subdivision, the property owner explicitly acknowledged that any future development of the lot must comply with the plat notes and restrictions of the 2003 Subdivision, as well as the Champions Settlement Agreement.

The plat also includes a specific acknowledgment that **vacation of the plat and replatting would be required** if development of the tract does not conform to the 2003 Subdivision or applicable City Code requirements. This means that bypassing subdivision requirements through a Land Status Determination is not permissible, as the property is already subject to existing subdivision regulations and plat conditions.

A Land Status Determination is only appropriate for properties that have not already been subdivided. Since the 2003 Subdivision established a legal subdivision of this property, the applicant cannot now rely on a Land Status Determination to circumvent the City's subdivision requirements under **Chapter 25-4 of the City Code**. Additionally:

- **The property lacks independent access:** The only access to the property requires the dedication of a right-of-way to TxDOT. This violates the condition in **Section 212.004(a)** that each new tract must have its own access to a public roadway without requiring additional public improvements.
- **The property is subject to specific plat note requirements**, particularly **Plat Note #2**, which mandates connection to the City's wastewater utilities. The applicant cannot bypass this obligation through a Land Status Determination.

By invoking a Land Status Determination, the applicant is attempting to circumvent the City's subdivision requirements under **Chapter 25-4 of the City Code**. The **2003 Subdivision** explicitly requires vacation and replatting if the development does not conform to the original subdivision's requirements or the City Code.

The applicant's reliance on a Land Status Determination is an attempt to avoid the process of vacating the plat and re-subdividing the property. This is likely because doing so would expose the fact that the applicant's rights under the **Champions Settlement Agreement** have already expired. The **Champions Settlement Agreement** (effective July 11, 1996) includes provisions on page 8 that govern a "project" on the northern portion of Tract 5. Specifically:

- The agreement required the landowner to file for a development permit to initiate a "project" within **six years** of the effective date (i.e., by July 11, 2002).
- If no development permit was filed within this six-year period, **all subsequent permits for a "project" would be governed by the Austin City Code in effect at the time of the filing of the development application.**

The agreement also specifies that the "project" would be subject to expiration. Based on this:

- The applicant has either allowed the original project to expire, or
- The applicant is now attempting to build a separate project, which would require compliance with the current City Code.

Under a **Vested Rights Determination**, if one truly applies here, the applicant would only be allowed to proceed with the original project envisioned by the subdivision. This would be considered the "first in the series" of permits. However, the applicant cannot create a fictitious "new first-in-the-series" of permits by filing a Land Status Determination. Doing so would constitute a **change of project**, and the current City Code would apply.

The applicant's reliance on a Land Status Determination in SPC-2023-0357C is legally flawed. The property has already been subdivided under the 2003 Subdivision, and any development must comply with the requirements of that plat and the City Code. The Land Status Determination is inapplicable and cannot be used to bypass subdivision requirements or the expiration of rights under the Champions Settlement Agreement. The applicant must either comply with the current City Code or replat the property in accordance with the original subdivision's terms. By attempting to misuse the Land Status Determination process, the applicant is seeking to bypass critical subdivision requirements, which protect public interests, ensure compliance with municipal codes, and maintain accountability in land development.

V. Hill Country Roadway Ordinance Non-Compliance and Violations Explanation
(Related to Points 8 through 14)

The applicant is subject to the **Hill Country Roadway Ordinance**, but there is little support for its compliance with the ordinance reflected on the site plan. The site plan lacks the required elements necessary to ensure compliance with HCRO. Without this critical information, it is difficult to see how the Zoning and Platting Commission could properly determine whether the project meets the ordinance's requirements. Specifically, the applicant has **failed to include essential details**, such as cut and fill variance information, despite City staff requesting it. This omission undermines the ability to evaluate compliance with the following provisions:

1. **Violation of § 25-6-415(A):** The site plan exceeds the limit of two access points to a Hill Country Roadway from a single site. The site already has two curb cuts onto 360 and one onto 2222.
2. **Violation of § 25-6-416(B)(4):** The site plan proposes access to a portion of the roadway with a grade of 8% or more, which is prohibited. The area being used to access the property has slopes of 25-35%.
3. **Violation of § 25-2-1105:** The site plan does not identify waivers to the Hill Country Roadway Ordinance, as required. Completely missing. It is within the purview of the Zoning and Platting Commission to waive some provisions of the HCRO; however, those waivers must be specifically identified. If the Settlement Agreement does not apply, the 100' setback that is part of the HCRO should be restored.

4. **Violation of § 25-2-1124:** The site plan fails to include height calculations to demonstrate compliance with the ordinance’s height restrictions. Completely missing.
5. **Violation of Sec. 2.7 of the Environmental Criteria Manual:** The site plan does not reflect the requirement to preserve 40% of the site as a natural area. Completely missing.
6. **Violation of Section 5, Appendix A of the Environmental Criteria Manual:** The site plan does not include revegetation criteria for the Hill Country Roadway site. Completely missing.
7. **Violation of Sec. 3.5.4 of the Environmental Criteria Manual:** The site plan does not address mitigation (restoration) requirements for Hill Country Roadway sites. Completely missing.

The site plan is incomplete and fails to meet the basic requirements of a Hill Country Roadway site plan. Without the inclusion of critical elements such as cut and fill variance information, height calculations, natural area preservation, and mitigation plans, the Zoning and Platting Commission cannot reasonably determine compliance with the Hill Country Roadway Ordinance. The applicant’s refusal to provide this information, despite requests from City staff, further complicates the review process and undermines the intent of the ordinance.

VI. Lake Austin Ordinance Violations Explanation
(Related to Points 15 through 18)

Because the site plan is being processed under the Champions Settlement Agreement, it is subject to the old version of the Lake Austin Ordinance; such ordinance provisions are included on Sheet 3 of the site plan. The site plan contains several violations of the Lake Austin Ordinance, failing to meet critical requirements for building placement, drainage, and cut and fill limits. These violations highlight significant noncompliance with the ordinance, as outlined below:

1. **Violation of Sec. 9-10-394(b):** The site plan places 1,184 square feet of building on steep slopes greater than a 35% grade, as reflected on Sheet 29. This is explicitly prohibited under the ordinance.
2. **Violation of Sec. 9-10-392:** The site plan fails to maintain overland sheet flow wherever possible, as required. Instead, the drainage system directs runoff into pipes, violating this provision of the ordinance.
3. **Violation of Sec. 9-10-409 (Cut and Fill Limits):**
 - o **Northwest Corner of the Property:** The site plan exceeds the 4-foot cut and fill limit in the northwest corner of the property, both inside and outside the area labeled as Dedicated R.O.W. (or R.O.W. donation). This is not permitted under the ordinance and would require a variance, including a recommendation from the Environmental Commission, which has not occurred. Additionally, a Land Status Determination cannot be used to dedicate right-of-way, and the 2023 Subdivision does not reflect this dedication.
 - o **Water Quality Control Pond:** The site plan also exceeds the 4-foot cut and fill limit in the area designated for the water quality control pond. Even if the Settlement Agreement allows cut and fill for the pond, this remains a violation of the ordinance.

The site plan demonstrates clear noncompliance with the Lake Austin Ordinance, including prohibited building placement on steep slopes, improper drainage design, and excessive cut and fill activities. These violations would require variances and proper review processes, such as recommendations from the Environmental Commission, which have not occurred. Without addressing these issues, the site plan fails to meet the ordinance’s requirements.

Conclusion.

In conclusion, the SPC-2023-0357C site plan contains numerous violations of the Austin Land Development Code, including provisions governing wastewater service, land status determination, vested rights, the Hill Country Roadway Ordinance, and the Lake Austin Ordinance. Key issues include the failure to connect to public wastewater systems as required by plat notes and City Code, improper reliance on a Land Status Determination to bypass subdivision requirements, and the lack of a valid Vested Rights Determination to justify noncompliance with current regulations. Additionally, the site plan fails to meet critical standards under the Hill Country Roadway Ordinance, such as natural area preservation, height restrictions, and cut and fill limitations, while also violating the Lake Austin Ordinance with improper building placement, drainage design, and excessive cut and fill activities. These deficiencies

collectively undermine the integrity of the regulatory framework and pose significant risks to environmental protections.

Given these violations, we respectfully request that the Zoning and Platting Commission deny the SPC-2023-0357C site plan and require the applicant to resubmit a plan that complies with the Austin City Code, subdivision plat notes, and all applicable ordinances. Compliance with these regulations is essential to ensure responsible development, uphold environmental protections, and maintain public trust in the City's land use and development processes.

Thank you,

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