



January 22, 2020

Via Electronic Communication

Jerry Rusthoven, Assistant Director
Joi Harden, Division Manager
Planning and Zoning Department
City of Austin
505 Barton Springs Road, 5th Floor
Austin, TX 78704

RE: Development Assessment for Brodie Oaks Redevelopment - Stakeholder Comments

Dear Mr. Rusthoven and Ms. Harden,

Attached to this letter are comments from the Save Our Springs Alliance in response to the [Development Assessment](#) submitted for the proposed redevelopment of the Brodie Oaks Shopping Center, generally located at the northwestern corner of the intersection of S Lamar Boulevard and Capital of Texas Highway. Given the size of this project and its location along Barton Creek and within the Barton Springs Zone, how redevelopment occurs on this site will have a significant environmental impact—whether such impact is positive or negative will depend on the City’s actions in the months ahead.

As the applicant’s introductory letter indicates, the Brodie Oaks Shopping Center was constructed well before Austin adopted many of its existing environmental regulations that work to protect Austin’s water resources from the harmful pollutants associated with land development. As a result, the site’s existing ~30 acres of pavement remains untreated, at least to the standards set by the Save Our Springs Initiative (“SOS Ordinance”) and existing code. Bringing this site into compliance with existing water quality regulations should be a priority for the City and for anyone else interested in the health of Barton Creek, Barton Springs, and the Edwards Aquifer.

Since its adoption by Austin’s voters in 1992, the SOS Ordinance remains one of the City’s most effective tools in protecting the water quantity and quality of Barton Creek, Barton Springs, and the Edwards Aquifer. The ordinance is based on two basic principles: (i) mitigating pollution caused by development by enhancing water quality controls; and (ii) promoting aquifer infiltration and minimizing environmental impacts by reducing overall impervious cover within the Barton Springs zone. Both components of the ordinance are critical on their own but also work in concert with one another in achieving the ordinance’s—and the voter’s—intent. As such, proposed deviations to the SOS Ordinance should receive the highest level of scrutiny

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and public review, with a process that engages all stakeholders for meaningful input, deliberation, and study.

The applicant for this project has proposed to redevelop the site under the provisions of Land Development Code (“LDC”) § 25-8-26 (aka, the “Redevelopment Exception”). It should be noted that the Redevelopment Exception is *already* an exception to the requirements of the SOS Ordinance. It allows the developer of a property to maintain levels of impervious cover beyond the requirements of the SOS Ordinance, in exchange for treating the resulting impervious cover on the property with improved water quality ponds. Maintaining allowable levels of impervious cover beyond SOS requirements is of substantial benefit and value to the developer of the property. This exchange of values—water quality treatment in exchange for increased impervious cover—has already been factored into the Redevelopment Exception, and therefore should not serve as the primary basis of approval for additional entitlements under a Planned Unit Development (“PUD”).

Rather, the layering of PUD zoning on top of the Redevelopment Exception introduces new requirements for the project to achieve superiority, as provided in Subchapter B, Article 2, Division 5 of the Land Development Code. As the City reviews the applicant’s rezoning request and seeks to define “superiority,” we would encourage the City to keep in mind the exchange of values already made in the adoption of the Redevelopment Exception. Double credit should not be awarded.

We do not mention this concern to diminish the planned project or its overall benefit to water quality. To some extent, this project is proof that the Redevelopment Exception can work for large sites; and if it ends up proceeding, it could offer a model for other large sites over the aquifer that are candidates for redevelopment, such as the Barton Creek Mall and the Oak Hill “Y”. The concern about the double credit is more of an acknowledgement that there will be other considerations, such as impacts on the adjacent neighborhoods and the Barton Creek trail system, that must be contemplated, beyond those that relate solely to water quality.

This is an enormous project with a community-scaled impact that merits a community-scaled conversation. The SOS Alliance encourages the City and the applicant to proactively solicit the input of the neighborhoods most immediately impacted by this development, such as Barton Hills, South Lamar, and Zilker.

As far as the SOS Alliance is concerned, we are still early in our review of the submitted Development Assessment, and we will refrain from taking an official position at this time. From an environmental standpoint, we recognize the opportunities presented by the redevelopment of the site. In addition to reducing impervious cover and treating the remaining pavement with SOS-standard water quality controls, the applicant also proposes to increase the development setbacks to protect Barton Creek and help reduce streambank erosion. However, as the attached comments will illustrate, there are several questions that remain unanswered and some details that need to be addressed. *See Appendix A attached.*

The SOS Alliance will be keeping a keen eye on this project, as it makes its way through the public input process, to ensure that the final product is protecting and enhancing the water

quality of Barton Creek, Barton Springs, and the Edwards Aquifer. We would appreciate the opportunity to stay in close contact with the City, as it continues to review the project and it makes a recommendation on the PUD application.

Many thanks for your consideration of our comments, and please feel free to contact me if you have any questions or desire additional information about any points we raise.

Many thanks,

Bobby Levinski

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APPENDIX A
SAVE OUR SPRINGS ALLIANCE INITIAL RESPONSE TO
DEVELOPMENT ASSESSMENT FOR BRODIE OAKS REDEVELOPMENT

1. **PUD vs. Redevelopment Exception.** The use of Planned Unit Development (“PUD”) zoning along with the Redevelopment Exception appears to be a classic case of “having your cake and eating it too” but on the scale of an entire cake factory. While the two code mechanisms can theoretically work together, there are certain inherent incongruities. For example, the PUD ordinance is based upon the premise that the proposed project achieves a level of superiority to current code, while the Redevelopment Exception is a mechanism that permits a developer to achieve a product that is inferior—and out of compliance—with current code.
 - a. ***Use of PUD Zoning.*** Generally, the SOS Alliance opposes the use of PUD zoning because it is often used to bypass standard zoning and variance processes in an effort to customize and permanently lock-in unique development regulations for individual landowners and developers. Although the council has set parameters within the code to measure whether a PUD has achieved superiority, too often these baseline requirements are ignored or altered to tilt the proposed project heavily towards maximizing the developers’ profits. For example, in recent years, we have seen developers use PUD zoning on sites less than one acre in size to increase their height entitlements to a level greater than what would be allowed under current code, despite requirements that PUDs be larger than 10 acres in scale. The developers do this to bypass the authority of the Board of Adjustment to grant hardship variances, because they know that they have no hardship and would not prevail in such a case.

That said, this project encompasses approximately 37.6 acres and includes multiple phases of redevelopment, which does seem to be more aligned with the intent of PUD zoning. Should this project proceed as a PUD, it must be evaluated with the lens of true superiority in mind and should be highly scrutinized to ensure the concept plans presented represent honest rendering of what the PUD’s provisions would allow.

As noted in our attached letter, the evaluation of “superiority” for this PUD must not credit compliance with existing water quality regulations. That is something required of all new projects within the City’s jurisdiction. The use of the Redevelopment Exception is a deviation to standard water quality requirements that results in an inferior product than what would otherwise be required.

These comments are not meant to diminish the significant environmental benefits that would result from the enhanced water quality treatment envisioned. Rather, they are intended to help the City and the City Council assign values to the community benefits being offered, as they evaluate the project’s superiority.

b. *Use of Redevelopment Exception.* Although we acknowledge the functional equivalence of the use of the redevelopment exception, this PUD would be more appropriately considered a site-specific amendment to the SOS Ordinance, requiring council initiation and a final vote by a super majority of the City Council.

i. Increase in Entitlements Tied to Redevelopment. The proposed PUD includes a substantial increase in development entitlements that were not contemplated at the time that the Redevelopment Exception was adopted. As explained in our attached letter, the Redevelopment Exception already provides a substantial benefit to the landowner by permitting redevelopment beyond the impervious cover requirements of the SOS Ordinance, in exchange for treating the resulting impervious cover on the property with improved water quality ponds. Maintaining allowable levels of impervious cover beyond the SOS Ordinance is of substantial benefit and value to the developer of the property. This exchange of values—water quality treatment in exchange for increased impervious cover—has already been factored into the Redevelopment Exception, and therefore should not serve as the primary basis of approval for additional entitlements under a PUD. The references to the Redevelopment Exception, at this point, unnecessarily conflate the increases in entitlements with the requirements of the Redevelopment Exception.

ii. Modifications to Redevelopment Exception. The Code Modification Table (Page 5 of 6) contained within the Development Assessment requests several modifications to the Redevelopment Ordinance, each of which would necessitate the need for a supermajority vote of the City Council as SOS amendments. However, it is our opinion that this conflict could be avoided by removing these requests entirely.

1. *Council Approval of Redevelopment.* To the extent it is determined that that the Redevelopment Exception applies, we do not believe it is necessary to modify LDC § 25-8-26(F), as suggested. Under this provision of the code, City Council approval is required for a redevelopment if the project meets certain criteria or thresholds. The applicant has requested that any development located within the “Brodie Oaks Redevelopment” be exempted from the Council approval process. The approval of a redevelopment exception is project specific; zoning is not relevant. Because PUDs are considered a zoning base district and would not constitute a permit initiating a project, the requested pre-approval would be an inappropriate provision to insert into Redevelopment Exception ordinance. This would grant a permanent exemption for this property, regardless of changes of projects in the future or the number of times the property may be redeveloped. Likewise, the reference to “Brodie Oaks Redevelopment” is entirely too vague. Any council approval of a redevelopment exception should be tied to a defined project that has an expiration.

The SOS Alliance would encourage the City and the applicant to consider that the plans for the site might change over time. What is being shown to the council as part of this Development Assessment are conceptual renderings, not site plans. Nothing would preclude the developer from seeking council approval of

individual projects during the permitting stage. If the developer seeks more assurance at this stage, considering the PUD as an SOS amendment would achieve that result.

iii. **Deletion of LDC 25-8-26(H)**. The applicant has requested deletion of LDC § 25-8-26(H), which is a provision that requires mitigation should a redevelopment within the Barton Springs Zone use a sedimentation/filtration pond in lieu of an SOS water quality pond. Although we respect *and greatly appreciate* that the planned development will utilize only SOS water quality ponds, we do not believe this section of the Redevelopment Exception Ordinance needs to be modified to achieve the desired result. A simple requirement inserted to the PUD that any redevelopment must use SOS water quality ponds achieves the same result. Such a provision could even include a reference to the inapplicability of LDC § 25-8-26(H) based on this fact.

2. **Environmental Superiority**. Chapter 25-2, Subchapter B, Article II outlines the applicable requirements of a Planned Unit Development (“PUD”) and the applicable measures for determining whether the PUD has achieved superiority. The following comments shall address those measures that relate to the Development Assessment’s performance in meeting the applicable environmental criteria under this Article.

a. ***Open Space Requirement Likely Met***. Based on the Development Assessment, it appears that the applicant is proposing that 13.7 acres (or 36%) of the property will be open to the public as civic spaces and parkland. This appears to include areas that will be used for water quality, as well as retention and re-irrigation. Recreational use and certain activities, especially dog parks and off-leash areas, may be inconsistent with the purpose of these areas, and we would want to ensure that these areas receive water quality easements to ensure that they are managed for the purposes of water quality. The crediting of these areas for open space (and parkland) seems inappropriate, considering the use of such areas should be highly restricted. We would welcome additional conversations around this point.

b. ***Green Building Elements Need Refinement***. The applicant has noted a desire to incorporate “district heating, water conservation and reuse strategies, and on-site energy production.” The inclusion of these elements would be helpful in achieving superiority for the proposed project. We would encourage the applicant to consider using the [recommendations](#) of the Water Forward Task Force as a guide for achieving superiority with regard to water conservation and reuse strategies. Possible strategies might include voluntary compliance with a “water benchmarking” metric for all buildings, using reclaimed water, and reusing water on-site in association with landscape maintenance and any cooling equipment that might be utilized.

c. ***Water Quality on Correct Path but Needs Clarification and Enforcement***. The SOS Alliance recognizes the significant opportunity for water quality improvements associated with the redevelopment of this site, which is currently developed with over 30 acres of untreated impervious cover. If properly treated and the commitments made are achieved, the proposed redevelopment could benefit the water quality of Barton

Creek, Barton Springs, and the Edwards Aquifer. As we expressed above, we caution the City from assigning too much of these benefits as “superiority” elements, when the ultimate development will not ultimately comply with the SOS Ordinance. However, we acknowledge the improvements from current conditions.

- i. **Non-Degradation**. The applicant has committed to meeting the non-degradation standard of the SOS Ordinance, which means that it will capture all the run-off generated on the site and treat it before its release. The commitment to use only SOS water quality ponds (instead of sedimentation / filtration) is a substantial benefit to water quality and should be factored into the overall superiority of the project; provided, however, this should be an express commitment in the PUD’s ordinance, and any future deviation to it should require a supermajority vote of the City Council to amend it.

1. ***Dog Parks Should be Prohibited***. Based on the Development Assessment, we understand that the applicant intends to irrigate the parkland on-site with the treated water. We appreciate the commitment to reusing water for irrigation purposes but are concerned this might re-contaminate the water if the parkland is inappropriately used. To help ensure that the water is not re-contaminated, reirrigation areas should not be used for recreational uses, especially dog parks and off-leash areas. We would also suggest that dog parks and off-leash be prohibited on all publicly accessible parkland and open space on the site and this restriction should be extended to a 1,000 ft. buffer from Barton Creek for all other areas.

2. ***Phasing***. The proposed phasing plan is somewhat vague; however, there appears to be two areas where SOS water quality ponds are planned. To ensure that the non-degradation requirement of the SOS Ordinance is met for each new building, the ponds to which that building would drain should be completed and operational before any certificate of occupancy is issued for such building.

- ii. **Impervious Cover**. The applicant has proposed to reduce the existing impervious cover on the site by 36%, resulting in a maximum impervious cover of 54% Gross Site Area (“GSA”). This is an impressive reduction of impervious cover, and we are excited about the restoration of natural areas on this site. However, to help provide a true “apples to apples” comparison of the various impervious cover requirements, we ask that the following adjustments be made to the Development Assessment:

1. ***NSA v. GSA***. The applicant is basing its calculations on Gross Site Area, but the SOS Ordinance is based on Net Site Area. Although 54% GSA might sound better as a talking point, we would encourage the applicant to provide the NSA calculations. Given that this property does have steep slopes near the creek and along 360, there needs to be a better understanding of the developable area.

2. ***Impervious Cover Definitions Should NOT Be Redefined.*** As shown in the Code Modification Table, the applicant intends to redefine the meaning of “impervious cover” under LDC § 25-8-63 to exclude the sidewalks and multi-use trails located within publicly accessible areas located on the site. We ***strongly object*** to any redefining of the meaning of “impervious cover.” Presently, the City Code only discounts sidewalks and multi-use trails that are located within public right-of-way or on public land. Although the practical intent of this redefinition is understood, amending the definition of impervious cover is unnecessary and leads to a false narrative about the total amount of impervious cover that is being reduced on the site.

The applicant has proposed a total impervious cover reduction of 36%, and such figure would be no less impressive should it be 34 or 35%, if the definition of impervious cover remains unchanged. By redefining the definition of impervious cover to exclude pavement in the recreational areas, there is a concern that these spaces would not remain green spaces. Such a risk is only introduced by attempting to change the definition of impervious cover.

To help provide a true reflection of the impervious cover intended for this site, the applicant should be required to submit a “before and after” comparison of the impervious cover on the site under the existing definitions and methodology provided under LDC 25-8-63 and the Environmental Criteria Manual.

3. ***Phasing.*** On Page 5 of the Code Modification Table, the applicant requests a modification to LDC § 25-8-25(c), which would enable the applicant to use the redevelopment exception so long as it does not increase the impervious cover on the site. Similar to the rationale stated above, we ***strong object*** to this modification, as it presents an unnecessary risk that the benefits proposed will never be achieved. What is being shown to the community is a plan to reduce impervious cover as part of the overall redevelopment. The first phase of the redevelopment should amount to a significant reduction in impervious cover. At no point in time should a new phase be adding impervious cover to the site.

The applicant has requested this modification to that code language to permit the use of an impervious cover tracking chart guaranteeing the reduction of impervious cover in each phase such that impervious cover in the final phase of development is less than 54% GSA. As of now, there is not phasing plan, and it would be unlikely, at the zoning change, that the phasing plan would result in any level of accuracy for the ultimate build out of the site.

Nonetheless, should a tracking table be used, we request the following:

- a. Responsibility of Developers to Track and Submit Revisions.** The City has an atrocious record of tracking impervious cover for these large-scale developments over the Barton Springs Zone. We could point to several development agreements that include impervious cover tracking tables that have been either ignored or not well maintained. Were a tracking table employed, the PUD’s ordinance should provide specific parameters on how the tracking table will be used, who is responsible for submitting revisions to it, and how it is maintained. No site plan, site plan revision, or other permit process, exception, or revision that could result in an increase in impervious cover should be approved without amending the tracking table to reduce the overall impervious cover allotment remaining.
 - b. Periodic Impervious Cover Assessments.** As an express condition in the PUD Ordinance, the submission of each new site plan should include an impervious cover study, certified by an engineer, showing the amount of impervious cover existing on the aggregate property.
 - c. Substantial Reductions.** The first phased of development should result in a substantial reduction in impervious cover, to show a commitment towards ultimate compliance and to ensure the benefits shown are achieved in the near-term. Each phase of development thereafter should have a minimum threshold for impervious cover reduction.
 - d. Timed Requirement.** Because there might be a disincentive to complete the phasing of the project (and retain existing impervious cover), there needs to be either a date by which compliance must be met or some other provision that would prevent the landowner from not achieving ultimate compliance. To be clear, this must be more than a financial penalty.
- iii. Creek Buffers.** In addition to reducing impervious cover and treating the remaining pavement with SOS-standard water quality controls, the applicant has also proposed to increase the development setbacks to protect Barton Creek and help reduce streambank erosion. It would appear that these setbacks would be significantly greater than what would be required under the current code, which should certainly be factored into the overall “superiority” of the PUD, but we would like to see more specificity as to what those specific creek setbacks will be.
- iv. SOS Amendment.** The PUD ordinance *must* include a provision that requires a super-majority vote for any deviation to the SOS Ordinance beyond what is contemplated in whatever ordinance is ultimately adopted. There cannot

exist a situation where there is a claim that because the PUD ordinance amended SOS, it can then be changed further by a simple majority.

d. ***Parkland Dedication Should Include an Element of Stewardship.*** Because the proposed development will likely result in a substantial increase in traffic along the Barton Creek greenbelt, the SOS Alliance would encourage the applicant to consider the importance of long-term stewardship. The trail is already deteriorating at a rate that the City cannot keep up with, in terms of funding for maintenance. This results in significant erosion which makes its way into Barton Creek.

- i. **Trail Management and Maintenance.** The SOS Alliance joins the Save Barton Creek Association in requesting that the applicant consider establishing long-term funding mechanisms that could contribute to the ongoing maintenance and upgrade of the trail, along with “leave no trace” signage, solid and pet waste management, cleaning, ecological restoration, and park ranger staffing. We believe that Public Improvement District (“PID”) might be the most appropriate tool to achieve this.
- ii. **Other Access Points.** The applicant should work with the Parks Department and nonprofit partners to examine the other adjacent areas of the greenbelt with access points, including the adjacent one along HWY 360, to help make necessary improvements to ensure this access point will work harmoniously and help distribute foot traffic.
- iii. **Environmental Stewardship.** The applicant should commit to a level of stewardship, recognizing the ecological and environmental responsibilities that it has as a landowner with access to the greenbelt. This might include actively maintaining “pack it out” garbage bag dispensers with “leave no trace” signage; the use of branding and environmental education to promote the ethics of environmental stewardship to its tenants and guests on the property; regular cleanups; and banning the use of single-use plastic bags from any retail tenants.
- iv. **Public Restrooms.** The applicant should consider providing access to public restrooms near the trail head (but outside any area used for water quality purposes and outside any water quality transition zones).
- v. **Deletion of Restrictive Covenant.** The applicant makes several references to a prior dedication of land for the Barton Creek Greenbelt, however, that dedication includes a provision that would allow the applicant to install water quality ponds on the previously dedicated parkland. As part of the PUD approval and counting to its overall superiority, the applicant should be required to delete this provision and should never be allowed to use the greenbelt for the treatment or disposal of stormwater.

- e. ***The Proposed Development Must Avoid Impacts to Airman's Cave.*** Throughout the 58-page Development Assessment, there does not appear to be any mention that [Airman's Cave](#) runs underneath a substantial portion of this site. In fact, the Environmental Resource Inventory submitted for the Development Assessment indicates that there is only low to moderate risk of subsurface voids that may be encountered during construction. Based on the plans submitted in the Development Assessment, as well as comments from the developer's agents, we understand that the applicant intends to build several towers on the site, with subsurface parking. Due to the known presence of Airman's Cave, in addition to the likelihood of other subsurface voids, the SOS Alliance would strongly recommend that the developer avoid significant excavation on this property. We would also encourage the City of Austin's Planning and Zoning Department to seek the advice of Dr. Nico Hauwert, the City of Austin's cave expert, so he may offer recommendations on how this development could proceed in a manner that would protect Airman's Cave and other other karst features from the impacts of the proposed development, to the extent such impacts exist. Additionally, the PUD should explicitly require that, if a void be encountered during construction, all excavation activities should be immediately stopped, and a qualified karst geologist must be contacted to make recommendations on project design alterations to avoid continued harm to such features.
- f. ***Development Should Avoid Subfloors.*** Although the City Code does not necessarily require variances for cut & fill below buildings, we understand that the applicant intends to build subsurface levels associated with its buildings, as well as the piers to support its towers. This will require a substantial amount of excavation in the Barton Springs Zone. We would request that the applicant consider deleting any subfloors and limiting the scope of its excavation for support structures to the maximum extent possible. We hereby request that the applicant provide more specificity as to the potential cut and fill that might occur on the site.
- g. ***Maximum Height Needs More Conversation.*** The Development Assessment proposes a new maximum height of 275 feet, which is a 458%-increase from the existing maximum height of 60 feet. If built, these buildings would by-far be the largest buildings constructed in South Austin. Although the SOS Alliance does not necessarily oppose height increases—especially when they accompany considerable consolidation of impervious cover, we also acknowledge that the level of entitlements proposed would substantially increase amount of non-point source pollutants on the site, including those resulting from vehicles, dogs, and residents.

We have also heard several concerns that the natural aesthetic value of Barton Creek may be impaired. At a recent meeting with the representatives of the developer, there was conversation that balloons could be placed at the proposed locations of the buildings demonstrating the proposed maximum heights and where the buildings could be seen at various vantage points. We request that the applicant proceed with that demonstration and that the City helps participate to ensure accuracy. We also think the applicant should prepare a 3D model showing its maximum proposed heights and how the proposed development would be impacted by compatibility standards.

- h. Hill Country Roadway Applies and Should Continue to Apply.** The Development Assessment proposes a complete exclusion of the Hill Country Roadway Ordinances requirements. *See Code Modification Table, Page 4 of 6.* The applicant states that the site “does not contribute to the Hill Country aesthetic that is being preserved through the ordinance.” *Id.* We find this particularly ironic considering the applicant has highlighted the views of the Hill Country from its publicly accessible open space as a community benefit. *See Letter from Lionheart, dated December 3, Page 2 of Development Assessment.*

The Hill Country Roadway Ordinance is applicable to this property and **should apply**. If the City Council wanted to exclude it, it would have done so when it adopted the ordinance.

The Hill Country Roadway Ordinance includes more than just setbacks and height limits; it has requirements and restrictions related to signate, native landscaping, natural area protection/restoration, and screening, to name a few.

As with any provision of the code, the applicant should be required to specify the specific provisions of the HCRO to which it would like deviation. We believe that, in doing this exercise, the applicant will find that its current conceptual might already be in compliance with most of the HCRO’s requirements. For example, the applicant has committed to restoring native woodland prairie on portions of the site, which would be required under the HCRO.

- i. Heritage Trees.** The SOS Alliance appreciates the applicant’s commitment to saving ***all*** of the Heritage Trees on the property. For a project of this scale, this is largely unprecedented. This should ***not*** be factored into superiority for the project, considering it’s a baseline code requirement, but this commitment should be acknowledged (and firmly embedded in the PUD requirements).
- j. Clarification of Alleged Scrivener’s Error.** The Development Assessment Application makes a reference to a “scrivener’s error” on the plat for the property which restricts residential uses on a portion of the site. In our experience, this kind of note was more typically related to exemptions from parkland dedication. The applicant should provide more detail about this note and how it was included on the plat before it is allowed to simply amend it.