



April 9, 2024

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City of Austin
301 W. Second St.
Austin, Texas 78701

RE: Development of Sunset Ridge Apartments under 2023-141744 SP at 8413 Southwest Parkway, Austin, Texas 78735

Honorable Council Member and Staff:

Thank you again for meeting with us this morning to hear our concerns. As a reminder, my name is Eric Gomez and I have been retained by Barton Creek Southwest POA and Travis Country West HOA, who make up roughly 500 households in Southwest Austin, in order to oppose the multifamily development, as currently proposed, at 8413 Southwest Parkway, Austin, Texas 78735, which is occurring under 2023-141744 SP (the "Project"). Admittedly, there is confusion as to the correct address for the Project. TCAD has the property address at 8413 Southwest Parkway, while the City of Austin (the "City") Property Profile tool has the address as 8401 Southwest Parkway. There is also an address of 8401 ½ Southwest Parkway in the City's permitting records. References in this letter to the "Property" include all of these addresses.

The Property is currently owned by Los Indios Ventures, LLC ("LIV"), and is approximately 9.605 acres in size. Zoning overlays for the Property include, but are not limited to, the Barton Springs Overlay and the Hill Country Roadways Overlay, and the Property lies within the Barton Springs Contributing Zone. As a result, the Property is in a very environmentally sensitive area. On December 19, 1985, the Property was annexed into the City of Austin. In August or September of 1987, a restrictive covenant was voluntarily entered into between the Property owner at the time and the City of Austin (the "Restrictive Covenant") as a part of the assignment of a zoning classification in Zoning Case No. C14-85-288.166. The Restrictive Covenant was filed of record in the Real Property Records of Travis County, Texas on October 21, 1988, in Doc. No. 7098022. The Restrictive Covenant has since been amended multiple times and is presently being amended by LIV and the City of Austin in order for the proposed 438-unit multifamily Project, Sunset Ridge Apartments, to proceed. As a part of greenlighting this Project, the City has made the determination that the Project is grandfathered to when the Restrictive Covenant was entered into. In other words, the City is treating the Restrictive Covenant as "a license, certificate, approval, registration, consent, permit ... or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought. Tex. Loc. Gov't Code § 245.001(1)." *River City Partners, Ltd. v. City of Austin*, No. 03-19-00253-CV, 2020 WL 3164404, at *4 (Tex. App. June 4, 2020). As a result, the City has also determined to apply the water quality ordinance that existed at the time—the Williamson Creek Ordinance—to the Project, which predates the Barton Springs Zone regulations. Confirmation of this legal basis was received at our meeting this morning, but if any of the above is no longer correct, please let me know.

Although there are numerous reasons why the proposed development of this Project at the Property does not make sense, the focus of this letter is on the applicable City regulations and how they appear to be willfully overstepped for the sake of affordable housing at any cost. I understand this is a bold assertion,

but it is an accurate description of the perception of roughly 1000 citizens in southwest Austin to the City's actions. To support this assertion, this letter relies on the City's own arguments and the findings by the Third Court of Appeals (Austin) in the case of *River City Partners, Ltd. v. City of Austin*, and the City's Land Development Code ("LDC").

In *River City Partners, Ltd. v. City of Austin*, the Court of Appeals faced a very similar fact pattern to the Sunset Ridge Apartments Project. In fact, the similarities are striking. The appellant developer had been attempting to develop a commercial project on a property "at the intersection of State Highway 71 and Old Bee Cave Road in the Oak Hill Area of Austin." *Id.* at *2. This property had also been annexed into the City in 1985, followed by the property owner voluntarily entering a restrictive covenant with the City as a part of a zoning process. At issue before the court was whether the restrictive covenant enabled the grandfathering provisions of Ch. 245 to apply to the commercial project, so that the project could take advantage of the more permissive Williamson Creek Ordinance, or whether the more restrictive Barton Springs Zone Ordinance should apply, even though the BSZ Ordinance had been enacted after to the developer's subdivision application had already been submitted to the City. Notably, the City argued that the restrictive covenant was not a permit – it was a contract with negative restrictions that limited the permissible use of land—and the Barton Springs Zone Ordinance was exempt from Ch. 245 grandfathering under the exception in Tex. Loc. Gov't Code § 245.004(2). *Id.* at *4 -*5. More specifically, the City argued that "Chapter 245 does not apply to municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant." *Id.* at *5. The court agreed with these arguments. *Id.* "Chapter 245 does not apply to certain types of permits and land use regulations including, as relevant here, certain "municipal zoning regulations." *Id.* at *2.

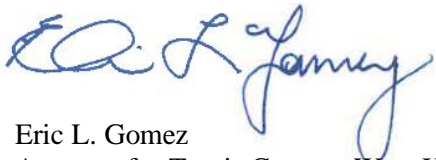
The City of Austin's own Land Development Code is also instructive. LDC Section 25-2-518 states that a "Qualifying Development" for participating in the Affordability Unlocked Bonus Program is one that "will comply with impervious cover as allowed by zoning". Under *River City Partners*, the applicable zoning includes the Barton Springs Zoning Ordinance and not the Restrictive Covenant. Therefore, the prosed impervious cover of 55% for the Sunset Ridge Apartments is far exceeding the 25% limit in the BSZ Ordinance. In LDC 25-8-516, the Code takes care to describe limited instances in which the SOS ordinances do not apply to certain development projects. These exceptions are available for platted or legal tracts on a single lot, that existed prior to 1991, where construction, renovations, additions, or repairs are limited to residential structures under 8,000 sq. ft. There are a few points to take away from this. First, the drafters took care to carve out a detailed exception and also chose to not add more. Second, this exception takes into account projects preexisting the SOS. Since the SOS Ordinance went into effect on August 10, 1992--according to Environmental Criteria Manual Section 1.2.2.2(A)(3)--and limited exceptions were provided for certain projects predating the SOS Ordinance, the drafters clearly anticipated a retroactive application of the Ordinance to all projects prior to 1991 that did not meet the criteria of the exception. Third, the Environmental Criteria Manual in Section 1.2.2.2 supports these points by capturing once more the limited exception for the inapplicability of the SOS Ordinances. Finally, LDC Section 25-8-515 states: "The requirements of this [BSZ] article are not subject to the exemptions, special exceptions, waivers, or variances allowed by Article 1 (General Provisions). Adjustments to the application of this article to a specific project may be granted only as set out in Section 25-8-518 (Limited Adjustment To Resolve Possible Conflicts With Other Laws) below." Since the Restrictive Covenant is not a permit, and the BSZ Ordinances are excepted from Ch. 245 grandfathering, and since the permissible exceptions have been well defined in the LDC but are inapplicable to this Project, the City must be pursuing other "exemptions, special exceptions, waivers, or variances" to the BSZ Ordinance in order to push this project through in violation of its own regulations.

Affordable Housing is greatly needed in this City. That is a fact without question. The Property here presents a great opportunity for an affordable housing project that complies with the current legal framework. Barton Creek Southwest POA and Travis Country West HOA are in full support of a project like that. The problem is that the Project currently being proposed by Los Indios and rushed through the City's regulatory process is not that project. Either the City and appellate court were wrong about the BSZ Ordinance and the restrictive covenants not being a permit, or the City is now wrong about grandfathering applying to the Sunset Ridge project. These positions cannot both be right, but I'm confident that the City got it right the first time.

Please consider the legal implications and ramifications of what you are doing and do not enable this Project to proceed at this Property until it can comply with all applicable laws and regulations.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Eric L. Gomez". The signature is written in a cursive, flowing style.

Eric L. Gomez
Attorney for Travis Country West HOA and
Barton Creek Southwest POA