



CITY OF SAN ANTONIO

January 4, 2004

Mr. Mike Cude

M.W. Cude Engineers L.L.C.
10325 Bandera Road,
San Antonio, TX 78250

Re: Creamer

MDP/POADP # 772

Dear Mr. Cude:

The City Staff Development Review Committee has reviewed Creamer Master Development Plan M.D.P. # 772. Please find enclosed a signed copy for your files. Your plan was accepted with conditions as noted.

- Any access and R.O.W. issues along state facilities will need to be resolved with the Texas Department of Transportation (TXDOT). For information about these requirements you can contact TXDOT at 615-5814.

The Development Services Engineering Division as part of their conditional approval cite the following:

- Detention requirements on this property to be determined at the platting stage.
- All Roadways shall conform to Table 506-1: Functional Classification System Description.
- All access driveways shall comply with UDC 35-506 (r) (8) Alignment
- The driveway aligned with Shaenfield Road shall have a minimum of 200' driveway throat length. As per UDC 35-506.

It should be understood that this is a conceptual plan and that all UDC requirements will be implemented for all plats at the technical reviewing stage. This includes such items as intersection sight distances, street design, access driveways, pavement requirements, traffic calming, cul-de-sac requirements, knuckle requirements, and right-of-way requirements.

- In consideration of public safety and convenience, excessive grades by reason of topography should be avoided in street layouts and arrangements.

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- This development will need to comply with tree preservation ordinance #85262. For information about these requirements you can contact Building Inspections at 207-7102.
- It will be expected that you will plat all of the property depicted in your Master Development Plan (M.D.P.) to include floodplains, drainage areas and open space.
- I would encourage you to work closely with the school district, so that they can plan accordingly.

Please note that this action by the committee does not establish any commitment for the provision of utilities, services or zoning of any type now or in the future by the City of San Antonio. If the proposed development is not platted in phases this Master Development Plan M.D.P./ POADP will be invalid.

ALL Platting shall comply with the Unified Development Code, Master Plan and Major Thoroughfare Plan for the city of San Antonio.

If you have any questions regarding this matter, please contact Mr. Michael O. Herrera, at (210) 207-7873.

Sincerely,



Emil R. Monciyaïs AIA, AICP
Director, Planning Department

EM/MH. Jr.

cc: Richard De La Cruz, P.E. Senior Engineer Development Services
John McDonald, Senior Planner Parks Department
Arturo Villarreal Jr., P.E. Storm Water Engineering

SCALE: 1"=200'

LOCATION MAP N.T.S.

C-3 COMMERCIAL = 20.01 AC.

- UNIT 1 = 1.90 AC.
- UNIT 2 = 1.38 AC.
- UNIT 3 = 1.38 AC.
- UNIT 4 = 1.38 AC.
- UNIT 6 = 3.44 AC. AND 10.73 AC. = C-2
- UNIT 11 = 1.57 AC.
- UNIT 12 = 1.39 AC.
- UNIT 13 = 1.38 AC.
- UNIT 14 = 1.72 AC.
- UNIT 15 = 2.36 AC.
- PROPOSED TXDOT R.O.W. = 2.11 AC.

C-2 COMMERCIAL = 79.39 AC.

- UNIT 5 = 2.34 AC.
- UNIT 6 = 10.73 AC. AND 3.44 AC. = C-3
- UNIT 7 = 2.54 AC.
- UNIT 8 = 2.29 AC.
- UNIT 9 = 17.17 AC.
- UNIT 10 = 2.84 AC.
- UNIT 16 = 3.62 AC.
- UNIT 17 = 3.15 AC.
- UNIT 18 = 2.86 AC.
- UNIT 19 = 4.25 AC.
- PROPOSED TXDOT R.O.W. = 1.66 AC.
- DRAINAGE R.O.W. = 25.94 AC.

■ DENOTES ACCESS POINTS

NOTE: ACCESS IS IN ACCORDANCE WITH TXDOT LETTER DATED 2/17/2002.

PLAN HAS BEEN ACCEPTED BY
 COSA *[Signature]*
 1-4-04 772
 (date) (number)
 If no plats are filed, plan will expire
 On 7-5-05
 1st plat filed on _____

CREAMER SUBDIVISION PRELIMINARY OVERALL AREA DEVELOPMENT PLAN		DATE	DESCRIPTION
M.W. CUDE ENGINEERS, L.L.C. CIVIL ENGINEERS & SURVEYORS LOCATION: 10325 BANERJA RD. SAN ANTONIO, TEXAS 78250 TEL: (210) 681-2951 FAX: (210) 523-7112 URL: WWW.MWCUDE.COM	10/30/02	REV. LOTS	
	11/7/02	2002 FEMA	
	6/11/03	PLAT BDT	
	7/31/03	ACCESS ESM'T.	
8/19/03	REV. ACRES		
DRAWN BY: M.E.E.	DATE: 3/1/01	SHEET	
CHECKED BY: S.L.V.	JOB NO.: 153403	1 OF 1	

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KENNETH W. BROWN, AICP
DANIEL ORTIZ
PATRICK W. CHRISTENSEN



112 E. PECAN STREET
SUITE 1490
SAN ANTONIO, TEXAS 78205
TELEPHONE: 210.299.3704
FAX: 210.299.4731

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PAUL M. JUAREZ
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July 18, 2006

Mr. James Darryl Byrd
Chairman, Planning Commission
City of San Antonio
1901 S. Alamo, 2nd Floor
San Antonio, Texas 78204

Via Hand Delivery

Mr. Florencio Pena
Director, Land Development
City of San Antonio
1901 S. Alamo, 2nd Floor
San Antonio, Texas 78204

Via Hand Delivery

Re: Appeal of the Decision of the Development Services Department Regarding the Purging of the Creamer Subdivision Preliminary Overall Area Development Plan ("POADP") No. 772 which was "Purged" in error; Our File No. 9001.002

Dear Messrs. Byrd and Pena:

The purpose of this correspondence is to formally appeal the decision by the City of San Antonio ("COSA") Development Services Department, which will be explained in detail below, requesting that said decision be wholly reversed. Specifically, this appeal is of the decision of the Development Services Department Director to refuse to reinstate the Creamer Subdivision POADP No. 772 which was purged from COSA records as an "expired" POADP. This request is made pursuant to Sections 35-405 and 35-412(d) of the COSA Unified Development Code (the "UDC") which specifically provide an appellate process for reversing a decision of the Development Services Department as described herein.

Background

The property is approximately 99.40 Acres located along Loop F.M. 1604, north of its intersection with Culebra Road (*see* Exhibit "1"). POADP #772 is vested as of May 2, 2001 (the date of filing the POADP application), pursuant to COSA Vested Rights Permit No. VRP 04-04-106 (*see* Exhibit "2," the "VRP 02-02-067"). POADP #772 was accepted by COSA on January 4, 2004 and was set to expire on July 5, 2005, if no plats were filed

based upon the POADP (see Exhibit "3"). However, the Sheanfield Ten Commercial Plat No. 050209 was approved by COSA on June 21, 2005. The Sheanfield Ten Commercial Plat No. 050209 was filed for record in the Real Property Records of Bexar County on June 24, 2005 in Volume 9566, Page 8 (see Exhibit "3"). COSA notified the owner of the property included within POADP #772 that the POADP was purged on June 5, 2006 (see Exhibit "4").

The UDC in effect on March 2, 2001, the vesting date of POADP #772, reads as follows:

Terms of Validity. The POADP shall be maintained in the permanent files of the director of planning and shall be conformed to in processing subsequent unit plats. The POADP shall remain valid until all units, contained in the POADP, are completed or upon receipt of a proposal to modify the POADP filed by the developer. The POADP shall become invalid if a plat is not filed within eighteen (18) months from the date the POADP is accepted. COSA UDC §35-2076 (see Exhibit "5").

As stated above, the Sheanfield Ten Commercial Plat No. 050209 was approved by COSA on June 21, 2005, which is before the eighteen (18) month expiration date of the POADP (July 5, 2005) imposed by UDC §35-2076. Therefore, pursuant to the UDC Code in effect on May 2, 2001 (the date that POADP #772 is vested), POADP #772 remains a valid POADP.

Grounds for Appeal

In the correspondence notifying owner of the property included within POADP #772 that the POADP was "purged," the Development Services Department is applying the incorrect UDC to POADP #772 (see Exhibit "4"). The correspondence cites the 2001 UDC Section 35-412 (h) (1) (A) as follows:

"Scope of Approval." An approved Master Development Plan shall remain valid in accordance with the following time frame:

The Master Development Plan shall expire unless a final plat is approved within eighteen (18) months from the approval of the Master Development Plan that plats, at least twenty (20) acres or eight (8) percent of the net area of the Master Development Plan area or that requires at least five hundred thousand dollars (\$500,000.00) in infrastructure expenses if the Master Development Plan is one thousand (1,000) acres or less or at least one million dollars (\$1,000,000.00) if the Master Development Plan is more than one thousand (1,000) acres." (see Exhibit "5")

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A subsequent e-mail correspondence from the Development Services Department also cites an incorrect UDC Provision (*see* Exhibit "6"). The e-mail correspondence cites the 1997 UDC Section 35-1027 (d) as follows:

"Basis for permit rights. The following criteria will be used by the city in determining the existence of rights for projects initiated after September 1, 1997. The following permits may be relied on by a property owner or developer to establish permit rights for property that is the subject of the permit. Provided, however, a minor plat that plats only easements shall not confer any permit rights. The permit rights acquired in reliance in reliance on one (1) of the types of permits indicated below will expire unless the action required to maintain permit rights is taken within the time frame indicated for each permit type:

(1) Preliminary Overall Area Development Plan (POADP). Permit rights will be recognized on the property which is the subject of a POADP that has been approved by the City Planning Department. The permit rights recognized for property located within an approved POADP will expire unless a final plat is approved within eighteen (18) months from the approval of the POADP that plats at least eight (8) percent of the net area of the POADP..." (*see* Exhibit "7")

First, the May 3, 2001 UDC cited in the June 5, 2006 correspondence does not apply to a POADP vested to May 2, 2001. Second, this Section of the 1997 UDC section cited in the e-mail correspondence applies to Development Permits. Development permits were created by COSA pursuant to Ordinance No. 86715 passed and approved on September 25, 1997. The Development Permit was created in response to the Texas Legislature's repeal of the then current vested rights statute codified as Chapter 481, Subchapter I, of the Texas Government Code. The Development Permit was a mechanism wherein vesting could be granted pursuant to the COSA UDC. POADP #772 is not vested based upon a Development Permit or the existence of Chapter 481 of the Texas Government Code. Again, this Chapter was repealed in 1997. VRP 04-04-106, approved by COSA on May 27, 2004, is based upon the requirements of Chapter 245 of the Texas Local Government Code. The UDC Section 35-1027 (d) from 1997 solely applies to Development Permits for projects initiated after September 1, 1997. It does not apply to a vested rights permit based upon Chapter 245 of the Texas Local Government Code.

Conclusion

In conclusion, POADP #772 should be reinstated as a valid Preliminary Overall Area Development Plan. It was purged in error as it is vested from the current MDP validity requirements codified in UDC Section 35-412, and the 1997 Development Permit requirements cited by the Development Services Department. As stated above, POADP #772 is vested as of May 2, 2001, pursuant to VRP 04-04-106. POADP #772 is subject to the POADP expiration regulations of Section 35-2076, of which POADP #772 is in full

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compliance. This Firm requests that the decision by the Development Services Department to "purge" POADP #772, be wholly reversed. Sections 35-405 and 35-412(d) of the COSA UDC specifically provide an appellate process for reversing a decision of the Development Services Department as described herein. Furthermore, this Firm requests that the Planning Commission place this appeal on the their agenda within sixty (60) days as required by UDC Section 35-405(a)(3). The appropriate \$150.00 filing fee for this appeal is included with this correspondence.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

Brown, P.C.

BY: 
Patrick W. Christensen

Enclosures

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