



REGULAR MEETING OF THE SAN MARCOS PLANNING AND ZONING COMMISSION

Tuesday, January 8, 2013, 6:00 p.m.
City Council Chambers
630 E. Hopkins Street

*Bill Taylor, Chair
Curtis Seebeck, Vice-Chair
Randy Bryan, Commissioner
Chris Wood, Commissioner
Travis Kelsey, Commissioner
Kenneth Ehlers, Commissioner
Carter Morris, Commissioner
Bucky Couch, Commissioner
Corey Carothers, Commissioner*

AGENDA

1. Call to Order.
2. Roll Call
3. Chairperson's Opening Remarks.

***NOTE:** The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session.*

4. 30 Minute Citizen Comment Period.

CONSENT AGENDA:

5. Consider the approval of the minutes from the Regular Meeting on December 11, 2012.

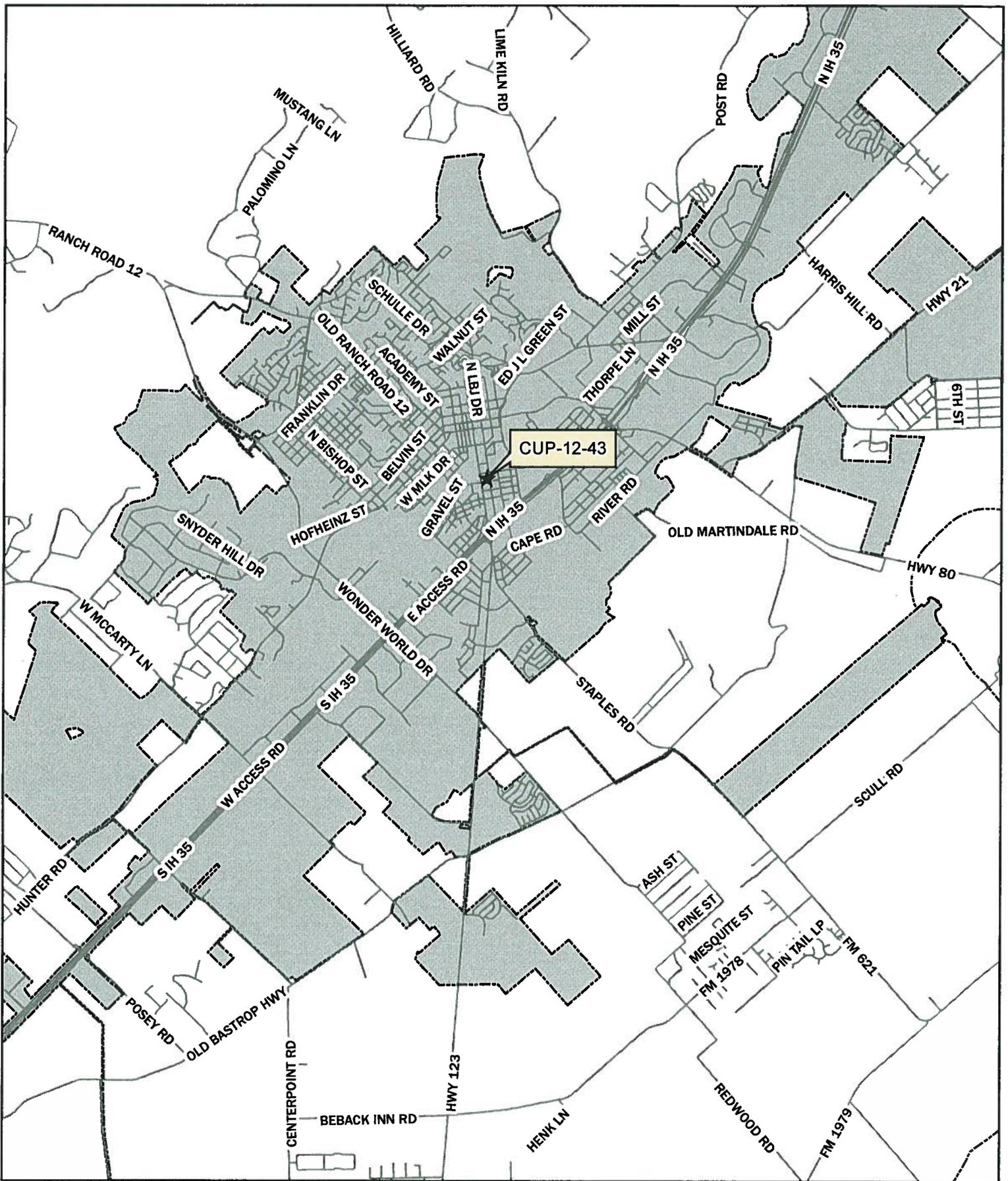
PUBLIC HEARING:

6. CUP-12-43 (TexMex Corral) Hold a public hearing and consider a request by Wilfredo Soza, on behalf of TexMex Corral, for a Conditional Use Permit to allow the sale of beer and wine for on-premise consumption at 408 South LBJ Drive.

NON CONSENT:

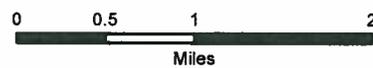
7. Development Services Report
 - a) Update from staff on the Comprehensive Plan
8. **Question and Answer Session with Press and Public.** *This is an opportunity for the Press and Public to ask questions related to items on this agenda.*
9. Adjourn

Notice of Assistance at the Public Meetings: The San Marcos City Hall is wheelchair accessible. The entry ramp is located in the front of the building. Accessible parking spaces are also available in that area. Sign interpretative for meetings must be made 48 hours in advance of the meeting. Call the City Clerk's Office at 512-393-8090.



**Planning and Zoning
Commission Meeting
January 8, 2013
Location Map**

This map was created by Development Services for reference purposes only. No warranty is made concerning the map's accuracy or completeness.



**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
COUNCIL CHAMBERS, CITY HALL
December 11, 2012**

1. Present

Commissioners:

Bill Taylor, Chair
Curtis Seebeck, Vice Chair
Chris Wood
Kenneth Ehlers
Travis Kelsey
Corey Carothers

City Staff:

Matthew Lewis, Development Services Director
Kristy Stark, Development Services Assistant Director
Roxanne Nemcik, Assistant City Attorney
Francis Serna, Recording Secretary
Amanda Hernandez, Sr. Planner
Emily Koller, Planner
Will Parrish, Planning Tech

2. Call to Order and a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Taylor at 6:00 p.m. on Tuesday December 11, 2012, in the Council Chambers, City Hall, City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

Chair Taylor welcomed the audience and viewers.

4. NOTE: *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session.*

5. 30 Minute Citizen Comment Period

Consent Agenda:

6. Consider the approval of the minutes from the Regular Meeting on November 27, 2012.

7. PC-12-28(04) (Parkway Falls Apartments) and Associated Subdivision Improvement Agreement.

Consider a request by F.M. Forrest, Inc., on behalf of San Marcos SHK, Ltd., for approval of a Final Plat for approximately 10.05 acres, more or less, out of the J.M. Veramendi Survey No.1, located at the intersection of Leah Drive and Medical Parkway, as well as the Subdivision Improvement Agreement related to the Del Sol Drive extension.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Ehlers, the Commission voted all in favor to approve the consent agenda. The motion carried unanimously.

Public Hearings:

8. CUP-12-41 (Black Rabbit Saloon) Hold a public hearing and consider a request by FSW Ventures, on behalf of Black Rabbit Saloon, for renewal of an existing Unrestricted Conditional Use Permit to allow the continued sale of mixed beverages for on-premise consumption at 127 E. Hopkins.

Amanda Hernandez, Sr. Planner, gave an overview of the project.

Chair Taylor opened the public hearing. Brian Scofield, President of FSW Ventures, on behalf of Black Rabbit Saloon said he was available to answer questions. He asked the Commission for their support. There were no additional citizen comments and the public hearing was closed. The motion carried unanimously.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Kelsey, the Commission voted all in favor to approve CUP-12-41 with the conditions that the permit shall be valid for three (3) years, provided standards are met, subject to the point system.

9. CUP-12-42 (Zelicks) Hold a public hearing and consider a request by Seth Katz, on behalf of Zelicks Inc., for renewal of an existing Conditional Use Permit to allow the continued sale of mixed beverages for on-premise consumption at 336 W. Hopkins.

Emily Koller, Staff Planner, gave an overview of the project.

Chair Taylor opened the public hearing. Barry James, owner of 323 W. Hopkins said he purchased the building in 1985 and spent all of 1986 renovating the building. He pointed out that he has a heavy investment as well. Mr. James explained that they try to call Seth and when they do not get an answer they call the police. Mr. James provided the Commission with a certified sound engineer calibrated sound recording of Zelicks from the next door property. He pointed out that 75 decibels is very noisy. Mr. James stated that the original temporary CUP specified no live bands. He felt that the original agreement is not being followed because they have had live bands at Zelicks. He asked how the agreement and the 75 decibel limit is going to be enforced. Mr. James further explained that when Zelicks had a live band, he called the Police Department and they took care of the problem but a report is not written. Mr. James felt that the problem is not addressed because reports are not written to identify the calls made to the Police Department.

Jane Hughson, 1600 N. LBJ Drive, thanked the Commission for their time and service. She said it is wonderful that the Dillon's bought and restored the Inn many years ago. In addition, many were pleased that the Katz' brothers took the service station and rehabbed the building into a new use. Ms. Hughson said it would be great if both businesses can continue to profit. She pointed out item #2 of the agreement and asked if motorcycles would be required to move after 11:00 p.m. She expressed her concerns regarding a 3 year permit being considered. She suggested a term less than 3 years preferably 1 year and should everything work out, then a 3 year can be requested next December.

Seth Katz, 336 W. Hopkins explained that the Board gave them 2 six month renewals to take action and to come to an agreement which they have done. He stated that promptly following the last six month renewal, they had begun mitigating the issues to an agreement with the Dillon's. Mr. Katz pointed out that they immediately moved their fence expanded the back yard area and encouraged patrons to socialize and play games furthest away from the Crystal River Inn. In addition he stated they agreed to pay for the installation of sound proofing material and repairs of three rooms alongside the property line of the Crystal River. Mr. Katz mentioned that they have installed signs in the parking lot asking motorcycles to park away from the Crystal River Inn fence line. He explained that they used David Sergi as both they and The Crystal River Inn used Mr. Curry as their mediator. In addition, they met with the city to achieve designated parking on North Street. Mr. Katz stated they have addressed the issues.

Brenda Smith, 323 W. Hopkins said she wanted to make it clear that not only are the Dillon's being affected by Zelicks. She explained that they do not have a buffer between them and Zelicks and the noise travels across the street. She pointed out that they are also affected by the noise. Ms. Smith stated that the settlement agreement does not address all issues. Their biggest concern is the loud music. She suggested that item 3 be clarified to read Saturday and Sunday morning instead of Friday and Saturday. Ms. Smith requested that the Katz not be allowed additional outdoor seating, activities, additional construction, renovations or modifications, and limit the decibel level to 60. She felt that the Commission should make the conditions very specific. Ms. Smith read part of the 2010 Staff Report and noted the screening and buffering conditions have not been met and continues to be an issue. She suggested the approval for one year to see if the Katz' can be good neighbors.

Kathy Dillon, 1000 Burselon Street stated she was present on behalf of herself and her husband after a long effort to support the Katz's in their quest to get their three year CUP renewal. She said she feels blessed because Zelicks has become a favorite place for her guests. Ms. Dillon stated they are trying to tweak the issues after 12 a.m. is when the issues come up. She added that the sound recordings are explicit. Ms. Dillon felt that the spike of sound from the motorcycles will be mitigated by the building. She pointed out that with the games being moved and the sound being lowered things should be ok. She thanked the Commission for caring for both businesses. She told the Commission to be aware when future similar request are submitted. She explained with 19 sleeping spaces and 12 hotel rooms next to a bar noise is really important. She added if they could turn the music down it would be great. Ms. Dillon said she hopes that no live music will ever be an issue.

Chase Katz, 336 W Hopkins said he was happy that they came to an agreement. He pointed out that through the internet 60 decibels is a conversation in a restaurant, office background music and an air conditioning unit. He added it is important for the Commission to know what the decibel level means. Mr. Katz pointed out that he knows the folks across the street have issues and they have given them their phone numbers, but they have not been contacted. He added that if they would have been contacted, he would have addressed the issues.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Ehlers and a second by Commissioner Kelsey, the Commission voted six (6) for and zero (0) against to approve CUP-12-42 with the conditions that the permit shall be valid for three (3) years, provided standards are met, subject to the point system; and subject to terms 2, 3, 4, 5 as stated in the November 21, 2012 Settlement Agreement, 2-Upon striping and designation of motorcycle parking on North Street, the applicant shall not permit motorcycle parking in front of the facility on Hopkins Street or in the parking lot of the facility, between the hours of 11:00 p.m. and 3:00 a.m.; 3-The applicant shall shut down the portion of its outdoor games on the half of Zelicks' property adjacent to the Crystal River Inn, at 12:00 a.m. on Friday and Saturday nights, but may keep games open on the half of Zelicks property adjacent on North Street; 4-The applicant shall constantly monitor the level of amplified or stereo music at all times in respect for the Crystal River Inn and to shut down all amplified or stereo music at 2:00 a.m.; 5-The applicant shall not operate any sounds equipment that produces sound in excess of 75 decibels for a period exceeding one minute between the hours of 11:00 p.m. and 3:00 a.m. as measured from within the property line of the Crystal River Inn; and 6. No live outdoor amplified music shall be allowed after 11:00 p.m. The motion carried unanimously.

10. LDC-12-14 (SmartCode Revisions) Hold a public hearing and consider revisions to Subpart B, the San Marcos SmartCode Articles 1, 3, 5 and 8 to make minor corrections and clarifications, add an option for fee-in-lieu of tree mitigation and add definitions for Downtown San Marcos and Downtown Tree Fund.

John Foreman, Planning Manager gave an overview of the SmartCode Revisions.

Chair Taylor opened the public hearing.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Kelsey and a second by Commissioner Ehlers, the Commission voted five (5) in favor and one (1) opposed to approve the revision to Subpart B, the San

Marcos SmartCode Article 1, 3, 5 and 8 to make minor corrections and clarifications, add an option for fee-in-lieu of tree mitigation and add definitions for Downtown San Marcos and Downtown Tree Fund. The motion carried. Commissioner Seebeck dissented.

Non-Consent Agenda

11. Development Services Report

- a. Update from staff on Comprehensive Plan

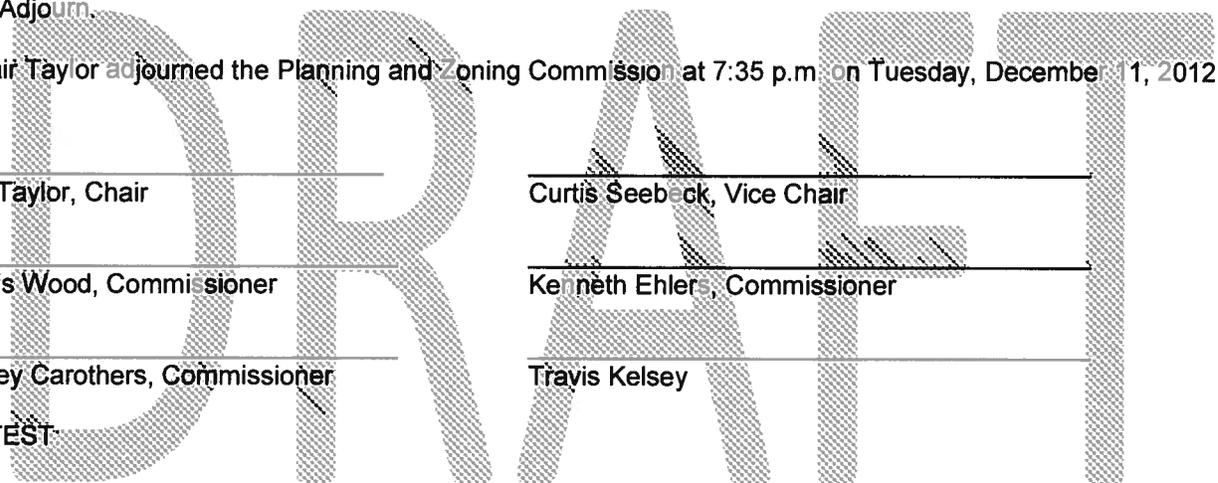
Matthew Lewis announced the last Comprehensive Plan meeting before the holidays will be Wednesday, December 12. The subcommittees will be finalizing the plan objectives.

12. Question and Answer Session with Press and Public. *This is an opportunity for the Press and Public to ask questions related to items on this agenda.*

There were no questions from the press and public.

13. Adjourn.

Chair Taylor adjourned the Planning and Zoning Commission at 7:35 p.m. on Tuesday, December 11, 2012.



Bill Taylor, Chair

Curtis Seebeck, Vice Chair

Chris Wood, Commissioner

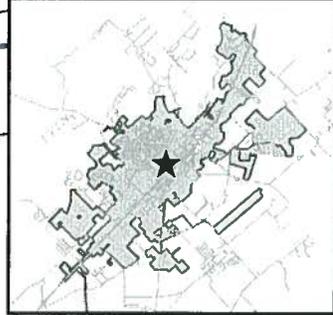
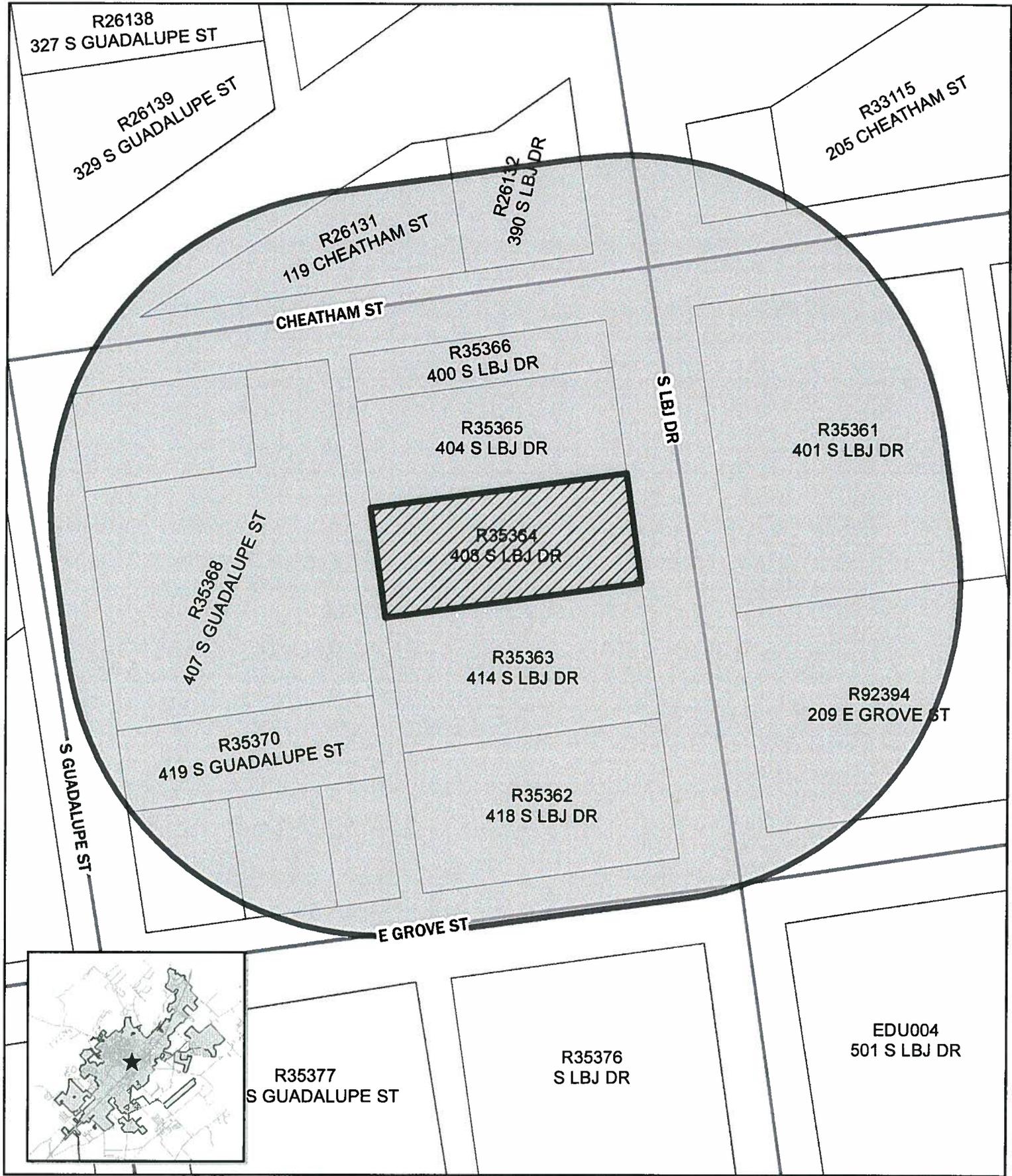
Kenneth Ehlers, Commissioner

Corey Carothers, Commissioner

Travis Kelsey

ATTEST

Francis Serna, Recording Secretary



CUP-12-43
Texmex Corral
408 S LBJ Drive
Date: 12/3/2012

-  Site Location
-  200 ft Buffer



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

CUP-12-43

Conditional Use Permit

TexMex Corral

408 South LBJ Drive



Applicant Information:

Applicant: Wilfredo Soza (TexMex Corral)

Mailing Address: 2206 Lancaster Street
San Marcos, TX 78666

Property Owner: Benito Marungo, Sr.

Applicant Request: A Conditional Use Permit (CUP) to allow the on-premise consumption of beer and wine.

Public Hearing Notice: Public hearing notification was mailed on December 28, 2012.

Response: None as of December 31, 2012

Subject Property:

Expiration Date: N/A – new CUP request

Location: 408 South LBJ Drive

Legal Description: Dan Mc Kie II, Block 5, Lot Pt of 3, Acres 0.2593

Frontage On: South LBJ Drive

Neighborhood: East Guadalupe

Existing Zoning: "T-5" Urban Center

Sector: Sector 4

Utilities: Adequate

Existing Use of Property: Retail

Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of property	T-5	Urban Center
S of property	T-5	Urban Center
E of property	T-5	Urban Center
W of property	T-5	Urban Center

Code Requirements:

A Conditional Use Permit (CUP) allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This measurement is taken "along the property lines of street fronts and from front door to front door, and in a direct line across intersections" LDC Sec.4.3.4.2(b)(2)3(a). While there is a church located on the northeast corner of LBJ Drive and Grove Street, this location does meet the distance requirements. This location is outside the Central Business Area (CBA) and is not subject to the additional requirements in the CBA.

CUPs issued for on-premise consumption of alcohol make the business subject to the code standards and the penalty point system for violations (Section 4.3.4.2).

Case Summary

TexMex Corral is a new business moving into the space where a retail shop was located. The applicant is proposing to convert the north portion of the existing building into a bar which would serve beer and wine. The gross floor area is approximately 2,500 square feet, the seating capacity is 70 and the floor plan indicates pool tables, dart boards and a DJ Booth with dance floor. The parking does meet the requirements of the Land Development Code. The hours of operations proposed are Monday through Friday from 11 a.m. to 11:30 p.m. and Saturday from 11:00 a.m. to midnight with no live entertainment proposed. The applicant will be applying for their TABC beer and wine license upon approval of the Conditional Use Permit and is planning on opening for business after making the necessary interior changes.

Comments from Other Departments:

There were no comments from other departments regarding the subject property.

Planning Department Analysis:

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard recommendation is that they be approved initially for a limited time period. Other new conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years;
- Final approval for the life of the State TABC license, provided standards are met.

As this is a new business, staff provides this request to the Commission for your consideration and recommends approval of the Conditional Use Permit with the following conditions:

- 1. The permit shall be valid for one (1) year, provided standards are met, subject to the point system;**
- 2. The permit shall not be valid until an approved TABC Permit is issued to the applicant and a copy is submitted to the Director;**
- 3. The permit shall not become effective until a Certificate of Occupancy is received;**
- 4. No live music shall be allowed on the property at any time.**

Planning Department Recommendation:	
	Approve as submitted
X	Approve with conditions or revisions as noted
	Alternative
	Denial

Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

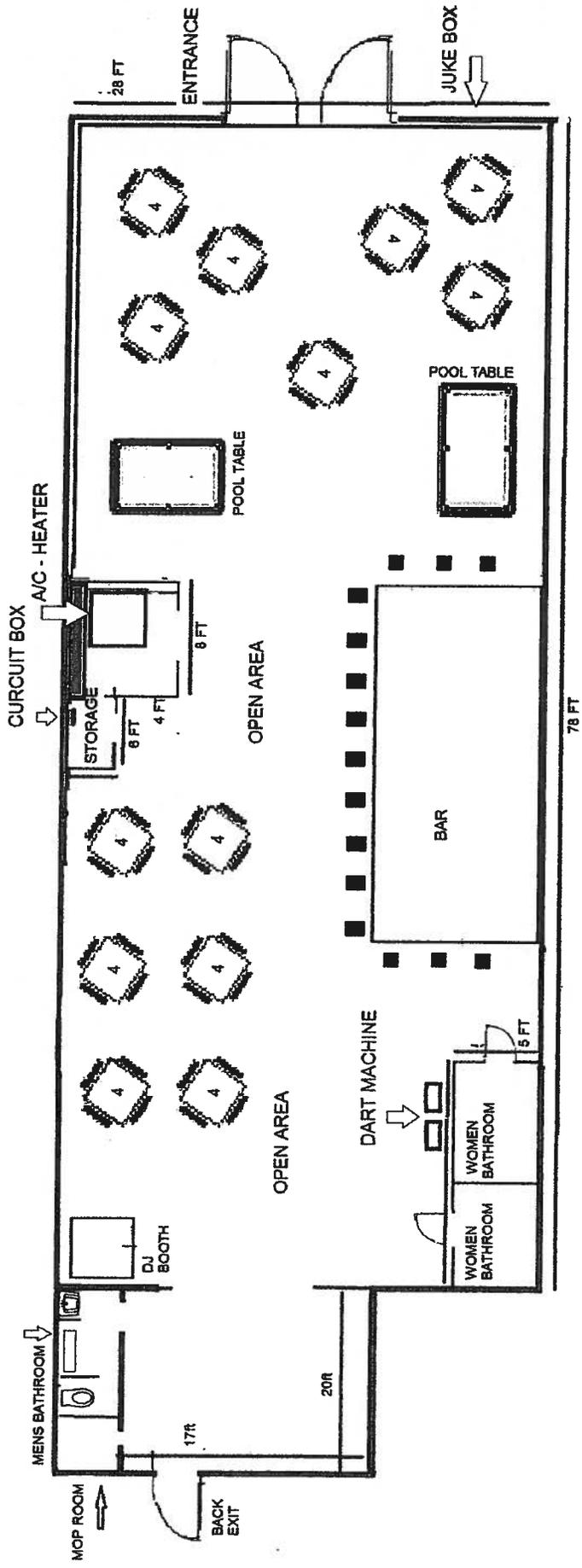
The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

Amanda Hernandez, AICP	Senior Planner	12/31/2012
Name	Title	Date





On-Premise Prequalification Packet

L-ON (6/2012)

Please complete this Prequalification Packet with information concerning your proposed business location for which you are applying to sell/serve alcoholic beverages. This information will be used to obtain your pre-qualification to hold a license/permit. You will submit this information to the proper governmental entities for certification that your proposed location is legal for the type of license/permit for which you are applying. Permit applicants will also provide this packet to their local newspaper for certification that you have published the required notice.

Please immediately contact your local TABC office to determine if you must post a 60 Day Sign at your proposed location, and for more information.

LOCATION INFORMATION

1. Type of On-Premise License/Permit

- | | |
|---|--|
| <input checked="" type="checkbox"/> BG Wine and Beer Retailer's Permit | <input type="checkbox"/> LB Mixed Beverage Late Hours Permit |
| <input type="checkbox"/> BE Beer Retail Dealer's On-Premise License | <input type="checkbox"/> MI Minibar Permit |
| <input type="checkbox"/> BL Retail Dealer's On-Premise Late Hours License | <input type="checkbox"/> CB Caterer's Permit |
| <input type="checkbox"/> BP Brewpub License | <input type="checkbox"/> FB Food and Beverage Certificate |
| <input type="checkbox"/> V Wine & Beer Retailer's Permit for Excursion Boats | <input type="checkbox"/> PE Beverage Cartage Permit |
| <input type="checkbox"/> Y Wine & Beer Retailer's Permit for Railway Dining Car | <input type="checkbox"/> RM Mixed Beverage Restaurant Permit with FB |
| <input type="checkbox"/> MB Mixed Beverage Permit | |

2. Indicate Primary Business at this Location

- | | |
|--|--|
| <input type="checkbox"/> Restaurant | <input type="checkbox"/> Sporting Arena, Civic Center, Hotel |
| <input checked="" type="checkbox"/> Bar | <input type="checkbox"/> Miscellaneous _____ |
| <input type="checkbox"/> Sexually Oriented | |

3. Trade Name of Location

TEXMEX CORRAL

4. Location Address

408 S LBJ

City SAN MARCOS	County HAYS	State TX	Zip Code 78866
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5. Mailing Address

City SAN MARCOS	State TX	Zip Code 78666
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6. Business Phone No.

() -

Alternate Phone No.

(512) 557-4179

E-mail Address

Wilfredo.Sozza@HSTMAIL.COM

OWNER INFORMATION

7. Type of Owner

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Individual | <input type="checkbox"/> Corporation | <input type="checkbox"/> City/County/University |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Joint Venture | |
| <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Trust | |

8. Entity/Applicant

WILFREDO CERVANTES SOZZA

9. If Applicant Is/Must Be Listed Below (attach L-OIC if additional space is needed).

Individual/Individual Owner	Limited Liability Company/All Officers or Managers		
Partnership/All Partners	Joint Venture/Venturers		
Limited Partnership/All General Partners	Trust/Trustee(s)		
Corporation/All Officers	City, County, University/Official		
Last Name SOZZA	First Name Wilfredo	MI C	Title OWNER
Last Name	First Name	MI	Title
Last Name	First Name	MI	Title

MEASUREMENT INFORMATION

10. Will your business be located within 300 feet of a church or public hospital? Yes No

NOTE: For churches or public hospitals measure from front door to front door, along the property lines of the street fronts and in a direct line across intersections.

11. Will your business be located within 300 feet of any private/public school, day care center or child care facility? Yes No

If "YES," are the facilities located on different floors or stories of the building? Yes No

NOTE: For private/public schools, day care centers and child care facilities measure in a direct line from the nearest property line of the school, day care center or child care facility to the nearest property line of the place of business, and in a direct line across intersections.

NOTE: For multistory building: businesses may be within 300 feet of a day care center or child care facility as long as the facilities are located on different floors of the building.

NOTE: If located on or above the fifth story of a multistory building: measure in a direct line from the property line of the private/public school to property line of your place of business in a direct line across intersections vertically up the building at the property line to the base of the floor on which your business is located.

12. Will your business be located within 1,000 feet of a private school? Yes No

13. Will your business be located within 1,000 feet of a public school? Yes No

60-DAY SIGN INFORMATION

14. If you were required to post a 60-day sign as required by Section 11.391 or 61.381 of the Texas Alcoholic Beverage Code at this location; what exact date was the required sign posted at the location?

Exact Date (mm/dd/yyyy)

11/19/2012

WARNING AND SIGNATURE

If Applicant Is/ Must Sign

Individual/Individual Owner

Corporation/Officer

Partnership/Partner

Limited Liability Company/Officer or Manager

Limited Partnership/General Partner

WARNING: Section 101.69 of the Texas Alcoholic Beverage Code states: "...a person who makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the Commission and required to be sworn commits an offense punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years."

BY SIGNING YOU ARE SWEARING TO ALL INFORMATION AND ATTACHMENTS TO THIS PACKET.

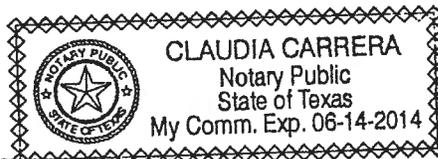
PRINT NAME WILFREDO CERVANTES 502A

SIGN HERE [Signature]

TITLE OWNER

Before me, the undersigned authority, on this 19th day of November, 2012, the person whose name is signed to the foregoing application personally appeared and, duly sworn by me, states under oath that he or she has read the said application and that all the facts therein set forth are true and correct.

SIGN HERE [Signature]
NOTARY PUBLIC



SEAL