

**MINUTES OF THE REGULAR MEETING OF THE  
SAN MARCOS PLANNING AND ZONING COMMISSION  
COUNCIL CHAMBERS, CITY HALL  
February 12, 2013**

**1. Present**

**Commissioners:**

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

**City Staff:**

Matthew Lewis, Development Services Director  
Kristy Stark, Development Services Assistant Director  
Roxanne Nemcik, Assistant City Attorney  
Francis Serna, Recording Secretary  
Alison Brake, Planner  
Emily Koller, Planner  
Tory Carpenter, Planning Technician  
Abigail Gillfillan, Permit Center Manager

**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 February 12, 2013, in the Council Chambers, City Hall, City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666.

**Chairperson's Opening Remarks.**

Chair Taylor welcomed the audience and viewers.

***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.*

**3. 30 Minute Citizen Comment Period**

Brenda Smith, 323 W. Hopkins, stated the biggest problem with Zelicks is live music. She felt that the mediated agreement was a step in the right direction. Ms. Smith pointed out that the agreement did not address live and outdoor music. She stated that amplified music is not compatible with the area. She added that people live and work in the area and asked the Commission that the issues to be carefully considered.

Barry James, 323 W. Hopkins, own property across the street. He came before the Commission as the person who filed the appeal. He explained that the Monday following the approval of the conditional use permit, Zelicks had a blowout which didn't include a live band and outdoor speakers but was a window rattler. Mr. James also explained that he appealed asking the Council to bring the request back to the Planning Commission to reconsider and not to clarify the conditions. He asked the Commission to not only clarify but possibly add recommendations to Council as a separate request. He pointed out that he has concerns regarding Item 6 allowing live outdoor amplified music. Mr. James expressed concerns about enforcing the decibel level.

Mike Dillon, 1000 Burluson, stated he and his wife Cathy Dillon own Crystal River Inn. He stated to allow outdoor music would be a disaster. He explained that they would not be allowed to have their caterings. He added that live music was not in the original CUP approval. Mr. Dillon pointed out that Zelicks has had bands twice and has been incredibly loud. He asked the Commission to not allow Zelicks to have live outdoor music.

Monte Sheffield was not present.

Jaimy Breihan, 134 E. Hillcrest asked if providing an address is required to speak. He stated that he lives approximately 10 blocks from Zelicks. He pointed out that the City and Texas State end events at 10:00 p.m. Mr. Breihan stated that live outdoor music will be a big problem for him and he knows that it is an issue for citizens living nearby. He added that the Commission should not set a precedent and that they are slowly driving people out of San Marcos. Mr. Breihan stated he is in support of the CVS Warrant. He added that he is in opposition to the Economic Development Incentive Waiver. Mr. Breihan felt that the original Hillside PDD should override any working construction documents. He stated that if the building is encroaching on other people property the buildings should be torn down.

Clinton Giles provided a written statement.

David Sergi, 904 Burluson expressed concerns regarding Item 9, Economic Development Incentive Waiver. He felt each zoning change request should be brought before the Commission for clarity and open government. Mr. Sergi referred to Hillside and explained that PDD is clearly written. He stated that The City and the developer are trying to change the rules when the PDD is clearly written stating that there is a 150' buffer. He pointed out that there is a problem with the document due to the developer. Mr. Sergi said that the issue does not fall on the citizens.

Cathy Dillon, 1000 Burluson stated that in December the subject of live outdoor bands had not been brought up. She expressed concerns with Zelicks currently being allowed to have live music until 11:00 p.m. which she felt will be a big problem. She felt that a couple times a year would not be a problem. Ms. Dillon asked the Commission to remove allowing bands.

Melissa Derrick stated that she supports the Dillon's and commented that Zelicks is the right development in the wrong place. Ms. Derrick spoke in opposition to the Economic Development Incentive Waiver. Ms. Derrick referred Hillside Ranch and asked how the issue evolved with a PDD in place. She explained that many people removed their names from the super majority petition because they were promised a 150' buffer. Ms. Derrick asked the Commission to support the original Hillside PDD.

Diane Wassenich spoke regarding Item 9 and stated that allowing zoning to be changed without approval is dangerous and unnecessary. She pointed out that the City has a current Master Plan and a preferred scenario that the community has come up where development should be happening. Ms. Wassenich spoke in opposition to the Economic Development Incentive Waiver. She pointed out that the language is clear in the Hillside PDD, which stated the buffer was 150'. Ms. Wassenich explained since the roundabouts were not included in the PDD there will be a problem getting the money for the shared costs. She felt that there are a lot of slip ups pertaining to language in documentation. She added that there is also wording issues with the Lazy Oaks Development Agreement. Ms. Wassenich referred to the Zelicks CUP and said the wording was inserted at the last minute to solve a problem which caused a bigger problem.

Seth Katz, 336 W. Hopkins pointed out that they were zoned Commercial and are now T5 zoning designation. He explained that they have been understanding and have imposed several restrictions upon themselves. Mr. Katz pointed out that they have no noise violations and have committed a lot of money towards noise mitigation. In addition, they have made an agreement with their neighbors. He asked the Commission to keep their decision as is and let them move forward.

**Consent Agenda:**

**4. Consider the approval of the minutes from the Regular Meeting on January 22, 2013.**

**MOTION:** Upon a motion made by Commissioner Carter and a second by Commissioner Ehlers the Commission voted on consent to approve the minutes of the Regular Meeting on January 22, 2013.

**Public Hearings:**

**5. CUP-13-01 (Cool Mint Café)** Hold a public hearing and consider a request by Cool Mint, Inc., for renewal of a Conditional Use Permit to allow the sale of beer and wine for on- premise consumption at 415 Burleson Street.

Tory Carpenter, Staff Planning Technician gave an overview of the project.

Chair Taylor opened the public hearing. There were no 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 all in favor to approve CUP-13-01 with the condition that the permit shall be valid for the lifetime of the State TABC license, provided standards are met subject to the point system.

**6. CUP-13-02 (CVS Warrant)** Hold a public hearing and consider a request by John N. Meeks, on behalf of Aurelius Ltd., for a SmartCode Warrant to allow a reduction in height below the 2-story limit for a proposed 1-story CVS store in a SmartCode T-5 zoning district at 301 North Edward Gary Street.

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

Chair Taylor opened the public hearing. There were no citizen comments and the public hearing was closed.

**MOTION:** Upon a motion made by Commissioner Wood and a second by Commissioner Morris the Commission voted all in favor to approve CUP-13-02.

**7. PC-12-30(04) (Blanco River Village Replat)** Hold a public hearing and consider a request by Scott Bauer, on behalf of Bigelow San Marcos, LLC, for approval of a replat of 5.008 acres, more or less, being Lots 1 and 11, Block J, and a portion of the rights of way of Morning Shadow and Rush Haven, of Blanco River Village, Section One, and Lot 1, Block H, and all of Block I, of the Amending Plat of Blocks, E, F, H, and I, Blanco River Village, Section One, establishing Blanco River Village for Greenway Subdivision, City of San Marcos, Hays County, Texas.

Alison Brake, Staff Planner gave an overview of the project.

Chair Taylor opened the public hearing. There were no citizen comments and the public hearing was closed.

**MOTION:** Upon a motion made by Commissioner Morris and a second by Commissioner Kelsey the Commission voted all in favor to approve PC-12-30(04).

**There was a 15 minute recess.**

**8. PDD-11-11(a) (Hillside Ranch II PDD Amendment)** Hold a public hearing and consider an amendment, by the City of San Marcos, to section 6.01 of the development standards of the Hillside Ranch Phase II Planned Development District (PDD) overlay to clarify the limits of the 150 foot buffer with regard to the row houses located on N. LBJ Drive for 10.925 acres, more or less, out of the TJ Chambers Survey, Tract 179, located at 1410 North LBJ Drive.

Kristy Stark, Assistant Director of Development Services, gave an overview of the project.

Chair Taylor opened the public hearing.

Gary Ford, Elm Hill Court, expressed concerns regarding the buffer. He said the residents expect that Planning and Zoning Commission and staff to protect the citizens from issues and enforcement. He asked the Commission to bring the development into compliance.

Nancy Moore expressed concerns regarding the buffer. She stated that Jay Hiebert measured the distance of the buffer which is an estimated 84-85'. Ms. Moore explained that she spoke the homeowners and they stated the buffer was 150' because that is what they were told when they removed their names from the petition. She stated the Mr. Hiebert wrote a letter to the City Attorney and was told that they built the building in the wrong place. Ms. Moore stated that the buffer is supposed to be 150'. She added that she has a letter from Tyler stating he removed his name from the petition because he was told he would have a 150' buffer. Ms. Moore read Code Section 5.6.1.3 regarding Public Parkland.

Ms. Gotcher, 1420 N. LBJ, stated she lives on the adjacent property that the building is encroaching upon. She said that she was promised a 150' barrier. Ms. Gotcher said she strongly opposes the PDD amendment. She explained that her house continuously shakes and they cannot close their doors due to the development. She asked the Commission to not approve the amendment of the PDD.

Jay Hiebert pointed out the date of the bubble diagram of January 5, 2012. He said the debate is the petition passed around by Mr. Bishop to remove their names from opposing the development in May 2012. Mr. Hiebert said that the PDD is very clearly stated that there will be a 150' buffer zone. He felt that it is not right that neighbors have to deal with issues to their homes due to the development. He asked the Commission to require the developer to comply with the PDD.

Jim Garber asked the Commission to not grant the request. He pointed out that 2300 citizens signed the petition to not build the apartments until the Comprehensive Master Plan was complete. Mr. Garber expressed concerns regarding the language in the PDD. He read a section of the code stating that 150' buffer is required. He added that if they are not going to listen to people then do it right. Mr. Garber stated that they should tear the building down.

Mr. Childre, 130 Cypress Court stated that the building is so close to the street. He listens to people race their cars on N. LBJ at 2 or 3 o'clock in the morning. He expressed concerns regarding accidents happening. Mr. Childre pointed out that his house has rattled for the last two or three months due to the construction. He asked who allowed the developer to build in the buffer zone. He felt the buildings should be removed.

David Wendel, 118 E. Holland, stated he was out getting signatures against the Hillside II project and issues on Elm Court. He pointed out that he did not have any problems getting signatures. Mr. Wendel mentioned that a student moved from Aspen Heights to Elm Court to get away from the noise and pollution and now lives with the racket every day. Mr. Wendel stated that there is a fire hydrant that is being used illegally. He stated that every day there are trucks driving on Holland Street. He called the city and has not heard back from them.

Penny Alba stated that her daughter lives on Elm Court and she has issues with her home with cracks on the wall and doors unable to open correctly. Ms. Alba pointed out that her daughter did not remove her name from the petition. She asked the Commission to stand up to developers and abide by the Ordinances. The citizens of this town are tired of all the apartment buildings. She felt that more apartment buildings are not needed. She stated she lives on Norcrest off of Mimosa Circle and she can hear all the pounding all day long.

Vincent DeBrock, an Arborist explained that issues started when they began the grading of the project. He stated that the first thing he noticed was the preservation of trees. Mr. DeBrock felt that the project was misrepresented because they did not follow through with their intentions of salvaging trees. Mr. DeBrock added that erosion control is another issue with the project.

Bill Guajardo, 113 Elm Hill Court stated he was originally against the project and felt the owner was allowed to build on his property. He explained that the neighborhood negotiated in good faith and though they had an agreement. Mr. Guajardo pointed out that his house vibrates and that he knows is doing damage to his home. He felt that they are living in consequences made by the City, City Council and the Planning Commission. He added that the community does not have faith in the City.

Cynthia Gonzales spoke in opposition to the amendment. She felt a developer should adhere to the ordinance.

No one else spoke and Chair Taylor closed the public hearing.

**MOTION:** Upon a motion made by Commissioner Couch and a second by Commissioner Morris the Commission voted all in favor to deny PDD-11-11(a).

There was a fifteen minute break

**9. LDC-13-01 (Economic Development Incentive Waiver)** Hold a public hearing and consider an amendment to Chapter 1 of the Land Development Code to expand the provision for economic development incentive waivers to include a waiver of zoning regulations.

Abigail Gillfillan, Planning Manager gave an overview of the project.

Chair Taylor opened the public hearing.

Tom Wassenich, 11 Tanglewood stated that he objected to large multifamily projects being allowed.

Diana Coffee said she is opposed to giving out her address. She stated that the waiver is a bad idea. Ms. Coffee felt that until an overlay is developed waivers should not be allowed.

No one else spoke and the public hearing was closed.

**MAIN MOTION:** Upon a motion made by Commissioner Morris and a second by Commissioner Bryan, the Commission voted six (6) for and three (3) against to approve amendment to Chapter 1 to include economic development incentive waivers to include a waiver of zoning regulations with the conditions that require a super majority vote of council when zoning regulations are being waived, include a twelve (12) month expiration date for waivers of zoning regulations and include the three (3) criteria from the Economic Development Policies of the ordinance. Commissioners Couch, Seebeck and Kelsey voted in opposition.

## **Non-Consent**

**10. PVC-13-01 (Sienna Pointe Plat Variance)** Consider a plat variance request by Jim Shaw for the Sienna Pointe Plat (PC-12-37\_03) to Sections 7.4.1.4 a (1) and 7.4.1.4 a (3) of the Land Development Code requiring streets not shown on the City's Thoroughfare Plan provide for a continuation or appropriate projection every 1200 feet and provide for future access to adjacent vacant areas.

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

**MOTION:** Upon a motion made by Chair Taylor and a second by Commissioner Kelsey the Commission voted five (5) for and four (4) against to deny PVC-13-01 based on variance criteria #4-Granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area and #5-Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property. Commissioner Couch, Morris, Ehlers, and Wood voted against.

**11. PC-12-37(03) (Sienna Pointe)** Consider a request by Jim Shaw on behalf of James Pendergast, Donna Marie Neuhaus, and Toribio Torres for approval of a final plat, and associated subdivision improvement agreement, of approximately 22.001 acres out of the J.M. Veramendi Survey League No. One, Abstract 17, establishing Sienna Pointe, located near the intersection of Hunter Road and McCarty Lane.

**MOTION:** Upon a motion made by Commissioner Morris and a second by Commissioner Ehlers the Commission voted all in favor to statutorily deny PC-12-37(03).

**12. CUP-12-42A (Zelicks Appeal)** Consider a statement of intent for City Council to clarify conditions (4) and (6) of the Conditional Use Permit CUP-12-42 issued to Zelicks Inc. on December 11, 2012.

**MOTION:** Upon a motion made by Commissioner Morris and a second by Commissioner Ehlers the Commission voted seven (7) for and two (2) against to approve the motion that was approved previously as stated in CUP-12-42. Commissioners Bryan and Taylor voted in opposition.

## **13. Development Services Report**

- a. Update on Downtown Implementation Plan
- b. Update on Comprehensive Plan

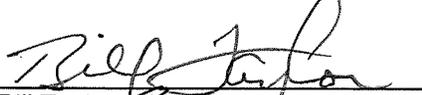
Matthew Lewis, Development Services Director gave an update on the Downtown Implementation and the Comprehensive Master Plan.

**14. 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.

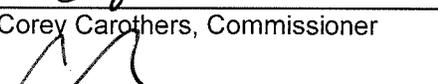
15. Adjourn.

Chair Taylor adjourned the Planning and Zoning Commission at 9:50 p.m. on Tuesday, February 12, 2013.

  
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Bill Taylor, Chair

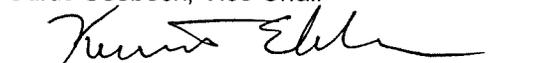
  
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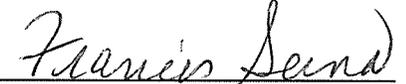
  
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ATTEST:

  
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Francis Serna, Recording Secretary