

**CITY OF SAN ANTONIO  
DEVELOPMENT SERVICES DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

**FROM:** Florencio Peña III, Director, Development Services Department

**SUBJECT:** Vested Rights Permit appeal for VRP # 04-06-146 (Mission Del Lago)

**DATE:** November 18, 2004

**SUMMARY AND RECOMMENDATIONS**

A Resolution deciding an appeal to grant vested rights on 812 acres located east of Mitchell Lake, west of U.S. Highway 281 and surrounding Mission Del Lago Municipal Golf Course and known as Mission Del Lago.

The Planning Commission supported staff's initial recommendation of denial by a majority vote on September 22, 2004. Staff recommends denial of this appeal.

**BACKGROUND INFORMATION**

The subject application was processed in accordance with the Unified Development Code (UDC) for the City of San Antonio, Article 4, Section 35-401, Paragraph (a), (2) Completeness Review and Article 7, Section 35-712, Paragraph (b), (2) Review and Approval.

1. On July 16, 2004, Development Services Department received the Vested Rights Permit application.
2. The applicant was seeking Vested Rights for an 812-acre site as depicted by POADP # 284, also known as Mission Del Lago.
3. On August 20, 2004, the analysis was concluded and a recommendation for disapproval was given with the following condition:  
A vesting date of February 2, 1988, was given for a school site consisting of 14.00 acres as identified on POADP # 284 and the applicant was notified of the decision.
4. On September 1, 2004, Development Services Department received a letter of appeal dated September 1, 2004, from Earl & Associates, P.C., Attorneys at Law.
5. On September 22, 2004, the Planning Commission heard the appeal and supported staff's recommendation for denial by a majority vote with one abstention and one in opposition.
6. On September 28, 2004, the applicant was notified in writing of the Planning Commission's decision.
7. On October 10, 2004, an appeal was filed with the City Clerk's Office appealing the Planning Commission's decision.

## **POLICY ANALYSIS**

To obtain vested rights, the applicant must meet two requirements. First, there must be evidence of some specific project/endeavor.

The UDC defines project as “[a]n endeavor over which the City exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor. Within the context of § 35-710 (Permit Rights), ‘project’ shall mean an endeavor over which the city exerts its jurisdiction and for which a preliminary overall area development plan, a plat, plat application or a building permit is required to initiate or continue the endeavor. Within the context of permit rights which existed prior to September 1, 1997, project shall mean an endeavor over which a regulatory agency exerts its jurisdiction and for which one (1) or more permits are required to initiate or continue the endeavor” (UDC Section 35-A101, Definitions).

Second, the initiation/start of a project may be verified by having obtained a permit.

The UDC defines permit 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 (Source: VTCA Local Government Code § 245.001). A ‘development permit’ includes any of the following: a subdivision plat, a conditional use permit, a building permit, or a certificate of occupancy. A ‘development permit’ does not include a certification of completeness, a letter of certification, an amendment to the text of this Chapter, or a rezoning” (UDC Section 35-A101, Definitions).

Therefore if it can be determined that a project exists, then vesting is established on the date it was initiated as evidenced by local governmental action.

Vested rights or permit rights are defined in the UDC as “[t]he right of a property owner or developer to complete a project under the rules, regulations and ordinances in effect at the time the project was initiated through a permit as herein defined. When permit rights exist for property within the boundaries of a project, ordinances passed after the date the project is initiated shall not apply to the project except as specifically provided within this section” (UDC Section 35-A101, Definitions).

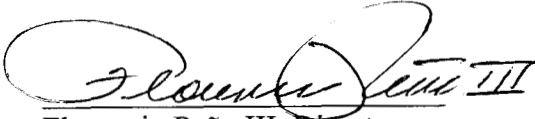
In this instance, the sole information submitted for vested rights consisted of copies of subdivision plats from completed projects in the area and the new school project. Therefore, it is the recommendation of staff and the Planning Commission that vested rights for this site, with the exception of the school, be denied on the basis that the information submitted did not support the establishment of a project pursuant to current definitions in the Unified Development Code for the City of San Antonio.

## **FISCAL IMPACT**

There is no financial impact.

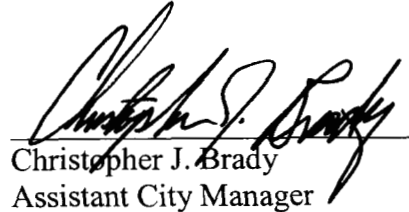
## COORDINATION

This application and appeal was coordinated with the City Attorney's Office.




Florencio Peña III, Director  
Development Services Department

Approved:



Christopher J. Brady  
Assistant City Manager



J. Rolando Bono  
Interim City Manager

RECEIVED  
CITY OF SAN ANTONIO  
OCT 1 2004

October 1, 2004

Ms. Leticia M. Vacek, TRMC, CMC  
City Clerk  
City of San Antonio  
Office of the City Clerk  
100 Military Plaza, 2<sup>nd</sup> Floor  
San Antonio TX 78205

Via Hand-Delivery

Re: Appeal of the decision of the planning commission and department of development services to disapprove Vested Rights Permit No. 04-07-146

Dear Ms. Vacek:

This is an appeal of the erroneous disapproval of the planning commission decision (made at its regularly scheduled meeting of September 22, 2004) to affirm the Department of Development Services decision to disapprove Vested Rights Permit Application No. 04-07-146. This appeal is made pursuant to Unified Development Code Section 35-712(d). Please find enclose herewith a check for \$75.00 to offset the city's costs associated with processing this appeal. Pursuant to the provisions of Section 35-712(d) please place this matter on the agenda of "the earliest regularly scheduled meeting of the City Council that will allow compliance with the requirements of the Texas Open Meetings Act"

**I. State Statutory and Municipal Regulatory Authority**

**A. State Statutory Authority**

Texas Local Government Code Chapter 245 preempts municipal regulatory agencies ability to apply certain regulations to certain projects.

Specifically, § 245.001 provides the following definitions:

- (1) "Permit" means 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.
- (2) "Political Subdivision" means a political subdivision of the state, including a county, a school district, or a municipality.
- (3) "Project" means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.



- (4) "Regulatory Agency" means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

The definitions set out above are taken directly out of Texas Local Government Code Section 245.001. The aforementioned definitions are the definitions that City Council must consider when reviewing this appeal. Dallas Merchants and Concessionaires Assoc. v. Dallas, 852 SW 2d 489, 491 (Tex. 1993) ("A City ordinance that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute.")

Section 245.002 (entitled "Uniformity of Requirements") provides as follows:

- (a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the permit is filed.
- (b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expirations, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for the project.

When reviewing this appeal, the City Council must consider the law as it is set out in Texas Local Government Code Section 245.002(a) and (b). As has been pointed out with regards to the definitions found in Texas Local Government Code Section 245.001, the City Council must look to Section 245.002 for guidance and where said section conflicts with City of San Antonio's City Code the City Council must follow the state statute.

#### B. Municipal Regulations

The municipal regulation at issue in this instance is a requirement that a "POADP shall be required in all instances where a tract of land within the City or its Extraterritorial Jurisdiction is platted or intended to be platted into two (2) or more units." This requirement is found in Ordinance No. 65513 Section 2(f), passed and approved on August 13, 1987. The POADP requirement was found in the City of San Antonio's first Unified Development Code at Chapter 35, Article 2, Division II, Section 35-2076 (entitled "Terms of Validity") read as follows:

"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 a POADP is accepted."

Additionally germane to this appeal is Section 35-2077 (entitled "Revisions"), which reads as follows:

"Revisions to the POADP may be made at anytime by submission of a new POADP to the Director of Planning; Within fifteen (15) working days after filing of the proposed revisions, the Director of Planning shall provide a written response indicating whether or not the revised POADP has been accepted."

## **II. The Project**

Mission del Lago is an 812 acre master planned community that includes single-family and multi-family housing; commercial development; municipal facilities (i.e. police and fire station), and eleemosynary institutions (i.e. schools and places of worship). Mission del Lago is surrounded by the Mission del Lago Municipal Golf Course, which was created pursuant to a donation of property by our client.

## **III. The Permit**

This project requires "a series of permits" in order to reach completion. As stated above, the first permit in that series is the Preliminary Overall Area Development Plan that was accepted by the City of San Antonio on February 2, 1988, pursuant to the provisions of the City of San Antonio's Unified Development Code Article II Division 2 (approved by Ordinance No. 65513).

## **IV. City of San Antonio Development Services Department erred in not approving Vested Rights Permit No. 04-07-146**

On July 16, 2004, Vested Rights Permit No. 04-07-146 was submitted to the City of San Antonio's Development Services Department. The purpose of this submittal was to obtain the City of San Antonio's acknowledgement that "Mission del Lago" is a project as that term is defined in Texas Local Government Code Section 245.001(3) and that Preliminary Overall Area Development Plan No. 284 was the first permit in a series of permits required for the completion of the project. (Texas Local Government Code Section 245.002(b) provides in relevant part "Preliminary plans and related subdivision plats, site plans and other development permits for land covered by the Preliminary plan or subdivision plats are considered collectively one series of permits for the project"). It should be axiomatic that a vested rights permit application such as this one should be approved by the Department of Development Services. However, the Department of Development Services has subscribed to a misplaced belief that a project must be fixed to the last detail at the time of inception in order to qualify for protection under Texas Local Government Code Chapter 245. This is not the case. The definition of "project" is an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor. (Texas Local Government Code Section 245.001(3)) The word endeavor simply means to "try, attempt". *Mariam-Webster Dictionary-1998 Home and Office Edition*. The legislature provides such a broad definition of "project" due to the realities associated with developing real property. For example, in this instance, the development includes approximately 800 acres of real property. Any development,

particularly a development of this magnitude, has not been determined to the minute degree of detail, required by the vested rights application, at the time of initiation. In this case, the developer initially intended the project to include single-family and multi-family housing; commercial development; municipal facilities (i.e. police and fire station), and eleemosynary institutions (i.e. schools and places of worship). The developer anticipated the approximate acres that would be devoted for each of the above described uses. There is no way the developer could be expected to anticipate at the time that the Preliminary Overall Area Development Plan was filed the specific acreage and specific location for each use. This fact was certainly understood by the legislature as evidenced by its definition of a project as an endeavor. Moreover, it was understood by the drafters of the City's first Unified Development Code. As previously stated, Section 35-2077 provides that "revisions to the POADP may be made at any time by submission of a new POADP to the Director of Planning; within fifteen (15) working days after filing of the proposed revisions, the Director of Planning shall provide a written response indicating whether or not the revised POADP has been accepted." Pursuant to the above referenced section, it was the practice of the City of San Antonio Planning Department to review a POADP, and, upon the determination that the POADP did not substantially change the project to accept the revision and so indicate by placing a letter suffix (i.e. A, B, C) to the POADP number.

Consequently, Appellant is requesting that the City Council overrule the decision of the Planning Commission and the Department of Development Services and approve Vested Rights Permit No. 04-07-146; and, thus, acknowledge that Preliminary Overall Area Development Plan is the initial permit in a series of permits for the Mission del Lago project.

**V. Objection to City presenting any additional information to City Council other than what was provided to Applicant**

The purpose of this objection is to object to the city staff from presenting to the City Council any additional information to support its decision to deny Vested Rights Permit No. 04-07-146, other than that which has been provided to Appellant along with the City's denial. City of San Antonio's Unified Development Code Section 35-712(b)(2) (entitled "Review and Approval") reads in relevant part "should application be denied the Planning Department shall enumerate in writing any and all reasons for such denial, which shall be delivered to the applicant within the time period allowed for review." (emphasis added) Pursuant to the above referenced section, the City was required to provide the applicant with any and all reasons that the City denied Vested Rights Permit No. 04-07-146. Enclosed herewith is a copy of the complete application, that is the permit that was denied by the City, and all comments that were provided by the City. Pursuant to Section 35-712(b)(2) the City is now precluded from providing any additional information to the City Council that was not provided to the Appellant.

**VI. Prayer**

Appellant hereby request that the Planning Commission overturns the decision of the Development Services Department to deny Vested Rights Permit No. 04-07-146 and that the Planning Commission in so doing approve Vested Rights Permit No. 04-07-146 and acknowledge that POADP No. 284 is a permit as that term is defined by Texas Local

Ms. Leticia M. Vacek, TRMC, CMC  
October 1, 2004  
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Government Code Chapter 245 that provides the project, described in Section II herein, with the full protection provided by Texas Local Government Code Chapter 245.

Sincerely,  
EARL & ASSOCIATES, P.C.

By:   
Habib H. Erkan, Jr.

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Enclosure