

AGENDA ITEM NO. **12**

**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 # 05-06-099 (Gateway Village Shops at Stone Oak)

DATE: December 15, 2005

SUMMARY AND RECOMMENDATIONS

Consideration of an appeal by Earl & Associates, P.C., on behalf of Mortgage Loan & Agency, Inc., regarding the Planning Commission's action to deny rights under Chapter 245, Texas Local Government Code for a proposed project on 1.722 acres out of Lot 1, Block 1, NCB 16329 located at the southwest corner of the intersection of FM 1604 and Voigt Drive.

The applicant is requesting approval of a vesting date of September 25, 1992. Staff recommends denial of this appeal.

BACKGROUND INFORMATION

On June 27, 2005, Development Services Department received a Vested Rights Permit application. The applicant was seeking Vested Rights for a site located at the intersection of FM Hwy 1604 and Voigt Drive (Exhibit A). The applicant requests vesting to September 25, 1992 based on recordation of a plat for the 2.93 acre tract.

On August 14, 2005, the Planning Commission denied the applicant's appeal of staff's determination. On September 21, 2005, the City Clerk's Office received an appeal to City Council regarding the decision of the Planning Commission to deny vested rights. The item was originally scheduled to be heard at City Council on November 10, 2005. City staff pulled the item to consider the applicant's submittal of supplemental information which could be used to support the applicant's request for vesting. The supplemental information consisted of an application to the Texas Natural Resources Conservation (TNRCC), now Texas Commission on Environmental Quality (TCEQ) for approval of a project at the property in question.

POLICY ANALYSIS

A review of the supplemental information indicates that a project was initiated on March 30, 1987. The project consisted of two phases, one for 5.9 acres in Hollywood Park and the other for 2.9 acres in the City of San Antonio. A building permit was issued by Hollywood Park for a

gasoline station on the 5.9 acres in the early 1990's. Subsequently, a building permit for the 2.9 acre tract was filed on June 19, 1996 with the City of San Antonio to build a 2-story bank facility. A Certificate of Occupancy was issued to the bank facility on November 26, 1997.

Since no building activity or any other demonstration of continued "progress towards completion" of this project has been provided for the period after November 26, 1997, it is staff's opinion that the project initiated on March 30, 1987 is dormant. In order for the project to maintain its vesting to March 30, 1987, the applicant must demonstrate "progress towards completion" in accordance with Chapter 245 of the Texas Local Government Code (TLGC). The applicant has not demonstrated "progress" since November 26, 1997 when the Certificate of Occupancy was issued. None of the following activities have been performed since November 26, 1997 as required by TLGC Section 245.005:

- 1) that an application for a final plat or plan has been submitted to a regulatory agency
- 2) that a good-faith attempt has been made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project
- 3) that costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility and other infrastructure facilities designed to serve, in whole or in part, the project in the aggregate which the project is located
- 4) that fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency
- 5) utility connection fees or impact fees for the project have been paid to a regulatory agency

The plat application upon which the applicant bases their original request for vesting was for one commercial project and did not indicate any phased development. There was no indication in the application that the original project completed in 1994 was phased development. Additionally, the plat subsequently became dormant in accordance with the provisions of Chapter 245 of the TLGC.

The supplemental information submitted by the applicant for consideration which consisted of the TNRCC Water Pollution Abatement Plan dated March 30, 1987 did demonstrate commencement of a project. However, no activity pursuant to TLGC Section 245.005 has been performed, therefore, the project is dormant.

FISCAL IMPACT

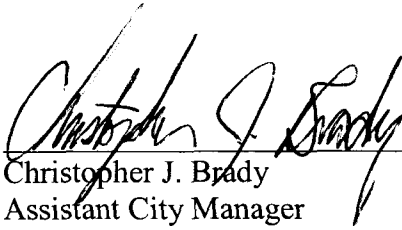
There is no fiscal impact related to this action.

COORDINATION

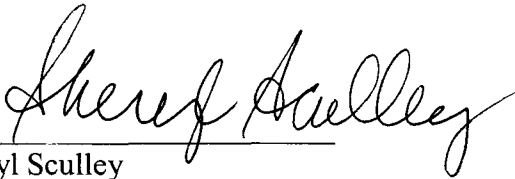
This appeal was coordinated with the City Attorney's Office.

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Florencio Peña III
Director, Development Services Department

A handwritten signature in cursive script, appearing to read "Christopher J. Brady", written over a horizontal line.

Christopher J. Brady
Assistant City Manager

A handwritten signature in cursive script, appearing to read "Sheryl Sculley", written over a horizontal line.

Sheryl Sculley
City Manager