

December 11, 2006

Mayor Will Wynn  
Mayor Pro Tem Betty Dunkerley  
Mike Martinez  
Jennifer Kim  
Lee Leffingwell  
Brewster McCracken  
Sheryl Cole  
Austin City Hall  
301 W. 2nd St. 2nd Floor  
Austin, Texas 78701

Honorable Mayor Wynn and Council Members,

Responsible Growth for Northcross requests that City Council immediately act to suspend and/or rescind approval of the site plan for the Northcross Mall Redevelopment due to the apparent fact that City administrative officials improperly processed the site plan application rather than referring the application to the Land Use Commission ("LUC"). Even in the event that referral of the application to the LUC is found not to be required by the City's Land Development Code ("Code"), there are serious questions regarding the site plan's compliance with applicable substantive regulations, as well as procedural defects that deprived potential interested parties of their legal right to air their opposition to the proposed site plan during the review process, that require a suspension of the approval in order that a thorough review may be made of the application and the procedures used for approving same that plainly did not comply with notice provisions required by the City's Code regardless which official or body ought to have considered the application.

**The site plan discloses a conditional use and was therefore improperly processed as an "administrative" site plan.**

A site plan application may be processed as an administrative site plan only if the application does not include any conditional uses. The site plan discloses a garden center of over 5,000 sq. ft. The Northcross Mall property is currently zoned "GR," and does not currently have a garden center. Under current zoning restrictions, operation of a plant nursery in a "GR" zoned area is a conditional use. Therefore, under ' 25-5-142, this site plan was required to have been approved by the LUC. Had the site plan been properly processed under the Code, it would have been subject to the public hearing and notice provisions of ' 25-5-144. By processing it as an administrative site plan, the applicant was able to improperly avoid the requirement of a public hearing. The director of WPDR did not have authority to approve this site plan under the Code, and the approval should, therefore, be rescinded by the City.

**The City of Austin's form notification to property owners did not comply with the requirements of ' 25-1-133(C)(6) that all notices describe how to become an "interested party" in opposition to the site plan application.**

Even if this application was properly handled as one for administrative determination, the Code requires that notice of the application be provided to certain persons and organizations before action is taken on the application. We believe, but have not yet confirmed that notice was not provided to all those entitled to notice. We have confirmed that the notice provided to at least some of those entitled to notice failed to describe the procedure and requirements for becoming an interested party. Instead, the notice simply offered contact information in the event that the recipient had “any questions concerning this application.” The words “interested party” do not even appear on the notice, much less any description of the recipient’s right to become an interested party and what steps he or she would take to do so. This proposed project is in the midst of not less than five neighborhoods with organized neighborhood associations. It appears that at least two of those neighborhood associations were entitled to the Code-required notice and in fact received what notice had been provided. If proper notice had been given, those neighborhood groups could have informed their members, some of whom live close enough to qualify as "interested persons," of the process for becoming an interested party.

**The notification that was issued by the City of Austin with respect to this particular site plan failed to “generally describe” the nature of the application, as required by 25-1-133(c)(3), such that any person reading it would have understood the scale or nature of the proposed development.**

The notice to property owners for this site plan application described the project in terms that utterly fail to capture the general nature of the development proposed in the application: “The applicant proposes to demolish the westerly two-thirds of the existing shopping mall, renovate the remaining portion, construct 5 ancillary retail buildings, a three-level parking garage and associated improvements.”

Section 25-1-133(c)(3) requires that notices of site plan applications “*must: generally describe the proposed development.*” (emphasis added) The description provided could apply to any commercial development project; it gives no indication whatsoever of the record-breaking size (*largest ever in Travis County*) of the proposed retail facility. Omission of such material information from the document intended to alert adjacent property owners and potential interested parties of the proposed project cannot in any way be deemed to be compliant with the notice requirements of ' 25-1-133.

Numerous aspects of both the site plan approval process and the site plan itself appear potentially non-compliant with Title 25 and other applicable law, and therefore in need of additional review. These aspects include but are not limited to notification, traffic, neighborhood and environmental impact, drainage, driveways, parking, screening, utilities, vegetation and waterways. In addition to requesting site plan suspension, we request an independent audit of the site plan review and approval process.

The planned redevelopment is inconsistent with the City’s Vision and Values and with the kind of growth most of our neighbors and local small businesses support. *Responsible*

*Growth for Northcross* is working toward establishing a partnership with Lincoln Property Company to develop a mutually beneficial, growth-oriented solution for Northcross Mall that serves the character and needs of the surrounding neighborhoods while also ensuring a successful business endeavor for Lincoln Property Company.

In the span of about 12 hours this past weekend, we collected almost 3600 signatures from Austinites who want you to stand up and fight for our neighborhoods. For people who live in the Northcross Mall area, this is the single most important issue we will remember when we are asked in the future for our votes and our support. We ask for your immediate action on this matter.

Sincerely,

Paige Hill, President  
Responsible Growth For Northcross, Inc.