

June 26, 2015

Mr. H. Clark Leming, Esquire  
c/o Leming and Healy P.C.  
P.O. Box 445  
Garrisonville, VA 22463

***RE: Vesting Determination, Austin Park, Assessor's Parcel 30-7H, "The Property"***

Dear Mr. Leming,

This letter is in response to your request for a determination of a vested right in a land use for Assessor's Parcel 30-7H (Austin Park), consisting of approximately 28.8836 acres owned by Austin Park Development, LLC.

The property was rezoned with proffered conditions from M-2, Heavy Industrial to B-2 Urban Commercial in 2004 by approval of Ordinance O04-41 (Attachment 1). The proffered conditions were amended in 2005 by approval of Ordinance O05-62 by the Board of Supervisors of Stafford County. (Attachment 2)

In your request, you state there are proffered conditions in Ordinance O05-62 citing specifics for the design, architectural treatment and cash contributions for the construction of commercial apartments and these proffered conditions, as part of the approved Ordinance O05-62, should be treated as a significant affirmative governmental act (SAGA) and satisfy the first prong of a vested land use.

According to the VA Code Section 15.2-2307, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the following occurs:



**1. The landowner (i) obtains or is the beneficiary of a significant affirmative governmental act (SAGA) which remains in effect allowing development of a specific project.**

The state code deems the following to be a SAGA allowing development of a specific project:

*(i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property; or (vii) the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.*

Proffer #4 states architecture will be consistent with the renderings entitled "Austin Park Centre Architectural Renderings" (Attachment 3). The rendering is a graphic representation of how a building(s) will look once constructed and does not equal a proffer allowing a specific land use on the property. Any lawful use would be required to occur in a building which generally resembles the rendering.

Proffer #13 outlines the cash contributions for each residential unit building permit issued. This schedule of payment is enforced only if a residential building permit is issued. The schedule of cash contributions does not by itself allow a specific land use on the property.

The proffered conditions do not state a specific land use to be developed on the property nor is a land use stated in the description of the rezoning case. In addition, there is no record of an approved preliminary or final site plan, a variance for this property, or a written order issued by a zoning administrator regarding a specific use or density for the property. Therefore, the property owner has obtained approval by the Board of Supervisors to rezone the property from M-2, Heavy Industrial, to B-2, Urban Commercial, with no use or project specified and the use of the property must comply with the current uses permitted and as regulated in the current zoning ordinance in the B-2, Urban Commercial Zoning District.

**2. Relies in good faith on the significant affirmative governmental act (SAGA).**

There is no specific use approved by a significant affirmative governmental act therefore, there is no SAGA to rely on for a specific use or project.

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**3. *Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative government act.***

The summaries of expenses incurred by the owner, Austin Park Development, Inc. included as part of the request show expenses incurring during 2004 to 2007. This time frame corresponds with the submittal of development plans during the years 2006-2007. Due to inactivity towards diligently pursuing approval of the plans for a specific project, all of the plan applications were closed and consequently not approved. In my opinion, any expenses incurred after the closing of the plan applications would not be applicable for vesting purposes since there was no specific project to pursue. As of this date, there has been no commercial or residential use of the property, and no construction has occurred in pursuit of a specific use by the land owner. Therefore, pursuit of a specific project was not done in a diligent manner and the proposed plans were never approved. In my opinion, this prong of establishing vested rights has not been met. The property owner cannot obtain a vested right due to a lack of diligent pursuit of a use of the property.

Due to these findings, the property is not vested to a specific land use. Any development of the property must comply with the uses that are currently permitted and as regulated in the in the B-2, Urban Commercial, zoning district of the Stafford County Zoning Ordinance.

This determination may be appealed to the Board of Zoning Appeals within thirty (30) days from receipt of this letter, in accordance with Section 15.2-2311 of the Code of Virginia, or this decision shall be final and unappealable.

Sincerely,



Susan W. Blackburn  
Zoning Administrator  
[sblackburn@staffordcountyva.gov](mailto:sblackburn@staffordcountyva.gov)

O04-41

**BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA**

**ORDINANCE**

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 17th day of August, 2004:

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<u>MEMBERS:</u>	<u>VOTE:</u>
Jack R. Cavalier, Chairman	Yes
Gary D. Pash, Vice Chairman	Yes
Peter J. Fields	Yes
Robert C. Gibbons	Yes
Kandy A. Hilliard	Yes
Mark W. Osborn	Yes
Gary F. Snellings	Yes

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On motion of Ms. Hilliard, seconded by Mr. Pash, which carried by a vote of 7 to 0, the following was adopted:

**AN ORDINANCE TO AMEND AND REORDAIN THE ZONING ORDINANCE FOR STAFFORD COUNTY BY AMENDING THE ZONING DISTRICT MAP TO RECLASSIFY, WITH PROFFERS, FROM M-2, HEAVY INDUSTRIAL, TO B-2, URBAN COMMERCIAL ON PROPERTY IDENTIFIED AS ASSESSOR'S PARCEL 30-7B, AQUIA ELECTION DISTRICT**

WHEREAS, Austin 610 Associates, applicant, has submitted application RC230603 requesting reclassification, with proffers, from M-2, Heavy Industrial, to B-2, Urban Commercial, of property consisting of approximately 61.14 acres, located on the west side of Jefferson Davis Highway, approximately 4,000 feet south of Garrisonville Road, Aquia Election District; and

WHEREAS, the Board has carefully considered the recommendation of the Planning Commission and staff and the testimony at the public hearing; and

WHEREAS, the Board has determined that the requested zoning is compatible with the surrounding land uses and zoning;

NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the 17th day of August, 2004, that the Zoning Ordinance for Stafford

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County be and it hereby is amended and reordained by amending the Zoning District Map to reclassify, with proffers, the parcels of land, as shown on the plat of survey by Greenhorne & O'Mara, Inc., dated July, 2003, from M-2, Heavy Industrial, to B-2, Urban Commercial, with the following proffers:

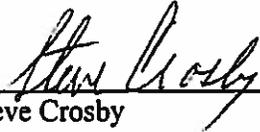
1. Right of Way Dedication and Improvement - The applicant shall dedicate right of way twenty five (25) feet on U.S. Route 1 (Jefferson Davis Highway) and extend Austin Park Drive approximately 800 linear feet, as indicated on Generalized Development Plan ("GDP"), dated July, 2003, revised June 16, 2004, and prepared by Greenhorne & O'Mara, Inc. The right of way shall be dedicated at the time of final site plan approval and construction shall occur in a sequence consistent with the development of the Property. At such time commercial uses are constructed on the property which generate a total of more than 4,500 additional vehicular trips per day, the applicant shall include dual left turn lanes out of the development, as indicated on the GDP, ~~at such time commercial uses on the property generating more than 4,500 additional vehicular trips per day are constructed~~, and shall pay the County 15% of the cost of adding a dedicated through lane on Foreston Woods Drive. In addition, the applicant shall provide frontage improvements along the length of the property adjacent to U.S. Route 1, including a right turn lane, as indicated on the GDP. The applicant further agrees to pay to the County the cost of the construction of a raised median within U.S. Route 1 for the length of the property at the time of submission of its site plan for the development of the property. The payment shall be based on a cost estimate submitted to and reviewed by staff at the time of site plan submission. ~~The applicant also agrees to pay to the County fifteen percent (15%) of the cost of adding a dedicated through lane on Foreston Woods Drive when the recreational enterprise is constructed.~~
2. Traffic Study - The applicant has submitted a traffic study dated January 30, 2004, prepared by the Vettra Company, and agrees to make any improvements indicated by the study, subject to Virginia Department of Transportation approval.
3. Interparcel Access - The applicant shall provide at the time of the site plan approval an interparcel access easement to Assessor's parcel 30-7C, as shown on the GDP, but shall be under no obligation to construct such connection.
4. Architecture Treatment - The applicant shall employ a consistent, coordinated design theme that features brick, glass, or split face block for the facades of all buildings visible from U.S. Route 1 or Interstate 95. Except for the proposed recreational enterprise building shown on the GDP, building height shall be limited to thirty-five feet (35'). Rooftop mechanical equipment shall not be visible from Interstate 95. The proposed recreational enterprise building shall be designed and constructed in a manner consistent with the style or general quality reflected in the elevations attached as Exhibits 1 and 2 to these proffers, although the applicant shall not be required to replicate the building shown on the exhibits. If a use is constructed on

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the property in lieu of the recreational enterprise, the applicant shall provide additional elevations, which shall be reviewed and approved by Planning staff as being consistent with the intent of this proffer.

5. Entrances/Curb Cuts to Parking Areas - The entrances or curb cuts to the parking areas shown for the proposed buildings shown on the GDP, shall be in the approximate location indicated on the GDP. The applicant agrees to construct the landscape islands in the parking areas, as depicted on the GDP.
6. Development in RPA - The applicant agrees it will not cross the RPA on the southern portion of the property with any roadway or develop any portion of the property to the south of the RPA.
7. Low Impact Development - The applicant shall employ low impact development techniques to provide stormwater management services for the property to the extent it is feasible to do so.
8. Maintenance of Austin Park Drive - The applicant agrees to establish a maintenance agreement between tenants and property owners to provide for the maintenance of Austin Park Drive, to include repairs to the roadway and snow removal.
9. Secondary Access - The point of secondary access to U.S. Route 1, shown on the GDP, shall be limited to right in/right out.
10. Signage - The applicant agrees to employ a consistent, coordinated design theme for signage throughout the development that features brick facades, earthtones or muted colors, and recessed lighting.
11. FRED Bus Stop - The applicant agrees to identify a location and provide a shelter for a FRED bus stop on Austin Park Drive if a bus route along U.S. Route 1 in the vicinity of the property is authorized.

A Copy, teste:

  
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Steve Crosby  
County Administrator

SC:JAH:kb

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BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA

ORDINANCE

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the ~~17<sup>th</sup>~~ 1<sup>st</sup> day of ~~August~~ November, 2005:

<u>MEMBERS:</u>	<u>VOTE:</u>
Gary D. Pash, Chairman	Yes
Gary F. Snellings, Vice Chairman	Yes
Jack R. Cavalier	Yes
Peter J. Fields	Yes
Robert C. Gibbons	Absent
Kandy A. Hilliard	Yes
Mark W. Osborn	Yes

On motion of Ms. Hilliard, seconded by Mr. Fields, which carried by a vote of 6 to 0, the following was adopted:

AN ORDINANCE TO AMEND AND REORDAIN THE ZONING ORDINANCE FOR STAFFORD COUNTY BY AMENDING THE ~~ZONING DISTRICT MAP TO RECLASSIFY, WITH PROFFERS, FROM M-2, HEAVY INDUSTRIAL, TO PROFFERED CONDITIONS ON PROPERTY IDENTIFIED AS ASSESSOR'S PARCEL 30-7B (PORTION), ZONED B-2, URBAN COMMERCIAL, AQUIA ELECTION DISTRICT~~

WHEREAS, Austin ~~610 Associates~~ Park Development, LLC, applicant, has submitted application ~~RC230603~~ 2501089 requesting ~~reclassification, with proffers, from M-2, Heavy Industrial, to B-2, Urban Commercial,~~ an amendment to proffered conditions of property consisting of approximately ~~61.14~~ 29 acres, located on the west side of Jefferson Davis Highway, approximately 4,000 feet south of Garrisonville Road, Aquia Election District; and

WHEREAS, the Board has carefully considered the recommendation of the Planning Commission and staff and the testimony at the public hearing; and

WHEREAS, the Board has determined that the requested zoning is compatible with the surrounding land uses and zoning;

NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the ~~17<sup>th</sup>~~ 1<sup>st</sup> day of ~~August~~ November, 2005, that the Zoning

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Ordinance for Stafford County be and it hereby is amended and reordained by amending the Zoning District Map to ~~reclassify, with proffers~~ amend proffered conditions on the parcels of land, as shown on the plat of survey by Greenhome & O'Mara, Inc., dated ~~July, 2003~~ March 29, 2005, from ~~M-2, Heavy Industrial, to B-2, Urban Commercial, with the following proffers as follows:~~

1. Right of Way Dedication and Improvement - The applicant shall dedicate right of way twenty five (25) feet and extend Austin Park Drive approximately 800 linear feet, as indicated on Generalized Development Plan ("GDP"), dated July, 2003, revised June 16, 2004, revised August 9, 2005, and prepared by Greenhome & O'Mara, Inc. The right of way shall be dedicated at the time of final site plan approval and construction shall occur in a sequence consistent with the development of the Property. At such time commercial uses are constructed on the property which generate a total of more than 4,500 additional vehicular trips per day, the applicant shall include dual left turn lanes out of the development, as indicated on the GDP, and shall pay the County 15% of the cost of adding a dedicated through lane on Foreston Woods Drive. In order to determine when vehicular trips exceed 4,500 per day, the applicant shall conduct traffic counts on a semiannual basis. In addition, the applicant shall provide frontage improvements along the length of the property adjacent to U.S. Route 1, including a right turn lane, as indicated on the GDP. The applicant further agrees to pay to the County the cost of the construction of a raised median within U.S. Route 1 for the length of the property at the time of submission approval of its site plan for the development of the property. The payment shall be based on a cost estimate submitted to and reviewed by staff at the time of site plan submission. Such estimate shall be completed by an engineer mutually agreeable to the applicant and the County.
2. Traffic Study - The applicant has submitted a traffic study dated January 30, 2004, revised May 19, 2005, prepared by the Vetra Company, and agrees to make any improvements indicated by the study, subject to Virginia Department of Transportation approval.
3. Interparcel Access - The applicant shall provide at the time of the site plan approval an interparcel access easement to Assessor's parcel 30-7C, as shown on the GDP, but shall be under no obligation to construct such connection.
4. Design and Architecture Treatment - ~~The applicant shall employ a consistent, coordinated design theme that features brick, glass, or split face block for the facades of all buildings visible from U.S. Route 1 or Interstate 95. Except for the proposed recreational enterprise building shown on the GDP, building height shall be limited to thirty five feet (35'). Rooftop mechanical equipment shall not be visible from Interstate 95. The proposed recreational enterprise building shall be designed and constructed in a manner consistent with the style or general~~

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quality reflected in the elevations attached as Exhibits 1 and 2 to these proffers, although the applicant shall not be required to replicate the building shown on the exhibits. If a use is constructed on the property in lieu of the recreational enterprise, the applicant shall provide additional elevations, which shall be reviewed and approved by Planning staff as being consistent with the intent of this proffer. The applicant agrees to utilize a consistent architectural theme and general layout of buildings that features a neo-traditional design, in substantial conformance with the renderings entitled "Austin Park Centre Architectural Renderings" dated August 1, 2005, prepared by Samaha Associates, P. C., and as depicted on "Austin Park Centre Conceptual Plan", dated August 1, 2005, prepared by Loiederman Soltesz Associates, Inc. ("Conceptual Plan"). The applicant shall adhere to the following guidelines:

(A) Street Scapes – the applicant shall provide for enhanced pedestrian circulation and locate structures as close to established walkways as practicable. Street landscaping shall feature predominately shade trees, with the exception of the parking areas located in the Virginia Power easement. Off street parking shall be located primarily to the rear of structures, as indicated on the GDP. Other features shall include public gathering areas, including courtyards, fountains, and gazebos. Such features shall be constructed in the approximate locations noted as "outdoor seating" or "fountain/sculptures" on the Conceptual Plan. Signage shall be coordinated with building materials and colors, and lighting shall utilize a consistent theme or style throughout the development.

(B) Architectural – Buildings in the development shall include varied ornamentation, such as recesses, balconies, stoops and breezeways. Windows and exterior design, including roofs, shall be distinct for given buildings and consistent with the architectural theme for the development. Building materials and design shall vary from building to building, but shall specifically exclude vinyl, cinder block and unadorned metal.

(C) Renderings – To ensure conformity with these proffers, at the time of submission of building permit applications, renderings of proposed structures included in each application shall be simultaneously submitted to the Planning Department for review and approval within ten (10) days.

5. Entrances/Curb Cuts to Parking Areas - The entrances or curb cuts to the parking areas shown for the proposed buildings shown on the GDP, shall be in the approximate location indicated on the GDP. The applicant agrees to construct the landscape islands in the parking areas, as depicted on the GDP.
6. Development in RPA - The applicant agrees it will not cross the RPA on the southern portion of the property with any roadway or develop any portion of the property to the south of the RPA.

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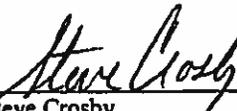
7. Low Impact Development – The applicant shall employ low impact development techniques to provide stormwater management services for the property to the extent it is feasible to do so. Recreational Amenities – The applicant shall construct the trail system in the general location shown on the Austin Park Centre Conceptual Plan. Benches shall be interspersed along the trail at intervals of 1,500 feet.
8. Maintenance of Austin Park Drive - The applicant agrees to establish a maintenance agreement between tenants and property owners to provide for the maintenance of Austin Park Drive, to include repairs to the roadway and snow removal.
9. Secondary Access – The point of secondary access to U.S. Route 1, shown on the GDP, shall be limited to right in/right out.
10. Signage - The applicant agrees to employ a consistent, coordinated design theme for signage throughout the development that features brick facades, earthtones or muted colors, and recessed lighting.
11. FRED Bus Stop – The applicant agrees to identify a location and provide a shelter for a FRED bus stop on Austin Park Drive if a bus route along U.S. Route 1 in the vicinity of the property is authorized.
12. Crosswalk – The applicant shall provide crosswalk improvements at the intersection of Route 1 and Foreston Woods Drive, consisting of striping and pedestrian signals, if permitted by VDOT to do so.
13. Cash Contribution – The applicant agrees to pay the sum of Four Thousand Five Hundred Ninety-three Dollars and 18 Cents (\$4,593.18) per unit, payable at issuance of the building permit for each residential unit. The per unit payments shall, until paid, be subject to annual increases, with notice to the applicant, to be calculated on a yearly basis commencing one year after the date of the proffer amendment. Such increases shall be calculated by multiplication of the National Consumer Price Index of the Department of Labor Statistics for the current year by the original per unit cash proffer amount. The per unit contribution shall be allocated based on the following categories or subcategories:

<u>Parks and Recreation:</u>	<u>\$500.00</u>
<u>Schools</u>	<u>3,250.00</u>
<u>Libraries</u>	<u>130.00</u>
<u>Fire and Rescue</u>	<u>100.00</u>
<u>Transportation</u>	<u>613.18</u>
	<u>\$4,593.18</u>

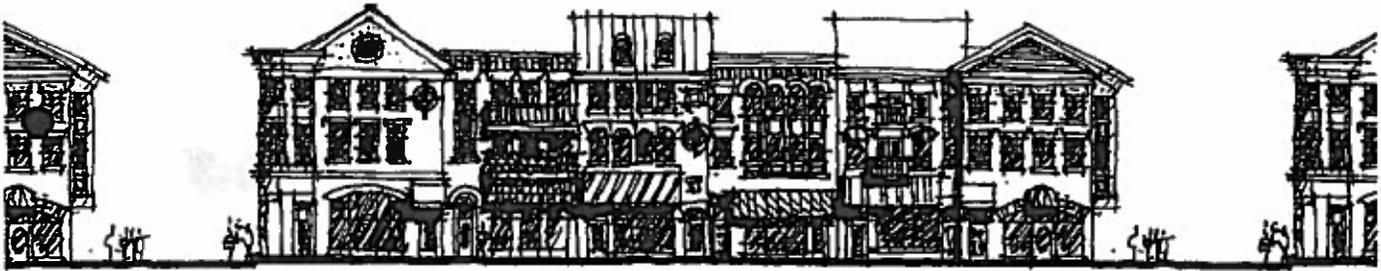
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The applicant shall be entitled to an offset for the improvements referenced at Proffer 1 above against the transportation portion of the cash improvement.

A Copy, teste:

  
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Steve Crosby  
County Administrator

SC:JAH:kb



retail/residential units

Samaha Associates, LLC

August 1, 2005