



# City of San Marcos

DRAFT

630 East Hopkins  
San Marcos, TX 78666

## Meeting Minutes Planning and Zoning Commission

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Tuesday, December 13, 2016

6:00 PM

City Council Chambers

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630 E. Hopkins

### I. Call To Order

**With a quorum present the regular meeting of the San Marcos Planning and Zoning Commission was called to order by Chair Garber at 6:05 p.m. on Tuesday, December 13, 2016 in the City Council Chambers of the City of San Marcos, City Hall, 630 E. Hopkins, San Marcos, Texas.**

### II. Roll Call

**Present** 8 - Commissioner Jim Garber, Commissioner Travis Kelsey, Commissioner Shawn Dupont, Commissioner Saul Gonzales, Commissioner Kate McCarty, Commissioner Betseygail Rand, Commissioner Lee Porterfield, and Commissioner Angie Ramirez

### III. Chairperson's Opening Remarks

### IV. 30 Minute Citizen Comment Period

H. C. Kyle, 711 W. San Antonio Street stated that when he was on the Planning Commission forty years ago they tried not to interfere with the neighborhoods. He referred to Gumby's request and pointed out that there are approximately 2-4 buildings that are occupied by people trying to sleep at night. Mr. Kyle said he doesn't understand allowing a business with a courtyard that will sell alcohol until 2:30 a.m. and open until 3:00 a.m. He explained that he can hear people talking 100 feet away in his neighborhood. Mr. Kyle said that the current situation has already affected the Crystal River Inn. He also expressed concerns with the business adjacent to a Sorority House. He added that the location was not appropriate where people are trying to sleep or next to a Sorority House. Mr. Kyle asked the Commission not to allow the CUP.

Lisa M. Coppoletta, 1322 Belvin Street said she wanted to talk about the criteria for stewardship in the Community. She explained that we need to view the impact of neighborhoods and the Historic District. Ms. Coppoletta explained that it is not all about the profit that is made from a business but also traffic analysis and the impact it will have in the neighborhood. Ms. Coppoletta expressed her concern with the approval of the new HEB. She explained that the number of dollars that are brought in should not be considered but the impact the business will have on the neighbors. Ms. Coppoletta gave an overview of an accident that happened in her neighborhood. She advised the Commission that traffic, type of customers, neighborhood impact

should be considered when a new business is brought into the area. Ms. Coppoletta expressed her concerns about the shovel test of the HEB and feels that HEB has not come clean. She mentioned that there are human remains and artifacts on the property.

Todd Salmi 1301 Brown Street, thanked the Commission for their service. He was present to speak regarding another controversial CUP. Mr. Salmi explained that the Commission has the authority beyond a yes or a no and explained that the Commission should encourage them to move beyond struggling with each other and working together. Mr. Salmi expressed his concerns with the current process and that compromise between the neighborhood and the applicants should be rewarded. He suggested tabling CUP-16-34 and suggested that the Commission give staff direction to have conversations between the applicant and concerned neighbors. He explained that we can't make people get along but should have the integrity to encourage it. He also suggested that the Commission direct staff for a more complete report of the analysis and provide written comments of areas of concern that can be addressed with the existing neighborhood, a school within 300 yards and previous Commission actions which was not included in the current report. He asked the Commission to table CUP-16-34.

Linda Coker 1800 Post Rd, Apt. 1417, said she has a unique prospective as part of the Hays County Historical Commission, Board Member of the Heritage Association and a member of the Main Street Board; she also runs the County Museum and offices in the County Courthouse. She explained that she speaks to a lot of tourist and tourist who are Heritage Tourists. Ms. Coker explained that Heritage Tourist are slightly older and they spend a lot of money when they are in San Marcos. She said the tourist stay in Bed & Breakfast Facilities and Historic Hotels. Ms. Coker stated that tourist are looking for antique shops, Historic Hotels that San Marcos does not have. She stated she loves Gumbly's but it is not the place and near the girls. There are many other locations that fit and this location is not it. She is happy to answer questions.

## CONSENT AGENDA

1. Consider approval of the minutes of the Regular Meeting on November 8, 2016.
2. Consider approval of the minutes of the Special Meeting on November 21, 2016.

**A motion was made by Commissioner McCarty, seconded by Commissioner Porterfield, that the Consent Agenda be approved. The motion carried by the following vote:**

**For:** 8 - Commissioner Garber, Commissioner Kelsey, Commissioner Dupont, Commissioner Gonzales, Commissioner McCarty, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

**Against:** 0

## PUBLIC HEARINGS

3. CUP-16-34 (Gumby's Pizza and Wings) Hold a public hearing and consider a request by 312 Ventures LLC for a new Conditional Use Permit to allow the sale of mixed alcoholic beverages for on-site consumption at 312 West Hopkins Street. (T. Carpenter)

MariAnn Moore, 2930 Summit Ridge Drive, said she has strong feeling for the Heritage aspect of the Community. She said she is very concerned things are encroaching on sacred Historical neighborhoods. She understands the business is not located in the Historic District but feels that places keep inching their way closer to the neighborhoods. Ms. Moore feels that places are catering more to pizza and alcohol drinkers. She pointed out that their quiet neighborhood has changed with Zelicks. Ms. Moore said she is concerned about parking and traffic in downtown. She pointed out that she is concerned with the number of seats and the limited amount of parking required. Ms. Moore stated that she is for growth but additional parking is necessary in downtown. She asked the Commission to not approve an item that will stay open until 2:30 a.m. next to a Sorority and a Bed and Breakfast.

Linda Jaluka, 4113 Knight Street, said she does not live in the City but is a Realtor in town. She said she is a big proponent of property rights. She suggested that the Commission consider the property rights of the people in the area when rezoning request are presented. Ms. Jaluka mentioned that there are three church's in the area within a 300 ft radius and at 3:30 in the morning there are approximately 80 people trying to sleep. Ms. Jaluka felt that Gumbys does not add anything to the area. She pointed out that we are trying to develop downtown to attract visitors, dwellers, young professionals and people that want to walk downtown. She requested that the request not be approved. Ms. Jaluka said there are other areas in town targeted for students.

Kristen Parkerson, 323 W. Hutchison which is next door pointed out that parking is currently an issue. She feels that when Gumby's is next door she will not have any place to park. She explained that she pays alot of money where she resides. Ms. Parkerson stated that she feels that Gumby's should be located closer to campus and not in the Historic District. She mentioned that noise is an issue and they already deal with Zelick's. She is concerned with drunks walking behind her residence. She said that the request is not fitting for the area and hopes that the Commission does not allow the request.

Cama Davis, stated she owns a portion of the building at 323 W. Hopkins Street which is located across from Cathy Dillon's Bed and Breakfast. In addition, she owns the top portion of the building with Airbnb apartment that are for rent with office downstairs. Ms. Davis said she has a house at 834 W. Hopkins and lives on Hazelton. She added that she loves San Marcos, pizza, and she loves the college students. Ms. Davis mentioned that she works for the University. She felt that the location was not the place. She also felt that there are other locations that are much more appropriate and not in the Historic District. Ms. Davis asked the Commission to table or deny the request.

Sonia McGill, 329 W. Hutchison and also the person who wrote the Sleepless in San Marcos article. She said there are alot of valid points made especially with Zelicks

being in her back yard. She explained that there is not one single night she is not awoken by vulgar language, beer bottles being tossed in dumpsters and vehicles peeling out. Ms. McGill pointed out as a former employer with Crystal River Inn which is world wide known has suffered. She mentioned that she would always receive 3 or more noise complaints. The area is impacted by negative things and doesn't feel that Gumbys will not add anything to the area. She pointed out that parking is also an issue. Ms. McGill added that Gumbys will attract customers that they do not want to deal with in the area. She said pizza and serving alcohol until midnight is fine but not until 3:30 a.m. She hoped the Commission does not vote in support of the request.

Paula Oxford, Co-Manager of Crystal River Inn stated she previously lived on the property for a year and in that time period her experience was an increased noise level of people yelling at each other after 11 p.m. until 2 a.m. She could tell there was an increase of alcohol in their system. She explained from personal experience when she resided at the Inn she experienced several incidents with people that were drunk and the police were involved. She said it would not be good to add another venue that would promote this type of activity.

Greir Del Rio, 316 W. Hopkins, Chapter Advisor for Alpha Delta Pie Sorority said her biggest concern is safety. She added that 3:30 a.m. is too late to stay open. Ms. Del Rio feels that parking is definitely going to be an issue as well as noise. She explained that there has already been issues in the past since Zelicks with a higher increase in crime. Ms. Del Rio asked the Commission to consider her concerns.

Kathy Dillon, 326 W. Hopkins, Co-Owner of Crystal River Inn and lives in Historic District. She said they are terrified with not only what is happening to her business but so many people are concerned with commercialism coming across Ranch Road 12. She feels that the Historic District is going to die one battle at a time. Ms. Dillon expressed concerns with another business in the neighborhood. She mentioned Zelicks has gotten better after four years. She said it is difficult to control the drunks from shouting and not to vandalize is impossible. She also feels the Noise Ordinance is not effective because it only control sustained noise. Ms. Dillon is also concerned with possible music in the future. She suggested that they only deliver after midnight. Ms. Dillon pointed out that it is important that any stipulations that are imposed should be done in writing.

Rachel Moon, President of Alpha Delta Pi Sorority stated she is not opposed or in total agreement with the request. She felt that if the owners, staff and managers work with them and respect their wishes and respect their concerns regarding, traffic, noise and hours of the business they could come to an agreement.

Amy Meeks, lives in the Historic District at 832 Belvin stated that she is concerned with Gumbys going into the proposed location because it is so close to the Historic neighborhoods. She said she is all about commercialization and wants people to make money, be able to live in San Marcos and have a livelihood. She said that Gumbys as proposed is the wrong commercial business to have in the proposed

location. Ms. Meeks pointed out that if the request is approved the details must be clear and enforceable. She pointed out that Zelicks violations have been difficult to enforce.

Virginia McKinney, Alpha Delta Pi Alumni serving as Board Treasurer at 312 W. Hopkins stated that an establishment serving alcoholic beverages wouldn't be their choice of business next to the Alpha Delta Pi Sorority. Ms. McKinney explained that the applicant met with the Board but they did not speak to the residents of the Sorority and were not given a complete picture of the request. Ms. McKinney explained their main concern is to provide comfort, safe and security of all the young ladies and the alumni who use the facilities. She said they believe the intent of the applicant is to run a restaurant that sells alcohol not primarily a bar. Ms. McKinney pointed out that if the permit is approved the Commission should consider parking, entry on Hopkins Street, security, lighting, traffic and hours of operation.

Camille Phillips, PO Box 172, asked the Commission to deny the request. She said Gumby's is a good restaurant but feels it is not the right location. Ms. Phillips is concerned with having the business in close proximity to a sorority house. She explained that there have been several incidents with students and currently do not know what happened to two students. Ms. Phillips stated that we do not need to endanger other college students. She is also concerned with the Historic District and stated that we need to attract tourism in San Marcos. She asked the Commission to vote against the request.

Lisa Marie Coppoletta, 1322 Belvin, stated that there is a procedure to run the meeting and the applicant refused to give his presentation and refused to speak in support of the request. She explained the reason speakers in support speak prior to speakers against is to understand the rationale of the request. She encouraged the Commission not to allow him to give his speech. Ms. Coppoletta pointed out that she was the twelfth person giving her speech against the request and not one person spoke in support of Gumby's. She expressed her concerns with Gumby's serving alcohol in proximity to the school, Sorority house, and in the Historic District. Ms. Coppoletta pointed out that Zelick's had a completely different business model than what was provided to staff. She added that there is no staff analysis on the impact of Crystal River Inn, drunk driving data or traffic analysis. She mentioned the parking is not sufficient for the amount of seats proposed.

Mike Dillon, 1000 Burleson, Co-owner of Crystal River Inn, 326 W. Hopkins stated that Mr. Higdon met with them who is a nice guy and Gumby's is terrific. He said his main concern is that we are selling more and more alcohol later and later at night. He said the market for alcohol sales after midnight are college kids. Mr. Dillon said they learned their lesson from Zelicks, even though the proposed request will not be like Zelicks and farther away that it will not impact his business. Mr. Dillon asked if they are impacted what is their recourse. He explained prior to Zelicks they never had vandalism. Mr. Dillon said he is not opposed to selling food until 3:00 a.m. but suggest they stop selling alcohol at midnight. He pointed out that they need to mitigate the problem.

Forrest Higdon, owner of 312 W. Hopkins said he appreciates everyone coming out to participate in the dialogue. He explained that they are a family business, himself, his father and brother. He said they have been a positive role model in the community for 7 years. In addition, he pointed out that they try to participate in every activity they can to make San Marcos a better place. He said they bought 312 W. Hopkins with the intent to moving their restaurant to further their ability to operate as a restaurant because they have outgrown their current facility. He explained that they have requested to open a restaurant that sells alcohol but will not operate as a bar. Mr. Higdon pointed out most of his business is from pizza deliveries. He mentioned that the area is not in the Historic District and that the area is defined as T5. Mr. Higdon pointed out that the Commission and Council have identified the location for his type of business. He does not want to create a bar atmosphere and will not have live music. He said his understanding is that the request will be tabled to for further discussions with the Dillon's, the Alpha Delta Pi Sorority and all the stakeholders involved. He thanked the Commission for their time and stated that he is a business owner trying to make the city a better place.

Adam Higdon, Forrest Higdon's younger brother spoke to represent the family. He said they have been in San Marcos for seven years and have worked with almost every Church and several youth groups. He assured the Commission that Gumby's will not be a rowdy bar. He explained that their current business has been open for seven years serving alcohol and have never had a single police report. Mr. Higdon mentioned that purchasing the building is part of their dream to have a better business.

Josh Whittenberg, Assistant Athletic Director at Texas State University spoke and Michelle Higdon's character pointed out that they have been involved with the athletic department for numerous years and are proud alumni. He said they have been a model of what it is to be an Alumni to give back to their university. The Higdon's are also proud members of the Bobcat Club Alumni Association. Mr. Whittenberg explained that Gumby's Pizza has been a big partner and through the partnership they provide meals for staff members and student athletes. He added that the Higdon's as well as Gumby's Pizza will have the San Marcos Community and the University in their best interest.

Zach Halton, 905 Dartmouth Ave., spoke in support of Gumby's. He said that Gumby's are community members and sponsored the Eyes of San Marcos during Sights and Sounds. They have also helped raise \$2000 for volunteer river clean ups at their own cost. He explained that the applicant is not opening a bar but a restaurant. He pointed out that staff has recommended approval of the request. He also mentioned that the property is not in the Historic District. Mr. Halton suggested that the Commission approve the request.

Shawn Hallaway said he has been part of the community and has known the Higdon's for about twenty years. He feels that with issues arising due to growth, the applicants are being targeted. Mr. Hallaway said he understands the frustration but the issues

have nothing to do with Gumby's. He said the Higdon's do a lot for the community. He asked the Commission for their support.

**A motion was made by Chair Garber, seconded by Commissioner McCarty, that CUP-16-34 (Gumby's Pizza and Wings) be tabled to the January 10, 2017 Planning and Zoning Commission Meeting. The motion carried by the following vote:**

**For:** 7 - Commissioner Garber, Commissioner Dupont, Commissioner Gonzales, Commissioner McCarty, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

**Against:** 0

**Recused:** 1 - Commissioner Kelsey

4. CUP-16-35 (Newk's Eatery) Hold a public hearing and consider a request by Colby Kaminer, on behalf of San Marcos Eatery 1, LLC, for a new Conditional Use Permit to allow the sale of beer and wine for on-premise consumption at 1285 South I-35 Suite 101. (W. Parrish)

Chair Garber opened the public hearing.

Will Parrish, Planning Tech gave an overview of the request.

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

Commissioner Gonzales left at 7:15 p.m. He was not present for the vote.

**A motion was made by Commissioner Dupont, seconded by Commissioner Porterfield, that CUP-16-35 (Newk's Eatery) be approved with conditions that the CUP shall be valid for one (1) year, provided standards are met, subject to the point system and the CUP shall be posted in the same area and manner as the Certificate of Occupancy. The motion carried by the following vote:**

**For:** 7 - Commissioner Garber, Commissioner Kelsey, Commissioner Dupont, Commissioner McCarty, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

**Against:** 0

**Absent:** 1 - Commissioner Gonzales

5. LDC-16-08 (Short-Term Rentals) Hold a public hearing and consider revisions to Subpart B of the City's Code of Ordinances (Land Development Code) amending Chapter 4 (Zoning Regulations) in order to regulate short-term rentals within the City of San Marcos. (A. Gillfillan)

Chair Garber opened the public hearing.

Abby Gillfillan, Planning Manager gave an overview of the revisions.

Carl Furry of 811 West San Antonio Street has lived here for 10 years. He explained

that he has a small guesthouse in his backyard that he rents out through Airbnb since August and has been very successful. He said he is happy to see regulations put in place and they seem reasonable. Mr. Furry stated that he understands that the goal is to make the properties safe, quiet and compliance which he is in support. He mentioned that they had a couple from Spokane Washington visit and said they loved San Marcos and can't wait to return. He felt that the hot taxes being paid directly to the city would streamline the process. He inquired if the 250 feet restrictions prevent an owner to have an additional rental within 250 feet.

There were no additional comments and the public hearing was closed.

**A motion was made by Commissioner Kelsey, seconded by Commissioner Dupont, that LDC-16-08 (Short Term Rentals) be recommended for approval to City Council. The motion carried by the following vote:**

**For:** 7 - Commissioner Garber, Commissioner Kelsey, Commissioner Dupont, Commissioner McCarty, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

**Against:** 0

**Absent:** 1 - Commissioner Gonzales

6. Hold a public hearing and consider two requests by Mark Lindley, on behalf of Stripes, LLC & 90 San Marcos, LTD for the approximately 10.432 acres, more or less, located near the intersection of Mill Street and IH-35, being lot 2 of the Stripes Addition No. 2, and lot 3 of the Aspen Heights Phase 2 Subdivision, regarding the following matters each to be approved by separate motion:
- a) PSA-16-01 - A Preferred Scenario Amendment from Area of Stability to Medium Intensity
  - b) ZC-16-12 - A Zoning Change from General Commercial (GC) to Multifamily (MF-24). (T. Carpenter)

Chair Garber opened the public hearing.

Tory Carpenter, Staff Planner gave an overview of PSA-16-02 and ZC-16-12.

Mark Lindley, representing Asset Campus Housing and Asset Plus from Houston Texas. In addition Mr. Lindley represents Stripes LLC and 90 San Marcos, LTD as an authorized agent. Mr. Lindsey gave a 10 minutes presentation.

Jim Evans, Region Director with Stripes and representative of Sonoco for the Central Region. He stated that he does not live in San Marcos although has an office in San Marcos. He explained that they initially purchased the property with the intent to serve the community. Mr. Evans added that the location to develop the gas station is to have access to the community behind the property. He pointed out that they did not have intent to attract guest from IH 35. He said he was present for the support of

Assets Plus. He explained that Asset Plus is the best compliment for the property because of the difficult access from IH 35.

Mike Dallas, Real Estate Broker, Austin representing 90 San Marcos, LTD said he has been involved in the development for over 10 years. He explained that they started working with the city about for 15 years ago for a Master Plan of the area. Mr. Dallas explained the surrounding development and pointed out that has had no interest in the four acres because it is not accessible to IH 35. He added that the location makes sense for multi family. Mr. Dallas asked for the Commissions support.

Andy Chillers, representing Jim Evans and Stripes. He asked the Commission to consider rezoning the entire tact to multi family. He explained that the IH 35 Exit does not have access to the property. Mr. Chillers pointed out that the property is not viable for commercial development. He added that the location is a good place for student housing especially with the bus route on Telluride.

There were no additional comments and the public hearing was closed.

**A motion was made by Commissioner Kelsey, seconded by Commissioner Ramirez, that PSA-16-01 be denied. The motion carried by the following vote:**

**For:** 6 - Commissioner Garber, Commissioner Kelsey, Commissioner McCarty, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

**Against:** 1 - Commissioner Dupont

**Absent:** 1 - Commissioner Gonzales

## **NON-CONSENT AGENDA**

V. Question and Answer Session with Press and Public.

**There were no questions from the press and public.**

VI. Adjournment

**A motion was made that the meeting be adjourned at 8:34 p.m. The motion carried by a unanimous vote.**

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**Jim Garber, Chair**

**ATTEST:**

**Francis Serna, Recording Secretary**

Notice of Assistance at the Public Meetings

I certify that the attached notice and agenda of items to be considered by the Planning and Zoning Commission was removed by me from the City Hall bulletin board on the

\_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_ Title:

\_\_\_\_\_