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October 8, 2020

San Marcos City Council  
San Marcos City Hall  
630 E Hopkins  
San Marcos, TX 78661

*Via email: [councilmembers@sanmarcostx.gov](mailto:councilmembers@sanmarcostx.gov)*

Mayor Jane Hughson  
San Marcos City Hall  
630 E Hopkins  
San Marcos, TX 78666

*Via email: [jhughson@sanmarcostx.gov](mailto:jhughson@sanmarcostx.gov)*

***Re: Lookout Partners; Zone Case CZ-20-12 (Steen Road)***

Dear Mayor Hughson and Members of the San Marcos City Council,

I represent LOP/SM Properties, LLC on this zoning change from FD (Future Development) to SF-6 (Single Family) on this approximate 14.71 acre site out of the JW Berry Survey.

As you know, this Property has been in the temporary land use category of FD since annexation in 2015.

The Property is surrounded on the north by Agriculture Ranch District, which is owned by the mayor, on the south by SF-6, on the east by SF-6 and on the west by non-zoned (outside of City Limits) land use.

The Property needs to obtain original permanent zoning adopted in accordance with the State Zoning Enabling Act, Chapter 211 Local Government Code, before being platted and developed. Without permanent zoning the owner cannot develop the Property.

Obtaining original permanent zoning is an essential first step to the owner's being able to plat the Property for a productive use. My client began meeting with certain Planning and Zoning, Mayor, Council Members and Staff in March of 2018 to work collaboratively on a development plan that was compatible with the surrounding neighborhood and feasible given the available and planned utilities and road infrastructure.

After much consultation with the City Manager and the planning staff, an application for SF-6 was filed and recommended by your professional zoning staff as the recommended land use for compatibility with surrounding land uses and to promote the health safety and welfare of the community.

My client was absolutely shocked that the Planning Commission, in response to emotional and ill-reasoned objections, voted to deny the requested zoning. No justification was given for the denial and no advisory opinion on the sense of the Commission was passed on to you as a recommended alternative

zoning that you should adopt. The Commission has ill-served you in its obligations to this Council, which is required to designate a permanent land use for the Property at this time.

The Council cannot simply fail to override the Planning Commission recommendation of denial and leave the Property without permanent original zoning. State law will not allow it. You have had five years to initiate original permanent zoning on your own initiative. You chose not to do that. When my client visited with a number of you, the indication was that SF-6 was a reasonable request for permanent zoning. Your professional planning staff agreed and recommended the SF-6. The Property cannot simply stay in the emergency temporary classification of FD after the Property Owner has requested original permanent zoning.

In *Haynes v. City of Quanah*, 610 S.W.2d 842, 846 (Tex. Civ. App. -- Amarillo 1980, writ ref'd n.r.e.), the appellant property owners had been restricted to a temporary zoning classification for 9 years during which time the City made no effort to initiate, propose or enact a permanent zoning plan. Prior to the Appellants' acquisition of the property the City of Quanah had enacted a zoning ordinance, which stated, "[t]he City Planning and Zoning Commission shall, as soon as practicable after annexation of any territory to the City, institute proceedings on its own motion to give the newly annexed territory a permanent zoning [. . .]." *Id.* at 843. The court held that temporary zoning is for the purpose of allowing a city, for a reasonable period of time, to propose, finalize, and enact a permanent zoning plan for an annexed area. *Id.* at 846.

In reaching this holding, the *Quanah* court focused on the language within the city's zoning ordinance, and discussed how the city had "failed to proceed *as soon as practicable after annexation* to give the area in question permanent zoning [emphasis added]." *Id.* The City of San Marcos has a very similar code in Sec. 4.1.4.1 of its Land Development Code, which states, "As soon as practical following annexation, the Responsible Official shall, on the Responsible Official's own or upon application by property owners of the annexed area, initiate proceedings to establish appropriate zoning on the newly annexed territory." As with the Appellant property owners in *Quanah*, my client's property has been unreasonably confined to a temporary zoning classification for years. As with the Appellee City in *Quanah*, the City of San Marcos has a codified obligation to prevent that from happening.

My client is entitled to develop its' Property which has been annexed without a permanent zoning classification for five years.

The current application was noticed for Public Hearing at SF-6 classification. This notification is not sufficient to grant more intensive zoning. I would submit that there is not a zoning classification more restrictive than the SF-6 that could be approved by the City Council at this time that would not be arbitrary, capricious and unjustified by the reasonably available infrastructure and surrounding land uses.

We submit that the requested zoning is reasonable and appropriate and compatible with surrounding uses. We urge you to reject the arbitrary denial of this zoning classification for unmeritorious reasons dismissed by your own professional staff.

The Planning Commission's irrational denial of your professional staff's recommendation has put you in a difficult position. You only have three options. You can overrule their recommended denial by supermajority vote (6 of 7 members approving) and approve the SF-6 zoning; simply deny the request and leave the Property Un-zoned, which the law will no longer allow you to do; or adopt some more restrictive zoning classification that would be challengeable as an arbitrary, unreasonable, capricious and unjustified zoning classification.

We implore you to do the right thing and adopt the SF-6 zoning as requested by applicant and recommended by your planning staff.

Respectfully submitted,

*Terrence L. Irion*

Terrence L. Irion, Attorney for  
LOP/SM Properties, LLC

*w/ permission*  
*[Signature]*

TLI:kc

cc: Mike Siefert  
Bill Hinckley  
Eric Gomez