

appellant does have standing.

Mayor wynn: great. So we have a motion by council member morrison, seconded by the mayor pro tem, that the appellant does have standing. Further comments? Questions? Hearing none, all in favor of the motion please say aye.

Aye.

Mayor wynn: opposed? No? I believe I heard -- there being three votes in favor of standing, three votes in opposition of standing, no decision is made. Therefore a public hearing will not be conducted this evening, but I will --

[inaudible] well, yes, council member martinez moves, mayor pro tem seconds, that this public 71, is postponed for one week to june 18, 2009, when we will have an odd number of members on the dais. Hopefully seven members. So again, apologize for the folks who came out, but there will be a decision made on standing next thursday. Okay. That was fun.

[Laughter] let's see. Takes us to our next -- council member cole will get lobbied all week. Good for her. That's what she gets for being gone. Takes us to our public 74, regarding the waterfront overlay. Welcome another brief staff presentation.

Good evening, mayor and council. I'm robert heil with neighborhood planning and zoning. This is item 74, to continue a public hearing which has been open for a while and to approve on third reading an ordinance amending title 25 of the city code relating to the waterfront overlay combining district and chapter 2-1 related to the waterfront planning advisory board. This -- as I mentioned, has been approved on first and second reading. On may 21 you approved it on second reading. The public hearing has still been held open, and staff is available for questions. Otherwise, we can turn it over to the public hearing.

McCracken: Okay. So do we have anyone signed up to speak at the public hearing?

You have seven speakers signed up.

McCracken: If you could start calling them in order.

Would you like them in order of for and against?

McCracken: Yes, please.

Okay.

McCracken: For first.

All right. The first person who signed up for is howard katz.

Mr. katz is not here.

The next person is dylon hope, followed by marcus hernandez and mike robbins. Those are all the people that have signed up for. The first one -- oh, and sorry, jeff jack.

Good evening, mr. jack. You have three minutes.

Mayor pro tem, council members, I'm glad that i didn't push the wrong button on that sign-in card. I was worried there for a second. As you know, I'm representing save town lake and want to express our appreciation for the opportunity that the community has had over the last nine months to weigh in on this very important issue in our community, and we realize tonight that this is one step along the way and that we have some more work to do with the appointment of the waterfront advisory planning board and the development of the bonus provisions. Council member shade asked me last time at the public hearing where save town lake stood with regard to our lawsuit, and specifically our position with regard to the whole issue of the super majority with regard to the pud issue. We k you're not going to vote on that this evening but we're glad to see that issue will be considered by the waterfront advisory planning board. And in just summary, I think the community is very much concerned about this issue. I think what you're hearing from various points of view all over the city is that the waterfront is very sacred to our community, and we hope that this action tonight will take us one step closer to reinstating the protections that the community developed in the '80s that are still valid today and will give us a city with a really wonderful waterfront, protected for the future generations and the scenic vistas, the open spaces will be preserved and make our community a really great river city again. Thank you. thank you, mr. jack. And mayor pro tem, i apologize for being off the dais. Our next speaker is laughton, smith. And a number of folks want to donate their time. Is linda north in the audience? The rules are they need to be present in order to do that. How about dick simmons? Hello, dick. Welcome. How about petra nesensow. How close was that? Oh, good. And how about marbin katano. smith, you'll have up to 12 minutes if you need it and and you'll be followed by steve jito.

Thank you. Good evening, it's my privilege to speak on behalf of the neighborhood condominiums hoa board this evening. We like to remind the council of the following before voting on the waterfront overlay ordinance. We are one of the few areas in which recommendations from the waterfront overlay task force would invoke a massive reduction in potentially buildable height. For reference, our current zoning of I would allow for 200-foot buildings. From another angle the cws next door was approved by you to be developed at 96 feet. The recommendations from the task force would take us from 200 feet not to a height equivalent to our neighbors at 96 feet, but to 45 feet. River walk condominiums are part of the community and have not been represented through the waterfront overlay task force review process. While there have been discussions for those that gain height as part of the overall recommendation, in the corresponding bonus provisions there has been no commitment to review those of us that are affected negatively, and in our case to a large degree. We would request council stipulate that parcels such as ours that have been significantly downgraded in height to be held out of the current ordinance until they can be reviewed and reevaluated. The height cap for our property of 45 feet as per the

waterfront overlay ordinance not only represents a significant loss in developable value of our property, it is also -- it also represents a significant loss of potential community benefits to the city as a whole. The heights that were set for our parcel over 21 years ago are unexplainable and unreasonable in the context of adjacent development. We are requesting they be reviewed and set at a level that could be justified with a definable set of reasons that makes sense for our 21st century waterfront. Approving the waterfront overlay ordinance as written today does not allow for this to happen. Members of council throughout this process are neighbors at CWS and Travis Heights, have been considered a part of the community. Why would we not be afforded the same rights? Thank you. Thank you, Mr. Smith. Smith, Council? Thank you, Laughton. I think our final speaker is Mr. Tittle. You will have three minutes.

Thank you, Mayor, Council. I would like to speak on two items within this plan. It would be the similar items that I spoke last time, the nature of the board itself and then the subdistricts. You stated that the board should be a diverse membership drawn from many fields. Unfortunately, I believe one area that has not been addressed is the owners themselves. I feel like they have been left out of the process. This has been going on for maybe a year. No one called any of our homeowners to have input. So I think at least one member of the property, and not just what you call the real property development, but actually property owners that are going to stay in place, not sell off quickly. So I would like that property owners be inserted into the diverse membership of the board. Next will be the -- item would be the subdistricts. For everyone who's concerned about the waterfront, I'd also ask you to be concerned about the water itself. For this plan not to include the water and the things that are built in the water and on the islands I think is short sighted. I think that that subdistrict should be in place. There's conversation about extending it all the way to the city limits -- extending it all the way to the city limits, past Montopolis. I think when you're considering subdistricts, that the water itself should be considered, and I'd like to state that position again, that this is all about the waterfront, and the views about the waterfront. I would ask everyone in this room to be concerned about the water itself. So take that end, I would like that subdistrict to be put in place. Thank you. Thank you, Steve. Council, that's actually all the folks that signed up to give us testimony. A bunch of folks signed up not wishing to speak, both in checking the box in favor or in opposition, and we'll note all of that for the record. So, comments? Questions? Council member Martinez. Thank you, Mayor. Well, I think we are going to make a positive step forward as it relates to our waterfront. I think there's still some very serious work to be done, and so I'm going to ask my colleagues that remain on the dais that you start considering right away your appointees to the waterfront planning advisory board, because I think the work that they're going to do is critical to the future protections that come out of the rewrite of this particular ordinance. So with that, Mayor, I'm going to move approval on third reading of what was approved on second reading, and I believe Council member Morrison has some language that is -- was proposed to add to part 25 that I do consider friendly. So whenever she's ready to put that out there. So I'll make that motion, Mayor. Motion by Council member Martinez to approve on third reading what was approved on second reading. Let's look -- let's let Council member Morrison second it, and that second will include some proposed language. If she could read that for the record or -- this is to replace part 25, which is the very end there, which Council member Shade had put in just to clarify that existing PUDs are not subject to the ordinance, and I'd like to replace that with two parts. Part 25, the following requirements apply to a planned unit development: A, a PUD approved after the effective date of this ordinance is subject to the requirements

of this ordinance, and b, property located within an existing pud on the date that this ordinance is adopted is not subject to the requirements of this ordinance. If the property remains in the pud, except that an amendment to an existing pud is subject to the requirements of this ordinance if the amendment, one, constitutes a, quote, substantial amendment under 1, parentheses substantial amendment of chapter 25-2, subchapter b, article 2, division 5, planned unit development. I have this all written out. 2, increases -- this is referencing the substantial amendment -- if it increases the size, scale or density of developnt allowed within the pud or further encroaches into the waterfront overlay setbacks. So what that's meant to do is say, okay, if you're an existing pud you're not under this new ordinance. If you're a new pud you are. If you're an existing pud with a substantial amendment that actually affects something that has had to do with the waterfront overlay, then you are going to be subject to it, and we wanted to limit that so that we didn't get into extra red tape with substantial amendments that don't affect height and all of that. So I would be glad to provide this to the clerk. I'll ask my aide to get that. Sorry, I thought you had it. so we have a motion and a second on the table, and the language will be distributed to us here shortly, hopefully. Comments on our motion? And second? Mayor elect? question for staff. It's my understanding pud ordinance goes before the planning commission. If the planning commission recommends disapproval of the pud, then when it comes to council it requires a super-majority to approve the pud; is that correct?

Robert heil, neighborhood planning and zoning. Yes, that is correct. what elements of the pud is the planning commission required to address? That may be a little too much, but --

the planning commission looks at the entire pud application, so that would include -- development restrictions?

Development restrictions. such as height, impervious cover, all that kind of stuff?

Correct, as well as those parts of the application in which the applicant demonstrates superiority from the existing code. So, yes. so the major issue, of course, is height in the waterfront overlay, it seems to be. So the planning commission would be required to make a recommendation on the height, maximum heights in the pud?

The planning commission makes a recommendation on the entire application, which includes -- I have never seen a pud that did not include a discussion of height. So -- and I would have to -- well, i think the question has been raised to me and that's what I'm trying to find out. Are they required to make a recommendation specific to that or not, or is -- are they -- it seems to me that if the height asked for in the pud exceeds the base zoning height, that would be listed as an exception in the pud ordinance.

Because pud would be the new base zoning district, they would have to specify to what height they were going to build. So -- to what height they were -- so all the exceptions would have to be -- all the exceptions to existing code would have to be somehow dressed in the new pud ordinance?

Right. All the exceptions to existing code would have to be spelled out in the pud application, and if they

were not spelled out, then they would default back to the existing land development code.

Leffingwell: okay. So that's what I'm trying to firm up, is is the planning commission required to specifically make a recommendation on height if it exceeds the base zoning height?

Because there isn't a base district zoning with pud, there's no set one, when an applicant came in for a pud application they would have to -- that's not something that could default. They'd have to say, we are going to build to 60 feet or 35 feet or scale it back. They'd have to describe that, because there is no specification to default to, so yes -- so yes -- i think I understand what you're saying. And you concur with that, mr. guernsey? The only reason I asked is you're standing here kind of lurking, so --

[laughter] well, you know, I think when we go through under the new ordinance, we go through and there's like a base district, and the base district probably does have an assumed height of maybe like 60 feet. Usually when we get to the waterfront overlay, if we had a pud in there usually they're asked to exceed the base district, and the majority of the cases that have come before you. So I think they would actually specify a height. If -- I also wanted to clarify one other thing. If the commission grants a pud application but not exactly what the applicant wants, let's say they ask for 200, the commission recommends 96, that's still a recommended pud, and it wouldn't require that super-majority vote. It's only if the commission recommends denial that i think it triggers that super-majority vote, just like a petition case would. so it gets kind of complicated. So the planning commission could recommend approval of the pud overall, but not necessarily all the requested components in it?

Guernsey: that's correct. It would still be a recommended pud that would not trigger the super-majority vote.

But they would have to make a recommendation on the specific height if it exceeded the base zoning limits, if the request exceeded the base zoning limits.

That's correct. That would have to be part of the applicable's request and what they would have to approve and if they deviated from that they would specify that as a recommendation to you.

Leffingwell: okay. Thanks. further -- again, whave a motion and a second on the table. In fact, we just received an email, in case you're looking, with the new language for part 25 as part of the third reading motion. Council member shade. I'd like to get some clarification on this suggested new language for part 25. Probably brent needs to be able to address these, i believe, since this looks like it came from you. Thank you. So this new language does a couple of things. On part b -- well, for the first part I guess if I read it by itself, pt a where it says a pud approved after the effective date of this ordinance is subject to the requirements of this ordinance. That would suggest that it would violate what's said elsewhere in the ordinance, which I realize is a point of big debate, but that this does not -- that the height restrictions in the waterfront overlay do not supersede pud. I mean, it's actually spelled out as a separate -- I think it's section 22. So if you have -- if you were to read this, it seems like this would actually be accomplishing what we voted on a couple of times, which is that we -- there some -- you know, -- we want -- we want pud's to operate -- it seems like this conflicts with section -- which is in section 22. So if I were to just

read this by itself, a pud approved after the effective date is subject to the requirements of this ordinance, then it would seem like that defeats the purpose of the -- am i wrong? I mean, if I -- that's basically doing what we voted on a couple times now, which it sounds like to me what some of us don't want to do.

Part 22, if I could speak briefly to that. Part 22 is really about design standards only, and the general rule is the waterfront overlay already contains language that says it trumps any conflicting provision of the land development code. But there is specific language in design standards that would call that into question and it would suggest that in certain areas the design standards would trump in the event of a conflict with waterfront overlay. The amendment in 22, in part 22, just eliminates that language, so the general rule would apply with design standards, and that is if they conflict with waterfront overlay, waterfront overlay trumps. so what is 25 a as proposed here -- what does it accomplish? 25 A was developed on direction of council on the last hearing of this matter, and a, I think the larger question -- I think it's really clear that the procedural requirements of the ordinance would apply to any pud adopted after the effective date of the ordinance. In other words, the waterfront planning advisory board review process and the other procedural aspects. The larger question of whether or not in adopting a pud -- adopting a new pud down the road, council would be able to supersede say, the height requirements or any other requirements of the waterfront overlay, is a larger legal question, and i don't think that's an entirely clear question. I think that the pud ordinance includes broad language, giving the council legislative authority as part of the pud process to set the requirements that will apply to that property. And whether this language would be enough to override that grant of legislative discretion I think is questionable. and so what you're saying is on second reading, you know, right or wrong, I think the vote -- the decision was that, you know, future council -- a pud could over -- could change elements, could override elements of the waterfront overlay. This language changes that, and any future pud's, in fact, have to comply with waterfront, correct? How I'm reading this?

I think that that is debatable, and I'm not trying to be dodgy here at all, but I think that the pud ordinance gives council discretion to choose requirements of the land development code that will require or come up with new requirements, and as a legal matter, if council adopts a pud that complies with the pud process and complies with state zoning requirements, the fact that it changes a -- whether or not this section here would be enough to override that i think is highly questionable. So what I'm trying to convey is that probably the strongest interpretation would be that this language would not be enough if council wanted to override a waterfront overlay requirement in a subsequent pud. This language alone would not be enough, probably, to prevent the council from doing that. It's clearly an discretion of intent.

Shade: intent of what? Intent of way?

Mayor? council member martinez.

I wanted to make a quick comment. The reason I considered this friendly language is because my interpretation is about friendly language, it's about process, making sure the waterfront planning and advisory board goes through the process of reviewing pud's. It in no way in my opinion and in my thought precluded any request that might not be in line with the waterfront overlay ordinance. Doesn't preclude

that. It just speaks to making sure that the values of the waterfront overlay are applied to the request, but the pud request could be exceeding the subdistrict height limit or any other provisions within the waterfront overlay, if there is a question about whether or not that's capable, then I don't consider this friendly language, and I think that's council member Morrison's intent. As the maker of the motion I would like to state my intent and that's exactly what council member Martinez just said. I'm sorry to interrupt, folks. In case you haven't heard, I'm sorry, I should have said this earlier, we do have reports of a tornado touching down several times in far northwest Austin, Anderson Mill, 183 area, heading this direction -- the storm is heading generally in this direction. At last word even should there be no more touchdowns of a tornado, we should expect up to 70-mile-an-hour winds throughout the rest of the town tonight, so just be aware of that. I'm sorry if you see and hear us worried about the weather outside. I should have said something earlier. I apologize.

[One moment, please, for]

Help if that? Because you're suggesting that not substantial amendment doesn't need reapproval.

Shade: Wouldn't this create a conflict on that exact example?

Morrison: I guess there's a legal issue about what the pud is. I think the pud is -- just to let you know, councilmember Shade, when I was reading this and it was being crafted, I was thinking, especially keeping it away from -- you know, you have a pu and then it gets rezoned to mf and then you have a whole new p.u.d. As long as you're still, it still has the same number on it because it's a zoning case. Even when it gets amended it still has that same number. I was intending to reference that there.

Shade: I definitely get that wha the intention was. I want to make sure we don't create a new problem. So like with small administrative amendments trigger the need, I guess, for approval under this language. That's what I'm trying to --

no. I think the language is -- the effect of the language is consistent with what councilmember Morrison described. And really the type of amendments that would trigger the waterfront overlay requirements are they would have to be a substantial amendment and there's a list of amendments that constitute substantial amendments under section 3.2.1. But also in addition, it would have to be an amendment that increases the size, scale or density of the development allowed or further encroaches into the waterfront overlay setbacks. And that language was added because not all of the substantial amendments -- something may qualify as a substantial amendment if it's a change of use, for example, that it may not really increase the development densities of the p.u.d. It may not really change the character or scale of development allowed within the p.u.d. So b-2 was added to sort of make it clear that the amendments that are going to trigger compliance with the ordinance would be ones that are significant and substantially will effect the level of development within the p.u.d.

Shade: So why wouldn't the language say (indiscernible). If the property remains within an existing ? I mean, use the same language consistently so that there's not -- except that an amendment is subject to the requirement of this ordinance if the amendment does 1 and 2? Because I think it creates some

confusion there. Didn't notice it before until I read it fresh here. Why wouldn't we use within an existing in every other place?

[00:03:25]

That introduces confusion. We did have this vetted with legal before, before this discussion today to make sure. But what you just suggested I think would take us back to the problem of if it's any , then it just -- it means that you could be starting -- have started over with another p.u.d. And you're amending it. I think that that doesn't achieve what we're trying to capture here.

Shade: Why wouldn't we have the same language? Wouldn't you say the property located within -- why can't you reference back to the existing? I think it creates confusion?

Morrison: You said within an existing pud? The moment you say within an existing , you introduce that confusion -- that situation we're trying to avoid.

Shade: Okay.

I apologize. I'm just not following the disconnect that you're identifying.

Shade: Well, it seems -- I'm sorry, I'm getting all the e-mails from hole too about this nasty storm, so I'm kind of -- it seems to me that when -- that this now creates -- that you could -- I guess I'm not sure about the administrative question. You're saying it does not trigger it. I mean, I guess it seems to me that if it's , then why would you need part 1 and 2 below? If it's a substantial -- if it becomes a new if it has a substantial change, so I guess I just don't understand the point of this.

It could remain --

Shade: Maybe greg could --

it remains -- if it's in the pud, but then is amended and the amendment is substantial and it would increase the density of the development or encroach in setbacks, then that amendment would trigger compliance with --

Shade: Right, because it would be a new pud.

Morrison: That's the problem. It doesn't become a new pud.

Shade: I thought it does.

Morrison: If you have an amendment, you still have the same p.u.d. It's just been amended.

Right, that's correct.

Morrison: It not a new p.u.d.

It's a substantial amendment. It would be an amendment of the existing p.u.d. It would still be the existing pud, but it would be amending that pud.

Shade: I can't hear you. What?

[00:06:01]

If there was a substantial amendment to , it would still have to be vetted and come back to you, so you would ultimately -- the council would ultimately have that final decision, whereas if it wasn't substantial, then it would remain administrative, but those changes are delegated to be very minor changes that would only be allowed.

Shade: If it was a substantial amendment, it would not only come to the council, but it would also go to the waterfront board as well as the planning commission?

Because it's a substantial amendment.

Shade: Okay.

Morrison: But it's still the pud.

Shade: Okay.

Mayor Wynn: Again, we have a slightly amended motion and second on the table approving this item -- what is this? Item 74 on third reading. Further comments? Questions? Are we ready to vote? Okay. So we have an amended motion and a second on the table, third reading. All in favor please say aye? Opposed? Motion passes on a vote of six to zero with councilmember cole off the dais.

Shade: Yay.

[Applause]

Mayor Wynn: Let's see. Before I call up item number 75, is there -- can somebody give us a quick update on the weather? For those of us who walk home?

[Laughter]

and especially those who rode their bicycles down here. I think they're more interested in the weather report.