



Planning and Building Department

Memorandum

To: Planning Commission
From: Scott Whyte, Planning Director
Date: June 9, 2020
Re: City of Dallas staff response to the letter received by Andrew Stamp; also acknowledgment of additional letters received in response to case files CPA 20-01 & ZC 20-01 – JENRAE Properties CPA & ZMA

The purpose of this memo is to clarify the scope of applications before the Planning Commission on June 9, 2020, and to respond specifically to the letter received from Mr. Andrew Stamp, dated June 4, 2020 (attached). This memo also introduces (to the record) additional letters of testimony received after the production of the June 2nd staff report, some of which were submitted via the applicant.

To clarify for the record, land use applications received for JENRAE Properties, to be heard on June 9, are Quasi-Judicial Land Use District Map Amendment proposals that pertain to: 1) the Dallas Comprehensive Plan Map and 2) the Dallas Zoning Map. Limited Land Use applications (i.e., Preliminary Subdivision or Site Design Review application) have not been submitted and are not before the Dallas Planning Commission on June 9.

The staff report prepared for JENRAE Properties (city case files CPA 20-01 and ZC 20-01) does not address any future development proposal for the subject property. If a development application were received at this time, such would be processed in accordance with the acknowledged Comprehensive Plan and effective City of Dallas land use regulations that have been acknowledged in accordance with the Comprehensive Plan.

According to ORS 227.178(3)(a), a local jurisdiction's approval or denial of a development application shall be based upon standards and criteria that were applicable at the time the application was first submitted. ORS 227.178(3)(a) is sometimes referred to as the "Goal Post Statute" as it recognizes the importance of having an acknowledged Comprehensive Plan in place (first) to evaluate a subsequent development application that would be subject to the state-mandated processing period of 120 days. At this time, applicable standards identified in Chapter 2.4 of the Dallas Development Code (Industrial zone) apply to the subject property where Residential is not a use permitted outright.

Assuming the applicant's Quasi-Judicial Land Use District Map Amendment proposals are approved and adopted by the City Council, and then subsequently approved the Department of Land

Conservation and Development (DLCD) via Post Acknowledgment Plan Amendment, the applicant may then apply for a Preliminary Subdivision where city standards and criteria specific to properties zoned Residential (consistent with a Comprehensive Plan Map designation that recognizes such) are applicable for consideration.

No development plan is currently before the Planning Commission. As such, staff finds that it would be premature and inappropriate to speculate or offer conjecture in response to the applicant's conceptual development plan, inclusive of trail implementation.

In part, Mr. Stamp's letter states (on page 1): "*The City's desired location for the RCTS (Rickreall Creek Trail System) is problematic from a design standpoint, because it results in up to six fewer lots being created.*" In response to this statement, staff observe how it would be necessary to first consider applicant's intended development plan, which is not before the Planning Commission via current applications, as stated above. However, as the Dallas Development Code describes options for site development (e.g. flexible lot size standards and cottage cluster development) staff will note that there is more than one way to develop the subject property under the RM zone as sought by the applicant.

In part, Mr. Stamp's letter also states (on page 1): "*We understand that the City will ultimately ask the developer to donate the land to the City either free of charge or in exchange for SDC credits.*" In fact, staff has not specified to the applicant the means by which the city might pursue the potential for a trail to be included as part of any development in the future. Mr. Stamp's letter (page 2) also describes the "rough proportionality" test in the case of *Dolan vs. City of Tigard* and explains how this test is applied. To the extent that the Rickreall Creek Trail may raise an issue under the *Dolan* case, staff maintains that such a test would only be relevant to a development application that is not before the Commission at this time. Staff also finds that the city is not required to apply this test in advance of a future development application based on past LUBA rulings. In their decision of *Gillette v. Lane County* (2006) the decision states (in part):

Although local governments frequently attempt to advise permit applicants regarding the scope and nature of evidence that will be required to demonstrate that a proposal complies with applicable land use approval criteria, it is not the local government's burden to accurately predict in advance all of the evidence that may ultimately be needed to obtain approval of a land use application. *Gillette v. Lane County*, 52 Or LUBA 1 (2006).

Finally, with this memo, staff acknowledge the attached letters of testimony that were received after production of the staff report dated June 2, 2020.

Attachments: Letters of Testimony

1. Stamp - 4248 Galewood Street, Lake Oswego
2. Engstrom - 279 SE Academy Street, Dallas
3. Hague - 391 SE Walnut Court, Dallas
4. Marion - 379 SE Walnut Court, Dallas
5. Payne - 409 SE Walnut Avenue, Dallas
6. Plummer - 295 SE Academy Street, Dallas