



December 18, 2015

**VIA ELECTRONIC MAIL**

The Honorable Don Keil  
MAYOR, CITY OF SEGUIN  
205 N. River Street  
Seguin, Texas 78155  
E: [dkeil@seguintexas.gov](mailto:dkeil@seguintexas.gov)

**VIA ELECTRONIC MAIL**

Director Pamela Centeno  
PLANNING DIRECTOR, CITY OF SEGUIN  
205 N. River Street  
Seguin, Texas 78155  
E: [pcenteno@seguintexas.gov](mailto:pcenteno@seguintexas.gov)

RE: Notice of Appeal and Request for Public Hearing following the Denial of an Application for a Specific Use Permit at 113 S. Camp Street.

Dear Mayor Keil and Director Centeno:

Please accept this Notice of Appeal on behalf of my client, Mr. Freddi Leos (“Applicant”), from the denial of his Application for a Specific Use Permit (“Application”) for the property located at 113 S. Camp St., Seguin, Texas 78155 (“Property”). Pursuant to the Seguin Unified Development Code (“UDC”) please set this matter for a public hearing on the first available date. See [UDC § 2.5.0\(E\)\(7\)](#).

**Issues Presented**

1. Whether the Planning and Zoning Commission’s (“Commission”) decision to deny Applicant’s request for a Specific Use Permit (“SUP”) on the ground that “[t]he specific use is incompatible with the adjacent county facility” is unjust. See Staff Report at 1.
2. Whether the Commission’s decision to deny Applicant’s request for a SUP on the ground that “[t]he establishment *may* impede the development and improvement of surrounding property by limiting the sale of alcohol” is unjust. *Id.* at 1 (emphasis added).
3. Whether the Commission’s decision to deny Applicant’s request for a SUP on the ground that “[t]he design of driveways does not provide for the safe and convenient movement of vehicular or pedestrian traffic [which]...*could* negatively impact adjacent properties and the public.” is unjust. *Id.* at 1 (emphasis added).

### **Procedural History**

On November 12, 2015, Applicant filed an application for a Specific Use Permit for the Property. On December 8, 2015, a hearing was held before the Commission. Upon conclusion of that hearing, the Commission denied the application and adopted Staff's recommendation.

### **Argument & Authorities**

- A. The Commission's decision to deny Applicant's request for a SUP on the ground that the specific use is incompatible with the County Courthouse is unsupported by the record and therefore unjust.

Staff claims that the proximity of a school to the courthouse makes the intended use unsafe. No evidence is offered to support this conclusion; instead, Staff presupposes that the courthouse and the surrounding area is unsafe, that the County cannot properly protect the public when transporting prisoners to and from the courthouse, and that the school is unable to protect its students.

The presence of shackled prisoners near the school does not make the students any less safe than the presence of armed law enforcement officers makes the students any more safe. The fact that the officers are armed and the prisoners are shackled actually weighs in favor of the intended use. Certainly the constant presence of armed law enforcement officers near the school makes it more safe than schools not located near the courthouse.

Moreover, [history has taught us](#) that the real threat to our school children is not from shackled prisoners or their friends and family *outside* the school but actually from children *inside* the school.

Staff unjustifiably relies on fear rather than an objective analysis of facts. For example, Staff did not include any data or crime analysis in Seguin much less downtown Seguin. A quick search of crime rates in Seguin shows a year-over-year *reduction* in the City's crime index. In fact, at a macro level, Seguin's 2013 crime index (272.4) is [nearly half](#) of what it was in 2001 (459.0). The Seguin Police Department's [2014 Annual Report](#) sets forth the reasons for the year-over-year reduction in crime in Seguin. And there is no legitimate reason to believe or suggest that the future will be any different.

In sum, Staff's failure to conduct an objective analysis of the facts and data and instead feign concern for safety is the very injustice this Council is charged with preventing.

- B. The Commission's decision to deny Applicant's request for a SUP on the ground that it might prohibit the sale of alcohol in the surrounding area is unsupported by the record and therefore unjust.

Staff's clear bias for establishments that serve (or might serve) alcohol over the education of Seguin's children is bewildering. The Property's intended use is for a charter

school that has a [14-year track record](#) of providing tuition-free education to at-risk students. More than 19% of residents [living around the Property](#) are living below the poverty level where the median household income is less than \$27,200 and minorities account for more than 67% of the population. The very children living in this area are the at-risk students the school will benefit.

Seguin's Main Street Program Director Kyle Kramm told Applicant that he wanted the Property to be used as a bar, a restaurant or retail—not a school. Not coincidentally, Staff's decision argues that the presence of the school will prevent the sale of alcohol within 300 feet of the Property.

The fact is, however, that a church sits less than 80 feet from the Property. The school would therefore not burden the neighboring buildings and tenants any more than the church already does. See [UDC § 6-2](#) (prohibiting the sale of alcohol within 300 feet of a church); see also [TEX. ALCOHOLIC BEVERAGE CODE § 109.33](#) (permitting a municipality to enact regulations prohibiting the sale of alcohol within 300 feet of a church).

Whether Staff's oversight was malicious or grossly negligent is an issue that can be decided another day if necessary. For now, however, the Council has the power to prevent this clear injustice.

Your vote to uphold Staff's blatantly unjust decision on this ground says to your constituents that you support bars over schools, drunks over children, and alcohol over education. And it's the kind of irresponsible decision sure to attract the attention of the [nation's largest nonprofit](#) working to protect families from drunk driving.

C. The Commission's decision to deny Applicant's request for a SUP on the ground that the driveway design is not "safe" or "convenient" and "could negatively impact adjacent properties and the public" is unsupported by the record and therefore unjust.

In support of this claim, Staff attached an email from Mr. Kramm to County Judge Kyle Kutscher in which Mr. Kramm appears to urge Judge Kutscher and the County to express concern over the increased traffic the school would bring. Judge Kutscher replied that he would ask the Guadalupe County Sheriff's Department to look into the potential impact. Whether that was ever done is unknown.

What we do know, however, is that Applicant had a traffic study conducted and that study concluded that traffic would not be negatively impacted by the school. On the other hand, the study did conclude that a restaurant would add more than 230 additional daily vehicles to the area than the school. In other words, if traffic is truly a concern, a restaurant is the last use to which this Property—or any property in the neighboring downtown corridor—should be used for.

On December 8, 2015, prior to the Commission's hearing, Applicant presented the traffic study and results of the traffic-flow analysis to the City's engineer who, having previously expressed concern over the design's impact on adjacent properties and the public,

admitted that Applicant's plan would not impact the adjacent properties or the public as he originally believed. Nevertheless, the conclusion of the City's engineer and the results of Applicant's traffic study were swept under the rug by Staff and the Commission.

### **Conclusion**

Staff's decision is supported by three untenable positions that cannot be supported on appeal to this Council or the district court. The Commission's adoption of Staff's decision must therefore be reversed in order to prevent a clear injustice.

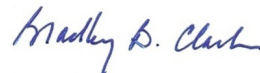
### **Prayer for Relief**

For the reasons discussed above, Applicant respectfully requests that the Council set this matter for a public hearing and upon final hearing, REVERSE the Commission's denial of Applicant's SUP Application and GRANT Applicant the requested SUP.

This result comports with the [vision and mission](#) of Seguin's Main Street Program. This result avoids the injustice created by Staff and the Commission. Finally, and most importantly, this decision is, without a doubt, the morally right decision.

If you have any questions of my client or me—or need any additional information prior to the public hearing—please do not hesitate to call or [email](#); otherwise, I look forward to meeting you both at the public hearing.

Yours truly,



Bradley B. Clark

BBC/bbc

cc: Mr. Ernest Leal, [eleal@seguintexas.gov](mailto:eleal@seguintexas.gov)  
Ms. Jeannette Crabb, [jetcrabb@aol.com](mailto:jetcrabb@aol.com)  
Mr. Phil Seidenberger, [pseidenberger@seguintexas.gov](mailto:pseidenberger@seguintexas.gov)  
Mr. Thomas V. Gastellon, Jr., [tomascastellon55@yahoo.com](mailto:tomascastellon55@yahoo.com)  
Mr. Carlos Medrano, [cmedrano@seguintexas.gov](mailto:cmedrano@seguintexas.gov)  
Ms. Fonda Mathis, [fmathis@seguintexas.gov](mailto:fmathis@seguintexas.gov)  
Ms. Donna Dodgen, [ddodgen@gmail.com](mailto:ddodgen@gmail.com)  
Mr. Mark Herbold, [mherbold@seguintexas.gov](mailto:mherbold@seguintexas.gov)  
Ms. Thalia Patlan Stautzenberger, [tstautzenberger@seguintexas.gov](mailto:tstautzenberger@seguintexas.gov)  
Mr. Derek Kuhn, [derek.kuhn@seguingazette.com](mailto:derek.kuhn@seguingazette.com)  
Ms. Jessica Kuhn, [jessica.kuhn@seguingazette.com](mailto:jessica.kuhn@seguingazette.com)