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The \$496 million Hays Commons project would bring 700 single-family homes, about 75,000 square feet of commercial space, 160 acres of conservation area and 260 acres of parks and open space to Austin.

MILESTONE COMMUNITY BUILDERS LLC



By [Justin Sayers](#) – Senior Staff Writer, Austin Business Journal

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Developers behind the 498-acre Hays Commons project — something of a poster child for [a controversial new law](#) allowing deannexation as a means of sidestepping municipal regulatory authority — aim to do the opposite by

annexing it into the city of Austin, a maneuver intended to allay longstanding environmental concerns.

The effort comes more than a year after Austin-based MileStone Community Builders LLC formally removed the project from the extraterritorial jurisdiction of Hays, a small city of about 250 people that straddles the Travis and Hays county lines, and after two decades of debate that failed to reach a resolution to push the project forward. The developers deployed the new law, known as Senate Bill 2038, to get out of Hays' regulatory reach.

Location of the planned development

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Over the last several months, however, representatives of MileStone have been going through the process of getting the \$496 million project annexed into Austin, and the plan has been heard by various city boards and commissions and could head to the City Council early next year. The project calls for 700 single-family homes, about 75,000 square feet of commercial space, 160 acres of conservation area and 260 acres of parks and open space.

The annexation process would involve multiple caveats. MileStone and the city would need to sign a municipal utility district consent agreement that would support the establishment of a MUD in the city's ETJ using Austin's water and wastewater services. Developers would start with a limited-purpose annexation and then fully move the project into Austin's city limits once infrastructure bonds are paid.

MileStone said it would adhere to all city environmental and zoning standards with one exception — impervious cover of 25%, which would be higher than the 15% allowed under the city's Save Our Springs ordinance but still less than county standards of about 40%. The company said the exception is needed to ensure the economic vitality of the project.

"We think that partnering with the city of Austin on it and really making the project subject to their rules and regulations is appropriate to be an

appropriate steward of the environmental sensitivity of the site," MileStone CEO Garrett Martin said.

"It makes sense for both sides because on our side, we get utility service, a water and wastewater agreement out of the arrangement, and on the city side, they get all of the land use regulations, all the environmental protections, everything that they would get as though the project were full-purpose," Martin said. "So that's a pretty good marrying up of the two different sort of goals and objectives."

Still, environmentalists who have long opposed the project due to its location over the Edwards Aquifer remain concerned.

They expressed optimism that water and wastewater concerns will be addressed — if the project doesn't tap into Austin utilities, the development would use on-site wells and dispose of treated water in a spray field — but still voiced opposition to the density and the extension of water and wastewater pipes to the site through sensitive areas. Should the city and developers not reach a deal, the site would revert back to county standards, which are lower.

"Our hope is that if this tract is developed, such development is consistent with existing development in this area, which is large lots/low density," said Mike Clifford, technical director for the Greater Edwards Aquifer Alliance, in a statement.



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Ongoing issues

The move marks the continued fallout of SB 2038 after it was passed last year. The new regulations essentially allow landowners on the fringes of major cities to petition to be removed from an ETJ. Proponents said it can make development easier in rapidly growing areas near big cities — thus helping to keep up with housing demand — but opponents said the law is too friendly to developers and limits cities' powers to effectively regulate land they might one day annex.

The Austin Business Journal [earlier this year](#) found the Austin area to be "ground zero" of sorts for SB 2038. For instance, as of Sept. 5, Austin released 641 properties from its ETJ totaling 14,831 acres — and that's just a portion of

the more than 1,000 properties totaling 34,500 acres that have been removed from the ETJs of other cities in the area. To put it in perspective, that's the equivalent of 41 Central Parks in Manhattan.

Martin spoke in favor of the bill at the Texas Legislature, and MileStone used it after it passed to [move the controversial Persimmon project in Buda](#) forward. The company was able to bring the city to the bargaining table and work out a deal to keep the project within Buda, with the city's major lamenting at the time that the law "cut (the city's) legs off."

But the disagreement over Hays Commons has been particularly testy. MileStone representatives delivered their deannexation letter to Hays on the first day the bill became state law. The city of Hays formally opposed the creation of the MUD for the project, and environmental groups have gotten involved.

Milestone has now launched a website, HaysCommonsense.com, to promote the annexation into Austin. Martin said the effort is intended to go directly to public "so they're not subject to misinformation or conjecture."

"Our goal is to share information and let people make their own judgment calls and come to their own conclusions," Martin said. "Very much so the alternatives are far less beneficial for the environment — substantially more beneficial from an economic perspective for us, but far less beneficial for the environment in terms of how the project gets developed. So we think people will see that if they have the information. I think, unfortunately, a lot of the tools and tactics that are used in these engagements by the opposition tend to distort the facts and make things less accurate so that people can't actually understand what's going on."



Image: MileStone

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MileStone Community Builders LLC CEO Garrett Martin
MILESTONE COMMUNITY BUILDERS LLC

The disagreements all tend to come back to water, wastewater and density.

Utilities in Texas aren't governed by city limits, but rather by certificates of convenience and necessity, or CCN. The Hays Commons property is mostly located in the service area of Hays and is adjacent to territory served by the city of Austin.

MileStone filed for a MUD — which is used to fund infrastructure and utilities on site — and a Texas land application permit from the Texas Commission on Environmental Quality to dispose of treated wastewater. While those plans prompted concerns, neither would be necessary if the deal with Austin is reached.

The project is tentatively scheduled to appear before Austin's Planning Commission in early January and head to the City Council after that. Martin said the company is moving forward with the TCEQ process as an alternative — a hearing regarding it is scheduled for early January — but the preference is to ink a deal with Austin.

MileStone bought the Hays Commons land a couple of years ago, but the previous owners, Walters Southwest, had spent about 15 years trying to develop the site. Milestone had sought changes to a 10-year [development agreement](#) approved in 2013 that called for fewer homes and included a proposed commercial district and potential limited partner annexation into Hays so that the city would reap the benefit of tax dollars.

Asked about his company's persistence, Martin said it wants "to see (the project) through," adding that he doesn't think other developers would be as careful about the environment.



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Opposition remains

Over the last several months, pieces of the Hays Commons MUD consent agreement proposal have been making their way through Austin's plethora of boards and commissions. For the majority — like transportation and parks and recreation — they received the go-ahead with little pushback.

But that wasn't the case at the Environmental Commission in early October, with the developers seeking an amendment to requirements under the Save Our Springs Initiative that are meant to protect the aquifer.

Several environmental groups spoke in opposition, including Clifford of the Greater Edwards Aquifer Alliance. He cited concerns that included the

amount of water requested for the project, transportation issues and proposed lot sizes are smaller than adjacent developments. The group previously released a [report](#) documenting the adverse impact of SB 2038 on land and water supply.

"Extending services to Hays Commons would create an unprecedented high-density development over the Edwards Aquifer Recharge Zone, encourage development that follows the installation of water and sewer lines, and put residents' water quality at risk with non-point source pollution," he said in an emailed response to questions.

Meanwhile, concerns remain as well in the city of Hays, which is nestled about 15 miles south of downtown Austin, on the edge of the Hill Country. The city is tiny — less than a square mile in size.

Hays Mayor Harvey Davis said that while the city no longer has jurisdiction over the project following the deannexation, lingering frustration remains because of the amount of time consumed trying to work out an agreement with Milestone. The city expended time and effort — and money — to get a deal good for all sides, he said.

The city has been asked to write a letter of support for the project's MUD proposal, but its council has tabled the request it for the time being without taking a vote on it.

Davis said some residents want the city to oppose the project because they remain concerned about impervious cover and view it as potentially opening the door for other such developments adjacent to the city. But they're also encouraged by potential for the project to tap into Austin utilities instead of drilling large wells in the vicinity.

"It's kind of confusing why we're being pressured so hard," Davis said. "There's a lot of appeal with the city of Austin taking over and they being under (the Save Our Springs ordinance). The city of Austin has lots of good capable people there to manage this project (and) make sure MileStone complies with their development agreement."

But he acknowledged that Hays has little power over what happens, thanks to SB 2038.

The proposed project has "caused a lot of expense and stress to all the people around here, including us," Davis said, adding that he'd personally rather see a "campus for a larger tech company or something" on the site.

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