

Item # C3



**MEMORANDUM**

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TO: Betty Baker, Chairperson  
Zoning and Platting Commission Members

FROM: Sherri Sirwaitis  
Planning and Development Review Department

DATE: September 21, 2010

RE: Case C14-2010-0097 (11777 Jollyville Road Rezone)

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The staff has changed our recommendation in zoning case C14-2010-0097 from NO-MU-CO to **denial**. The staff has recently received new information concerning deed restrictions that govern the property under consideration. When the staff made our recommendation for this case in July, the subdivision deed restrictions had been modified to allow for medical office, administrative office, professional office and art gallery uses on this lot. However, yesterday the staff received information from the surrounding neighbors stating that they had amended the deed restrictions back to remove the provision to consider Lot 1, Block B of the Highland Oaks Section Two subdivision as a "Commercial Lot". Therefore, per a resolution adopted by the City Council on December 3, 1987, it is the general policy and intention of the city to deny any requests to zone or rezone property to allow uses which may conflict with existing private restrictions prohibiting non-residential uses on the property. The current deed restrictions only permit residential uses on the site under consideration and the staff recognizes this by revising our recommendation to denial for the proposed rezoning.

Sincerely,

A handwritten signature in cursive script that reads "Sherri Sirwaitis".

Sherri Sirwaitis, Case Manager  
Planning and Development Review Department

1-1-87  
REST COV.

R E S O L U T I O N

WHEREAS, in considering requests for zoning and rezoning, the City Council applies its legislative discretion to protect and advance the public interest; and

WHEREAS, where property is subject to a private restriction prohibiting non-residential uses, zoning or rezoning the property to a zoning district where non-residential uses are allowed may result in litigation brought by citizens entitled to the benefits of the restriction; and

WHEREAS, the City Council believes the public interest is better served, in such instances, by deferring any change of zoning which might be inconsistent with such private restrictions until the private restrictions are removed or declared invalid by a court of competent jurisdiction; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Council hereby expresses its general policy and intention to deny any requests to zone or rezone property to allow uses which may conflict with existing private restrictions prohibiting non-residential uses on the property; and

BE IT FURTHER RESOLVED:

That the City Council will assume a private restriction prohibiting non-residential uses on property is valid, notwithstanding any other facts, until the restriction is removed or declared invalid by a court of competent jurisdiction.

ADOPTED: December 3, 1987

ATTEST: James E. Aldridge  
James E. Aldridge  
City Clerk