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**MEMORANDUM**

**TO:** Planning Commissioners

**FROM:** Lee Heckman, AICP  
Planning and Development Review Department

**DATE:** November 19, 2012

**SUBJECT:** C14-74-145(RCT) 500 South Third

City staff is requesting a postponement of this case until December 11, 2012.

After the public hearing for November 27, 2012 was scheduled and notice completed, staff learned this tract is within the Waterfront Overlay District. As such, the request should be presented to the Waterfront Planning Advisory Board. The next available Waterfront Planning Advisory Board is December 10, 2012. If recommended for approval at that time, or even if forwarded without a recommendation, the case may be considered by the Planning Commission on December 11, 2012.

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**Lee Heckman, AICP**  
**Planning and Development Review Department**

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2**REVIEW SHEET****CASE:** C14-74-145(RCT)  
500 South Third**PC DATE:** November 27, 2012**ADDRESS:** 500 South Third Street**AREA:** 0.6940 acres  
(30,230 sq. ft.)**OWNER:** Michael G. Martin**AGENT:** Vaughn & Associates  
(Rick Vaughn)**CURRENT ZONING:** MF-3-NP and SF-3-NP**NEIGHBORHOOD PLAN AREA:** Bouldin**SUMMARY STAFF RECOMMENDATION:**

Staff recommendation is to grant termination of the public restrictive covenant.

**PLANNING COMMISSION ACTION:**

November 27, 2012: Staff requests postponement until December 11, 2012 in order to present the case to the Waterfront Planning Advisory Board on December 10, 2012.

**DEPARTMENT COMMENTS:**

The subject tract is located at the northern end of South Third Street, immediately south of the old "Filling Station" site, which was recently approved for redevelopment as The Park Planned Unit Development (see Exhibits A to A-3).

In 1974, this tract, and the area between it and Barton Springs Road, were a single parcel comprising 1.514 acres and was rezoned by the Planning Commission and Council. That request was for a rezoning of three zoning tracts from "A" and "B" Residence, both First Height and Area, and "C-2" Commercial, Second Height and Area. After deliberation by the Commission and an amended request from the applicant, the Commission subsequently approved "C-2" Commercial, Second H&A on the northern tract, abutting Barton Springs Road, "C" Commercial, Second H&A on the middle tract, and "B" First H&A on the third, or southern, tract (which corresponds with the current subject tract) – with the condition that the southern 10' remain "A" Residence, First Height and Area. Additionally, the Commission required – and the applicant agreed – to restrict the tract to vehicular parking only without a special permit, the provision of a privacy fence north of the "A" residence strip, and a prohibition of access to South 3<sup>rd</sup> Street.

Council approved this amended rezoning request with the Commission's conditions.

The restrictive covenant executed at the time of the 1974 rezoning mandated four things:

- 1) Required a 10-foot wide (then "A" now "SF-3") residential zoning along the southern property line;
- 2) Required a 6-foot high privacy fence along the northern edge of that 10-foot wide strip;
- 3) Limited the tract to no other purpose than vehicle parking without an approved special permit; and
- 4) Prohibited access from this tract to South 3<sup>rd</sup> Street, and required its closure at the owners' expense.

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With adoption of the Zoning Conversion Ordinance in the 1980s, the parent property converted into a combination of CS-1, CS, and MF-3, along with a 10-foot wide SF-3 strip at the southern boundary. When the Bouldin Creek Neighborhood Plan was adopted in May 2002, the parent property was rezoned again, to CS-1-NP, MF-3-NP, and SF-3-NP.

In 2005 the approximate 1.5-acre property was subdivided, with the entirety of the subject tract becoming Lot 2 of a 2-lot subdivision. The two new Lots were sold to different buyers.

Lot 1 (the former Filling Station site), picked up a Vertical Mixed-Use zoning overlay in 2007. Most recently, in 2011, The Park PUD was approved by the Council, yet this PUD only included the platted Lot 1, north of the subject tract. Meanwhile, there was a proposal to vacate and replat Lot 2 (the subject tract), in order to remove a restriction on the 2005 subdivision plat that restricts development on Lot 2 to four (4) residential units. The request for the plat vacation and replat was not approved by the Commission, and the applications were subsequently withdrawn.

Consequently, today the subject property remains an undeveloped tract with MF-3-NP zoning, save for the 10' SF-3-NP zoning on the southern edge. A plat restriction limits development of the property to 4 residential units, and a restrictive covenant from a 1974 zoning case effectively prohibits any access, and limits use to vehicular parking without a special permit. While easements dedicated on the property with the plat may be wholly or partially released, such as the partial release of a 15' wastewater easement in August 2012 or release of a 15' public utility easement in October 2012, the limitation of the use of the property to four residential units can only be modified with a plat vacation.

The request for the Commission's consideration at this time only involves the restrictive covenant from 1974.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	MF-3-NP & SF-3-NP	Undeveloped
<i>North</i>	PUD; P-NP; CS-1-V-NP	Park for Mobile Food Vendors; Offices (COA and Other)
<i>East</i>	MF-3-NP	Apartments
<i>South</i>	SF-3-NP	Single-family residential
<i>West</i>	SF-3-NP	Religious Assembly, Single-family residential

The subject tract is also within the Auditorium Shores subdistrict of the Waterfront Overlay District. However, it is outside the limits of both the primary and secondary setbacks. There is no additional setback for the creek which crosses the property, nor are there any additional development standards for this subdistrict (see Exhibit A-1 & A-2).

**AREA STUDY:** N/A

**WATERSHED:** Town Lake Creek

**CAPITOL VIEW CORRIDOR:** No

**TIA:** Not Required

**DESIRED DEVELOPMENT ZONE:** Yes

**HILL COUNTRY ROADWAY:** No

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**NEIGHBORHOOD ORGANIZATIONS:**

Bouldin Creek Neighborhood Assn.	127
South Central Coalition	498
Austin Neighborhoods Council	511
Perry Grid	614
Austin Independent School District	742
Home Builders Association of Greater Austin	786
Save Town Lake	1004
Homeless Neighborhood Organization	1037
Bouldin Creek Neighborhood Planning Team	1074
League of Bicycling Voters	1075
Austin Parks Foundation	1113
Super Duper Neighborhood Objectors and Appealers Organization	1200
Austin Monorail Project	1224
Sierra Club, Austin Regional Group	1228
The Real Estate Council of Austin, Inc.	1236
Austin Heritage Tree Foundation	1340
SEL Texas	1363

**RELATED CASES:**

NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C1474-145	<p>"A" and "B" Residence 1<sup>st</sup> H&amp;A to "C-2" Commercial 3<sup>rd</sup> H&amp;A (north 150')</p> <p>"C-2" Commercial to "C" Commercial 3<sup>rd</sup> H&amp;A and "B" Residence 1<sup>st</sup> H&amp;A</p>	<p>As per the amended request:</p> <p>Tract 1: "C-2" Commercial 2<sup>nd</sup> H&amp;A</p> <p>Tract 2: "C" Commercial 2<sup>nd</sup> H&amp;A</p> <p>Tract 3: "B" Residence 1<sup>st</sup> H&amp;A excluding southern 10' to remain "A" Residence 1<sup>st</sup> H&amp;A</p>	Adopted amended request as approved by Commission with conditions.
C8-05-0029.0A	Approve 1.502- acre, 2-lot Subdivision	Approved	N/A
C8-05-0029.0A and C8-06-0101.0A	Approve Vacation of Lot 2; and Approve new 0.694-acre, 1-lot Subdivision w/variance	Denied Variance (applications withdrawn)	N/A

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5**CASE HISTORIES:**

NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C14-2007-0097 (west)	SF-3-NP to NO-CO-NP (City as Applicant)	Expired without Public Hearing	
C14-2007-0220 (northwest & north – NOT on subject tract)	Addition of Vertical Mixed Use zoning to selected tracts (City as Applicant)	Approved; 11/13/2007	Approved; 12/13/2007
C814-2008-0145	CS-1-V-NP to PUD-NP	Approved staff recommendation to deny PUD-NP; 02/09/2010	Approved PUD-NP; 03/03/2011

**ABUTTING STREETS:**

Street Name	ROW Width	Pavement Width	Classification	Bicycle Plan	Capital Metro	Sidewalks
South Third Street	50 Feet	Approximately 30 Feet	Local	No	No	No

**CITY COUNCIL DATE:** December 13, 2012\***ACTION:****ORDINANCE READINGS:** 1<sup>st</sup>2<sup>nd</sup>3<sup>rd</sup>**ORDINANCE NUMBER:****CASE MANAGER:** Lee Heckman  
e-mail address: lee.heckman@austintexas.gov**PHONE:** 974-7604

\* Staff will request a postponement in order to accommodate consideration of the request by the Waterfront Planning Advisory Board and Planning Commission. Such consideration is anticipated to occur on December 10 and December 11, respectively.

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6**SUMMARY STAFF RECOMMENDATION**

Staff recommendation is to grant termination of the public restrictive covenant.

**BASIS FOR RECOMMENDATION**

The request is for termination of the existing public restrictive covenant only. It is not a request to change the existing zoning, or remove restrictions set forth in the plat, such as the limitation of development to no more than four residential units.

Staff believes two of the four restrictive covenant requirements, namely, that 10' of (then A, now SF-3) residential zoning remain along the southern property line and that a privacy fence be erected on the northern edge of that (single) family residential strip, reflects a desire by the Commission and Council to provide an appropriate setback and buffer between the then existing single-family homes along South 3<sup>rd</sup> Street and the proposed multifamily zoning. In 1974, the City did not have the compatibility requirements that are in place today. In considering these two requirements, staff has deduced that the proposed multifamily use was not the issue per se, but how to provide for an appropriate interface, or compatibility, with the existing single family residential.

Any new development is subject to Subchapter E. Design Standards and Mixed Use. These standards include setbacks (no structure may be built within 25 feet of the property line; no structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line; and no structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line), landscaping (an area at least 15 feet wide is required along the property line), screening (a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection), site layout (an intensive recreational use, including a swimming pool, tennis court, ball court, or playground, may not be constructed 50 feet or less from adjoining SF-3 property), among others. Staff believes the suite of compatibility requirements in place today, and that would apply to development of the site, adequately protects the abutting single-family.

Termination of the covenant would remove the requirement of a privacy fence at the northern edge of the 10' strip. The result is that the property owner could erect a fence or gate on the property line, if it is so desired. Termination would not change the underlying zoning of the 10' SF-3-NP strip. It would, however, allow the owner to submit an application to rezone the property from SF-3-NP. Such an application for rezoning would be subject to all normal rezoning procedures, including public hearings, and positive recommendations by the Waterfront Planning Advisory Board and the Planning Commission, as well as adoption by the City Council.

Requirement that the tract be used only for vehicular parking without a special permit may reflect a desire on the part of the Commission and Council for flexibility. At the time this tract was rezoned to multifamily, it abutted multifamily to the east, and was part of the commercially-zoned property to the north. Without topographic constraints, it's conceivable the commercial endeavors could/would use the extra surface parking this tract provided. Or, if additional parking was unnecessary, perhaps the site could be developed as an extension of the existing apartments to the east.

Regardless, in the 1970s all site plans for apartments and condominiums were reviewed by the Planning Commission as special permits. So, the Council was not attempting to prohibit multifamily use. Rather, the Council simultaneously granted multifamily zoning to the tract and took steps to ensure that the site plan for any use was approved by the Planning

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Commission, via the special permit process. Approval by the Planning Commission necessarily meant public notice to nearby residents and a hearing on the proposed site plan.

Multifamily projects are not uncommon today, and may be routinely approved administratively unless they involve a variance. In the case of a variance, approval of the relevant Boards and Commissions is required. In addition, the City notifies property owners and residents within 500 feet of a property when a site plan application is filed. Those so inclined may register as interested parties. The covenant's requirement is procedural only, and not a substantive prohibition against uses otherwise allowed under the multifamily zoning. Given the notice and review provisions of today's code, staff believes the absolute requirement for Planning Commission review of a site plan on this tract is an unnecessary requirement, unless some sort of variance is requested.

Lastly, the prohibition against access to and from South Third Street from this property effectively makes this tract land-locked and therefore undevelopable. At the time of the restrictive covenant, this tract was part of a larger parcel that extended to Barton Springs Road. Preventing cut-through traffic or shortcuts across the property from Barton Springs to South 3rd Street would have made sense. Such a prohibition of access to South 3<sup>rd</sup> also reinforces the notion this tract was seen as likely to be incorporated and developed either with the commercial to the north or the multifamily to the east.

Topographically, neither option is feasible (see Exhibit A-3). There is an approximate six-foot drop in elevation from this tract to the old Filling Station parking lot; there is a creek and ravine separating this tract from the apartments to the east. What was a topographically-isolated piece of property became a legally-isolated property with the subdivision plat approved in 2005, in which this tract became its own Lot. The Code requires that each Lot have access and frontage to a public right-of-way. As configured and approved, this tract/Lot takes frontage to South 3<sup>rd</sup> Street. That it was also expected to take access to S 3<sup>rd</sup> St is reinforced by the fact that 10 feet of additional right-of-way along that Street was dedicated at the time of subdivision. It is unknown if the restrictive covenant surfaced in the preparation and review of this subdivision; presumably, if it had, the request for termination or modification would have been submitted at that time. Perhaps there was an expectation that frontage would be provided by S 3<sup>rd</sup> St, but access from Barton Springs Road through some form of joint use driveway/agreement between future property owners; however, there is no evidence of such a shared-access solution in subdivision case folders. Staff could not have knowingly approved creation of Lots without frontage and access (although there may be provisions for special purpose, City-owned, Lots); similarly, the Council would likely not prohibit access to a stand-alone single-parcel property today.

This parcel is not likely to be reincorporated into the tract to the north, or provided access to and from Barton Springs Road. There would have been opportunity for either incorporation or a provision of access at the time of The Park PUD application. Neither happened, and staff believes this reflects the topographic challenges of the site. Staff thinks this prohibition of access is a hold-over from an earlier day when the tract was part of a parent parcel and was not land-locked. Platting the tract as a Lot without legal access may have been an oversight; or, anticipated (but undocumented) cross-access from Barton Springs didn't materialize over time. While staff is aware access to and from the tract will have an impact on the abutting single-family neighborhood, the reality is that without access to South 3<sup>rd</sup> Street, this tract is land-locked and will not be developed.

In sum, staff believes the three substantive prohibitions in the covenant (no access, provide a setback, and build a fence), as well as the procedural requirement (no multifamily or other

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allowed use without Planning Commission approval), were intended to protect the then abutting and existing single-family residential, and to keep residents and owners informed of the proposed development of the site. While much has changed along Barton Springs Road, including approval of The Park PUD on the northern portion of this tract's parent parcel, the immediate neighborhood along S 3<sup>rd</sup> St remains single-family. As such, any new development on this tract must comply with today's compatibility standards and current zoning provisions. Area residents and owners will be noticed of any proposed site development. Staff believes the protections adopted by Council in 1974 when adopting the rezoning ordinance and restrictive covenant are still appropriate, but that these protections are provided (or even exceeded) with current code and application requirements. Furthermore, staff does not believe the Council would restrict access on this isolated tract today, thus rendering it undevelopable. Maintaining a prohibition against access runs afoul of the subdivision requirements and can no longer be justified.

## EXISTING CONDITIONS

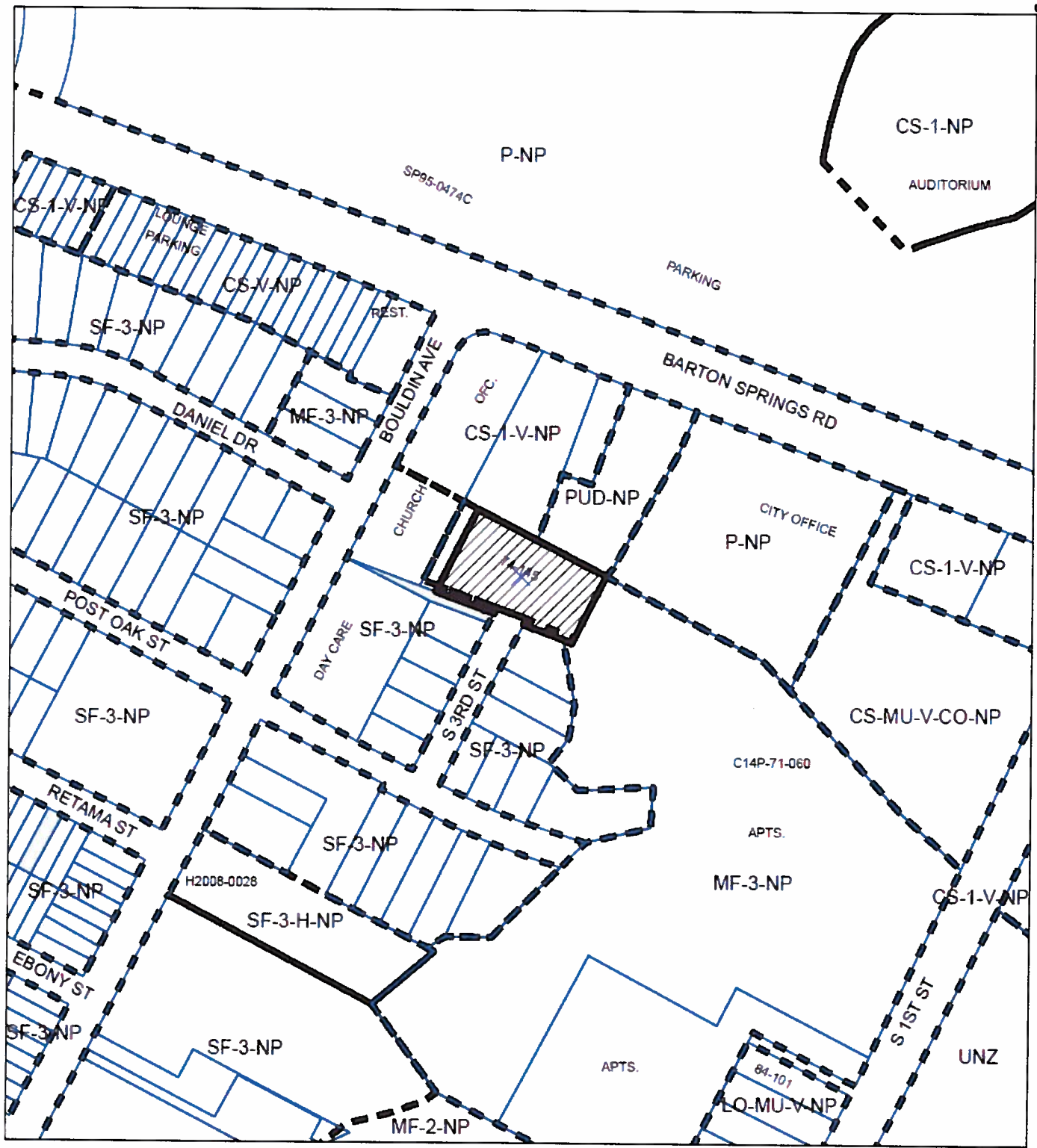
### Site Characteristics

The site is an undeveloped tract currently zoned MF-3-NP and SF-3-NP at the northern terminus of South Third Street. It is heavily wooded, although it is unknown if any of the trees are considered protected under the Code. The site is topographically constrained, falling from west to east, and with a sharp drop to the north; East Bouldin Creek separates the eastern portion of the tract from the western. The site is further constrained by floodplain and easements. The property is encumbered with FEMA and Austin's fully developed floodplain, and nearly the entire eastern third of the tract remains in a Drainage Easement and Critical Water Quality Zone.

A plat restriction limits development of the tract/Lot to a maximum of 4 residential units.







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**ZONING**

**ZONING CASE#:C14-74-145(RCT)**


 SUBJECT TRACT  
 PENDING CASE  
 ZONING BOUNDARY

1" = 200'

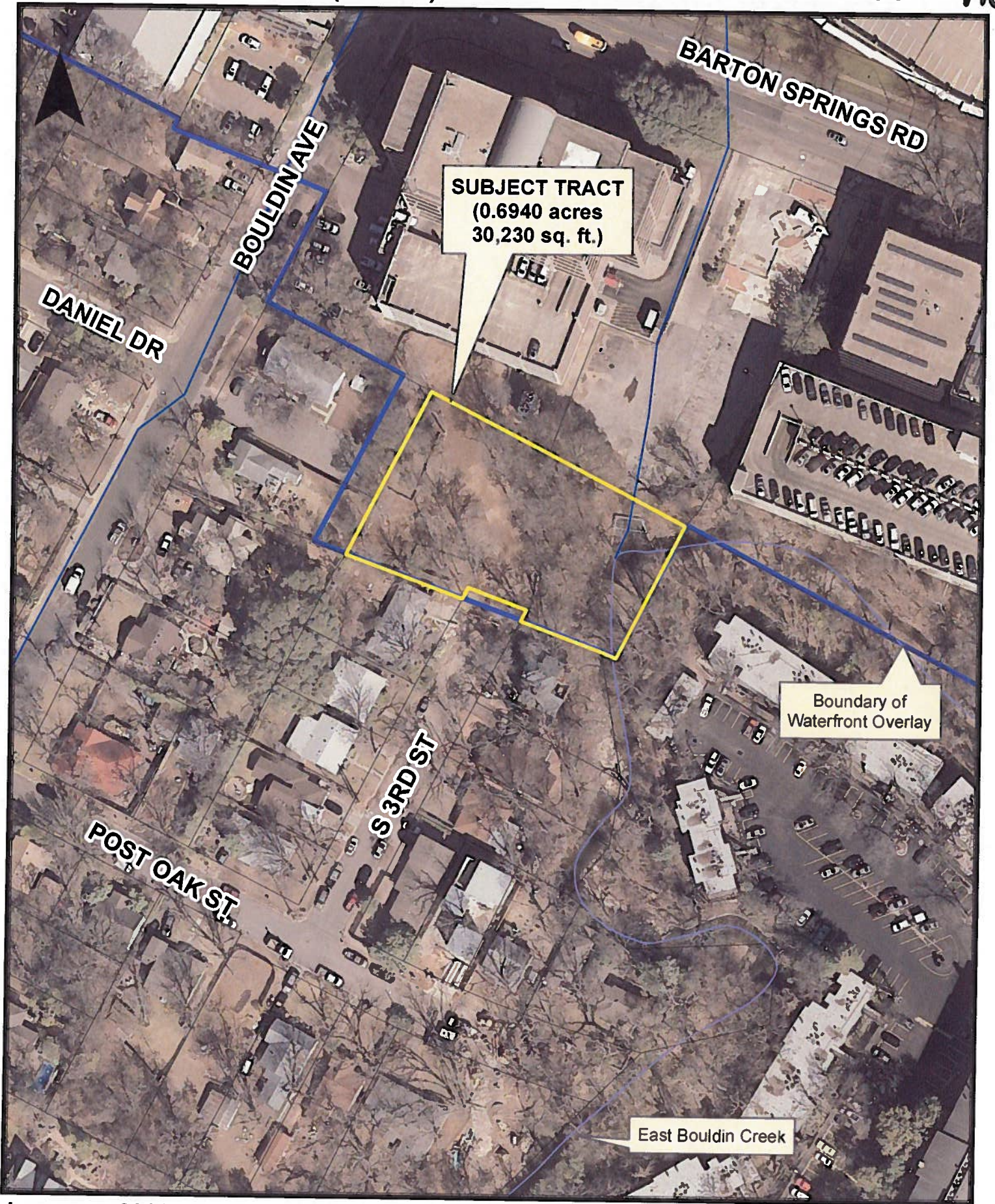
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



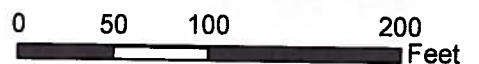
**Exhibit A**

C14-74-145(RCT) / 300 South Third Street C1/10



Imagery: 2009

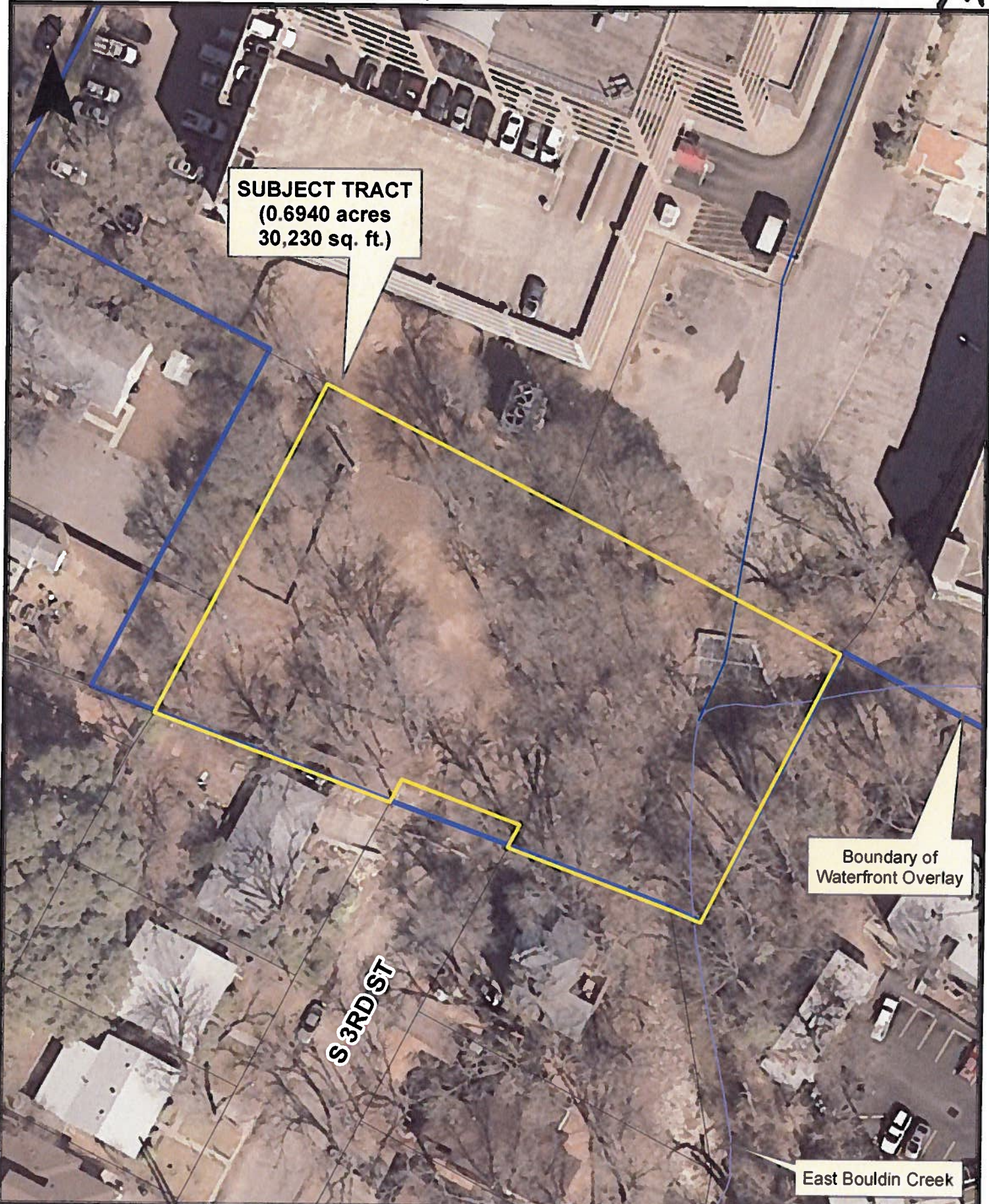
Exhibit A-1



1 inch = 100 feet

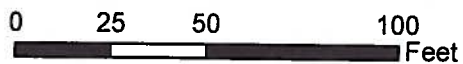
C14-74-145(RCT) / 300 South Third Street

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Imagery: 2009

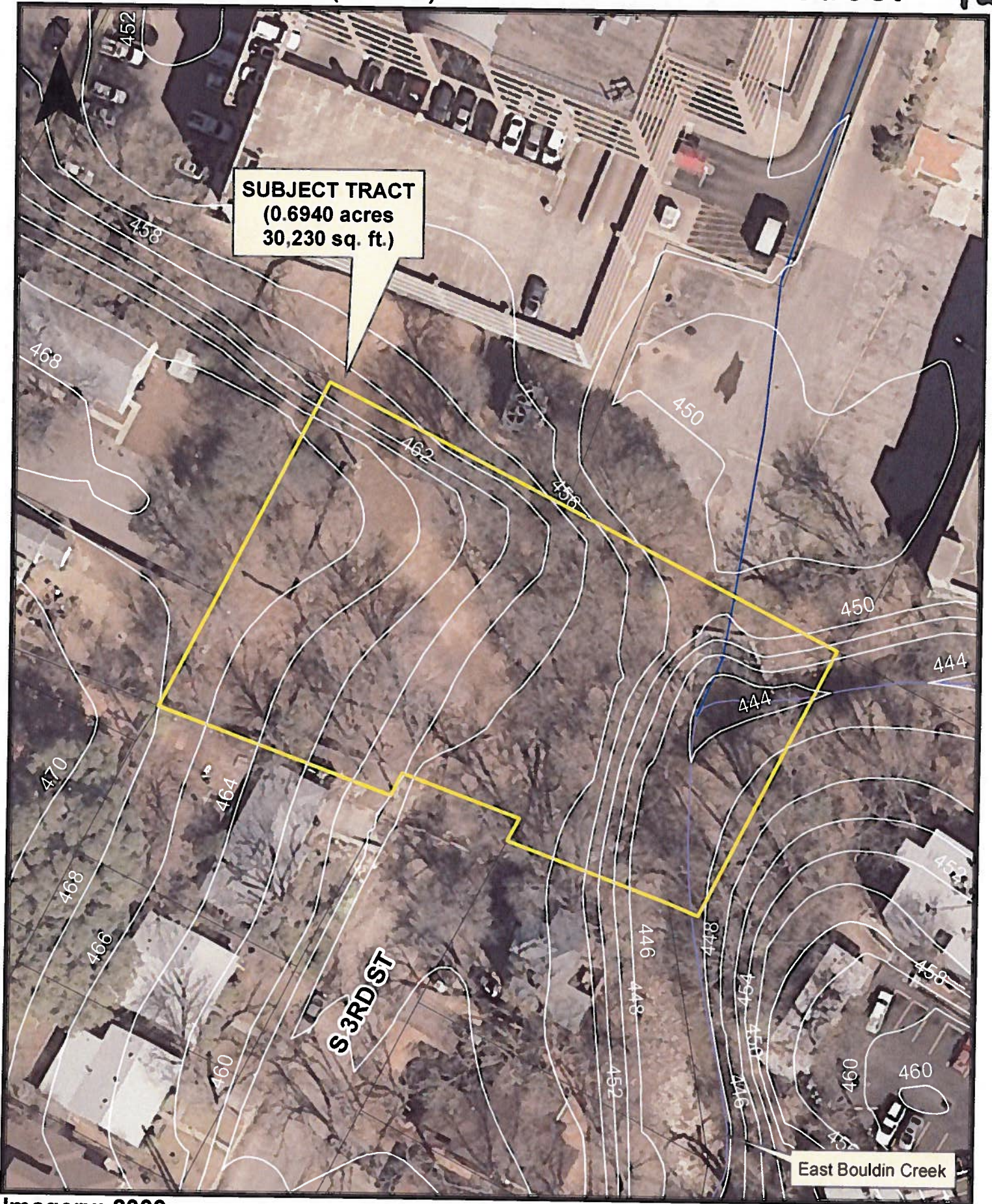
Exhibit A-2



1 inch = 50 feet

# C14-74-145(RCT) / 300 South Third Street

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Imagery: 2009  
Contours: 2003

Exhibit A-3

0 25 50 100 Feet

1 inch = 50 feet