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MEMORANDUM

TO: Planning Commission

FROM: Lee Heckman, AICP
Planning and Development Review Department

DATE: December 11, 2012

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

City staff is requesting a postponement of this case until January 22, 2013.

Consideration of the request to terminate a public restrictive covenant was postponed at the Waterfront Advisory Planning Board last evening until their January 14, 2013 meeting. The next available Planning Commission meeting in which the case could be considered is January 22, 2013.

In addition to this staff request for postponement, there was a previous request for postponement (please see attached) submitted from residents of the adjoining neighborhood.

A handwritten signature in black ink, appearing to be "LH", with a long horizontal stroke extending to the right.

Lee Heckman, AICP
Planning and Development Review Department

x: Randy Scott, Requestor (via Email)
Nina Fantl, Requestor (via Email)
Rick Vaughn, Applicant (via Email)
Michael Martin, Owner (via Email)



MEMORANDUM

TO: Planning Commission

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

DATE: December 10, 2012

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

Attached please find a postponement request from Randy Scott and Nina Fantl, both residents of the Bouldin Creek neighborhood (Exhibit A). Though not specifically identified as to the length of the postponement, Mr. Scott is requesting postponement at both today's Board meeting and tomorrow's Commission public hearing. The next meeting of the Board is January 14, 2013, whereas the next meeting of the Commission is January 8, 2013.

Also attached is a response from the owner, requesting the case not be postponed (Exhibit B).

The case is currently scheduled for a public hearing at the Planning Commission tomorrow. Should the application be postponed by the Board, staff will subsequently request a postponement at Planning Commission until January 22, in order to accommodate the Board's January 14, 2013 meeting. Should the case be considered by the Board, the postponement request from Randy Scott stands, and the item would be considered for postponement at your meeting tomorrow.

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

- x: Randy Scott, Requestor (via Email)
- Nina Fantl, Requestor (via Email)
- Rick Vaughn, Applicant (via Email)
- Michael Martin, Owner (via Email)

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-----Original Message-----

From: Randy Scott

Sent: Friday, December 07, 2012 1:17 PM

To: Heckman, Lee

Subject: RE: 801 Barton Springs Rd / 500 S. 3rd

Lee,

Thank you for getting back with me.

The neighborhoods next scheduled BCNA meeting is on December 11, 2012. In order for full participation of the neighborhood I would like to request a postponement of the hearings to the dates you mentioned in your email below. The applicant has not adequately reached out to the neighborhood association and the December 11, 2012 neighborhood meeting would be a great opportunity for them to do so.

The neighborhood would like a chance to discuss and secure:

- Parking
- Pedestrian access and connectivity
- Easements
- Compatibility Standards
- Number of Units

Please let me know when and if I'm needed to speak.

Hope this helps and thank you,
Randy

From: Nina Fantl

Sent: Friday, December 07, 2012 2:52 PM

To: Heckman, Lee

Subject: Re: 500 S 3rd Restrictive Covenant Link

Hello Lee,

Thank you so much for your email. I hereby request a continuance of the meeting on Monday, 12/10/13. The applicant should be present and we need additional time to prepare.

Thanks,

Nina

Nina J. Fantl, Esq.

1524 South Interstate Highway 35, Suite 315

Austin, Texas 78704

(512)476-9950

Licensed in Texas and D.C.

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December 10th, 2012

Dear Commissioners, Board Members, Council Members:

We the applicants, respectfully ask that our hearing continues as scheduled. We feel adequate notice was given concerning this hearing by way of the city's posted Notice Sign as of October 30 and the city's mailed announcement on November 16th for a scheduled November 27th Planning Commission hearing which was postponed. Any neighbors that had any inquiries were contacted right away in order to answer questions and address any concerns. We had a meeting with the neighbors that went very well (Mr. Randy Scott did attend and had very few questions or concerns at that time). We continued to welcome questions and offered to share site plan details with anyone that was interested. A request for postponement recently came in from Mr. Scott just two business days prior to the already postponed hearing although we have not heard from him personally. We attempted numerous phone calls to Mr. Scott on Friday to see if we could answer any questions or address any concerns, however there was no returned calls. It wasn't until Sunday early evening when I received an email stating they wanted to ensure that the number of units were limited in the construction and mentioned some other items referencing site plan compatibility details.

This scheduled hearing is actually for the release of a recently discovered, 40 year old restrictive covenant that was put into place when the subject property was owned by the commercial property directly to the north. There are current zoning and compatibility standards that have since replaced the original intent of the old restrictive covenant. Unfortunately, with the restrictive covenant in place, it eliminates any and all access to the property.

Although the hearing is specifically to release the old restrictive covenant, here are the responses to Mr. Scott's concerns. These were also emailed to him and the neighbors Sunday evening, although they had also been discussed at the neighborhood meeting:

- The 2005 subdivision process included a hearing which the neighborhood participated in, and the hearing described the future use of the property in detail. Although MF-3 zoning allows 36 units/acre or 24 units on this sized site, we voluntarily added in the plat notes during the subdivision process, to build no more than 4 residential homes/units. That holds true to this day, nothing has changed so the number of units is known and restricted by the plat notes. Also, we have recently submitted a site plan to the city showing as much (4 units).
- Regarding parking requirements, easements, compatibility and such, all city of Austin guidelines will be followed explicitly. Those compatibility standard guidelines are available for review at the city at any time. Again, we are always willing to share site plan information to those who inquire. The builder is open to discussions during the process to determine if access by foot through the property is a possibility and if it is or isn't desired by the neighborhood as a whole with special attention given to the neighbors in close proximity. Of course, this is assuming that the property owner to the north is willing to give access as well. However, that discussion is outside of this hearing.

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- One important note** The neighbors had some concern of someone trying to do more with the property than is currently allowed. If there are any future variations or changes desired, one would have to go before planning commission hearing for approval, giving the neighborhood the chance to be involved. This holds true for any property, anywhere in Austin including even a next door neighbor. This isn't our intent as we simply want to build the four homes following all city guidelines that the neighborhood is expecting and the city approved since 2005.

In conclusion, we respectfully ask that the hearings take place as scheduled. This is the last meeting scheduled for this year and further postponement creates hardship on the applicant. The neighborhood was notified well in advance to the hearing (and rescheduled hearing). They have had time to meet us and extend any questions, or concerns of which we responded to promptly. We have reached out to the neighborhood to those who with interest as they received their adequate notice well in advance to this hearing. The planning commission hearing has already been postponed once, giving more time for any concerned neighbors to express those concerns. The few items that the neighbors did mention are already mandated by the City of Austin along with the subdivision plat notes. The intended use of the property has been known since 2005 by the neighborhood since they were involved with a hearing and the city's approval. Nothing has changed regarding the property use since then. The mentioned postponement reasons are regarding the site plan use, which will follow all city of Austin guidelines and can be discussed throughout the process. We have extended another invitation to meet with the neighbors again today just to answer any additional questions regarding the site plan and are waiting for a response. Although we want to be as informative as possible with the neighbors, the site plan concerns are not being heard before the Waterfront Board, Planning Commission and City Council. As you know, it is the termination of old restrictive covenant that would otherwise eliminate all access to the property, if it were to stay in place. Thank you for your consideration to move forward with our scheduled hearings.

Sincerely,



Michael & Allisyn Martin