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RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

CASE: C14R-85-149.100 (RCA)
(Scofield Farms Phase 3 Section 2)

Z.A.P. DATE: July 2, 2013
August 6, 2013

ADDRESS: 13103 Wingate Way

OWNER/APPLICANT: James E. McCarn

AGENT: Coats Rose Yale Ryman & Lee, PC (John M. Joseph)

EXISTING ZONING: SF-2

AREA: 10.0922 acres

SUMMARY STAFF RECOMMENDATION:

Staff recommends the proposed amendment to the restrictive covenant to amend the specified requirements under Paragraph 1 and Paragraph 5(e)-please see below.

ZONING AND PLATTING COMMISSION RECOMMENDATION:

7/02/13: Postponed to August 6, 2013 at the neighborhood's request (5-0, B. Baker, S. Compton-absent); C. Banks-1st, G. Rojas-2nd.

DEPARTMENT COMMENTS:

The applicant is requesting an amendment to the restrictive covenant associated with zoning case C14-85-149.100, the North Lamar Area Study, to amend Paragraph 1 of the document as it refers to a conceptual land use plan. Specifically, the applicant would like to amend the language that states, "...that the number of units to be constructed on each Area designated as Residential on the Plan shall not exceed the density set forth on the Plan (As so amended). In the event that any Area is subdivided, the FAR or unit density, as pertinent, on any subdivided lot within such Area may exceed such specified limit so long as the total FAR or unit density within such Area does not exceed such specified limit." The Plan allows for an approved density of 42 units and the applicant requests that the restrictive covenant be modified to allow for a total of 46 single-family Residential units for Area 11. In addition, the applicant would like to amend Paragraph 5 of the restrictive covenant to delete the reference to "Area 11" in Section (e). Paragraph 5(e) states, "All lots in Areas 11, 15, 16 and 17 shall have lots width at the front building setback line of not less than sixty-five feet (65')." The applicant would like to remove Area 11 from this section so that they can comply with standard subdivision requirements of the City of Austin that include a minimum lot width of 50 feet. The applicant's request letter is included as Attachment A to this report.

The staff is recommending the applicant's request to amend Paragraph 1 and Paragraph 5, Section (e) of the restrictive covenant as this request is consistent with the density and size of residential lots to directly to the south and east of this property in this area of the City. The North Lamar Area Study designated this property for residential land use and since this study was adopted in 1985, the City Council approved SF-2, Single Family Residence-Standard Lot District zoning for this tract of land. The staff believes that the applicant's request is consistent with the surrounding zoning/land uses adjacent to this tract of land.

The applicant agrees with the staff's recommendation.

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	ZONING	LAND USES
<i>Site</i>	SF-2	Undeveloped
<i>North</i>	GR, MF-2-CO	Undeveloped Tract, Multifamily
<i>South</i>	SF-1, 1-SF-2	Single-Family Residential (North Shields Neighborhood)
<i>East</i>	SF-6	Single-Family Residential, Detention
<i>West</i>	GR, LO	Undeveloped

AREA STUDY: North Lamar Area Study**TIA:** N/A**WATERSHED:** Walnut Creek**DESIRED DEVELOPMENT ZONE:** Yes**CAPITOL VIEW CORRIDOR:** N/A**HILL COUNTRY ROADWAY:** No**NEIGHBORHOOD ORGANIZATIONS:**

Austin Heritage Tree Foundation
 Austin Independent School District
 Austin Monorail Project'
 Austin Northwest Association
 Bike Austin
 Homeless Neighborhood Organization
 North Growth Corridor Alliance
 Pflugerville Independent School District
 SELTEXAS
 Sierra Club, Austin Regional Group
 The Real Estate Council of Austin, Inc.
 The Ridge @ Scofield Homeowners Association

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-05-0055 (Tomanet Estates Zoning #5: 12700-12702 Tomanet Trail)	I-RR to SF-1	5/17/05: Approved staff's recommendation of SF-1 district zoning by consent (9-0); J. Martinez-1 st , J. Gohil-2 nd .	6/09/05: Approved SF-1 by consent (6-0, McCracken-off dais); all 3 readings
C14-03-0188 (Cedar Elm-BWL: 13201-13205 Burnet Road)	GO to GR	4/3/04: Approved staff's recommendation of GR zoning, by consent (9-0); J. Martinez-1 st , J. Gohil-2 nd .	3/04/04: Granted GR zoning (6-0, McCracken-absent); all 3 readings
C14-00-2179	IP to SF-2, SF-3, MF-1	10/17/00: Approved staff rec. of SF-2 (TR1), SF-3 (TR 2), and MF-1 (TR3) by consent (8-0)	11/30/00: Approved SF-2-CO (TR1), SF-3-CO (TR2); MF-1-CO (TR3) w/condition of 2,000 vehicle trip per day limit (7-0); all 3 readings

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C14R-85-149.70 (RCA- Parmer Lane Baptist Church: 1601-1605 West Parmer Lane, 12400-12436 Scofield Farms Drive)	An amendment to the public restrictive covenant to delete the requirement under Section 8 that prohibits an access driveway to Parmer Lane.	1/6/04: Approved staff's recommendation to amend the North Lamar Area Study restrictive covenant by consent (9-0): J. Martinez-1 st , J. Donisi-2 nd .	2/05/04: Approved the restrictive covenant amendment (7-0)
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RELATED CASES:

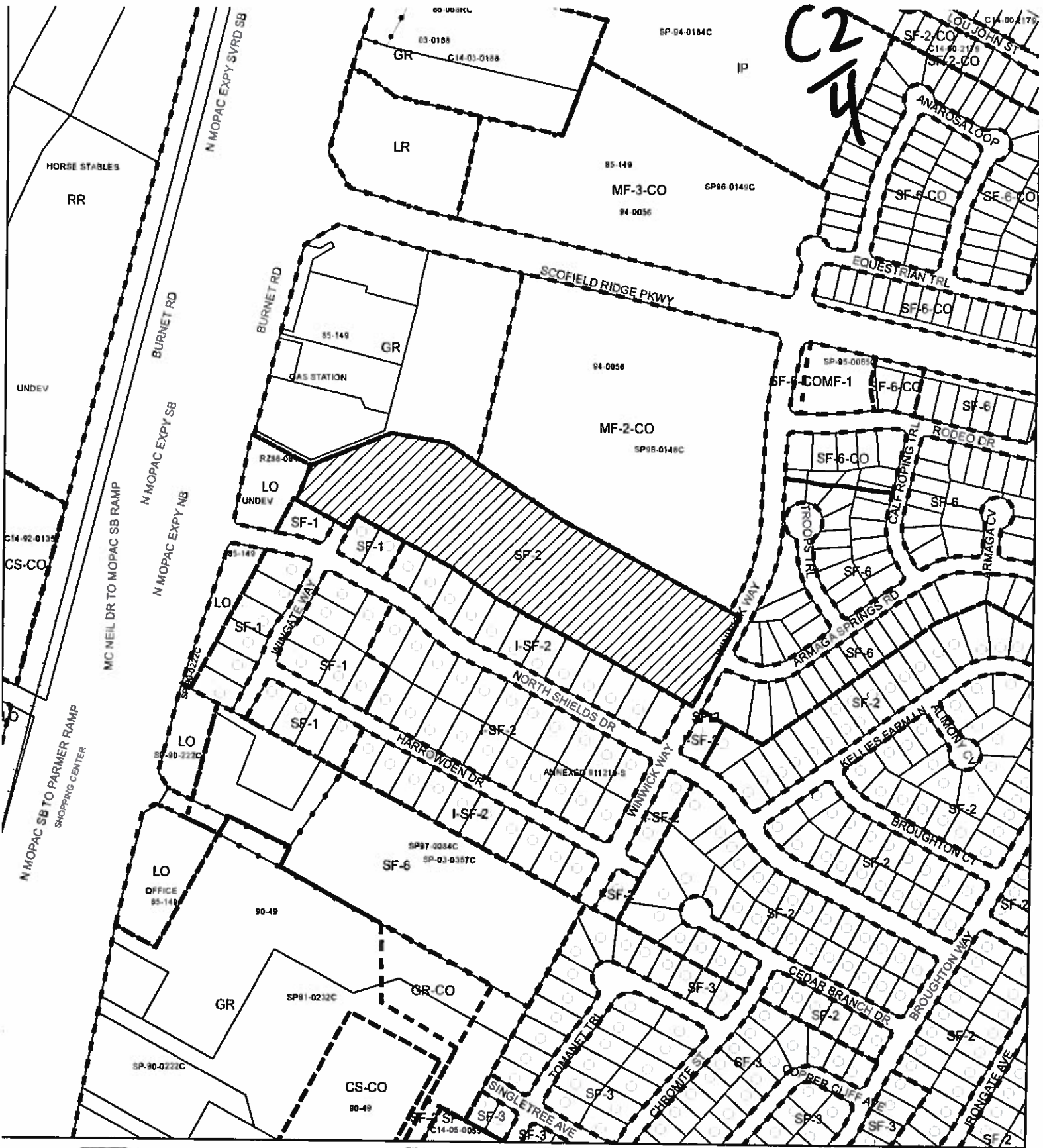
NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-85-0149.70	RR to GR, MF-2, LO, and SF-2	Approved LO (Tracts a, b, & d), SF-2 (Tract c & e)	9/18/86: Approved LR (Tract 1), MF-2 (Tracts 2 & 3), LO (Tract 4), and SF-2 (Tract 5) 3/19/89: Corrective Ordinance changes original Tract 2 (7.930 acres) to LR (Ordinance No. 890406-G)

ABUTTING STREETS:

Name	ROW	Pavement	Classification	Daily Traffic City of Austin traffic counts:
Wingate Way	50'	26'	Local Street	Not Available
Scofield Ridge Parkway	120'	Varies	Arterial	N/A

CITY COUNCIL DATE: August 8, 2013**ACTION:****CASE MANAGER:** Sherri Sirwaitis**PHONE:** 974-3057

sherri.sirwaitis@austintexas.gov



ZONING CASE
C14-85-149.100

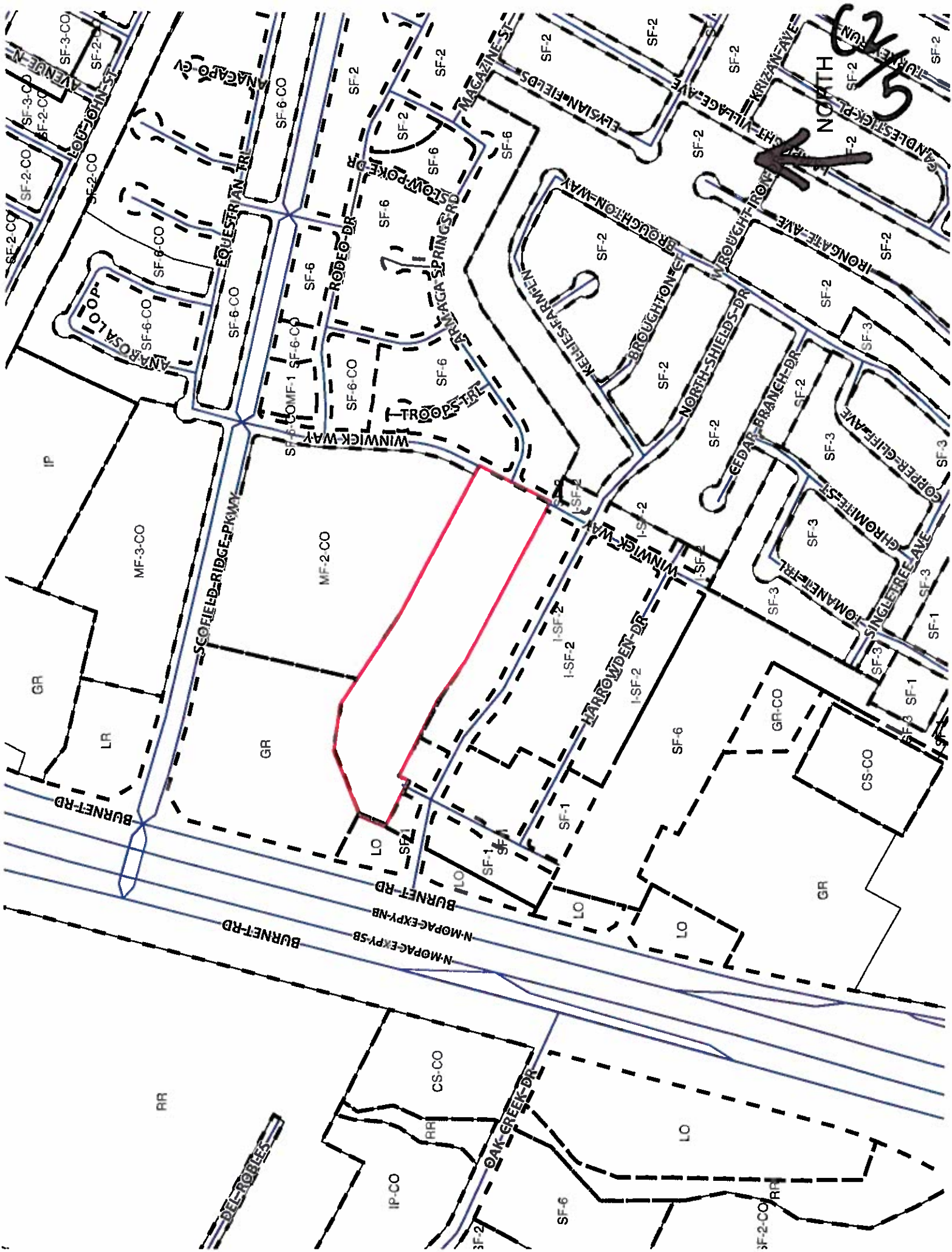
- N**
- SUBJECT TRACT
 - PENDING CASE
 - ZONING BOUNDARY

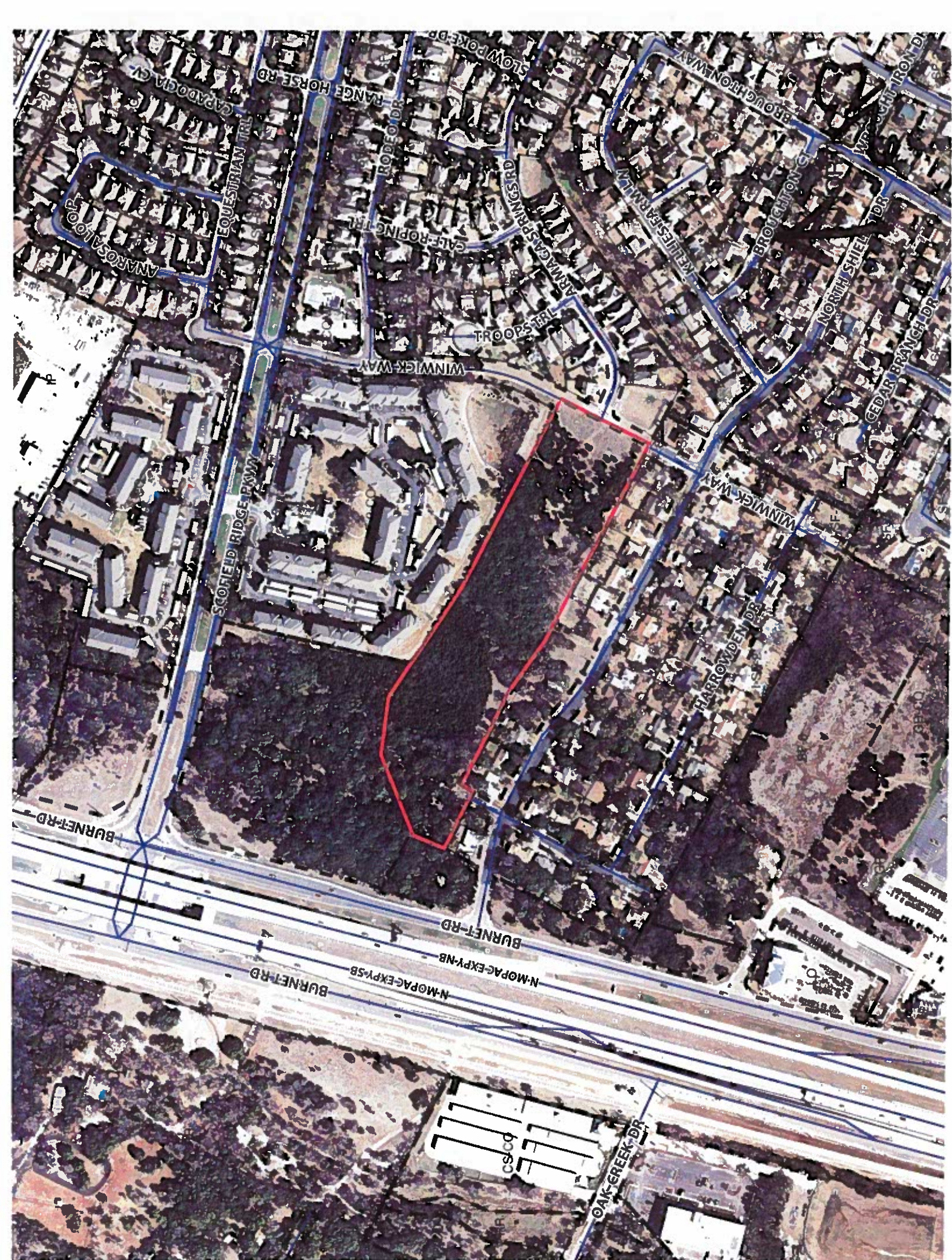
1" = 400'

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.

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RESTRICTIVE COVENANT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

230
200
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Ordinance Nos. 85-144
and 85-

25.00 RTEA
3 04/11/86

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WHEREAS, Nash Phillips/Copus, Inc., a Texas corporation with principal offices in Travis County, Texas ("NPC"), is the record owner of that certain property in Travis County, Texas, more fully described in Exhibit A attached hereto and made a part hereof for all purposes (the "Property"); and

WHEREAS, the City of Austin, a Texas municipal corporation ("City"), and NPC have agreed that the Property should be impressed with certain covenants and restrictions running with the land, and desire to set forth such agreement in writing;

NOW, THEREFORE, NPC, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand to it paid by City, the receipt of which is hereby acknowledged, does hereby agree with respect to the Property, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on it and its successors and assigns, as follows.

1. A conceptual land use plan ("Plan"), describing and setting for the Property as various Planning Areas and designating certain development and use information, is attached hereto and made a part hereof for all purposes. NPC and City agree that the permanent zoning classifications for the Property shall be as set forth in the above-referenced Ordinances; that the total floor space (excluding parking and all other areas excluded therefrom under the Zoning Ordinance of City applicable on the date hereof) of all buildings on the Planning Areas designated as Commercial, Office/Professional, and Industrial on the Plan shall not exceed the floor to area ratios ("FARs") set forth on the Plan (as amended pursuant hereto from time to time); and that the number of units to be constructed on each Area designated as Residential on the Plan shall not exceed the density set forth on the Plan (as so amended). In the event that any Area is subdivided, the FAR or

REAL PROPERTY RECORDS
Travis County, Texas

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EXHIBIT
"B"

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unit density, as pertinent, on any subdivided lot within such Area may exceed such specified limit so long as the total FAR or unit density within such Area does not exceed such specified limit.

2. The existing street located south of the Property and presently known as Willow Wild Drive shall not be extended across Parmer Lane into the Property.

3. One driveway access to Area 37 from Parmer Lane, between the existing streets located south of the Property and presently known as Provident Way and Willow Wild Drive, shall be permitted.

4. Prior to the issuance of a certificate of occupancy with respect to any building within an adjacent Area, a landscaped berm shall be constructed between the building set back line and the curb on each side of Metric Boulevard, Scofield Farms Lane and the north side of Parmer Lane. Provided that the location and height do not restrict visibility, drainage, site access or public safety, all landscaped berms shall be up to four feet (4') in height as measured from the crest of such berms to the gutter or pavement low point of the adjacent roadway.

5. As regards single-family Areas, the following shall apply:

- (a) Landscaping shall include two (2) hardwood trees, no less than 1" caliper, 5 gallon and seven feet (7') high, and turf in the street yard (the portion of each lot which lies between the street right-of-way line and the actual front wall line of the building) for all residential lots in Areas 11, 15, 16 and 17.
- (b) The minimum size of homes shall be 1300 square feet in Areas 15, 16 and 17, and 1400 square feet in Area 11.
- (c) The exterior walls of all residences in Areas 11, 15, 16 and 17 shall consist of not less than forty percent (40%) masonry.
- (d) All residences in Areas 11, 15, 16 and 17 shall have two (2) car garages.

(e) All lots in Areas 11, 15, 16 and 17 shall have lot width at the front building setback line of not less than sixty-five feet (65').

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6. As regards apartment Areas (presently, Areas 21, 24, 28, 30 and 32), the exterior walls shall consist of not less than forty percent (40%) masonry overall, and not less than sixty percent (60%) on walls facing public streets.

7. As regards all computations hereunder, the exterior wall of any structure shall exclude windows, doors, and garage doors, and masonry shall include brick, rock, and stucco.

8. In Area 24, all buildings shall be set back not less than one hundred feet (100') from the 100-year flood plain. In Area 28, all buildings shall be set back not less than fifty feet (50') from the 100-year flood plain. In all other Areas, buildings shall be set back from all public streets at least the distance required under applicable City ordinances.

9. Area 10 is intended to serve area retail needs and all improvements therein will meet applicable compatibility standards under the City zoning ordinance. It is contemplated that buildings generally will have pitched roofs and masonry exterior walls, and that the development will include a landscaped buffer area at least ten feet (10') wide around the perimeter boundaries.

10. Upon the submission to City of any site plan with respect to any part of the Property, as required by the City zoning ordinance, or upon any proposed amendment to this Restrictive Covenant, notice thereof shall be mailed by the applicant to all neighborhood organizations on the City records whose boundaries are contiguous to the Property.

11. If any person or entity of any character shall violate or attempt to violate the foregoing agreements and covenants, it shall be lawful for the City of Austin, its successors and assigns to prosecute proceedings at law or in equity against any person or entity violating or attempting to violate such agreements or covenants and to prevent said person or entity from violating or attempting to violate such agreements or covenants.

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12. If any part or provision of this Restrictive Covenant shall be declared invalid by judgment or court order, the same shall in nowise affect any of the other provisions hereof, and such remaining provisions shall remain in full force and effect.

13. The failure at any time to enforce this Restrictive Covenant by the City of Austin, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

14. This Restrictive Covenant may be modified, amended or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, or such other governing body as may succeed such City Council, and (b) the owner(s) of the portion of the Property affected by the proposed modification, amendment or termination at the time of such action.

EXECUTED, this the 13th day of January, 1986.

NASH PHILLIPS/COPUS, INC.

By: *Dan H. Davidson*
Its Executive Vice President

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 13th day of January, 1986 by Dan H. Davidson, Executive Vice-President, on behalf of Nash Phillips/Copus, Inc.

Phillis A. Aaberg
NOTARY PUBLIC, State of Texas
PHILLIS A. AABERG
Print Name
Notary Public
State of Texas
Commission exp. 12-12-87

My Commission Expires:

1/10/86
J17-18

NOTARY SEAL

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Sirwaitis, Sherri

Subject: FW: RE: C14-85-149.100(RCA) request for delay until the neighborhood has had time to meet with developer

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

From: Donald Newman

Sent: Tuesday, June 18, 2013 3:47 PM

To: Sirwaitis, Sherri

Cc:

Subject: Fw: RE: C14-85-149.100(RCA) request for delay until the neighborhood has had time to meet with developer

Ms Sirwaitis,

Per our phone conversation this P.M., as President on behalf of the North Shields Neighborhood Homeowners Association, I am formally requesting a posponment of any Planning and Zoning hearing on the McCarn Tract until the regularly scheduled Planning and Zoning meeting of August 6, 2013. We also request this meeting be scheduled at a time when members of our organization may attend in consideration of their employment.

We have discussed via Phone having a meeting with the developer tenatively scheduled for the week of July 22. This date was considered best due to neighbors being out of town on vacation during the long weekend of July 4th, and the week of July 15 was a conflict for the developer.

We appreciate the City of Austin kindness to include neighborhood input on a project that will not only adjoin our long established and quality neighborhood, directly abutts and is adjacent to our homesteads on the northern boundry of our subdivision.

At this time due to the number of neighbors affected by this project I am seeking a nearby location adequate to hold a meeting and hopefully can acquire a church rectory on Palmer Lane during the week of July 22.

Will keep you and Ms Madere advised by e-mail and again thank you on the city's behalf for your kindness in working with our organization.

Don Newman President of North Shields 512-731-7270

On Tue, 6/18/13, Pamela Madere wrote:

From: Pamela Madere

Subject: RE: C14-85-149.100(RCA) request for delay until the neighborhood has had time to meet with developer >

To: "Donald Newman" > Date: Tuesday, June 18, 2013, 4:03 PM Don You may request a postponement from Sherri Sirwaitis, her information is set forth below. We will not object to the postponement.

Sherri Sirwaitis

City of Austin

(512) 974-3057

sherri.sirwaitis@austintexas.gov

Send Sherri an email and tell her that the North Shields Neighborhood Association would like to request a postponement of the currently scheduled July 2nd ZAP hearing for Case #C14-85-149.100(RCA).

ZAP meets on July 2, July 16, and August 6. That means this matter should be scheduled for the ZAP hearing August 6.

Thank you,
Pamela Madere

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

From: Donald Newman
Sent: Tuesday, June 18, 2013 1:10 AM
To: Pamela Madere
Subject: Re: C14-85-149.100(RCA) request for delay until the neighborhood has had time to meet with developer

Ms Madere,

Are you the contact to request a delay in this hearing? We met with and requested the Developer meet with our neighborhood back in March when 3 members of our association met for the first time with McCarn and these prospective developers. At that time they stated they had no information and even purchase of the land was in question. They committed to call us back in 3 weeks with plans and product they intended to develop on this parcel which adjoins the homes on the northern side of North Shields Drive. Our contact for service for this meeting was supposed to be Jim McCarn. Despite numerous calls to Jim the answer was always there was no information forthcoming from the developer to meet with the neighborhood. I would hate to think this was being railroaded against the neighborhood without our being informed and having input. Appreciate your kindness in working with North Shields neighborhood Association which now has about 150 homes represented. I have been the President since 1982 and look forward to a pleasant relationship with the developer and city staff on this important issue. Please inform me as soon as possible as to who I need to contact to extend the Planning hearing because my latest mail out quoted this date as of August 8, 2013 at 2:00P.M. Hopefully if we can meet the week of July 22 then hopefully without a big road block the hearing can still take place on Aug 8. I just feel uncomfortable stating best guess of the neighborhood without actual input as to their concerns and issues.

Thanks waiting on hearing from you

Don Newman as President of North Shields

From: Pamela Madere
Sent: Monday, June 17, 2013 4:02 PM
To:
Subject: C14-85-149.100(RCA)

Don,

Thank you for taking my call today. As the President of North Shields Neighborhood Association, you have contacted City staff and requested that staff not allow this matter to be heard by the Zoning and Platting Commission and City Council until the neighborhood meets with the applicant. As you know, this matter is scheduled to go to the Zoning and Platting Commission on July 2. To accommodate your request for the neighborhood meeting, it would be appropriate for you to file a postponement request with the City of Austin. We will not object to the neighborhood's postponement request.

You intend to call a neighborhood meeting but due to vacation schedules you are looking at late July for the meeting, likely the week of July 22. Please let us know possible dates for the meeting.

Thank you,

Pamela Madere

512-541-3594
Director
Coats Rose
Barton Oaks Plaza
901 S. Mopac, Suite 500
Austin, Texas 78746

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