

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-02-0183(RCT)
Restrictive Covenant Termination

P.C. DATE: December 10, 2013
November 12, 2013

OWNER: Paul Saustrup

ADDRESS: 1120 Tillery Street

AGENT: Hector Avila

ZONING: CS-MU-CO-NP

AREA: 3.50 Acres

SUMMARY STAFF RECOMMENDATION:

Staff supports the proposed Restrictive Covenant Termination (RCT). The RCT would remove a requirement that the property rollback zoning from general commercial services-mixed use-conditional overlay-neighborhood plan (CS-MU-CO-NP) combining district zoning to single family residence small lot-neighborhood plan (SF-4a-NP) combining district zoning if the plant nursery land use was discontinued.

PLANNING COMMISSION RECOMMENDATION:

December 10, 2013: *DENIED STAFF RECOMMENDATION TO TERMINATE RESTRICTIVE COVENANT, (5-0). [D. CHIMENTI- 1ST, M. SMITH- 2ND; R. HATFIELD, A. HERNANDEZ, B. ROARK, & J. STEVENS ABSENT]*

November 12, 2013: *GRANTED POSTPONEMENT REQUEST TO DECEMBER 10, 2013, BY NEIGHBORHOOD ASSOCIATION, ON CONSENT, (7-0). [NORTEY- 1ST, ROARK - 2ND]*

DEPARTMENT COMMENTS:

The subject property is located on the west side of Tillery Street between Govalle Avenue and Goodwin Avenue. It is formerly part of the Ted's Trees plant nursery site; the property to the south is also zoned CS-MU-CO-NP and is still used a plant nursery. North of the subject property is a small subdivision zoned SF-3-NP that is currently undeveloped. East of the property, across Tillery Street, is a residential area zoned SF-3-NP. West of the property is part of Austin Community College Eastview Campus, which is zoned P-NP. Other land uses and zoning categories in the area include undeveloped, religious assembly and nursing home (zoned MF-3-NP, SF-3-NP and MF-3-NP, respectively). Please see attached zoning map and aerial map (Exhibits A & B).

All properties in the vicinity were zoned in conjunction with the Govalle Neighborhood Plan, which was adopted in 2003. No changes to this zoning are currently proposed. The zoning case, C14-02-0183.001, was adopted as Zoning Ordinance No. 030327-11a in April 2003. The subject tract was identified as Tract 161 in the ordinance, designated CS-MU-CO-NP, and is subject to the following conditions:

1. The following uses of Tract 161 may not exceed 5,000 square feet of gross floor area:
Administrative and business office, Professional office.
2. The following uses are prohibited uses of Tract 161: Agricultural sales and services, Art and craft studio (general), Automotive repair services, Automotive washing (of any type), Automotive rentals, Automotive sales, Business or trade school, Campground, College and university facilities, Commercial off-street parking, Communication service facilities, Community recreation (public), Construction sales and services, Consumer repair services, Counseling services, Custom manufacturing, Day care services (general), Day care services (commercial), Day care services (limited), Drop-off recycling collection facility, Equipment repair services, Exterminating services,

Food sales, General retail sales (convenience), Hotel-motel, Hospital services (general), Indoor entertainment, Kennels, Art and craft studio (limited), Building maintenance services, Business support services, Club or lodge, Commercial blood plasma center, Communications services, Community recreation (private), Congregate living, Consumer convenience services, Convenience storage, Cultural services, Electronic prototype assembly, Equipment sales, Financial services, Funeral services, General retail sales (general), Guidance services, Hospital services (limited), Indoor sports and recreation Laundry services, Limited warehousing and distribution, Maintenance and service facilities, Medical offices (not exceeding 5000 sq. ft. gross floor area), Medical offices (exceeding 5000 sq. ft. gross floor area), Monument retail sales, Off-site accessory parking, Outdoor sports and recreation, Personal improvement services, Pet services, Private secondary educational facilities, Public secondary educational facilities, Residential treatment, Restaurant (general), Safety services, Software development, Transportation terminal, Veterinary services, Multifamily residential, Outdoor entertainment, Pawn shop services, Personal services, Private primary educational facilities, Public primary educational facilities, Research services, Restaurant (drive-in, fast food), Restaurant (limited), Service station, Theater, and Vehicle storage.

In addition to these limits on the CS-MU-CO-NP zoning, a Restrictive Covenant was filed in conjunction with the zoning case. This Restrictive Covenant requires the property to rollback to SF-4a-NP zoning if the plant nursery land use ceases operation on the property (Please see Exhibit C- Restrictive Covenant). Correspondence regarding the Restrictive Covenant Termination is attached as Exhibit D- Correspondence. The Applicant has stated their intent to develop Townhouse/condominium land use on the property that would not be possible under SF-4-a-NP zoning, but would be possible under the existing CS-MU-CO-NP zoning. Due to the significant number of limitations attached to the current zoning, Staff supports termination of the Restrictive Covenant that would require the SF-4a-NP rollback.

SUMMARY STAFF RECOMMENDATION:

Due to the significant number of limitations attached to the current zoning, Staff supports termination of the Restrictive Covenant that would require the SF-4a-NP rollback.

BASIS FOR LAND USE RECOMMENDATION (ZONING PRINCIPLES)

1. . *Zoning changes should promote an orderly and compatible relationship among land uses.*

By terminating the restrictive covenant, the property will be well suited for development that fits the character and intensity of the area.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS-MU-CO-NP	Undeveloped
<i>North</i>	SF-3-NP	Undeveloped, Residences, Religious Assembly
<i>South</i>	CS-MU-CO-NP, SF-3-NP	Plant nursery, Residences
<i>East</i>	SF-3-NP	Residences, Religious Assembly
<i>West</i>	P, SF-3-NP, MF-3-NP	ACC Campus, Residences, Undeveloped

AREA STUDY: N / A

TIA: N/A

WATERSHED: Boggy Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

SCENIC ROADWAY: No

SCHOOLS:

Oak Springs Elementary

Kealing Middle School

Eastside Memorial HS at Johnston

NEIGHBORHOOD ASSOCIATIONS:

PODER

Del Valle Community Coalition

Preservation Austin

Guadalupe Neighborhood Development Corporation

African American Cultural Heritage District Business Association

Govalle/Johnston Terrace Neighborhood Planning Contact Team

Austin Neighborhoods Council

Govalle Neighbors

United East Austin Coalition

ABUTTING STREETS:

Name	ROW	Class	Sidewalk?	Bus Route?	Bike Route?
Tillery Street	Varies	Collector	Yes, one side	N/A	Yes- both sides

CITY COUNCIL DATE & ACTION:

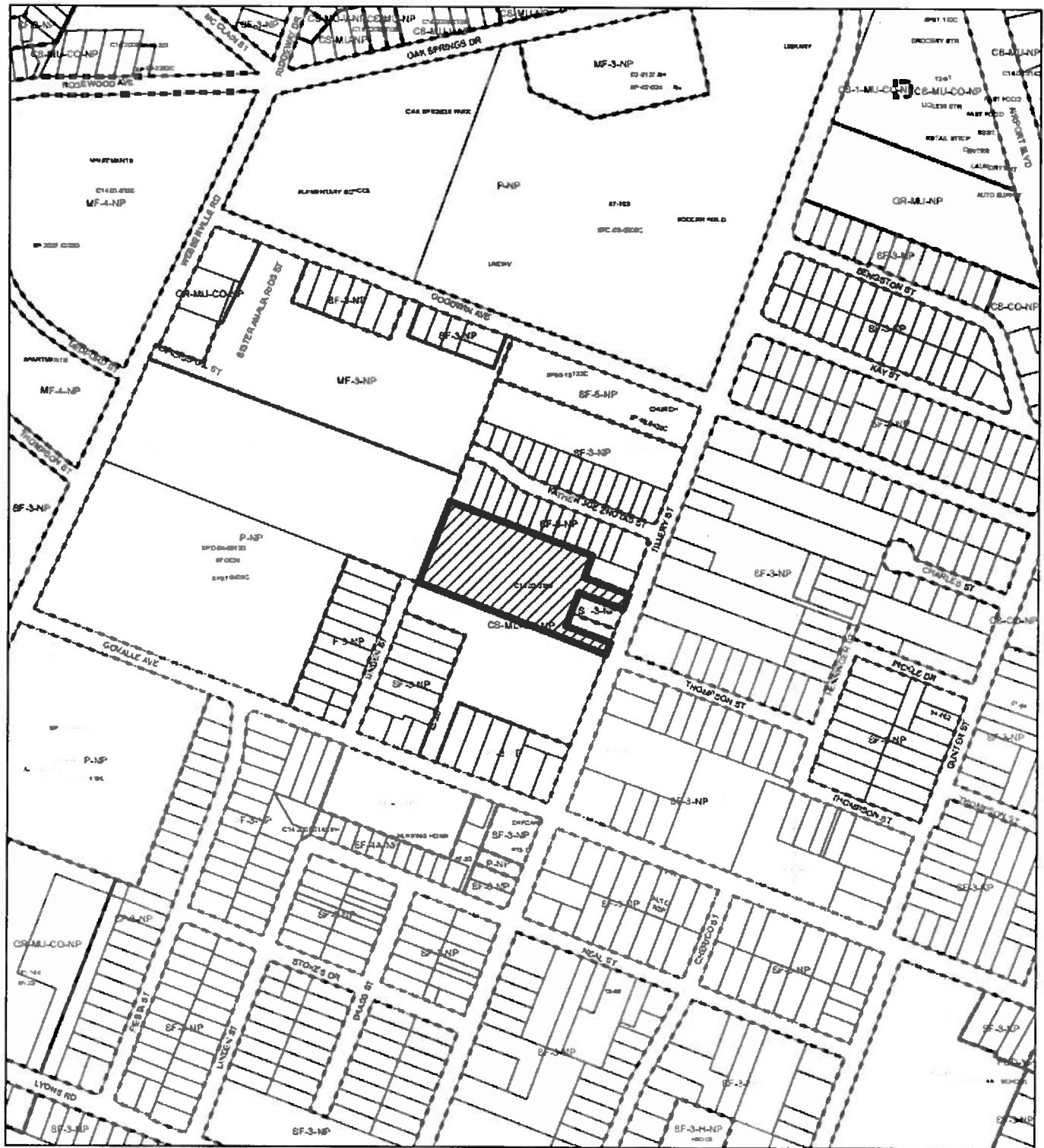
January 23, 2013:

December 12, 2013: *POSTPONED TO JANUARY 23, 2014, AT STAFF'S REQUEST, ON CONSENT (7-0). [SPELMAN- 1ST, COLE- 2ND]*

ORDINANCE READINGS:

CASE MANAGER: Heather Chaffin
e-mail: heather.chaffin@austintexas.gov

ORDINANCE NUMBER:**PHONE:** 974-2122



SUBJECT TRACT



PENDING CASE



ZONING BOUNDARY

ZONING

ZONING CASE#: C14-02-0183(RCT)



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.

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.



Chaffin, Heather

From: GNDC <gndc@sbcglobal.net>
Sent: Thursday, December 05, 2013 5:54 PM
To: Chaffin, Heather
Cc: Anderson, Dave - BC; Hernandez, Alfonso - BC; Stevens, Jean - BC; Chimenti, Danette - BC; Jack, Jeff - BC; Nortey, James - BC; Oliver, Stephen - BC; Roark, Brian - BC; Smith, Myron - BC; Daniel Llanes; Daniel Llanes; Johnny Limon; Susana Almanza
Subject: Objection to zoning change at 1120 Tillery C14-02-0183(RCT)
Attachments: 1120 Tillery_upzoning_objection0001.pdf; 1120 Tillery_Objection_ltr_20001.pdf; 1120 Tillery rollback clause.pdf

Dear Ms. Chaffin and Members of the Planning Commission:

I am the executive director of a Texas nonprofit corporation that owns 11 acres adjacent to 1120 Tillery (Ted's Trees), for which the owner is requesting termination of a Restrictive Covenant (RC), case C14-02-0183(RCT).

I cannot imagine that staff will support the request, because it undermines the neighborhood planning process and City Council action that ratified the zoning changes that came with the plan. As I'm sure you know, the property in question was up-zoned the property from SF-3 to the current CS-MU-CO zoning with the full agreement of the Owner to "not object to" a re-zoning to SF-4A when the nursery, residence and business office uses then on the property ceased. I'm providing more detail than I would like because the Notice sent out by the City implies the neighborhood wanted CS-MU zoning and the RC would somehow make a mistake by rolling the zoning back to SF-4A. That, as I'm sure you know, is completely incorrect.

In addition to my objection on 2 of the Notices we received, I am attaching some backup pages from the City Planning Department staff that were provided to Planning Commissioners and to the City Council at the time the Govalle-Johnston Terrace Neighborhood Plan (GJTNP) was being finalized. Just in case you somehow were not aware of the process, I will remind you that the neighborhood very kindly agreed to a temporary up-zoning from SF-3 (that had been on the property for decades) so that the uses on the property would be in compliance with the new, neighborhood plan zoning and so that the owner could continue to receive rents from the nursery uses and agricultural tax exemptions until the 3.5 acres were ready for redevelopment. At the time of redevelopment, which appears to be imminent, rather than insisting on a true roll-back to SF-3, the neighbors and property owners agreed to have the City initiate a re-zoning to a denser, but still compatible SF-4A category. The City staff, and eventually the City Council, codified that agreement both with the CS-MU-CO and with the RC.

I have heard that the current and/or future owner would like to avoid subdivision and putting in a City street and instead wants to do condos. As a developer, that makes good sense to me. But that can and should be done with SF-4B zoning because, just like the SF-4A that the owner gladly agreed to back when the GJTNP was approved, it is compatible with the surrounding predominantly single-family neighborhood.

One suggestion that I would like to propose is simply to amend the RC to add SF-4B as an allowable re-zoning category. In this way, the owner would get to avoid the headache, time delays and cost of subdivision and the cost of installing a City street. They also will get, by my rough calculations, about 10 to 12 more dwelling units than SF-4A would yield. That's a sweet deal and maintains compatibility with the neighborhood and conforms with the spirit and intent of the GJTNP future land use map and process. Perhaps some sort of community benefit, such as requiring 15% of the addition units gained by changing from SF-4A to SF-4B should be made affordable to buyers or renters with low-to-moderate incomes. Just a thought.

I, of course, would only recommend you support this alternative if the Govalle-Johnston Terrace contact team supports it as well.

Thank you!

Mark C. Rogers, Executive Director
Guadalupe Neighborhood Development Corporation
p 512-479-6275 x3
guadalupendc.org

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

www.austintexas.gov

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-02-0183(RCT)
Contact: Heather Chaffin, 512-974-2122
Public Hearing: Nov 12, 2013, Planning Commission
Dec 12, 2013, City Council

Mark C. Rogers

Your Name (please print) We have 31 parcels adjacent, including 29 SF-4A

1124 Tiller; 3000 through 3128 Father

Your address(es) affected by this application Joe 2 notes Street, etc

☐ I am in favor
☒ I object

Mark C. Rogers, Executive Director 12/5/2013
Signature Date

Daytime Telephone: 512 479 6275 x 3

Comments: The CS-MU-CO zoning and the Restrictive Covenant to re-zone (not roll back because it was SF-3) were an agreement made in the neighborhood planning process. The owner got CS-MU because that was very restricted use limited to those existing at the time w/ the agreement the property would be re-zoned SF-4A when those uses ceased. CS-MU was a gift that was temporary.

If they want condos, amend the Restrictive Covenant to also allow

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Heather Chaffin

P. O. Box 1088

Austin, TX 78767-8810

SF-4B

That is the

reasonable thing to do.

INFORMACIÓN DE AUDIENCIA PÚBLICA

Esta petición de zonificación / rezonificación será repasada y acción será tomada de acuerdo a dos audiencias públicas: ante la Comisión de Usos Urbanos y el cabildo municipal. Aunque solicitantes y/o su(s) agente(s) se les requiere atender la audiencia pública, usted no esta bajo requisito de atender. De todos modos, si usted atiende la audiencia pública, tendrá la oportunidad de hablar a FAVOR o EN CONTRA al propuesto desarrollo urbano o cambio de zonificación. Usted también puede contactar a una organización de protección al medio ambiente u organización de vecinos que haya expresado interés en la aplicación teniendo implicaciones a su propiedad.

Durante la audiencia pública, la comisión podría postergar o continuar audiencia del caso en una fecha futura, o puede evaluar la recomendación de los oficiales municipales y las del público al mismo tiempo mandando su recomendación al cabildo municipal. Si la comisión anuncia una fecha y hora específica para postergar o continuar discusión, y no se extiende más de 60 días, no tendrá obligación de otra notificación pública.

El cabildo municipal, durante su audiencia pública, puede otorgar o negar una petición de zonificación, rezonificar el terreno a una clasificación de zonificación menos intensiva que lo que es pedida. En ningún caso se otorgara una clasificación de zonificación más intensiva de la petición.

Para otorgar un desarrollo de usos urbanos mixtos, el cabildo municipal puede agregar la designación USO MIXTO (MU) DISTRITO COMBINADO, *Mixed-use (MU) Combining District*, a ciertos usos urbanos de comercio. La designación MU- Distrito Combinado simplemente permite usos urbanos residenciales en adición a los usos ya permitidos el los siete distritos con zonificación para comercio. Como resultado, la designación MU- Distrito Combinado, otorga la combinación de oficinas, comercio, y usos urbanos residenciales en el mismo sitio.

Para más información acerca del proceso de desarrollo urbano de la ciudad de Austin, por favor visite nuestra página de la *Internet*:

www.austintexas.gov

Comentarios escritos deberán ser sometidos a la comisión (o a la persona designada en la noticia oficial) antes o durante la audiencia pública. Sus comentarios deben incluir el nombre de la comisión, la fecha de la audiencia pública, y el número de caso de la persona designada en la noticia oficial.

Numero de caso: C14-02-0183(RCT)

Persona designada: Heather Chaffin, 512-974-2122

Audiencia Publica: Nov 12, 2013, Planning Commission

Dec 12, 2013, City Council

Mark C. Rogers for Guadalupe N.A.C.

Su nombre (en letra de molde)

1126 Tilley; 3000 through 3128 Father

Joe Zantaras Street, adjacent 7 acres.

Su domicilio(s) afectado(s) por esta solicitud

Mark C. Rogers, Executive Director

Firma

12/5/2013

Fecha

Daytime Telephone: 512 479 6275

Comments: A roll-back would be to SF-3, not SF-4A. The owner agreed to the SF-4A in exchange for the up zoning (temporary) in order to maintain the nursery business and agricultural tax exemptions. The RC would put the property in compliance w/ the neighborhood plan. Terminating the RC while leaving the CS-MU-CO zoning in place would p. negate the City Council action re: the Gov Johnst. Take h. Plan; and 2). grant massive entitlements that were never intended; and 3). create

Si usted usa esta forma para proveer comentarios, puede retornarlos a la City of Austin. the potential for an incompatible

Planning & Development Review Department development.

Heather Chaffin

P. O. Box 1088

Austin, TX 78767-8810

SF-3, SF-4A or SF-4B

are all reasonable alternatives. SF-4B gives them the condo use they seem to want.

A detailed list of specific restrictions to be included in the CO for certain tracts is provided in Attachment 2.

PLANNING RECOMMENDATION:

12-18-02: Passed 7:1:1

Recommendations:

1. Recommend approval of the Govalle/ JT Neighborhood Plan (with its' principles and goals) and Rezoning with the following additions.
2. Direct staff to have a public hearing on allowing small lot amnesty for Govalle/ JT NP
3. Recommend CS-CO-NP for tract 171
4. Recommend keeping tract 132 as MF-2-CO-NP
5. Recommend for tract 50 finding some zoning to allow existing use with the least intense zoning needed.
6. On the FLUM, reflect the area along Red Bluff as Mixed Use
7. Encourage neighborhood and staff to work with the 6 outstanding property/property owners to reach consensus for a recommendation for CC.
8. Recommend including language (like in the Southeast Plan) for allowing SMART housing to be considered for properties in the neighborhood and the plan being generally supportive of future SMART housing project proposed in the neighborhood.

ISSUES:

Three property owners have verbally agreed to zoning rollback provisions provided via public restrictive covenants. These covenants are currently being written by the City of Austin Law Department and will be presented to the City Council upon execution.

A number of petitions have been received and will be validated prior to the City Council hearing.

DEPARTMENT COMMENTS:

In response to the Affordability Impact Statement (Attachment 3) prepared by Neighborhood Housing and Community Development the staff recommendation was revised on January 27, 2003 to include Small Lot Amnesty.

There were five rezoning cases initiated prior to or during the neighborhood planning process. They are C14-01-0003 located at 618 Tillery Street, C14-02-0093 located at 5100 East 7th Street, C14-02-0170 located at 601 Airport, C14-02-0127SH located at 3000 Oak Springs Road and C14-02-0114SH located at 2700 Lyons Road.

C14-02-0170, C14-02-0114SH, and C14-02-0127SH have been completed. C14-01-0003 has been withdrawn and is proposed for rezoning as part of this neighborhood plan. C14-02-0093 was completed on January 9, 2003 and is no longer recommended as a base rezoning as part of this neighborhood plan but will receive a Neighborhood Plan Combining District (NP) designation.

AREA STUDY: Govalle/Johnston Terrace Combined Neighborhood Planning

TIA: Waived.

Tree

	Subject	FCR	FC
159c	312 ALLEN ST	LI	CS-CO-NP
159d	308 ALLEN ST	LI	CS-MU-CO-NP
161	3008 GOVALLE AV, 1123 LINDEN (LOT 7B *RESUB OF LOT 7 BLK 1 OLT 45&46 DIV A CHERICO SUBD NO 2), 1123 LINDEN (LOT 7A *RESUB OF LOT 7 BLK 1 OLT 45&46 DIV A CHERICO SUBD NO 2), 1116, 1118 & 1120 (3.50AC OF OLT 48&51 DIVISION A), 1120 (39 X 150 FT OLT 46&51 DIVISION A) TILLERY ST	SF-3	CS-MU-CO-NP
162	3517 7 ST E	LI	P-NP
163	0 PLEASANT VALLEY RD N (.106 AC OLT 36 DIVISION A)	CS	P-NP
164	1136 AIRPORT BLVD (LOT 14 *LESS 14 X 75 FT PLUS E 75 FT OF LOT 15A BLK A OLT 55&56 DIV A SPILLAR & GREENWOOD ADDN), 1136 AIRPORT BLVD (LOT 16A *RESUB OF LTS 15-16 BLK A OLT 5&58 DIV A SPILLAR & GREENWOOD ADDN), 1136 AIRPORT BLVD (LOT 15C OLT 55&56 DIV A LEE WOODROW R SUBD) & 3500 KAY ST	CS	CS-CO-NP
165	0 AIRPORT BLVD (.67 AC OLT 56 DIVISION A)	CS, CS-1	CS-CO-NP, CS-1-CO-NP
166	1120 & 1122 AIRPORT BLVD, 3700 THOMPSON ST & 980 SPRINGDALE RD	CS	CS-CO-NP
167	300 ALLEN ST	CS-1	CS-CO-NP
168	3503 & 3515 WEBBERVILLE RD	SF-3, CS	GR-MU-CO-NP
169	821 GUNTER ST	LI	CS-MU-CO-NP
171	3401 7 ST E	CS-1	CS-CO-NP

REVISED DRAFT

20. Bolm Road Single Family

Tract 132a – 5901 Bolm Road

SF-4a-CO with the conditional overlay limiting dwelling units on the tract to a maximum of 6.5 units per acre.

21. Bolm Road

Tract 132b

Govalle/Johnston Terrace
Prohibited
Service Station

Rollback Tracts

Rollback tracts require the agreement of the property owner in a public restrictive covenant to implement.

Tract 161 – Ted's Trees on Tillery

Rezone to CS-MU-CO with the CO prohibiting all uses except Administrative and Business Office, Plant Nursery, Professional Office, and Single Family Residential. The CO would also limit the size of any Administrative and Business Office and Professional Office use to 5,000 square feet. If the current commercial use (Plant Nursery) ceases to operate then the City will initiate rezoning the tract to Single Family (SF-4a). The tract is shown on the Future Land Use Map as Single Family.

Tract 169 – Casa Marianella

Rezone to CS-MU-CO with the CO prohibiting all uses excepting Administrative and Business Office, Art and Craft Studio (Limited), Day Care Services (Limited and General), Professional Office, and all residential uses allowed under the Mixed Use Combining District. Transitional Housing is permitted as a conditional use. If the current use (Transitional Housing) ceases to operate then the City will initiate rezoning the tract to Single Family (SF-3). The tract is shown on the Future Land Use Map as Single Family.