

## **RESTRICTIVE COVENANT TERMINATION REVIEW SHEET**

**CASE:** C14-80-016(RCT)

(2208 Lake Austin Restrictive Covenant Termination)

**P.C. DATE:** April 8, 2014

**ADDRESS:** 2208 Lake Austin Boulevard

**OWNER/APPLICANT:** 2208 Lake Austin, LLC (Vance Elliott)

**AGENT:** Alice Glasco Consulting (Alice Glasco)

### **NATURE OF REQUEST:**

To terminate/delete a public restrictive covenant for the property located at 2208 Lake Austin Boulevard.

### **SUMMARY STAFF RECOMMENDATION:**

The staff recommends the applicant's request to terminate the public restrictive covenant as it applies to this site.

### **PLANNING COMMISSION RECOMMENDATION:**

4/08/14: Motion to approve restrictive covenant termination (8-0, A. Hernandez-off dais);  
J. Stevens-1<sup>st</sup>, M. Smith-2<sup>nd</sup>.

### **DEPARTMENT COMMENTS:**

The site under consideration is currently developed with an office use. The applicant is in the process of requesting a rezoning of this property from LO-NP to LO-MU-NP because they would like to remodel the existing building and add to it so that they can use the property for a live/work use.

Therefore, the property owner is asking to terminate a public restrictive covenant that was passed with the previous zoning case, C14-80-016. This covenant states that, "The above described property will be restricted to professional office use only, and will operate during professional office hours only." (Please see Restrictive Covenant for Case C14-80-016 – Attachment A). The staff recommends the applicant's request for a restrictive covenant termination for this property. The conditions of the covenant would no longer be valid as the staff is currently recommending a neighborhood plan amendment to mixed use and re-zoning of this site to the LO-MU-CO zoning district (Please see staff report for zoning case C14-2014-0015).

The applicant agrees with the staff's recommendation.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	LO-NP	Office (Lolley & Associates Certified Public Accountant)
<i>North</i>	SF-3-NP	Single-Family Residential
<i>South</i>	GO-CO-NP, LR-CO-NP	Veterinary Services (AADC Animal Allergy Center, Lake Austin Boulevard Animal Hospital)
<i>East</i>	GR-CO-NP	Office (Met Study)
<i>West</i>	LR-NP	Personal Improvement Services (Austin Deep Massage Therapy, As You Like It, Agnes)

**AREA STUDY:** Central West Austin Neighborhood Plan **TIA:** Not Required

**WATERSHED:** Johnson Creek, Town Lake      **DESIRED DEVELOPMENT ZONE:** No

**CAPITOL VIEW CORRIDOR:** No      **HILL COUNTRY ROADWAY:** No

**NEIGHBORHOOD ORGANIZATIONS:**

Austin Heritage Tree Foundation  
Austin Independent School District  
Austin Monorail Project  
Austin Neighborhoods Council  
Bike Austin  
Central West Austin Neighborhood Plan Contact Team  
Homeless Neighborhood Association  
Preservation Austin  
Save Barton Creek Association  
Save Town Lake.org  
SELTEXAS  
Sierra Club, Austin Regional Group  
Super Duper Neighborhood Objectors and Appealers Organization  
The Real Estate Council of Austin, Inc.  
West Austin Neighborhoods Group

**SCHOOLS:** Austin I.S.D.

Casis Elementary School  
O Henry Middle School  
Austin High School

**CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
C14-2011-0157 (Animal Allergy and Dermatology Center of Central Texas: 2207 Lake Austin Boulevard)	NO-NP to LR	2/28/12: Approved staff rec. of LR-CO-NP zoning, with a 2,000 vehicle trip per day limit,(6-3, D. Chimenti, J. Stevens, D. Tiemann-No); M. Dealey-1 <sup>st</sup> , D. Anderson-2 <sup>nd</sup> .	3/22/12: Approved LR-CO-NP zoning on consent on all 3 readings (6-0, L. Morrison-absent); B. Spelman-1 <sup>st</sup> ; M. Martinez-2 <sup>nd</sup> .
C14-06-0087 (2307 Lake Austin Blvd.)	MF-3 to GR-MU	6/20/06: Approved GR-MU-CO zoning, with conditions to 1) prohibit Automotive Rentals, Automotive Repairs, Automotive Sales, Automotive Washing, Commercial Off-Street Parking, Pawn Shop Services, Service Station, Financial Services, Hotel-Motel, Medical Offices, Day Care Services-Commercial, Hospital Services, Exterminating Services, Funeral Services, Indoor Entertainment, Outdoor Sports and Recreation, Pet Services, Guidance Services uses; 2) prohibit Drive-in Service use; 3) prohibit access to Lake Austin Blvd.; 4) comply with 'LR' district site development regulations (7-0)	7/27/06: Approved GR-MU-CO zoning on consent on all 3 readings (7-0)
C14-99-0105 (2204 Lake Austin Blvd.)	SF-3 to GR	7/13/99: Approved GR zoning (7-0)	7/15/99: Approved GR-CO zoning, with following conditions: 1) prohibit vehicular access to Lake Austin Blvd.; 2) limit development on the property to the 'LR' district site development standards; 3) prohibit Automotive Rentals, Automotive Repairs, Automotive Sales, Automotive Washing, Commercial Off-Street Parking, Pawn Shop Services, Service Station, Financial Services, Hotel-Motel, Medical Offices, Day Care Services-Commercial, Hospital Services, Exterminating Services, Funeral Services, Indoor Entertainment, Outdoor Sports and Recreation, Pet Services, Restaurant-General, Guidance Services uses; (6-0); 1 <sup>st</sup> reading

			8/26/99: Approved GR-CO zoning, with conditions (7-0); 2 <sup>nd</sup> /3 <sup>rd</sup> readings
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**RELATED CASES:** NPA-2014-0027.01 (Neighborhood Plan Amendment)  
C14-2014-0015 (Rezoning Case)

**ABUTTING STREETS:**

NAME	ROW	PAVEMENT	CLASSIFICATION	DAILY TRAFFIC
Lake Austin Boulevard	104'	60'	Local	N/A
Upton Street	45'	27'	Arterial	N/A

**CITY COUNCIL DATE:** May 15, 2014

**ACTION:** Postponed to June 12, 2014 on consent at the applicant's request (7-0), B. Spelman-1<sup>st</sup>, M. Martinez-2<sup>nd</sup>.

June 12, 2014

**ACTION:**

**CASE MANAGER:** Sherri Sirwaitis

**PHONE:** 974-3057

**EMAIL:** sherri.sirwaitis@austintexas.gov



Attachment A

RESTRICTIVE COVENANT

(C14-80-016)

500

THE STATE OF TEXAS

COUNTY OF TRAVIS

AUG 19-80 8801 \* 5.00

2-35-8849

WHEREAS, Gene Neill Lundgren of Travis County, Texas, is the owner of the following described property, to-wit:

2208 Lake Austin Boulevard, Lot 5, Block 4, Charles Johnson Addition, More fully described in deed recorded in Volume 3759, Page 1842, Deed Records of Travis County, Texas.

WHEREAS, the City of Austin and Gene Neill Lundgren have agreed that the above described property should be impressed with certain covenants and restrictions running with the land and desire to set forth such agreement in writing;

NOW THEREFORE, Gene Neill Lundgren for and in consideration of One and No/100 dollars (\$1.00) and other good and valuable consideration in hand to the undersigned paid by the City of Austin, the receipt of which is hereby acknowledged, does hereby agree with respect to said property described above, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on her, her successors and assigns, as follows, to-wit:

1. The above described property will be restricted to professional office use only, and will operate during professional office hours only.
2. If any person, persons, corporation or entity of any other character shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against any person, or entity violating or attempting to violate such agreement of covenant and to prevent said person or entity from violating or attempting to violate such agreement or covenant.
3. If any part or provision of this agreement or covenant herein contained shall be declared invalid, by judgment or court order, the same shall in nowise affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full force and effect.



4. The failure at any time to enforce this agreement 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.

5. This agreement 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 the City Council of Austin, and (b) by the owners of the above described property at the time of such modification, amendment or termination.

EXECUTED, this the 23<sup>rd</sup> day of July, 1980.

*Gene Neill Lundgren*  
Gene Neill Lundgren

THE STATE OF TEXAS  
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Gene Neill Lundgren known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 23<sup>rd</sup> day of

July, 1980.

NOTARY SEAL

*Myneka Evans*  
(Notary Public in and for Travis County, Texas)  
Myneka Evans

STATE OF TEXAS  
I hereby certify that this instrument was duly and lawfully executed and at the time executed before me and that the same was recorded in the Volume and Page of the public records of Travis County, Texas, as stamped herein by me, on

AUG 19 1980



ORDINANCE NO. 800807-S

AN ORDINANCE ORDERING A CHANGE IN USE AND HEIGHT AND AREA AND CHANGING THE USE AND HEIGHT AND AREA MAPS ACCOMPANYING CHAPTER 45 OF THE AUSTIN CITY CODE OF 1967 AS FOLLOWS:

LOT 5, BLOCK 4, CHARLES JOHNSON SUBDIVISION, LOCALLY KNOWN AS 2208 LAKE AUSTIN BOULEVARD, FROM "A" RESIDENCE, FIRST HEIGHT AND AREA DISTRICT TO "O" OFFICE, FIRST HEIGHT AND AREA DISTRICT, SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND DECLARING AN EMERGENCY.

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

PART 1. Chapter 45 of the Austin City Code of 1967 is hereby amended to change the USE and HEIGHT and AREA designations from "A" Residence, First Height and Area District to "O" Office, First Height and Area district, on the property described in File C14-80-016 to-wit:

Lot 5, Block 4, Charles Johnson Subdivision, a subdivision in the City of Austin, Travis County, Texas, as recorded in Volume 3759, Page 1842 of the Deed Records of Travis County, Texas,

locally known as 2208 Lake Austin Boulevard, in the City of Austin, Travis County, Texas.

PART 2. It is hereby ordered that the USE and HEIGHT and AREA maps accompanying Chapter 45 of the Austin City Code of 1967 and made a part thereof shall be changed so as to record the change ordered in this ordinance.

PART 3. WHEREAS, an emergency is apparent for the immediate preservation of order, health, safety and general welfare of the public, which emergency requires the suspension of the rule providing for the reading of an ordinance on three separate days, and requires that this ordinance become effective immediately upon its passage; therefore, the rule requiring the reading on three separate days is hereby suspended and this ordinance shall become effective immediately upon its passage as provided by the Charter of the City of Austin.

PASSED AND APPROVED

August 7, 1980

X  
X  
X  
X

*Carole Keeton*  
Mayor

APPROVED: *Albert De La Rosa*  
City Attorney

ATTEST: *Grace Monroe*  
City Clerk

:cf

SCANNED



# Alice Glasco Consulting

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Austin, TX 78731  
aliceglasco@mindspring.com  
512-231-8110 • 512-857-0187 Fax

February 1, 2014

Greg Guernsey, Director  
Planning and Development Review Department  
505 Barton Spring Road, Suite 500  
Austin, Texas 78704

RE: 2208 Lake Austin Blvd.

Dear Greg:

I represent the owners of the above referenced property in three cases – rezoning, plan amendment (FLUM change) and a restrictive covenant termination (C14-80-016). The subject property was encumbered with a restrictive covenant that is associated with zoning case number C14-8-016. As part of the rezoning process, a use restriction was approved by the City Council and it reads as follows:

The above described property will be restricted to professional use only, and will operate during professional office hours only.

## **Justification Rezoning/Plan Amendment and Restrictive Covenant Termination:**

1. The property is currently zoned LO-NP. The proposed rezoning is LO-MU-NP, which is intended to allow office and residential use.
2. Section 25-2-894 of the Land Development Code reads as follows: “One dwelling unit is permitted as an accessory use if not more than 50 percent of the building is used for the dwelling unit. An occupant is not required to be engaged in the principal use.”

The proposed rezoning of LO-MU-NP, and the termination of the restrictive covenant, would give the property owner the flexibility of having more that 50% of the building as residential.

3. The property owners would like to remodel the existing building and also add to it so they can live there and move their office from out of town – a true Live/Work use.
4. **Plan Amendment:** we are requesting to change the FLUM from office to mixed use.

Greg Guernsey, Director  
Planning and Development Review Department  
RE: 2208 Lake Austin Blvd.

5. **Restrictive Covenant Termination:** The existing restrictive covenant limits the site to professional office use only. Therefore, terminating the restrictive covenant would allow the property to accommodate both office and residential use.

The recorded restrictive covenant my client is seeking to terminate is attached. Please let me know if you have any questions or need additional information.

Sincerely,



Alice Glasco, President  
AG Consulting

Cc: Vance Elliot  
Cari Patterson  
Maureen Meredith, Neighborhood Planner  
Sherri Sirwaitis, Zoning Planner