

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

C19

CASE: C14-92-0150(RCT)
Silver Springs Apartments

P.C. DATE: July 15, 2014

ADDRESS: 12151 N. IH 35 Northbound

AREA: 19.812 Acres

OWNER/AGENT: Strategic Housing Finance Corporation of Travis County (Craig Alter)

DESIRED DEVELOPMENT ZONE: Yes

WATERSHED: Walnut Creek

SCENIC ROADWAY: No

CAPITOL VIEW CORRIDOR: No

TIA: N/A

SUMMARY STAFF RECOMMENDATION:

Staff recommends granting the restrictive covenant termination request.

ZAP COMMISSION RECOMMENDATION:

July 15, 2014:

ISSUES:

The property was rezoned from SF-2 to MF-3-CO in 1992. As a condition of zoning, the property owner was required to post funds for a share of future street improvements in the area. This was administered via a restrictive covenant (RC), with the funds due prior to approval of any site plan on the property. Attached with this report is a letter from City Staff stating that a site plan was approved in 1995 that satisfied the conditions of the RC (Exhibit A- Staff Correspondence). No rezoning or site plan is proposed with the current application.

DEPARTMENT COMMENTS:

The subject property is located along the northbound frontage road of IH 35, between VFW drive and Yager Lane. It is zoned MF-3-CO and has been developed with the Silver Springs Apartments since 1995-1996. North and northwest of the property is undeveloped property zoned GR. Northeast of the subject property, across Yager Lane, is property zoned P that appears to contain a regional detention/water quality pond, as well as other utility structures. East of the subject property is another, separate multifamily development, also zoned MF-3-CO. South and southeast of the property are tracts zoned GO, GR-CO, and GO-CO. The GO and GR-CO properties are located across VFW Road, and are undeveloped. The GO-CO property is developed with a mix of uses, including a sports field, cellular communications tower, and VFW meeting hall. Please refer to Exhibits B and C (Zoning Map and Aerial View).

The property was rezoned from SF-2 to MF-3-CO in 1992 with City File # C14-92-0150. A restrictive covenant (RC) was filed with the rezoning to require the property owner to post funds for a share of future street improvements in the area, due prior to approval of any site plan on the property. The Silver Springs Apartments site plan was processed under City File # SP-94-0316C, which was approved on August 18, 1995, and funding requirements were addressed at that time. Please refer to Exhibit D (Restrictive Covenant). In July 2013, City Staff verified that all requirements of the RC have been satisfied (Exhibit A- Staff Correspondence).

EXISTING ZONING AND LAND USES:

| | ZONING | LAND USES |
|--------------|----------------------|--|
| <i>Site</i> | MF-3-CO | Multifamily |
| <i>North</i> | P-NP | Undeveloped, Utility |
| <i>South</i> | P-NP, GO-NP, MF-4-NP | Undeveloped |
| <i>East</i> | MF-3-CO, GO-CO | Multifamily, Outdoor sports & recreation, Club/lodge, Telecommunications tower |
| <i>West</i> | N/A | Interstate 35 Northbound Frontage Road |

RELATED CASE NUMBERS:

| CASE NO. | REQUEST | COMMISSION | COUNCIL |
|---|----------------|---|---|
| C14-92-0150 Hamilton Tract | SF-2 to MF-3 | 04/20/93: Approved staff rec on consent: MF-3-CO (9-0) (CO: max. 20 d.u./acre; RC: Fiscal for roadway imp.) | Ord. No 940728-V: MF-3-CO (CO: max. 20 d.u./acre; RC: Fiscal for roadway imp.) 07/28/94: App. 3 rd Reading, (6-0-1) Goodman- 1 st , Nofziger- 2 nd , Garcia- abstain. 06/10/93: App. 2 nd Reading, (5-0-1) Garcia- abstain. 05/06/93: App. 1 st Reading, (5-0-1) Garcia- abstain, Nofziger- absent. |
| C14-00-2084 Veterans of Foreign Wars | SF-2 to GO | 06/27/00: Approved staff rec on consent: GO-CO (9-0) (CO: max. 2,000 vpd) | Ord. No. 000803-99: GO-CO (CO: max. 2,000 vpd) 08/03/00: Approved all 3 readings on consent: GO-CO (7-0) Goodman- 1 st , Wynn- 2 nd . |

NEIGHBORHOOD ORGANIZATIONS:

Friends of Copperfield Nature Trails
 Friends of the Emma Barrientos MACC
 North Growth Alliance
 Pflugerville Independent School District
 Tech Ridge Neighbors
 Yager Planning Area

CITY COUNCIL DATE & ACTION:

August 7, 2014:

ORDINANCE READINGS: 1st 2nd 3rd **ORDINANCE NUMBER:**

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

PHONE: 974-2122



City of Austin

Founded by Congress, Republic of Texas, 1839
Planning and Development Review Department
P.O. Box 1088, Austin, Texas 78767

EXHIBIT A C10
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July 15, 2013

Matthew Borah
Locke Lord LLP
600 Congress Avenue, Suite 2200
Austin, TX 78701

Re: Restrictive Covenant
Silver Springs Apartments
12151 N IH-35 SVRD

To Whom It May Concern:

The property at 12151 N IH-35 SVRD, [ABS 279 SUR 291 FRITZ L ACR 19.790] also known as *Silver Springs Apartments* was subject to a Restrictive Covenant recorded in vol. 12254, pg. 1112 of the Real Property Records of Travis County, Texas which required the posting of funds for a share of future street improvements prior approval of any site plan. This restriction was imposed as a condition of rezoning the property to the multi-family designation.

The existing multi-family residential development was authorized by site plan SP-94-0316C, approved 08/18/1995. Approval of this site plan indicates that the conditions of the agreement outlined in this Restrictive Covenant were satisfied.

If you have any additional questions, feel free to contact me at 512-974-2769 or christopher.johnson@austintexas.gov

Sincerely,

A handwritten signature in black ink, appearing to read "C. Johnson", written over the typed name and title.

Christopher Johnson,
Development Assistance Center Manager

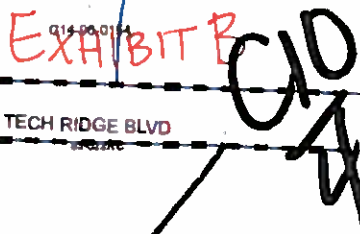




EXHIBIT D C10
15.00
120

FILM CODE
00005186108

Zoning Case No. C14-92-0150

RESTRICTIVE COVENANT

OWNERS

TEXAS COMMERCE BANK NATIONAL ASSOCIATION, a national banking association, as successor by merger to Texas Commerce Bank-Austin, National Association

ADDRESS:

c/o David Holt, Holford Group, 9501 North Capital of Texas Highway, Austin, Texas, 78759.

CONSIDERATION:

Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY:

19.812 acre tract of land out of the John M. Swisher Survey and the L. Fritz Survey, said 19.812 acre tract of land being more particularly described by metes and bounds in "Exhibit A" attached and incorporated herein for all purposes. (hereinafter referred to as the "Property")

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions as conditions of zoning for the Property;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its successors and assigns.

1. No site plan for development of the Property, or any portion of the Property, shall be approved or released, and no building permit for construction of a building on the Property, shall be issued, until the Owner pays its pro rata share for future street improvements at the intersection of Yager Lane and the northbound frontage road of Interstate Highway-35, said pro rata share to be determined at the time the Owner submits an updated Traffic Impact Analysis for the proposed development.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
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, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

All citations to the Austin City Code shall refer to the Austin City Code of 1992, as amended from time to time, unless otherwise specified. When the context requires, singular nouns and pronouns include the plural.

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TEXAS COMMERCE BANK NATIONAL ASSOCIATION,
a national banking association

BY: Joseph F. Griffith
Joseph F. Griffith
Senior Vice President

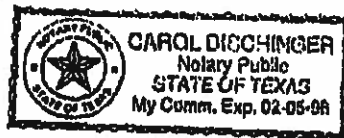
Date: August 4, 1994.

THE STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 4th day of August, 1994, by of Joseph F. Griffith, as Senior Vice President of TEXAS COMMERCE BANK NATIONAL ASSOCIATION, a national banking association, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said TEXAS COMMERCE BANK NATIONAL ASSOCIATION, a national banking association, and that he was duly authorized to execute the same as the act of said national association for the purposes and consideration therein, expressed, and in the capacity therein stated.

Carol A. Dischinger
Notary Public Signature

Carol A. Dischinger
Type or Print of Notary
My Commission Expires: 2/12/98



After Recording, Please Return to:
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767
Attention: Joe Jimenez, Legal Assistant

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FIELD NOTES FOR 19.812 ACRES OF LAND OUT OF THE JOHN M. SWISHER SURVEY AND THE L. FRITZ SURVEY IN TRAVIS COUNTY, TEXAS, BEING PART OF THAT 31.681 ACRE TRACT (CALLED 31.647 ACRES) CONVEYED TO PAX REGIS INCORPORATED, BY DEED RECORDED IN VOLUME 6804, PAGE 1494, TRAVIS COUNTY DEED RECORDS, SAID 19.812 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at the northeast corner of said 31.681 acre tract, being a point on the south right-of-way (ROW) line of Yager Lane, for the northeast corner hereof;

THENCE S30°22'09"W 1626.74 feet with the east line of said 31.681 acre tract to the southeast corner of said 31.681 acre tract, for the southeast corner hereof;

THENCE N59°27'55"W 236.80 feet with the north ROW line of V.F.W. Drive to a point on the curving east ROW line of I.H. 35;

THENCE with said east ROW line along a curve to the left, a chord bearing N04°10'26"W 1007.16 feet, with curve radius of 3969.75;

THENCE along the proposed west ROW line of Pax Regis Blvd. the following 7 courses:

1) along a non-tangent curve to the left a chord which bears S33°19'30"W 18.64 feet, with curve radius of 25 feet, 2) S55°12'32"E 36.68 feet, 3) along a curve to the left a chord which bears S77°42'32"E 19.13 feet, with curve radius of 25 feet, 4) N79°47'28"E 128.64 feet, 5) along a curve to the left a chord which bears N55°12'46"E 220.46 feet, with curve radius of 266.00 feet, 6) N30°18'04"E 495.43 feet, 7) along a curve to the left a chord which bears N14°21'56"W 35.36 feet, with curve radius of 25 feet, to a point on the south ROW line of Yager Lane and the north line of said 31.681 acre tract;

THENCE S59°21'56"E 568.75 feet along said ROW line to the point of BEGINNING, containing 19.812 acres of land.

These field notes were prepared from available documents and maps only; an on-the-ground survey was not conducted.

Prepared by: Stuart Watson
Stuart Watson, RPLS 4560

Dec 8, 1992



REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12254 1114

"EXHIBIT A"

C10
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FILED

94 AUG 19 PM 4:45

DANA DE MEAUVOR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped herein by me, and
was duly RECORDED, in the County and Page as the
same RECORDS of Travis County, Texas, on

AUG 19 1994



Dana DeMeauvor
COUNTY CLERK
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12254 1115