

RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

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CASE: C14-2009-0151(RCA)
Shoal Creek Walk

P.C. DATE: November 12, 2014
October 28, 2014

ADDRESS: 835 West 6th Street

AREA: 2.7 acres

OWNER: Schlosser Development (Bradley Schlosser)

AGENT: A. Glasco Consulting (Alice Glasco)

ZONING: DMU-CURE

SUMMARY STAFF RECOMMENDATION:

Staff recommends the restrictive covenant amendment, with conditions.

PLANNING COMMISSION RECOMMENDATION:

November 12, 2014:

October 28, 2014: *TO GRANT POSTPONEMENT AS REQUESTED BY APPLICANT TO NOVEMBER 12, 2014, ON CONSENT (8-0) [J. STEVENS- 1ST, A. HERNANDEZ- 2ND; B. ROARK- ABSENT]*

ISSUES:

The Applicant proposes removing one of the restrictions included in the public restrictive covenant (RC) that was created when the property was rezoned to DMU-CURE in 2010 (City File # C14-2009-0151). Please refer to *Exhibit A (Restrictive Covenant)*. The Applicant proposes removing the following requirement:

“Green roofs. At least 20,000 square feet of green roof design shall be provided as a means to improve the quality of the air, reduce stormwater runoff and improve energy efficiency of the structure beneath. The green roof system shall be designed according to City approved requirements and standards.”

In lieu of the green roof requirement, the Applicant proposes an alternative water quality compliance program designed to City specifications. No other changes to the DMU-CURE zoning or other RC restrictions are proposed with this request.

DEPARTMENT COMMENTS

The subject property is located at the southeast corner of West 6th Street and Bowie Street, and is currently developed with a parking lot. The eastern boundary of the property is formed by Shoal Creek. Across Bowie Street to the west is Whole Foods grocery, which is zoned DMU. Across 6th Street to the north is the GSD&M headquarters and surface parking lot, both zoned DMU. To the south, across West 5th Street, are a bar and a mixed-use apartment building, zoned DMU and DMU-CURE-CO, respectively. The property is also within the boundaries of the Capitol View Corridor. Please refer to *Exhibits B and C (Zoning Map and Aerial Exhibit)*.

Zoning History. The green roof requirement was one of several site development requirements attached with a public RC when the property was rezoned to DMU-CURE in 2010. CURE zoning is designed to provide flexibility and incentives for development within the downtown area, including changes to site development standards and waivers from development fees. Projects offer improved development standards and other benefits in exchange. The 2010 zoning case included CURE zoning because the Applicant wanted to achieve a higher floor-to-area ratio (FAR). Since the site is significantly impacted by floodplain and the Capitol View Corridor, the Applicant worked with the City to develop a list of items to offer as community benefits. In addition to the green roof requirement, the restrictive covenant included green building, Great Streets, open space, and hike and bike trail requirements.

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Since the 2010 project was planned immediately adjacent to Shoal Creek and so close to Lady Bird Lake, the Applicant agreed to use an innovative green roof system with a rainwater harvesting system to replace the standard sedimentation-sand filtration system. Such a system would provide multiple benefits for the site as describes in the restrictive covenant, “improve the quality of the air, reduce stormwater runoff and improve energy efficiency of the structure beneath.”

Amendment. In lieu of the green roof requirement, the Applicant proposes an alternative water quality compliance program designed to City specifications. Please refer to *Exhibit D (Applicant Letter)*.

At time of this report, some details have not been finalized, but Staff recognizes that the intent of the original restrictive covenant may be met through other methods than a green roof. Additionally, a site plan is currently under review for a building on a portion of the site that will be five (5) stories high. There are no plans to make the rooftop accessible to the public, and the building elevation may preclude visibility of a green roof from nearby buildings. The Applicant and Staff are working on a phased plan that would allow the possibility that the vegetative area be provided on a green roof or at ground level.

STAFF RECOMMENDATION:

Staff supports the restrictive covenant amendment, with conditions as outlined below. The conditions reflect input from Planning and Development Review and Watershed Protection Department, and are intended to provide flexibility while upholding the goals and priorities of the original restrictive covenant.

1. A water quality pond shall be sized to accommodate 100% of site stormwater; due to site engineering constraints, a minimum of 93.3% of the site’s impervious cover shall be treated in the pond using a sedimentation-sand filtration system. The remaining 6.7% of stormwater volume will be addressed via a fee-in-lieu payment.
2. A phased vegetation plan shall be provided that allows the option of rooftop or ground level plantings. Phase 1 shall provide a minimum of 20,000 square feet of green roof and/or ground level vegetation. This riparian planting area would provide natural function (e.g., bank protection, habitat, urban heat island abatement, etc.) equivalent to a green roof of the same size. Phase 2 provisions will be addressed prior to City Council amendment of the restrictive covenant.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	DMU-CURE	Parking lot
<i>North</i>	DMU	Office, Parking lot
<i>South</i>	DMU-CURE-CO	Mixed use building, Cocktail lounge
<i>East</i>	P, DMU, CBD-CO	Shoal Creek Greenbelt, Commercial Liquor Sales, Restaurant, Condominiums
<i>West</i>	DMU	Retail

CITY COUNCIL DATE & ACTION:

December 11, 2014:
 November 6, 2014: Postponement request to December 11, 2014.

ORDINANCE READINGS:

ORDINANCE NUMBER:

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

PHONE: 974-2122



RESTRICT 2010083202

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Zoning Case No. C14-2009-0151

RESTRICTIVE COVENANT

OWNER: Shoal Creek Walk, Ltd., a Texas limited partnership

ADDRESS: 601 North Lamar Blvd., Suite 301, Austin, Texas 78703

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: A 2.6 acre tract of land, more or less, being a portion of Lots 1-3 Block 5, Subdivision of Raymond Plateau, Outlot 11, Division Z, City of Austin, and a 4,940 square feet tract of land being a partial vacation of the Bowie Street right-of-way, the tracts of land being more particularly described by metes and bounds in Exhibits "A" and "B" incorporated into this covenant.

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WHEREAS, the Owner (the "Owner", whether one or more), of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

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 ("Agreement"). These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. All residential and commercial development shall comply with Austin Energy Green Building Program (GBP) for a minimum two-star rating.
2. The Owner shall design and construct streetscape improvements in full compliance with the City of Austin Great Streets design criteria as it exists May 2010. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Planning and Development Review Department. The Urban Design Section shall inspect and approve the streetscape improvements prior to issuance of a certificate of occupancy.
3. Green roofs. At least 20,000 square feet of green roof design shall be provided as a means to improve the quality of the air, reduce stormwater runoff and improve energy efficiency of the structure beneath. The green roof system shall be designed according to City approved requirements and standards.

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4. **Open Space.** If building development on the Property exceeds 482,687 square feet of gross leasable area, the Owner/Developer shall provide the following:

At least thirty thousand (30,000) square feet of the total development on the Property shall be provided as green and/or open space (hardscape and/or landscape) accessible for public use. At least 5,000 square feet of green/open space shall be along Shoal Creek.

5. **Bowie Street Bike Lane.**
 - a) Prior to issuance of a certificate of occupancy for any phase of the project, Owner/Developer shall design and install a five foot monolithic curb bicycle lane on the east side of Bowie Street between 5th and 6th Streets. Design and construction shall be as generally depicted on Exhibit "C" attached to this Agreement.
 - b) Installation shall include all necessary signing and striping, and sealcoating of any remaining and existing asphalt.
6. **Shoal Creek Improvements.** Development under the current approved and released site plan, SP-06-0588C, as approved on December 28, 2007, or any successor site plan approved and released for development of the Property, shall include improvements to the Shoal Creek hike and bike trail as specified under SP-06-0588C. During maintenance and construction of the trail between West 5th and West 6th streets, signs shall be provided to direct pedestrian and bike traffic to alternate routes.
7. If any person or entity shall violate or attempt to violate this Agreement, 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, to prevent the person or entity from such actions, and to collect damages for such actions.
8. If any part of this Agreement 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.
9. 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.
10. 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, or a portion of the Property, subject to the modification, amendment or termination at the time of such modification, amendment or termination.

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EXECUTED on May 26, 2010.

OWNER:

Shoal Creek Walk, Ltd.,
a Texas limited partnership

By: Shoal Creek Walk GP, L.L.C.,
a Texas limited liability company, its
general partner

By: [Signature]
Bradley Schlosser, its Manager

APPROVED AS TO FORM:

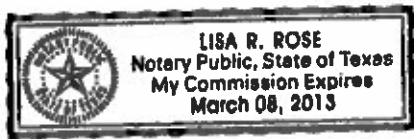
[Signature]
Assistant City Attorney
City of Austin

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on May 26, 2010, by
Bradley Schlosser, Manager of Shoal Creek Walk GP, L.L.C., a Texas limited liability company,
general partner of Shoal Creek Walk, Ltd., a Texas limited partnership, on behalf of said limited
partnership.



[Signature]
Notary Public, State of Texas

After Recording, Please Return to:
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-1088
Attention: Diana Minter, Paralegal

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TRACT 2
FIELD NOTES FOR
2.600 ACRES

DESCRIBING 2.600 ACRES OF LAND SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS CONSISTING OF THAT CERTAIN 2.05 ACRE TRACT CONVEYED TO LAMAR-SIXTH-AUSTIN I, LIMITED PARTNERSHIP BY DEED OF RECORD IN DOCUMENT #2000117493, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS ("OPRTCT"), AND THAT CERTAIN 0.55 ACRE TRACT CONVEYED TO LAMAR-SIXTH-AUSTIN I, LIMITED PARTNERSHIP BY DEED OF RECORD IN DOCUMENT #2000119070, OPRTCT; SAID 2.600 ACRES BEING A PORTION OF LOTS 1-3, BLOCK 5, SUBDIVISION OF THE RAYMOND PLATEAU, OUTLOT 11, DIVISION 2 OF THE CITY OF AUSTIN, TEXAS, RECORDED IN VOLUME V PG. 401, DEED RECORDS OF TRAVIS COUNTY, TEXAS ("DRTCT") AND BOOK 1 PAGE 30, PLAT RECORDS OF TRAVIS COUNTY, TEXAS ("PRTCT"); SAME BEING LOTS 1-6, 9 AND A PORTION OF LOT 7, RESUBDIVISION OF ORIGINAL LOTS ONE AND TWO IN BLOCK NO. 5 OUTLOT 11, DIVISION 2 OF THE CITY OF AUSTIN, TEXAS, RECORDED IN BOOK 1 PAGE 19, PRTCT; SAID RESUBDIVISION LEAVING A REMNANT OF THE ORIGINAL LOT 2; SAID 2.600 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a 1" square bolt head found at the northeast corner of said 2.05 acre tract in the south r.o.w. line of West 6th Street (80' r.o.w.); said point being the northwest corner of that certain 1703 s.f. tract conveyed to the City of Austin by deed of record in Volume 7439 Page 408, DRTCT; and from said beginning point run the following nine (9) courses and distances:

THENCE along the common line of the said 2.05 acre tract and the said 1703 s.f. tract, by courses 1-3 as follows:

- 1) S26°57'22"W 52.30 feet to a 1/2" iron rod found at an angle point;
- 2) S35°56'58"W 76.23 feet to a round bolt head found at an angle point;
- 3) S45°39'37"W 62.46 feet to a 1/2" iron rod found at the most easterly southeast corner of said 2.05 acre tract and being in the north line of said 0.55 acre tract;

THENCE along the north line of said 0.55 acre tract and the south line of said 1703 s.f. tract by course 4 as follows:

- 4) S64°45'52"E 16.33 feet to a lead plug and tack found in concrete sidewalk at the northeast corner of said 0.55 acre tract and the southeast corner of said 1703 s.f. tract;

THENCE along the east line of said 0.55 acre tract by course 5 as follows:

EXHIBIT "A"

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5) S59°35'08"W 230.99 feet to a lead plug and tack found in concrete sidewalk in the north r.o.w. line of West 5th Street (80' r.o.w.) at the southeast corner of said 0.55 acre tract;

THENCE along the south lines of said 0.55 acre and 2.05 acre tracts and the north r.o.w. line of West 5th Street by courses 6 and 7 as follows:

6) N77°26'35"W at 60.22 feet pass a 1/2" iron rod found with Wallace Group cap and continuing in all 81.93 feet to a 1/2" iron rod set with Wallace Group cap at a point of curvature;

7) Along a curve to the right whose radius is 899.60 feet with an arc length of 110.49 feet and whose chord bears N73°57'58"W 110.42 feet to a 1/2" iron rod found with Accusurve cap at the intersection of the north r.o.w. line of West 5th Street with the east r.o.w. line of Bowie Street (80' r.o.w.);

THENCE along the west line of said 2.05 acre tract and the east r.o.w. line of Bowie Street by course 8 as follows:

8) N25°02'25"E 410.76 feet to a headless PK nail found in concrete at the northwest corner of said 2.05 acre tract, same being the intersection of the east r.o.w. line of Bowie Street and the south r.o.w. line of West 6th Street;

THENCE along the north line of said 2.05 acre tract and the south r.o.w. line of West 6th Street by course 9 as follows:

9) S64°58'55"E 341.88 feet to the POINT OF BEGINNING of the herein described tract, encompassing within the metes recited 2.600 acres of land, more or less, as computed by The Wallace Group, Inc. in July, 2002.

Bearing Basis: Found monuments along east r.o.w. of Lamar Blvd. between West 5th and 6th Streets as shown on July 1998 Accusurve survey (N24°57'00"E) which was based on monumented centerline of Lamar Blvd.



EXHIBIT "A"

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ALICE GLASCO CONSULTING

August 5, 2014

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

RE: Amendment to Restrictive Covenant for Shoal Creek Walk
Case no. C14-2009-0151

Dear Greg:

I represent Schlosser Development, the owner of the above referenced property. In 2010, the subject property was encumbered with a restrictive covenant that is associated with zoning case number C14-2009-0151. As part of the rezoning process, Schlosser Development agreed to 6 conditions that are listed in the attached restrictive covenant.

My request is to delete paragraph 3, which reads as follows:

Paragraph 3: Green Roofs:

At least twenty thousand (20,000) square feet of green roof design shall be provided as a means to improve the quality of air, reduce stormwater runoff and improve energy efficiency of the structure beneath. The green roof system shall be designed according to City approved requirements and standards.

2009 DMU-CURE Zoning Background:

Because of the constraints of the Capitol View Corridor and the 2006 modifications to the floodplain that resulted in a reduction of developable site area, the city council granted DMU-CURE for the subject site in 2010. The purpose of the DMU-CURE zoning was to increase building height from 120 feet to 350 feet for that portion of the site that was outside the Capitol View Corridor.

The height increase allowed the land owner to maximize the allowable floor-to-area-ratio (FAR) of 5:1 without an increase in density. The FAR allowed under DMU (without CURE) gave the site a maximum of 600, 000 plus square feet, but this square footage could not be achieved on the site due to the height limit for that portion of the site that is in the Capitol View Corridor and the loss of developable land due to an increase of floodplain area that resulted from a 2006 Shoal Creek study prepared by the City. Several of the conditions listed in the restrictive covenant were simply from the 2006 Site Development Permit.

Mr. Greg Guernsey
RE: C14-2009-0151 - RC Amendment

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Background and Justification:

- In 2006, when the developer was ready to submit a new site plan there was no option for paying a fee-in-lieu of water quality for one acre or less. Therefore, Forest Nikorak, Supervising Engineer with Watershed Protection and Development Review Department suggested that the developer provide a green roof as a way to meet a portion of the water quality requirement.
- Watering of the green roof was to occur by using re-circulated rain water collected from the internal drive until it evaporated and when that ran out, City of Austin water would be used.
- In 2012 (SP-2012-0036C) a new site plan was submitted and new changes to the City's flood plain model applied to the site. The new flood plain model raised the 100-year elevation by two feet, thus reducing the area of the internal drive that captured rainwater to be used to water the proposed green roof.
- The green roof will not be visible to the public.
- The green roof will be 5 or more stories up in the air without protective shade
- The plantings on a green roof require water to survive. However, due to the persistent and ongoing drought conditions in central Texas, it is impractical and very nearly impossible to have a viable green roof due to watering restrictions. To illustrate this, at the existing Whole Foods Market Land mark Store and Office Headquarters, due to the lack of a reliable water source: (1) the flowing water in the water feature at the front of the store has been turned off for several years; and (2) the plants in the existing rooftop planters have been replaced with Astro Turf after the cacti and ground cover all died.
- To reduce stormwater runoff, a conventional water quality system will be provided as part of the site plan process, which will meet or exceed the proposed green roof system. Additionally, for sites that are 1 acre or less, the city now allows a fee -in-lieu of providing 100% an on-site water quality pond. What this means is that the developer will pay a fee-in-lieu for the first one acre and provide an onsite water quality pond for the remaining acreage of approximately 1.6 acres.

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Mr. Greg Guernsey
RE: C14-2009-0151 - RC Amendment

The recorded restrictive covenant Schlosser Development is seeking to amend is attached. Please let me know if you have any questions or need additional information.

Sincerely,



Alice Glasco, President
AG Consulting

Cc: Richard W.R. Duggan III, Schlosser Development
Joe Longaro, Longaro./Clarke & Assocs.
Jerry Rusthoven, Zoning Division Manager