

## RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

**CASE:** C14-75-042(RCA1)  
East Parke Residential

**Z.A.P. DATE:** November 18, 2014

**ADDRESS:** 5601 Durango Pass

**AREA:** 11.28 acres

**DISTRICT:** 1

**OWNER:** Continental Homes of Texas, LP (Richard Maier)

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

**ZONING:** GR

### **SUMMARY STAFF RECOMMENDATION:**

Staff recommends the restrictive covenant amendment.

### **ZONING AND PLATTING COMMISSION RECOMMENDATION:**

November 18, 2014: *TO GRANT THE RESTRICTIVE COVENANT AMENDMENT. (5-0) [G. Rojas- 1<sup>st</sup>, P. Seeger- 2<sup>nd</sup>; S. Compton, R. McDaniel- Absent]*

### **ISSUES:**

The proposed restrictive covenant amendment (RCA) would eliminate requirements tied to a 1975 zoning case (City File #C14-75-042). A proposed rezoning request, C14-2014-0158, has been filed with the City to supersede the 1975 case and restrictive covenant. Several other restrictive covenant amendments (RCAs) are proposed to allow consolidation of the parcels for redevelopment with single family residences. These are being processed under the following City File numbers: C14-75-042(RCA3), C14-76-083(RCA), C14-84-346(RCA1) and C14-84-346(RCA2). Please refer to *Exhibit A (Restrictive Covenant)*.

### **DEPARTMENT COMMENTS**

The original restrictive covenant applied to 62 acres of land. The Applicant proposes removing the following requirements from only land owned by the Owner listed above (see shaded area on attached map). Please refer to *Exhibits B (Zoning Map)*. The remaining land will not be affected.

The Applicant proposes removing the following requirements: 1. A landscape plan is required at time of building permit; 2. A lot on a GR [commercial] property adjacent to SF-3 [residential] property must have a landscape plan prior to certificate of occupancy; 3. If the property is subdivided, individual lots must comply with requirements; and 4. If the Planning Department ceases to exist, the appropriate City department will enforce the covenant. If approved, the requirements that would be removed were not standard City requirements in 1975, but are now standard requirements. The Applicant proposes subdividing the subject property into 124 single family lots. Please see *Exhibit C (Applicant Correspondence)*.

The subject property is located roughly 400-500 feet northeast of the intersection of US 183 and Loyola, but does not have access to either roadway. The property has access to Durango Pass and Coolbrook Drive, residential streets that are part of the residential neighborhood to the east. Properties in this neighborhood are mostly zoned SF-2, with a few SF-3 properties as well, and are developed with duplexes and single family residences. South of the property are parcels zoned P that are developed with park/open space features. To the west of the rezoning tract is undeveloped land. This area to the west is the remainder of the 1975 and 1984 zoning cases described in

the previous section, and is comprised of parcels zoned GR, LO, MF-3, and SF-3. Immediately north of the rezoning tract is another residential area. Properties in this neighborhood are zoned SF-2 and SF-3, and are developed with duplexes and single family residences. LBJ High School is also located to the north, and is also SF-3.

### **STAFF RECOMMENDATION:**

Staff recommends the restrictive covenant amendment.

#### *1. The proposed zoning should promote consistent and orderly planning.*

The requirements that would be removed were not standard City requirements in 1975, but are now standard requirements. The existing restrictive covenants are a patchwork of outdated requirements that make cloud the property title and make regulatory application confusing. Since the Applicant owns only a portion of the property covered by the original restrictive covenant, it is not possible to recommend a restrictive covenant termination.

#### *2. The proposed rezoning does not grant an unequal benefit to the landowner.*

Removal and/or modification of the restrictive covenant will make the property subject to current City codes and regulations, which is more equal to other properties.

### **EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	GR	Undeveloped
<i>North</i>	SF-2, SF-3	Duplex, Single family, LBJ High School
<i>South</i>	P	Parkland/ open space
<i>East</i>	SF-2, SF-3	Duplex, Single family
<i>West</i>	GR, LO, MF-3, SF-3	Undeveloped

### **NEIGHBORHOOD ORGANIZATIONS:**

Del Valle Community Coalition

East Austin Conservancy

East MLK Combined Neighborhood Association

University Hills Neighborhood Association

Austin Neighborhoods Council

FRS Property Owners Association

PODER

East MLK Combined Neighborhood Contact Team

University Hills Neighborhood Plan Contact Team

Bluebonnet Hills Association

LBJ Neighborhood Association

### **CITY COUNCIL DATE/ACTION:**

February 12, 2015:

January 29, 2015: *POSTPONED TO FEBRUARY 12, 2015, ON CONSENT (11-0) [O. Houston- 1<sup>st</sup>, D. Zimmerman- 2<sup>nd</sup>]*

December 11, 2014: *POSTPONED TO JANUARY 29, 2015, ON CONSENT (7-0) [L. Morrison- 1<sup>st</sup>, B. Spelman- 2<sup>nd</sup>]*

**ORDINANCE READINGS:** 1<sup>st</sup>    2<sup>nd</sup>    3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Heather Chaffin  
e-mail: [heather.chaffin@austintexas.gov](mailto:heather.chaffin@austintexas.gov)

**PHONE:** 974-2122

THE STATE OF TEXAS        §

COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

AM-6-15-66 337 \* 850

1--16-8969

THAT WHEREAS 62.101 Ltd., a Texas limited partnership (of which Douglas Duwe is the, and the only, general partner), is the owner of that certain tract of land of 42.67 acres more or less (said 42.67 acre tract being hereinafter called the Subject Property) out of the J. C. Tannehill League, in the City of Austin, Travis County, Texas, said tract of 42.67 acres more or less (the Subject Property) being more particularly described on Exhibit I attached hereto and made a part hereof; and,

WHEREAS, the Subject Property, along a portion of its boundary, adjoins a portion of the boundary of that certain tract of land of 0.40 acre more or less (said 0.40 acre tract being hereinafter called the A Strip) out of the J. C. Tannehill League, in the City of Austin, Travis County, Texas, said tract of 0.40 acre more or less (the A Strip) being more particularly described on Exhibit II attached hereto and made a part hereof and said A Strip being owned by said 62.101 Ltd.; and,

WHEREAS, as a condition to the rezoning of the Subject Property "GR" General Retail, First Height and Area, under the zoning ordinance of the City of Austin, Texas, and for the better development of the Subject Property, the City Council of the City of Austin, desires that 62.101 Ltd. make, execute and deliver for the benefit of the City of Austin, a municipal corporation, the following restrictive covenant;

NOW THEREFORE, 62.101 Ltd., owner of the Subject Property, does hereby place upon and charge the Subject Property (the 42.67 acre tract described on Exhibit I hereto) with the following restrictive covenant which, subject to the following provisions hereof, shall be deemed a covenant running with the land for the benefit of the City of Austin and binding upon 62.101 Ltd., its successors and assigns, to wit:

5240 876



1. Prior to the issuance by the City of Austin of a building permit (for any building which could not be built if it were on property in the City of Austin which was zoned "A" Residence under the zoning ordinance of the City of Austin as the same exists May 1, 1975) in respect to any lot (carved out of the Subject Property) which adjoins the A Strip (the 0.40 acre tract described on Exhibit II hereto), the Director of Planning of the City of Austin shall have approved an appropriate landscape plan for the said A Strip (such plan to call for natural condition substantially as at present and to be generally as outlined in the schematic drawing of the applicant which is on file at the Planning Department of the City of Austin in its zoning case file No. C14-75-042; the A Strip may have utilities), and such approval by the Director of Planning shall not be unreasonably withheld; such approval shall be conclusively deemed given if the Director of Planning states in writing that he has approved such plan; the owner of the lot in question may appeal any denial or refusal of such approval to the Planning Commission of the City of Austin.

2. On any given lot which may be carved out of the Subject Property, if such lot adjoins any of the said A Strip no occupancy permit (for any building which could not be built if it were on property in the City of Austin which was zoned "A" Residence under the zoning ordinance of the City of Austin as same exists May 1, 1975) shall be issued by the City of Austin for such lot unless the landscape plan referenced in numbered paragraph 1 hereof above has first been implemented on the particular segment (of the said A Strip) which adjoins the said given lot in question; such implementation shall be conclusively presumed to have occurred if the Director of Planning of the City of Austin signifies in writing that he finds such implementation to have occurred on such segment of said A Strip, and said Director of Planning will not unreasonably withhold his said signification that such implementation has so occurred; the owner of the lot in question may appeal any denial

or refusal of signification that such implementation has occurred to the Planning Commission of the City of Austin.

3. If the Subject Property is hereafter divided into separate lots, this restrictive covenant will be applied on an individual lot basis, to each respective individual lot severally. If the Subject Property is not hereafter divided into separate lots, this restrictive covenant will apply to it as if it were all one lot (until it is divided into separate lots, at which time the application will be on an individual lot basis, severally as to each respective individual lot).

4. If the office of Director of Planning of the City of Austin should be abolished or vacant at any time, then the official of the City of Austin then performing the majority of the functions now assigned to the said Director of Planning shall act for purposes of these restrictions in lieu of the Director of Planning, and the written certification or opinion of the City Attorney of the City of Austin (or an Assistant City Attorney) as to the identity of such substitute official for purposes of these restrictions may be relied upon for purposes of compliance with these restrictions by the Owner of the lot in question (or of the Subject Property), his heirs, assigns, mortgagees, tenants or contractors, and/or by any City of Austin official who issues a building permit or occupancy permit.

5. This restrictive covenant can be enforced by, and only by, the City of Austin.

6. If any person or persons shall violate or attempt to violate the foregoing restriction 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 the person or persons violating or attempting to violate such restriction or covenant, and either to prevent him or them from so doing or to collect damages for such violation.



1-16-8972

7. The restrictive covenant can be amended by joint action of the City of Austin (acting pursuant to majority vote of a quorum of the City Council of the City of Austin, or of such other governing body of said city as may succeed its City Council) and the then owner of the particular lot in question out of the Subject Property.

8. Any suit brought to interpret or enforce this restrictive covenant, or to determine the validity, as reasonable or otherwise, of any failure or refusal to approve the landscape plan or to find same has been implemented as above provided, shall be brought in a District Court in Travis County, Texas.

EXECUTED this 17 day of July, 1975.

62.101, LTD.

By

Douglas Duwe  
Douglas Duwe, its  
general partner

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared DOUGLAS DUWE, a member of the partnership of 62.101, LTD., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said 62.101, LTD., a limited partnership, and that he executed the same as its General Partner and as the act of such partnership and for the purposes and consideration therein expressed.

July GIVEN UNDER MY HAND AND SEAL OF OFFICE this 17<sup>th</sup> day of July, 1975.

NOTARY SEAL

Margaret Borchardt  
Notary Public in and for  
Travis County, Texas

SCANNED



# Exhibit I

## FIELD NOTES

1--16-8973

FIELD NOTES FOR 42.67 ACRES OF LAND OUT OF THE J.C. TANNEHILL LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, SAME BEING OUT OF AND A PART OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO L.D. TURNER OF RECORD IN VOLUME 611 AT PAGE 253 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 42.67 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at the southwest corner of the said Turner tract, same being the southwest corner of this tract, and which POINT OF BEGINNING is the intersection of the east line of Ed Bluestein Boulevard and the north line of Decker Lake Road;

THENCE, with the said east line of Ed Bluestein Boulevard, N11° 57'E 361.97 feet to the point of curvature of a curve, whose intersection angle is 14° 36'02", whose radius is 5894.60 feet and whose tangent distance is 755.14 feet;

THENCE, continuing with the east line of Ed Bluestein Boulevard, along said curve to the left, an arc distance of 1502.10 feet, the chord of which arc bears N02° 57'W 1498.04 feet to the point of tangency of said curve;

THENCE, continuing with the east line of Ed Bluestein Boulevard, N16° 29'W 140.97 feet and N10° 15'W 918.14 feet to the most northerly corner of the said Turner tract, same being the most northerly corner of this tract, and which point is the most westerly corner of Lot 2, Block C, M. & G. Estates, a proposed subdivision;

THENCE, with the south line of said Lot 2, Block C, M. & G. Estates, S59° 46'E 500.27 feet to the point of curvature of a curve whose intersection angle is 65° 26', whose radius is 85.97 feet and whose tangent distance is 55.23 feet;

THENCE, along said curve to the left, an arc distance of 98.18 feet, the chord of which arc bears S23° 13'E 92.93 feet to the point of tangency of said curve;

THENCE, S59° 46'E 290.00 feet to a point in the centerline of a proposed street;

THENCE, with the said centerline of a proposed street, S30° 14'W 150.00 feet to the point of curvature of a curve, whose intersection is 41° 47', whose radius is 300.00 feet and whose tangent distance is 114.51 feet;

THENCE, continuing with the said centerline of a proposed street, along said curve to the left, an arc distance of 218.78 feet the chord of which arc bears S09° 21'W 213.96 feet to the point of tangency of said curve;



FIELD NOTES

PAGE TWO

1--16-8974

THENCE, continuing with the said centerline of a proposed street, S11° 33'E 94.14 feet to a point in the centerline of another proposed street, which point is the point of curvature of a curve, whose intersection angle is 50° 26', whose radius is 370.00 feet, and whose tangent distance is 174.24 feet;

THENCE, with the said centerline of a proposed street, along said curve to the right, an arc distance of 325.68 feet, the chord of which arc bears S85° 09'E 315.27 feet to the point of tangency of said curve;

THENCE, continuing with the centerline of a proposed street, S59° 56'E 440.00 feet to the point of curvature of a curve whose intersection angle is 89° 58', whose radius is 80.00 feet and whose tangent distance is 79.95 feet;

THENCE, continuing with the centerline of a proposed street, along said curve to the right, an arc distance of 125.62 feet, the chord of which arc bears S14° 57'E 113.10 feet to the point of tangency of said curve;

THENCE, continuing with the centerline of a proposed street, S30° 02'W 437.00 feet to the point of curvature of a curve whose intersection angle is 21° 29', whose radius is 800.00 feet and whose tangent distance is 151.76 feet;

THENCE, continuing with the centerline of a proposed street, along said curve to the right, an arc distance of 299.96 feet, the chord of which arc bears S40° 46'W 298.21 feet to the point of tangency of said curve;

THENCE, continuing with the centerline of a proposed street, S51° 31'W 270.24 feet to a point in the centerline of a creek;

THENCE, with the said centerline of a creek, in a southeasterly direction with the following five (5) courses;

- (1) S30° 00'E 182.20 feet to a point;
- (2) S36° 30'E 90.00 feet to a point;
- (3) S18° 30'E 80.00 feet to a point;
- (4) S01° 30'E 150.00 feet to a point;
- (5) S08° 30'W 140.00 feet to a point in the east line of

the aforesaid Turner tract, same being the west line of that certain tract of land described in a deed to Hunter Schieffer of record in Volume 2643 at Page 284 of the Deed Records of Travis County, Texas;

THENCE, with the west line of the said Schieffer tract, S30° 40'W 252.90 feet to a point on the aforesaid north line of Decker Lake Road, which point is the southeast corner of this tract;

THENCE, with the said north line of Decker Lake Road, S80° 20'W 264.91 feet to the point of curvature of a curve whose intersection angle is 17° 55'04", whose radius is 666.78 feet and whose tangent distance is 105.12 feet;



FIELD NOTES  
PAGE THREE

1--16-8975

THENCE, continuing with the said north line of Decker Lake Road, along said curve to the right, an arc distance of 208.52 feet, the chord of which arc bears S89° 20'W 207.67 feet to the point of tangency of said curve;

THENCE, continuing with the said north line of Decker Lake Road, N81° 40'W 83.82 feet to the POINT OF BEGINNING and containing 42.67 acres of land.

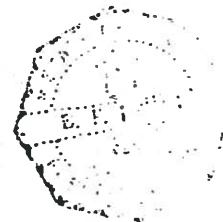
FIELD NOTES BY

*B. F. Priest*

B.F. Priest, Reg. Public Surveyor

DATE

6-2-75



SCANNED

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Exhibit II

WEST PORTION OF  
TRACT III-A

FIELD NOTES

1-16-8976

FIELD NOTES FOR 0.40 OF ONE ACRE OF LAND OUT OF THE J.C. TANNEHILL LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, SAME BEING OUT OF AND A PART OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO L.D. TURNER OF RECORD IN VOLUME 611 AT PAGE 253 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.40 OF ONE ACRE OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING for reference at the most northerly corner of the said Turner tract, which point is the most westerly corner of Lots 2, Block C, M. & G. Estates, a proposed subdivision;

THENCE, with the north line of the said Turner tract, S59° 46'E 500.27 feet to the northwest corner and POINT OF BEGINNING of this tract;

THENCE, continuing with the north line of the said Turner tract, S59° 46'E 368.33 feet to a point in the centerline of a proposed street, which point is the northeast corner of this tract;

THENCE, with the said centerline of a proposed street, S30° 14'W 50.00 feet to a point in a line fifty (50) feet south of and parallel to the north line of the Turner tract, which point is the southeast corner of this tract;

THENCE, with the said line fifty feet south of and parallel to the north line of the Turner tract, N59° 46'W 290.00 feet to the point of curvature of a curve whose intersection angle is 65° 26' whose radius is 85.97 feet and whose tangent distance is 55.23 feet;

THENCE, along said curve to the right, an arc distance of 98.18 feet, the chord of which arc bears N27° 13'W 92.93 feet to the point of tangency of said curve, same being the POINT OF BEGINNING and containing 0.40 of one acre of land.

FIELD NOTES BY

*B. F. Priest*  
B.F. Priest, Reg. Public Surveyor

DATE

6-2-75



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LAW DEPARTMENT  
CITY OF AUSTIN  
P.O. BOX 1088  
AUSTIN, TEXAS 78768

FILED

AUG 6 8 37 AM '75

1E-16-8977

*Carrie Shropshire*  
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 hereon by me; and was duly  
RECORDED, in the Volume and Page of the named RECORDS  
of Travis County, Texas, as Stamped hereon by me, on

AUG 6 1975



*Carrie Shropshire*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

SCANNED

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## ALICE GLASCO CONSULTING

September 11, 2014

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

RE: Restrictive Covenant Termination - C14-75-042 (A)

Dear Greg:

I am representing Continental Homes of Texas, LP (D.R.Horton) as it relates to the termination of this 1975 restrictive covenant. My client, Continental Homes of Texas, LP (D.R.Horton) has the subject property under contract with the intent of developing 124 single family homes.

### **Background:**

The land area covered under zoning case number C14-75-042 (ordinance no. 750724 -B) comprised of approximately 62 acres. However, my client intends to purchase **ONLY 26.98 acres out of the original 62 - acre parcel**. A total of three restrictive covenants were recorded under this 1975 zoning case – Part “A” pertains to the GR -zoned tract, which consisted of 42.07 acres; part “B” consisted of 19.03 acres and is zoned LO and SF-3; while part “C” covered 24.34 acres ( a portion of the 43- acre tract).

The conditions listed in the part “A” restrictive covenant are as follows:

1. An appropriate landscape plan is required prior to issuance of a building permit.
2. Any lot carved out of the GR tract and adjoins the SF-3- zoned strip must have an implemented landscape plan prior to issuance of a certificate of occupancy.
3. If the GR tract is divided into separate lots, the restrictive covenant will be applied on an individual lot basis.



Greg Guernsey  
Restrictive Covenant Termination - C14-75-042 (A)

4. If the office of the Director of Planning of the City of Austin should be abolished or vacant at any time, then the official of the City of Austin then performing the majority of the functions now assigned to the said Director of Planning shall act for purposes of these restrictions in lieu of the Director of Planning.

**Justification Restrictive Covenant Termination**

- The proposed use is single family not duplexes.
- The proposed development will comply with the city's current landscaping requirements.

Please let me know if you have any questions or need additional information.

Sincerely,

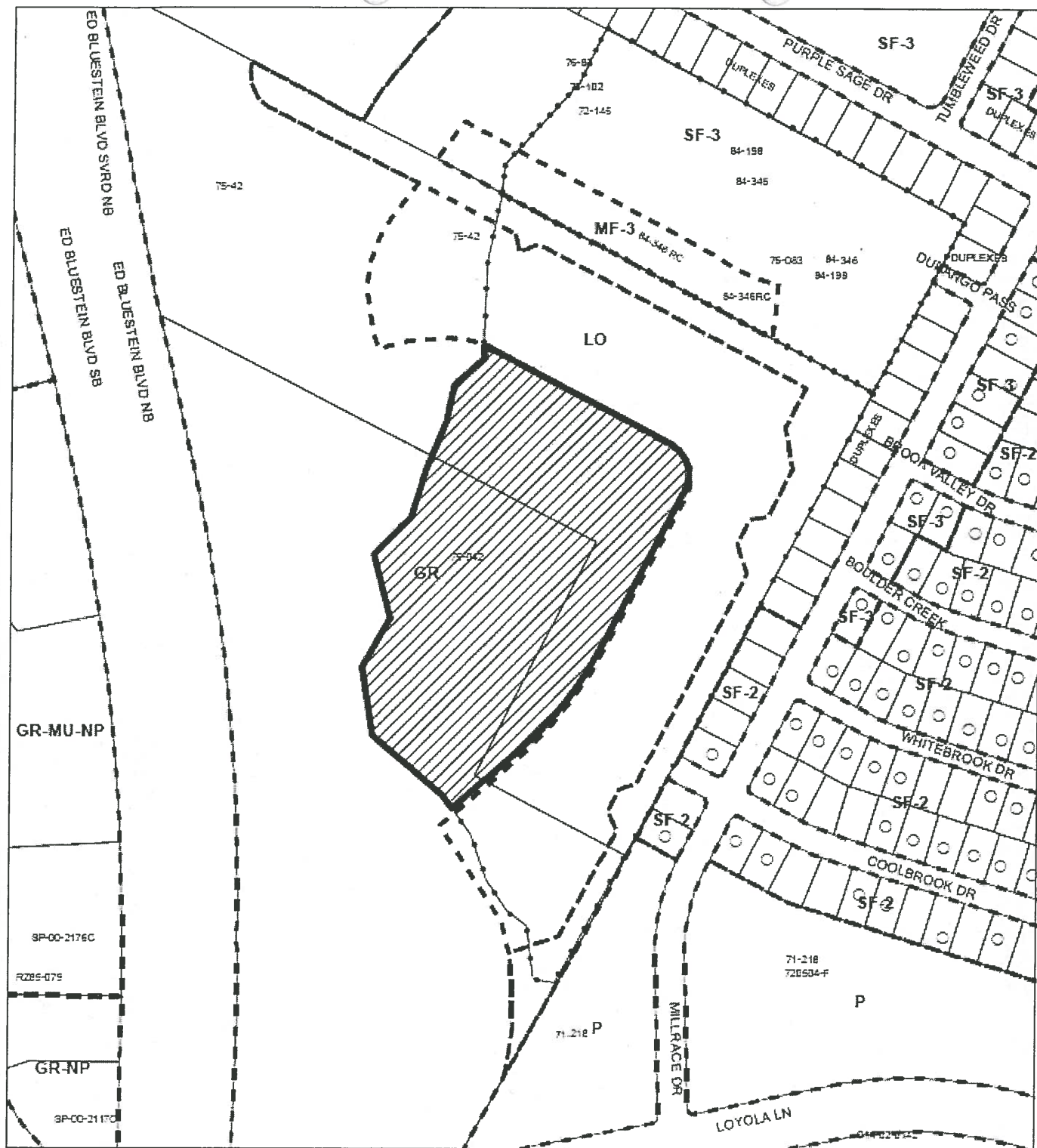


Alice Glasco, President  
AG Consulting

Cc: Richard N. Maier, D.R. Horton  
Tom Anker, D.R. Horton  
Bill Barton, D.R. Horton  
Sherri Sirwaitis, Zoning Planner  
Jerry Rusthoven, Zoning Manager

Attachments

SCANNED



SUBJECT TRACT



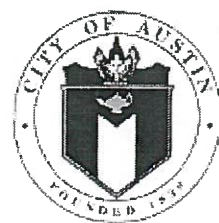
PENDING CASE



ZONING BOUNDARY

## ZONING

CASE#: C14-75-042(RCA1)



1" = 300'

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.



