

JOHN M. JOSEPH

Direct Dial 512.541.3593

April 15, 2015

VIA EMAIL

Greg Guernsey, Director Planning & Development Review Department City of Austin P.O. Box 1088 Austin, Texas 78767

RE: Cantarra Mixed Use; C14-2014-0167

Dear Mr. Guernsey:

On behalf of our client, Cantarra Ventures, Ltd., we object to the conditional overlay proposed by the Applicant and recommended by Staff in Case Number C14-2014-0167, which is set for consideration by Council on April 16, 2015. The proposed overlay – which would ban fences, but no other structures, within 50 feet of Howard Lane and Cantarra Drive -- is an attempt by the Applicant to extinguish an easement encumbering his property. We submit that Council should not be involved in readjusting property interests that property owners have freely conveyed to one another.

The subject tract sits at the intersection of East Howard Lane and Cantarra Drive, at the entrance to the Cantarra subdivision, a small-lot, residential subdivision developed by Cantarra Ventures, Ltd. Cantarra Ventures holds a 50-foot landscape easement across the tract, as shown on Exhibit "A". Cantarra Ventures acquired this easement in 2006 in conjunction with its development of the Cantarra subdivision. The easement grants Cantarra Ventures "the unrestricted right to install, construct, maintain, repair and replace landscaping, screening and all related improvements thereon . . . including without limitation, signage, monuments, fencing [and] retaining walls . . . . " (emphasis added). The Applicant purchased the property subject to the easement, which is recorded in the Travis County property records. The easement is also shown on the Applicant's 2014 survey. See Exhibit "B."

Cantarra Ventures currently uses the rights afforded by the easement for marketing and branding improvements, including its subdivision monuments. When Cantarra learned in March of the Applicant's attempt to nullify the easement, Cantarra constructed a fence -- as the easement explicitly allows -- in order to preserve and protect its easement rights.

Barton Oaks Plaza, 901 South MoPac Expressway, Building 1 Suite 500, Austin, Texas 78746 Phone: 512-469-7987 Fax: 512-469-9408

Web: www.coatsrose.com

This unorthodox use of a conditional overlay has no sound *zoning* justification. When the Applicant's agent made the request to Staff in February 2015, the only justification she offered – other than Applicant's bald desire to be freed of the encumbrance -- was to provide "safe sight clearance/visibility at the intersection." See Exhibit "C." The Transportation Department has made no determination that such a setback is necessary, however. The fence is setback from the street farther than the setbacks required by either the current zoning (15 feet for interim SF4A) or the proposed zoning (25 feet for LR). Applicant has not demonstrated, and cannot demonstrate, why zoning setbacks that provide adequate visibility for thousands of intersections in the city are inadequate for a hum-drum intersection in the suburbs. We also note that, despite the Applicant's purported concern for "visibility," the Applicant's request prohibits *only* fences and no other structures, such as the 35-foot tall buildings that would be allowed as of right on this tract.

Cantarra believes the existing fence is protected by an array of rights, including its grandfathering rights under state law, its nonconforming use and noncomplying structure rights under Sections 25-2-947 and 25-2-963 of the Austin City Code, and its statutory right to continue pre-annexation uses under Section 43.002 of the Local Government Code. Because easements are vested property interests, Cantarra also reserves the right to assert a takings claim if its rights are expropriated through a conditional overlay.

Finally, we note that many of the surrounding homeowners have objected to the proposed rezoning, as shown by their signatures on a petition. The petitions are attached as Exhibit "D." Staff excluded this evidence of local opposition from Council backup, evidently on the ground that state law does not recognize valid petitions opposing initial (rather than interim) zoning. But the petition nevertheless documents significant public opposition to the rezoning and should have been disclosed to Council.

Thank you in advance for your consideration.

X

Sincerely,

John M. Joseph

cc: Sherri Sirwaitis, Case Manger Jerry Rusthoven, Manager City Council Alice Glasco

## LANDSCAPE EASEMENT

THE STATE OF TEXAS {
COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

5

THAT Compass Bank, successor by merger to Horizon Bank and Trust, SSB, as Custodian for the Robert E. Johnson, Jr. SEP IRA Account and the Gordon R. Johnson SEP IRA Account, hereinafter called "Grantor", for and in consideration of the sum on Ten Dollars and 00/100 (\$10.00) and other good and valuable consideration, to Grantor in hand paid by Cantarra Ventures, Ltd., Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell and convey to Grantee and its assigns hereinafter called "Grantee", the easement and right of ingress and egress upon and across the real property located in Travis County, Texas, as more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference as if fully set forth herein, the "Easement Property", for the purpose of and with the unrestricted right to install, construct, maintain, repair and replace landscaping, screening and all related improvements thereon, including without limitation, irrigation, drainage improvements, turf, berms, trees, shrubs, annual and perennial plantings, ground cover, signage, monuments, fencing, retaining wall(s), and similar landscape or screening improvements (the "Facilities") within the Easement Property.

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, and Grantor hereby binds Grantor, together with its successors and assigns, to warrant and forever defend this easement and the rights granted herein unto Grantee, its successors and assigns against every person whomsoever lawfully claiming or attempting to claim the same or any part thereof, by, through, or under Grantor, but not otherwise. Further, Grantor does hereby grant to Grantee the right and privilege at all times to enter the Easement Property, or any part thereof, and with the right of access across Grantor's adjacent property for ingress and egress to the Easement Property as is reasonably necessary for the purpose of constructing, installing, operating, maintaining, replacing, upgrading and repairing said Facilities, and all incidental improvements.

This Easement may be assigned in whole or in part.

EXECUTED this 3 day of April, 2006.

#### **GRANTOR:**

Compass Bank, successor by merger to Horizon Bank and Trust, SSB, as Custodian for the Robert E. Johnson, Jr. SEP IRA Account and the Gordon

R. Johnson SEV IRA Account

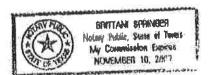
Bv:

Its:

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**COUNTY OF TRAVIS** 



Bruttani Sounger Notary Public in and for the State of Texas

AFTER RECORDING RETURN TO:

Cantarra Ventures, Ltd. 1401 Burnham Drive Plano, Texas 75093

RETURN TO:
ALAMO TITLE COMPANY
901 S. MOPAC EXPRESSWAY
BLDG. III, SUITE 100
AUSTIN, TEXAS 78746-5776
GF# 12 13 0 498 12

#### FIELD NOTES

BEING ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF AND A PART OF THE MARIGUITA CASTRO LEAGUE SURVEY NO. 50, ABSTRACT 160 SITUATED IN TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED AS 145.072 ACRES, CONVEYED TO HORIZON BANK AND TRUST, S&B IN VOLUME 12839, PAGE 1191 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING 0.717 ACRE OF LAND MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at an iron rod found in the north right-of-way line of Gregg Lane, at the most southerly corner of said Horizon Bank tract, being also the most westerly corner of that certain tract of land described as 24.906 acres, conveyed to Ada M. Ellison in Volume 11688, Page 462 of the Real Property Records of Travis County, Texas, for the POINT OF COMMENCEMENT.

THENCE, with the north right-of-way line of said Gregg Lane, being also the south line of said Horizon Bank tract, N59°22'39"W, a distance of 265.21 feet to a point,

THENCE, departing the north right-of-way line of said Gregg Lane, and crossing said Horizon Bank tract, N30°36'38"E, a distance of 39.94 feet to an iron rod set for the POINT OF BEGINNING of the herein described tract.

THENCE, continuing across said Horizon Bank tract, the following eight (8) courses and distances, numbered ! through 8;

- 1. N59°23'22"W, a distance of 369.68 feet to an iron rod set,
- 2. with a curve to the right having a radius of 25.00 feet, an arc length of 39.60 feet and whose chord bears, N14°00'27"W, a distance of 35.59 feet to an iron rod set,
- 3. N31°22'27"E, a distance of 254.69 feet to an iron rod set,
- 4. \$59°23'22"E, a distance of 50.00 feet to an iron rod set,
- 5. \$31°22'27"W, a distance of 204.69 feet to a point,
- 6. with a curve to the left having a radius of 25.00 feet, an arc length of 39.60 feet and whose chord bears, \$14°00'27"E, a distance of 35.59 feet to a point,
- 7. \$59°23'22"E, a distance of 319.01 feet to a point, and

8. \$30°36'38"W, a distance of 50.00 feet to the POINT OF BEGINNING and containing 0.717 acre of land.

Prepared By:

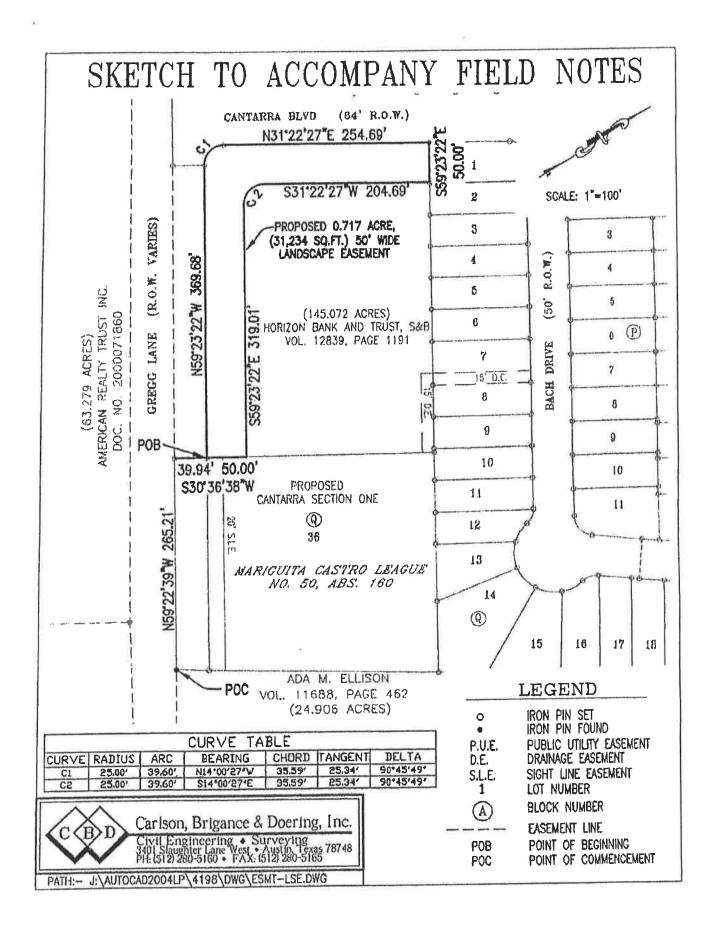
Thomas V. Dodd, - B.P. J.S. No. 1882

CARLSON, BRIGANCE & DOERING, INC.

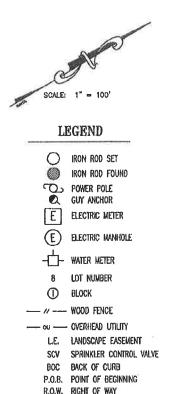
3401 Slaughter/Lane West

Austin, Texas 78748

(512) 280-5160 Fax: (512) 280-5165



TITLE SURVEY OF 2.386 ACRES OF LAND RECORDED IN DOCUMENT NUMBER 2013203647 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING SITUATED IN THE MARIGUITA CASTRO LEAGUE NUMBER 50, ABSTRACT 160, IN TRAVIS COUNTY, TEXAS



TO: DANIEL R. RENNER, SELF DIRECTED IRA SERMCES. INC., CUSTODIAN FBO MICHAEL RAY JETER ROTH IRA #201001423 AND SELF DIRECTED IRA SERVICES, INC., CUSTODIAN FBO KATHERINE SUE JETER IRA #201312627 AND HERITAGE TITLE OF AUSTIN, INC.

(GF # 201400822, EFFECTIVE DATE: APRIL 3, 2014)

STATE OF TEXAS: COUNTY OF TRAVIS:

I, the undersigned, do hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, visible utility easements or roadways, except as shown hereon and that said property has access to and from a dedicated roadway except as shown hereon. The legally described property IS NOT within a special flood hazard area as designated by the Department of Housing and Urban Development Federal Insurance Administration Flood Hazord Boundary Map Number 48453C 0290H for Travis County, Texas, dated September 26, 2008.

(B) ELECTRIC 22 ACRES RICHT-OF-WAY D AS PER PLAT METER T&TA CANTARRA DRIVE (64' R.O.W.) VAULT SIDEWALK :N31°22'27"E 254.69 WOODEN SIGNS ONE 20080024 S TRIPLE-POLE 2 WOODEN SIGN NAW. 393. 12" WIDE SIGNS (ROCK/CINDERBLOCK) MOW) DOC NO. 45"W 50" L.E. DOC. NO. 2006068759 国と大田 391 Š GREGG TRACT 3 W. 65 2.386 ACRES X DANIEL R. RENNER DOC. NO. 2013203647 DRAINAGE EASEMENT 29 ACRES RIGHT-OF-WAY 3 AS PER PLAT DOC. NO. 2006068753 SCV CASTRO 160 P.O.B. MARIGUTTA ADDITIONAL DEDICATED LEAGUE NO. S30°36'38"W 265.44 WATER QUALITY ESAIL & DRAINAGE ESAIL CRAVEL. SERVICE ROAD (Q) 36 1.636 ACRES

THIS TRACT IS SUBJECT TO:

AARON V. THOMASON

ORDANA, COLEVALID-CHILY IF SEALED IN RED INK

RESTRICTIVE COVENANTS AS THOSE RECORDED IN VOL. 8600, PG, 14 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS.

100) LANDSCAPE EASEMENT GRANTED TO CANTARRA VENTURES, LTD., BY INSTRUMENT DATED APRIL 13, 2006, RECORDED UNDER DOCUMENT NO. 2006068759 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, - as shown on drawing

10b) LANDSCAPE EASEMENT 50 FEET IN WIDTH ALONG THE FRONT AND SIDE PROPERTY LINE(S) AS SHOWN BY PLAT RÉCORDED UNDER DOCUMENT NO. 200800024 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. - as shown on drawing

10c) DRAINAGE EASEMENT 15 FEET IN WIDTH ALONG THE REAR PROPERTY LINE(S), AS SHOWN BY THE PLAT RECORDED UNDER DOCUMENT NO. 200800024 OF THE OFFICIAL PUBLIC RECORDS OF TRAMS COUNTY, TEXAS.

Dated, this the 22 day of danuary, 2014.

Curve Table Curve # Length Radius Chord Direction Chord Length Tangent DELTA C1 9.05 25.00 N21'00'18"E 9.00 4.57 20'44'18"

AARON V. THOMASON, RPLS# 6214 Carlson, Brigance and Doering, Inc. 5501 West William Cannon

Austin, Texas 78749

(512) 280-5160 (512) 280-5165 (fox)

garon@cbdeng.com

Carlson, Brigance & Doering, Inc. PIRM ID #1/3791 REG. # 10024900

PATH-J:4056/DWG/TITLE SURVEY-

Subject:

FW: C14- 2014-0167 - Cantarra Mixed Use

**From:** Sirwaitis, Sherri [mailto:Sherri.Sirwaitis@austintexas.gov]

Sent: Wednesday, February 18, 2015 11:35 AM

To: Alice Glasco

Subject: RE: C14- 2014-0167 - Cantarra Mixed Use

No, I think this e-mail should suffice.

Thanks,

### Sherri Sirwaitis

City of Austin
Planning & Development Review Department
<u>sherri.sirwaitis@austintexas.gov</u>
512-974-3057(office)

From: Alice Glasco [ma

Sent: Wednesday, February 18, 2015 11:34 AM

**To:** Sirwaitis, Sherri **Cc:** Rusthoven, Jerry

Subject: RE: C14- 2014-0167 - Cantarra Mixed Use

Sherri,

Yes – that is what we ae requesting – to prohibit a fence or wall within 50 feet of Cantarra Drive and E. Howard Lane (the 50 feet is the area assigned as a landscape easement given to a third party by the previous property owner).

Sorry for not running it by your first — I intended to , I learned of my client's desire last Thursday before the city council meeting and so I asked Jerry about it since he was at city hall. **Do you need a letter from me?** 

Alice Glasco, President Alice Glasco Consulting 512-231-8110 W 512-626-4461 C

\_\_\_\_\_\_

From: Sirwaitis, Sherri [mailto:Sherri.Sirwaitis@austintexas.gov]

Sent: Wednesday, February 18, 2015 11:28 AM

EXHIBIT "C"

To: Alice Glasco

Subject: RE: C14- 2014-0167 - Cantarra Mixed Use

So you are requesting to amend your zoning request to LR-MU-CO to add a conditional overlay stating that, "A fence is prohibited along the property line adjacent to Howard Lane."? It was unclear as you have not discussed this with me before.

Thanks,

### Sherri Sirwaitis

City of Austin
Planning & Development Review Department
<u>sherri.sirwaitis(@austintexas.gov</u>
512-974-3057(office)

From: Alice Glasco [mailto:

Sent: Wednesday, February 18, 2015 10:05 AM

**To:** Sirwaitis, Sherri **Cc:** Rusthoven, Jerry

Subject: RE: C14- 2014-0167 - Cantarra Mixed Use

Sherri,

Thank you for the follow-up. Please see the attached ordinance for Elm Terrace as an example of prohibiting a fence. I our request – we are asking the fence or wall not be allowed within 50 feet of the two roadways. Should I come and meet with you and Jerry, again?

Alice Glasco, President
Alice Glasco Consulting
512-231-8110 W
512-626-4461 C
Email:

**From:** Sirwaitis, Sherri [mailto:Sherri.Sirwaitis@austintexas.gov]

Sent: Wednesday, February 18, 2015 10:00 AM

To: Alice Glasco

Subject: RE: C14- 2014-0167 - Cantarra Mixed Use

Hi Alice,

I am not sure I understand. You cannot prohibit a fence on a property through a zoning case. You can create a buffer area or setback in a zoning case. Is that what you are asking to do through a conditional overlay for the case ?

Thank you,

# Sherri Sirwaitis

City of Austin
Planning & Development Review Department
<u>sherri.sirwaitis@austintexas.gov</u>
512-974-3057(office)

From: Alice Glasco [mail Sent: Friday, February 13, 2015 8:56 AM		
To: Sirwaitis, Sherri		
	Bill L Barton (	Richard Maier -
D. R. Horton () <b>Subject:</b> FW: C14- 2014-0167 - Cantarra Mixed Use		
Sherri,		
I spoke to Jerry Rusthoven yesterday at city hall abvoluntarily prohibit a fence or wall within 50 feet of Drive. This restriction would ensure safe sight clear residences of the subdivision. The attached private who does not own the land, to possibly erect a tall and thus affect the motoring public. Please let me I more information.	f East Howard Lane and Cantar arance/visibility at the intersect e landscape easement allows a l fence or wall that would inhib	ra ion for the third party, it visibility
<u>Jerry:</u> please confirm your concurrence with our re bunch!	quest per our meeting yesterda	ay. Thanks a
Alice Glasco, President Alice Glasco Consulting 512-231-8110 W 512-626-4461 C		
Email: {		

Date: March 27, 2015

File Number: C14-2014-0167

Address of Rezoning Request: 13007 Cantarra Drive

To: Austin City Council

We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any classification other than SF-4A.

The proposed commercial zoning is inconsistent with the surrounding single-family residences.

Cantarra Homeowners Association, Inc.

By:

Name: Cary L. Cobb

Title: President

Address: Lot 23, Blk. R, Cantarra Section One (Landscape, Sidewalk & P.U.E.

Date: March 27, 2015 Contact Name: Doreen Clark

Phone Number: 972-964-9050 x. 123

Date: March 27, 2015

File Number: C14-2014-0167

Address of Rezoning Request: 13007 Cantarra Drive

To: Austin City Council

We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any classification other than SF-4A.

The proposed commercial zoning is inconsistent with the surrounding single-family residences. Further, the proposed conditional overlay to prohibit fences on the subject tract wrongly attempts to extinguish a landscape easement Cantarra Ventures, Ltd. holds across the subject tract.

Cantarra Ventures, Ltd., a Texas Domestic Limited Partnership

By:

Intermandeco GP, LPC, a Texas Limited Liability Company,

Its General Partner,

By:

Name: Cary L. Cobb

Title: Director of Operations

Address:

1. 3520 ½ E. Howard Lane, Austin, TX 78660

LOT 36, Blk Q, Cantarra Section 1 (Water Quality Easement &

Drainage Easement);

2. Lots 17, 18, 20, 21 & 22 in Blk. R of Cantarra Section 1

Date: March 27, 2015 Contact Name: Doreen Clark

Phone Number: 972-964-9050 x 123

Date: 3/28/15

File Number: C14-2014-0167

Address of Rezoning Request: 13007 Cantarra Drive

To: Austin City Council

We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any classification other than SF-4A.

The proposed commercial zoning is inconsistent with the surrounding single-family residences.

Signature	Printed Name	<u>Address</u>	Pflugerage	
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Date: 3178	1\5 Contact	Name: Doreen Clar	k	

Phone Number: 972-964-9050 x. 123

Date: 3/28/15

File Number: C14-2014-0167

Address of Rezoning Request: 13007 Cantarra Drive

To: Austin City Council

We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any classification other than SF-4A.

The proposed commercial zoning is inconsistent with the surrounding single-family residences.

Signature	Printed Name	Address
i laste Dos	Rajae Ross	12,509 cantakes
	Train's Boys	13509 / wtane DR1.
Ilwi R. Mi	Gloria R. Mono	was 3416 Back-Or
Halein Silm	Valorie Silva	3421 Bach Dr.
70	Roderick mostes	3512 Back Dr.
1/00	TOMMY LADTIR	4609 BACHDRY
HUEX TETENO	talmond EYE	3509 BOCK BKY
Dick & Sings	LA T	3204 BACK ODEY
Pull Wilm	DETIAN WIG	U 3417 Back DL -
Alvillane.	WilliamsiA	13212 Confirma Dr
Fran time	Ryan true	Balb Canterra, DC.
India lark	Michael Frug	1326 Captorn Dr.
Dans	AMU TON	13317 Styrodor
COKER WEDT IN	L FOIREN MICORTI	N 3325 STIVET SI
Date: 3178 115	() Contr	act Name; Doreen Clark

Phone Number: 972-964-9050 x. 123

Date: 3/28/15

File Number: C14-2014-0167

Address of Rezoning Request: 13007 Cantarra Drive

To: Austin City Council

We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any classification other than SF-4A.

The proposed commercial zoning is inconsistent with the surrounding single-family residences.

Signature	Printed Name	Address	
& Buttell	Janet Matchaede	3721 Pearlman	Dr.
C DWAIN /	Mitchell Goesta	3204 Milduer	
Mille Ho	Shawna los	3204 Advers N	
1 milion	Activ. Johnson	13600 Canta	Wes dr
unping	KEBECCIA DOMUCON	13000 CANTAIN	The Par
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tales Willer	Busine Ville	3400 Stewer	154
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Tingson de all and on	gu Bisunda windra	Ju 3549 St;	real st
- XD	Hestor Garcia	13020 Conte	
Date: 3/28 1/5	Contac	t Name: Doreen Clark	-

Phone Number: 972-964-9050 x 123

Date:		
File Number: C14-2014-01	67	10
Address of Rezoning Reque	est: 13007 Cantarra Drive	
To: Austin City Council		
described in the referenced	file, do hereby protest aga	the requested zoning change inst any change of the Land any classification other than
The proposed commercial z residences.	oning is inconsistent with t	he surrounding single-family
Signature	Printed Name	Address
Jessen -	Jazeb Gonzales	3400 Back DT. 18660
Date:	Cor	ntact Name: Doreen Clark

Phone Number: <u>972-964-9050 x.</u> 123

Date:		
File Number: C14-2014-0167		
Address of Rezoning Request	: 13007 Cantarra Drive	
To: Austin City Council		
We, the undersigned owners described in the referenced fi Development Code which wo SF-4A.	le, do hereby protest again	ast any change of the Land
The proposed commercial zon residences.	ing is inconsistent with the	surrounding single-family
Signature	Printed Name	Address
Vitoles Dem	Victoria Direcon	3401 Bach Dr.
	72-65-0000	Some Pallottane
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Date:	Conta	act Name: Doreen Clark

Phone Number: <u>972-964-9050 x.</u> 123

Date:		
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The proposed commercial a residences.	zoning is inconsistent with	the surrounding single-family
Signature	Printed Name	Address
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12		
Date:	Co	ontact Name: Doreen Clark
	Ph	one Number: 972-964-9050 x. 123

	Date:			
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	To: Austin City Council			
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	The proposed commercial zoning is incoresidences.	onsistent with the surro	unding single-family	
	Signature Printed  Maurice	<b>—</b>	Address /3020 Cantarra D Palugeroi lle, TX 76	K
	Date:		me: <u>Doreen Clark</u> nber: 972-964-9050 x. 123	