Item #49
P&Z Dept.

Rezoning Application of Abraham Birgani

Case No.: C14-2017-0042
6610 McNeil Road/
12602 Blackfoot Trail

LEGAL DESCRIPTION:
LOT 2 OF INDIAN OAKS 2 SUBDIVISION

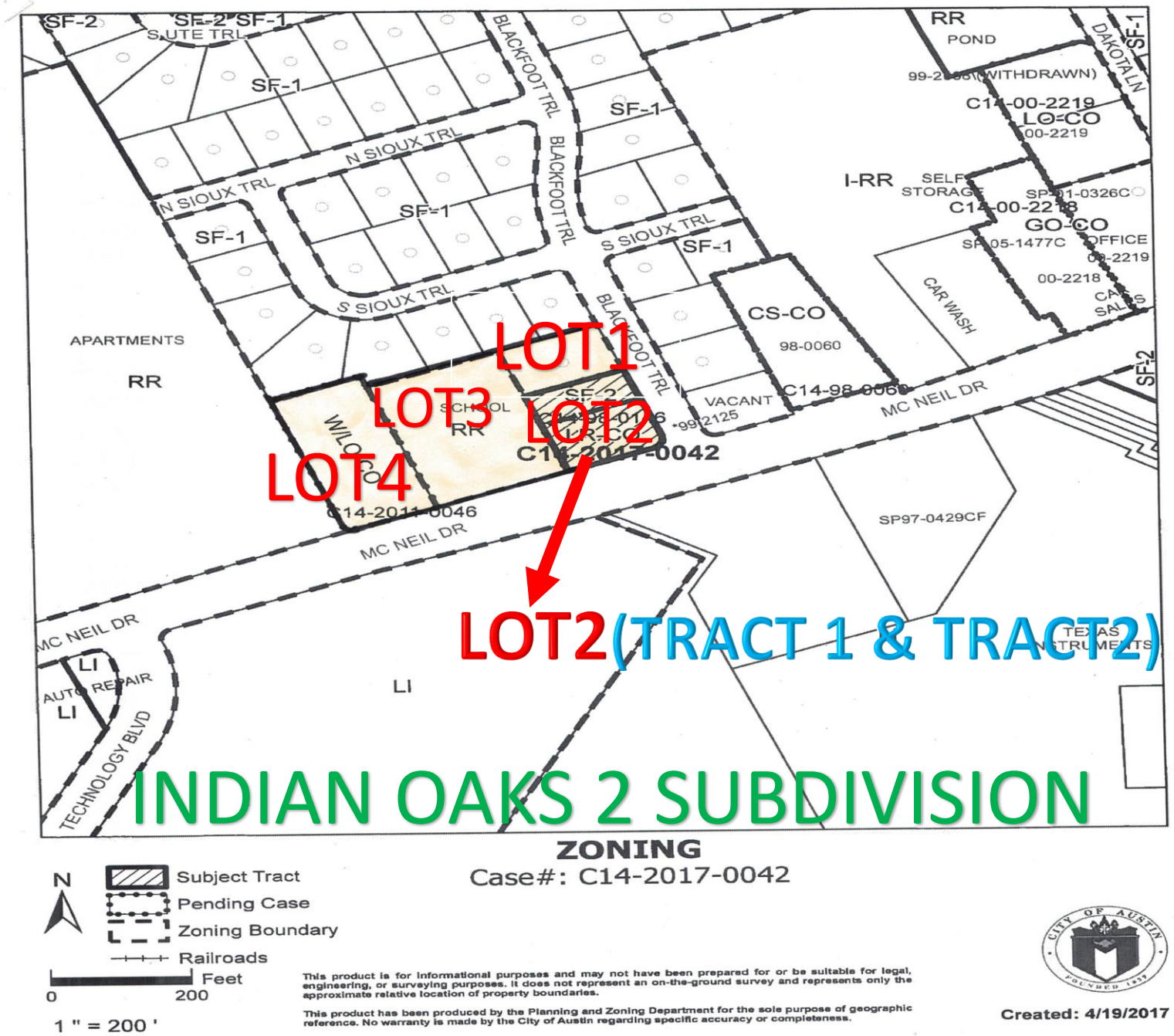
- Property consists of one building, the front part facing McNeil and side extending onto Blackfoot Trail located in Williamson County and has been commercialized since 1985
- When purchased in December 1989, it was zoned entirely commercial
- until the City of Austin annexed it early Jaunary 1998
- Prior to annexation, Mr. Birgani had all the permits and Austin city approved site plan, consisting of elaborate drainage structure and parking lot– Site plan permit #SP-97-0439D

INDIAN OAKS 2 SUBDIVISION CREATED IN 1977 & IT has 4 LOTS (LOT1, LOT2, LOT3, & LOT4)

- COMMERCIAL ZONED SINCE 1985
- MR. BIRGANI OWNS LOTS 1 & LOT 2

INDIAN OAKS 2 SUBDIVISION IS CREATED IN 1977 AND CONSIST OF 4 LOTS (LOT1, LOT2, LOT3 AND LOT4)

- SINCE 1985 ALL 4 LOTS COMMERCIALIZED
- MR. BIRGANI OWNS LOT1 & LOT2
- AUGUST, 2000 LOT 2 WAS DIVIDED BY CITY OF AUSTIN IN TWO TRACTS (TRACT1 & TRACT2)



1985- The undersigned agree that the restriction imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purpose only and may be used for any lawful purpose

AMENDMENT OF RESTRICTIONS Vol 1186

18833

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WILLIAMSON §

WHEREAS, by Deed recorded in Volume 500, Page 496, of the Deed Records of Williamson County, Texas, a copy of which is attached hereto as Exhibit "A", RAYMOND FLOYD DAVIS and wife, ALINE DAVIS, and BEULAH DAVIS, as Grantors, did convey to ROSCOE E. MILLEGAN and wife, ANNIE MILLEGAN, as Grantees, those six (6) tracts of land situated in Williamson County, Texas, as are more fully descibed on Exhibit "A"; and

WHEREAS, BEULAH DAVIS is now deceased and DIANA EICHSTATDT, joined herein by her husband, DONALD L. EICHSTATDT, is her only heir; and

WHEREAS, ELAINE BARNES, wife of DALE BARNES, is now deceased; and

WHEREAS, RICHARD BOUTON and wife, DIANE BOUTON, CRAIG H. SHEMPERT and wife, BARBARA SHEMPERT, DALE BARNES and FRANK C. WOLCHICK, JR., are successors in title to portions of the hereinabove referenced property; and

WHEREAS, the above named MILLEGANS, BOUTONS, BARNES, SHEMPERTS and WOLCHICK constitute all of the parties with any interest in and to the property described on Exhibit "A"; and

WHEREAS, the Deed attached as Exhibit "A" contains certain restrictions restricting the use of the property for residential purposes only, and the parties hereto now desire to amend said restrictions to permit any lawful use;

NOW THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the restrictions imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purposes only and may be used for any lawful purpose.

EXECUTED this 24th day of April, 1985.

ROSCOE C. MILLEGAN — ANNIE MILLEGAN

DIANA EICHSTATDT — DONALD L. EICHSTATDT

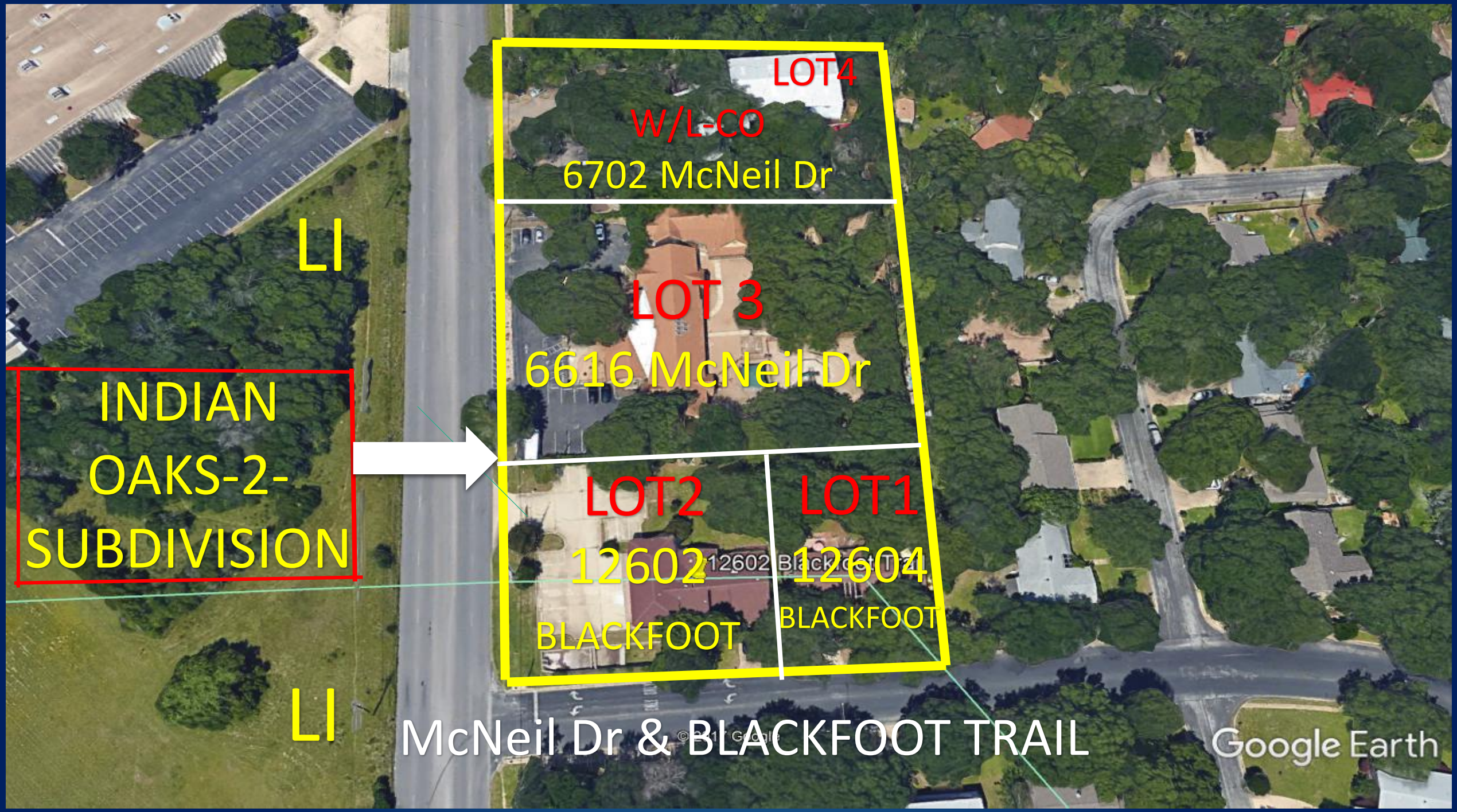
RICHARD BOUTON — DIANE BOUTON

CRAIG H. SHEMPERT — BARBARA J. SHEMPERT

FRANK C. WOLCHICK, JR. — DALE BARNES

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on APRIL 24, 1985, by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6702 McNeil Dr
LI
LOT 3
6616 McNeil Dr
INDIAN OAKS-2-SUBDIVISION
LOT2
12602
BLACKFOOT
LOT1
12604
BLACKFOOT
LI
McNeil Dr & BLACKFOOT TRAIL
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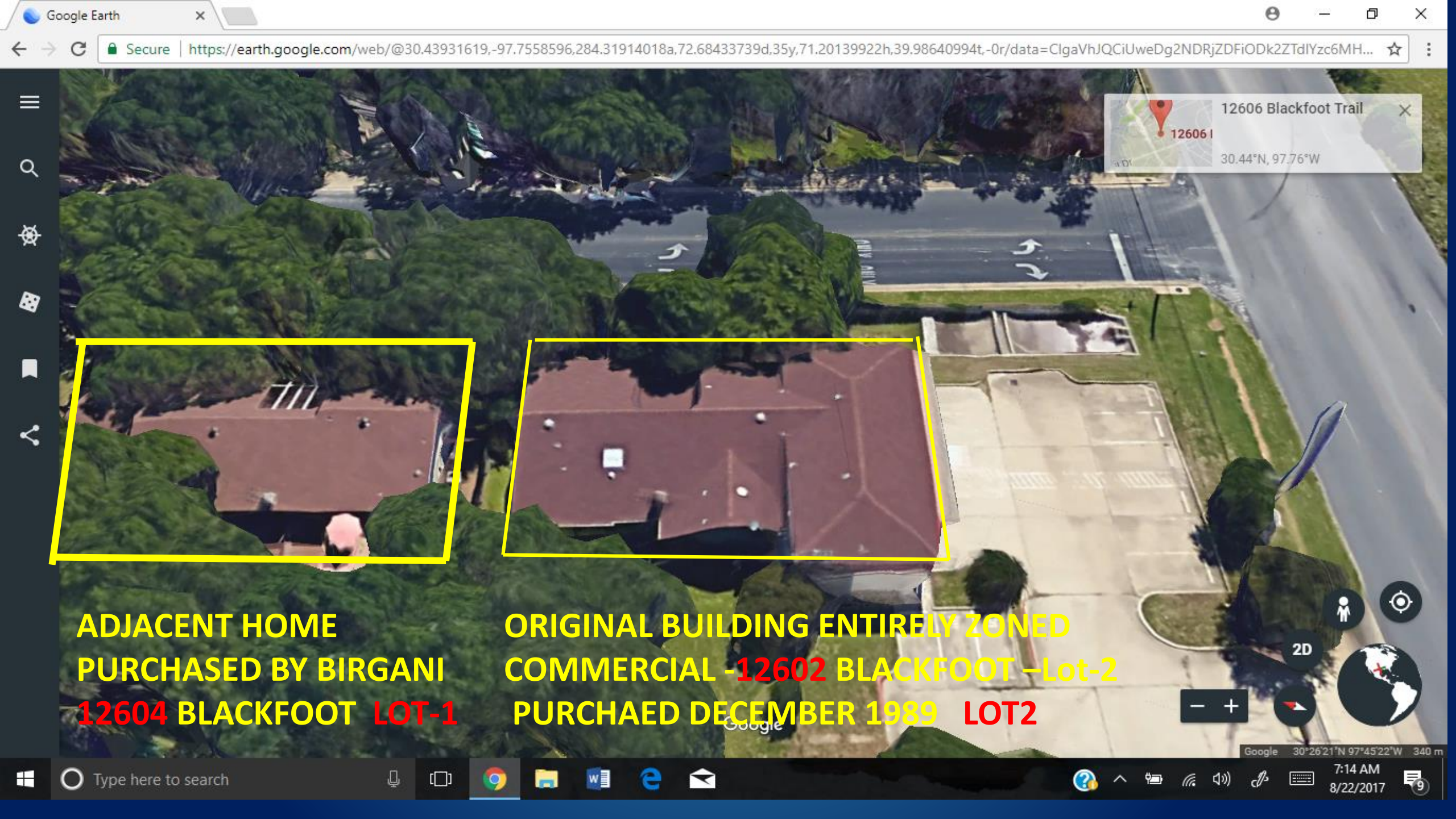
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12606 Blackfoot Trail
30.44°N, 97.76°W
ADJACENT HOME
PURCHASED BY BIRGANI
12604 BLACKFOOT LOT-1
ORIGINAL BUILDING ENTIRELY ZONED
COMMERCIAL -12602 BLACKFOOT –Lot-2
PURCHAED DECEMBER 1989 LOT2
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8/22/2017

March, 1998, Unbeknownst to Mr. Birgani, city zoned entire property SF-1 (residential), and red-tagged his entire business, stopped construction, **revoked** all his permits and approved **site plan #SP-97-0439D**

Faced with **tremendous financial loss**, Mr. Birgani was **compelled** to enter an onerous zoning agreement with city:

1. City drew artificial property line through part of building and forced him to submit another site plan which was approved **3** years later - **(The site plan # SP-99-2171C)**

2. Zoned front portion (1416 SF) as **LR-CO** and back portion (2380 SF), **64 feet** from north of property line as **SF2.** Also imposed with impossible conditions in **restrictive covenant** and in Ordinance No. 9907722-46), **PROHIBITING**

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12606 Blackfoot Trail
30.44°N, 97.76°W
TRACT-1
TRACT-2
ADJACENT LOT
PURCHASED BY BIRGANI
12604 BLACKFOOT
(LOT-1)
ORIGINAL BUILDING ENTIRELY ZONED
COMMERCIAL FORCED BY CITY TO BE
DIVIDED INTO TWO TRACTS ZONED AS LR-CO
WITH IMPOSSIBLE CONDITIONS LOT2
2D
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17 restrictions imposed on LR-CO

1. Consumer Convenience Services
2. Food Sales
3. General Retail Sales
4. Bed and Breakfast
5. Restaurant
6. Congregate Living
7. Community Recreation
8. Guidance Services
9. Residential Treatment
10. Consumer Repair Services
11. General Retail Sales (Convenience)
12. Pet Services
13. Restaurant (Drive-In, Fast Food)
14. Service Station
15. Community Recreation (Private)
16. Counseling Services
17. Hospital Services

ADDITIONALLY, RESTRICTIVE COVENANTS WERE IMPOSED ON JULY 22, 1999

The most onerous restriction imposed "hours-of-operation restriction:

- **Monday through Friday 8:00 a.m. until 8:00 p.m.**
- **Saturdays – 8:00 a.m. until 12:00 noon**
- **Sunday- CLOSED**
- **Due to such extreme restrictions, it remained vacant for 14 of 20 past years.**

MR. BIRGANI FILED AN APPLICATION FOR TERMINATION OF THESE RESTRICTIVE COVENANTS ON JULY 26, 2017, WHICH IS STILL PENDING

REGARDING ORDINANCE RESTRICTIONS (No. 9907722-46), MR. BRIGANI OBJECTS TO ALL OF THE RESTRICTIONS EXCEPT THE PROHIBITION ON ACCESS FROM BLACKFOOT FOR COMMERICAL USE.

PLANNING AND ZONING RECOMMEDATION – AUGUST 15TH

LEFT BUILDING DIVIDED WITH TWO DIFFERENT ZONING CLASSIFICATIONS

- MAINTAINED ARTIFICIAL DIVISION OF BUILDING AND REZONED BACK HALF OF BUILDING AS SF-2 (RESIDENTIAL)
- REZONED FRONT PORTION OF BUILDING FACING McNeill (1416 SQAURE FEET) AS GR-MU-CO WITH OVERLAY CONDITIONS PROHIBITING:

1. Prohibit Alternative Financial Services
2. Automotive Washing (of any type)
3. Bail Bond Services
4. Drop-Off Recycling Collection Facility,
5. Medical Office-exceeding 5,000 sq. ft. gross floor area
6. Medical Offices-not exceeding 5,000 sq. ft. gross floor area,
7. Outdoor Entertainment
8. Pawn Shop Services

9. Service Station,
10. Congregate Living
11. Guidance Services
12. Hospital Services (General),
13. Hospital Services (Limited),
14. Residential Treatment and Drive-In Services
15. maintain the condition from Ordinance No. 9907722-46 that, "Pedestrian and vehicular traffic associated with a non-residential use on the Property may not access Blackfoot Trail."

(7-0, D. Breithaupt, B. Evans, S. Lavani and S. Trinh-absent); J. Duncan-1st, A. Aguirre-2nd.

ZAP RECOMMENDATION LEAVES PROPERTY COMPLETELY INACCESSIBLE

ITEM 15 ABOVE STATES:

"maintain the condition from Ordinance No. 9907722-46 that, "Pedestrian and vehicular traffic associated with a non-residential use on the Property may not access Blackfoot Trail."

HOWEVER

ON PAGE 11 OF AGENDA BACKUP: STAFF REPORT

– 20171005-045, IT STATES:

"If requested zoning is granted, it is recommended that access to McNeil Drive be *prohibited* as a condition of zoning because 200 feet of frontage is required for site to have access to a major arterial."

ADDITIONAL RIGHT-OF-WAY REQUIRED FOR ZONING CHANGE – 7 MORE FEET FROM FRONT CURB LINE

- **Zoning Change Review Sheet - August 15, 2017 provides: "In addition, if the requested zoning change is granted, then 57 feet of right-of-way should be dedicated from the existing centerline of McNeil Drive to accommodate the required ROW for a Major Arterial Divided 4-lane roadway at 114 feet."**

- **This provision was superseded by the ATD Memorandum of July 26, 2017, that provided in part: ". . .the Director has determined that the right-of-way dedication is deferred site plan."**

ZAP RECOMMEDATION DESTROYS COMMERCIAL FEASIBILITY OF PROPERTY BECAUSE 1-MAINTAINING DIVISION OF LOT 2, 2-ADDITIONAL R.O.W. AND COMPATBILITY STANDARDS LANDSCAPE AREA AT LEAST 25 FEET WIDE REQUIRMENT FOR LR, GO, GR, L, CS, CS1 OR CH ELIMINATES ALL BUT 5 PARKING SPACES, REDUCES FILTERATION PONDS AND REDUCES EXISTING BUILDING

- Property is located in Rattan Creek Watershed – 65% impervious restriction applies
- When building was constructed, Lot 2 was undivided and property fell within 65% restriction
- Forced division of Lot 2 rendered Tract 2 - 92% developed because it contains the building, parking lot, and water drainage system
- If division of Lot 2 is maintained, submission of new site plan will require Mr. Birgani to reduce his impervious area by 27%, eliminating all but 5 parking spaces (including 1 handicapped) and would require him to reduce building from 1416 to 882 square feet
- This will cost Mr. Birgani more than $400,000.00 to comply

- MR. BIRGANI ABSOLUTLEY AGREES THAT THERE WILL BE NO ACCESS FROM BLACKFOOT BECAUSE as long as property access from McNeil not blocked by transportation in future:

1. IT WOULD IMPEDE TRAFFIC FLOW ON BLACKFOOT AND IS NOT CONSISTANT WITH NEIGHBORHOOD

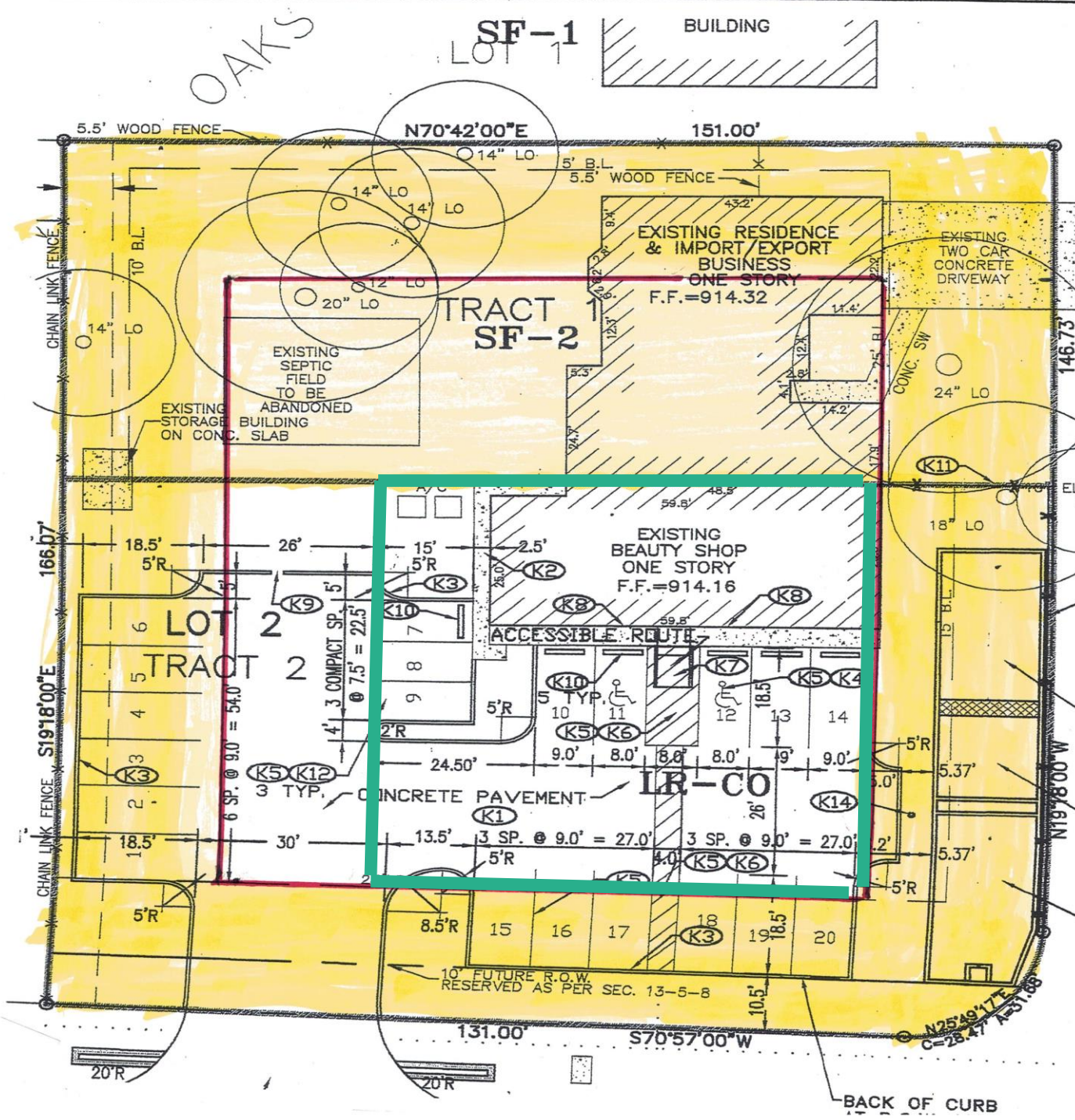
2. IT IS PHYSICALL IMPOSSIBLE DUE TO DRAINAGE SYSTEM

CURRENT RECOMMENDATION STILL MAKES PROPERTY COMMERICALLY INVIABLE

- RESTRICTIONS ON MEDICAL OFFICES, PAWN SHOPS, AND ALTERNATIVE FINANCIAL SERVICES

- LIMITING COMMERICAL ENTERPRISE TO 1416 SQUARE FEET MAKES PROPERTY UNPROFITABLE AND RENDERS VALUE OF PROPERTY PRACTICALLY WORTHLESS AS COMMERCIAL PROPERTY

- TOTAL AREA OF LOT2= 24,829 SF
- AREA OF TRACT 1 = 9,664 SF
- AREA OF TRACT 2 = 15,164
- AREA OF R.O.W, FILTERATION PONDS AND LANDSCAPING =7,388 SF
- AREA OF TRACT 2 = 7,777 SF
- AREA OF 27% REDUCTION = 2,100 SF
- SQUARE FEET AREA FOR FOR BUILDING, PONDS AND PARKING LOTS=5,677 SF
- SMALL BUILDING, 5 PARKING SPACES AND ADDITIONAL COST OF $400,000



MR. BIRGANI SUFFERS A PROFIT LOSS UNDER CURRENT RECOMMENDATION WITH IMPOSITION OF ADDITIONAL RIGHT-OF-WAY

GROSS RENTAL INCOME ON NOW 882 SQUARE FEET (at $1.75 per square foot per month based upon data from commercial realtor)

$18,522.00

GROSS EXPENSES:

$19,729.00

PROFIT

MINUS -$1,207.00

UNDER CURRENT RECOMMENDATION *(WITHOUT RIGHT-OF-WAY)* --- MR. BRIGANI'S MINIMAL PROFIT RENDERS PROPERTY COMMERCIALLY INVIABLE

GROSS RENTAL INCOME ON 1416 SQUARE FEET (at $1.75 per square foot based upon data from commercial realtor)

GROSS EXPENSES:

$19,729.00

PROFIT

$10,007.00

(If the property was rented every day of year with no major repair and no increase in taxes and insurance)

BY EXTENDING THE GR-MU-CO INTO ALL BUT THE BACK 30 FEET OF THE PORTION OF THE BULDING ZONED SF-2, MR. BRIGANI BEGINS TO MAKE PROPERTY PROFITABLE

GROSS RENTAL INCOME ON WITH EXTENDING GR-MU-CO 2,580 SQUARE FEET (at $1.75 per square foot based upon data from commercial realtor)

$54,180.00

GROSS EXPENSES:

$22,000.00

PROFIT

$32,180.00

BY EXTENDING THE GR/CS-MU-CO INTO ALL OF THE PORTION OF THE BULDING ZONED SF-2, MR. BRIGANI PROPERTY WOULD BE PROFITABLE

GROSS RENTAL INCOME ON 3526 SQUARE FEET (at $1.75 per square foot based upon data from commercial realtor)

$74,046.00

GROSS EXPENSES:

$20,000.00

PROFIT

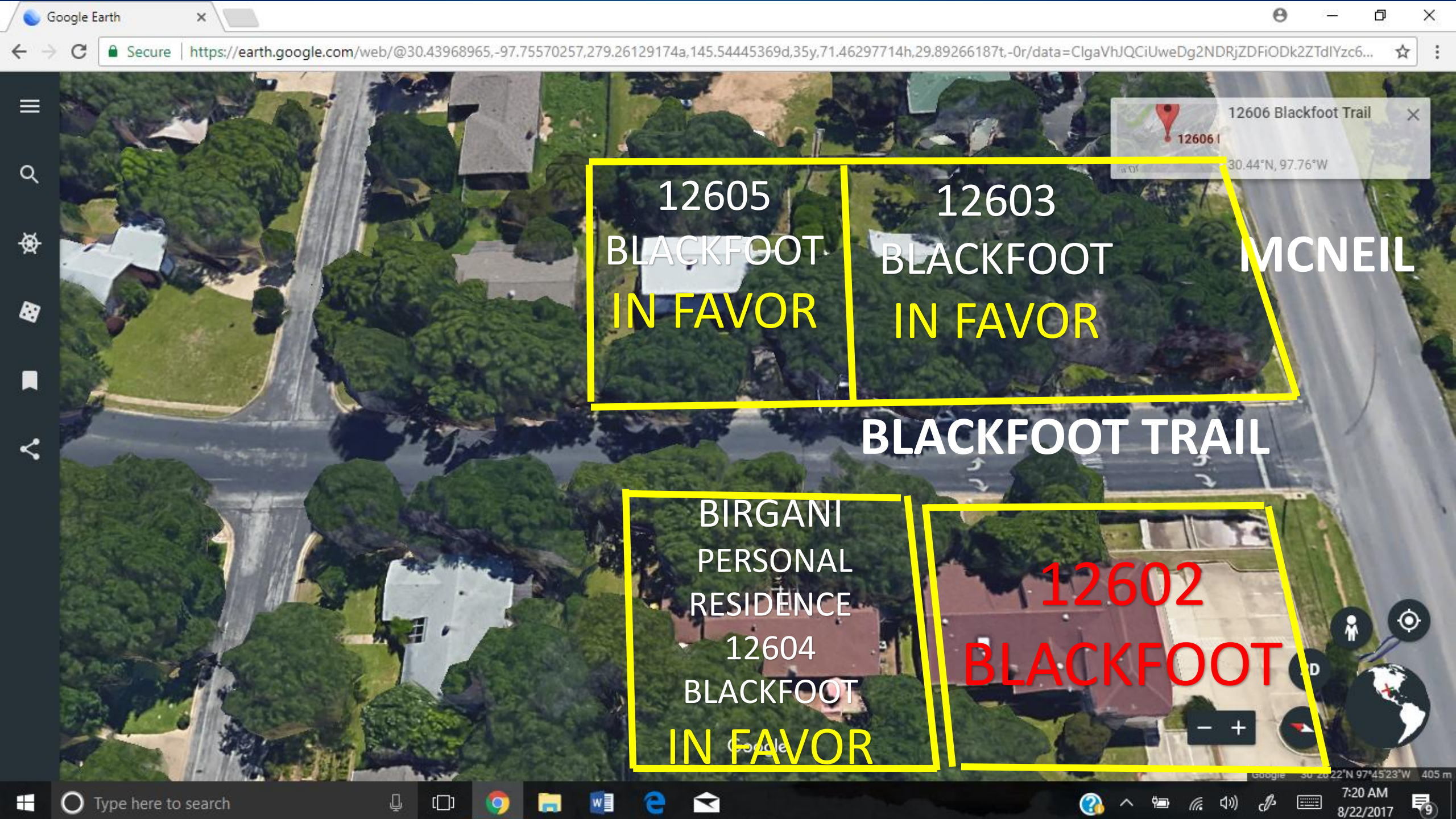
$43,760.00

IN THE EVENT THAT CITY EXTENDS GR-MU-CO OR CS-MU-CO INTO SOME OR ALL OF BACK PORTION OF BUILDING FACING BLACKFOOT

1) MR. BIRGANI WOULD ENSURE THAT SIDE OF BUILDING FACING BLACKFOOT IS AESTHETICALLY CONSISTANT WITH RESIDENTIAL CHARACTER OF NEIGHBORHOOD
2) ALL VEHICULAR OR PEDESTRIAN TRAFFIC FOR COMMERICAL WILL BE CONDUCTED SOLEY IN THE FRONT OF THE BUILDING FACING McNeill
3) THE COMMERCIAL USE OF ALL OF OF THE BUILDING WILL HAVE NO IMPACT ON NEIGHBORS

MR. BIRGANI'S PERSONAL RESIDENCE IS IMMEDIATELY NEXT DOOR ON THE NORTH SIDE OF THE BUILDING. ALL ADJACENT PROPERTY OWNERS ARE IN FAVOR OR NOT OPPOSING THE CS-MU REZONING

PLEASE SEE IN FOLLOWING FEW SLIDES OTHER PROPERTIES AROUND THE PROPERTY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12605
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BIRGANI
PERSONAL
RESIDENCE
12604
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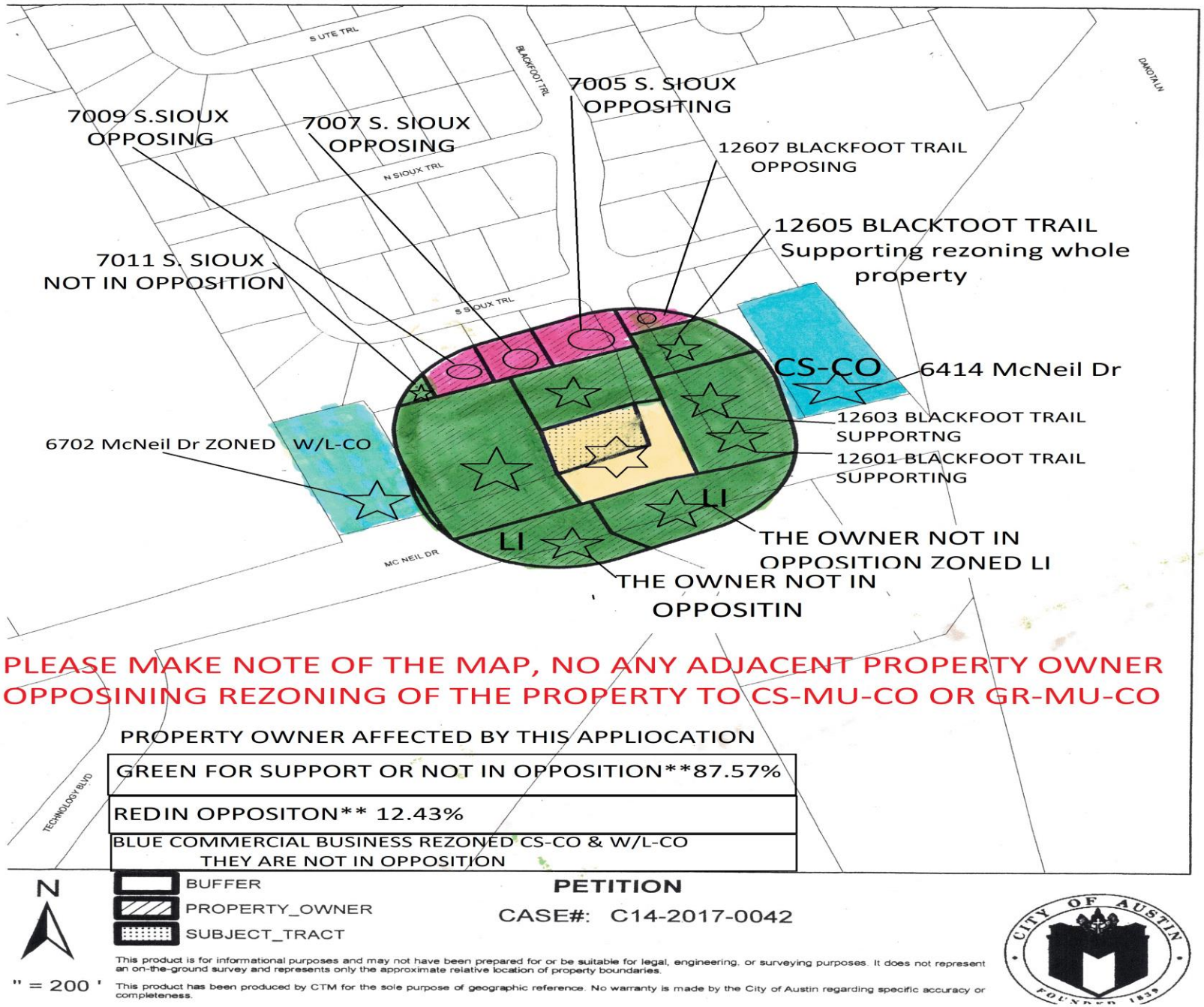
PLEASE MAKE NOTE THAT ALL ADJACENT PROPERTY OWNERS TO THE SUBJECT PROPERTY (CASE# C14-2017-0042) ARE IN FAVOR OR NOT OPPOSING TO REZONE WHOLE PROPETY TO CS-MU-CO



4 LOTS OF INDIAN OAKS 2 SUBDIVISION
LOT4
W/L-CO
LOT3
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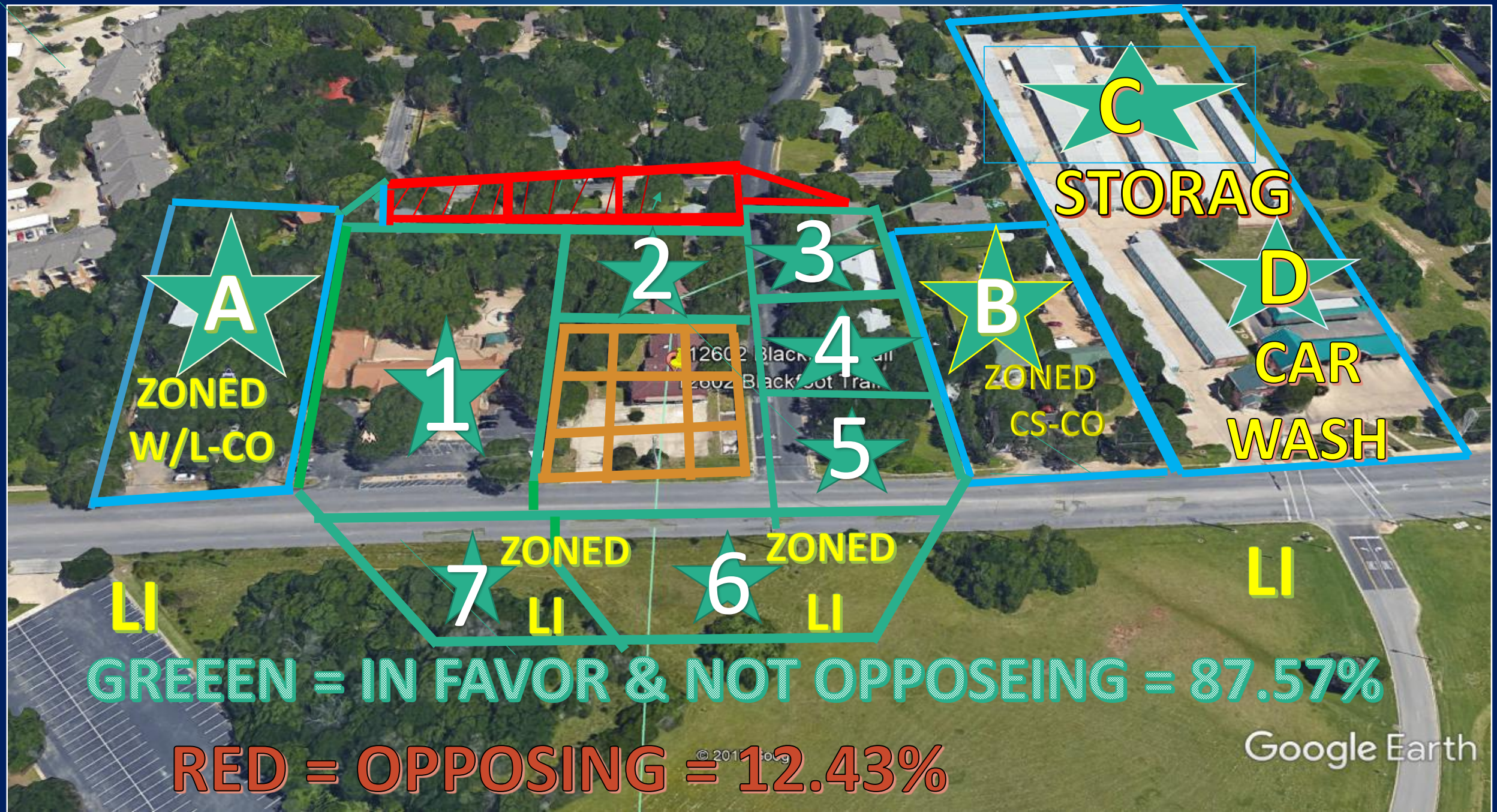
ADJACENT PROPERTY OWNERS IN FAVOR OR NOT OPPOSITING CS-MU



THE CITY CANNOT JUSTIFY DISPARATE ZONING RECOMMENDATION BASED UPON THE FOLLOWING PROPERTIEs

1. FOUNDATION AUTO REPAIR - 6750 Corpus Christi Drive/McNeil GR-CO Adjacent to 4 residence
2. NEWIMAGE HAIR SALON - 6410 McNeil Drive/Dakota GR-CO – Adjacent to one residence
3. JOHNSON CUSTOM POOLS - 6514 McNeil Drive CS-CO – adjacent to 5 residence
4. DAC INTERNATIONAL-AEROSPACE ENGINEERING - 6702 McNeil Drive W/L-CO – adjacent to 2 residence
5. NOT YET DEVELOPED - 6810 McNeil Drive –GR-CO – Recently zoned and across from apartment homes

6. 6914 McNeil Drive - Recently zoned as GR-CO – adjacent to apartment home and retirement home
7. VIDA MOTOR (auto sales) -7224 McNeil Drive - Zoned as CS-CO – adjacent to a residence
8. ADVANCED AUTO PARTS - 7308 McNeil Drive/San Filipe - Zoned as GR-CO- adjacent to a residence
9. MULTIPLE RESTAURANTS ETC. - 7318 McNeil Drive/San Filipe - Zoned as GR-CO and CS-CO – adjacent to apartment and retired homes

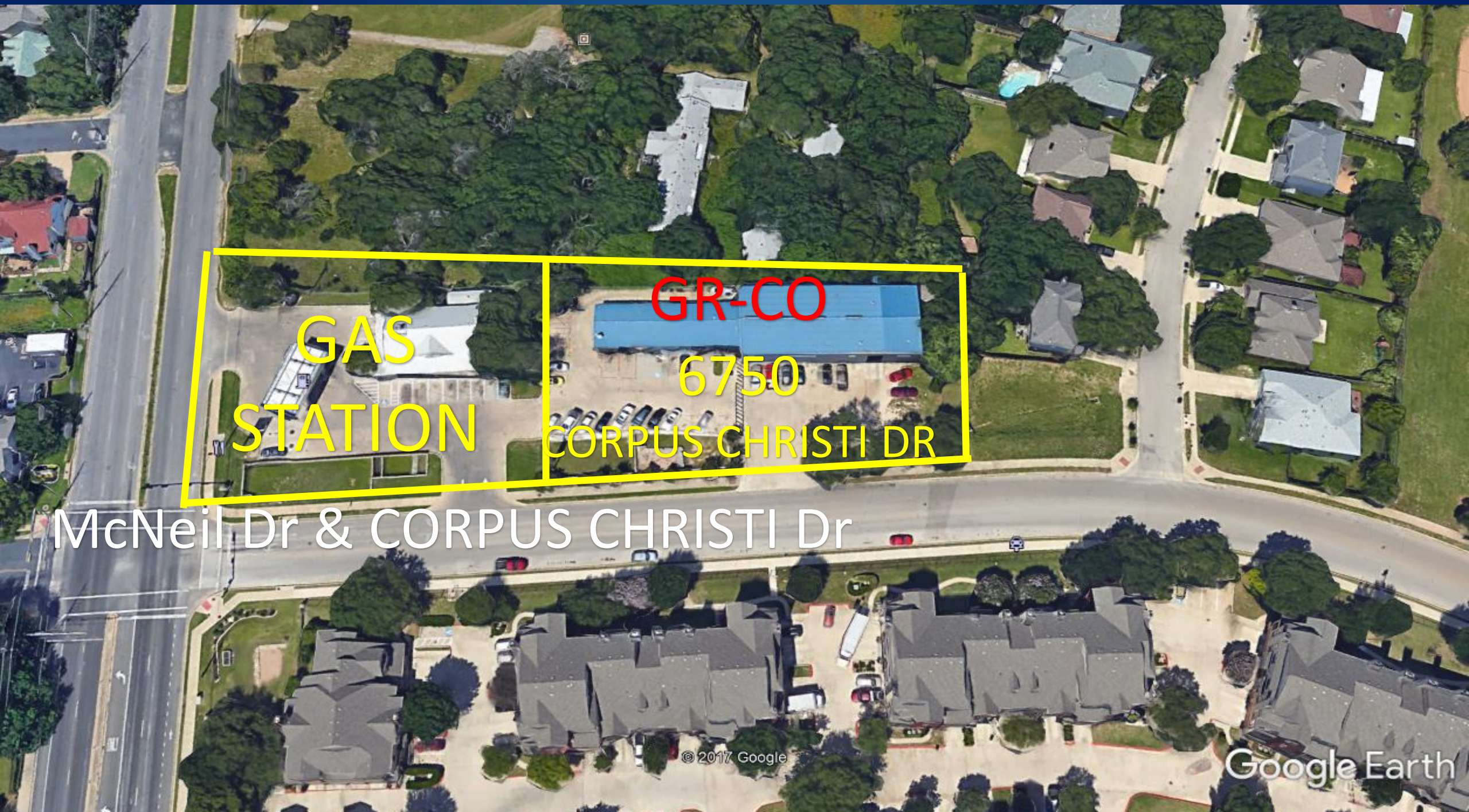
PLEASE SEE OTHER REZONED PROPERTIES AT OTHER ENTRANCE'S TO NEIGHBORHOODS FROM McNeil DRIVE

- THERE ARE 5 ENTRANCES FROM McNeil Dr to NEIGHBORHOODS, EACH ONE THEM HAS ONE OR MORE PROPERTIES THAT REZONED BY CITY OF AUSTIN TO GR-CO, CS-CO AND LI EXCEPT MR. BIRGANI PROPERTY

1. CORPUSE CHRISTI DRIVE
2. DAKOTA LN
3. BLACKFOOT TRAIL, WHERE THE PROPERTY MR. BIRGANI PROPERTY IS LOCATED
4. LOS INDIOS TRAIL
5. SAN FELIPE BLVD

- WHY MR. BIRGANI PROPERTY HAS BEEN SINGLE OUT AND TREATED UNFAIRLY FOR LAST 20 YEARS?

- WHY MR. BIRGANI SMALL PROPERTY MUST BE DIVED BUT OTHER LARGER PROERTIES HAVE NOT BEEN DIVIDED WHEN THEY REZONED?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CORPUS CHRISTI DR
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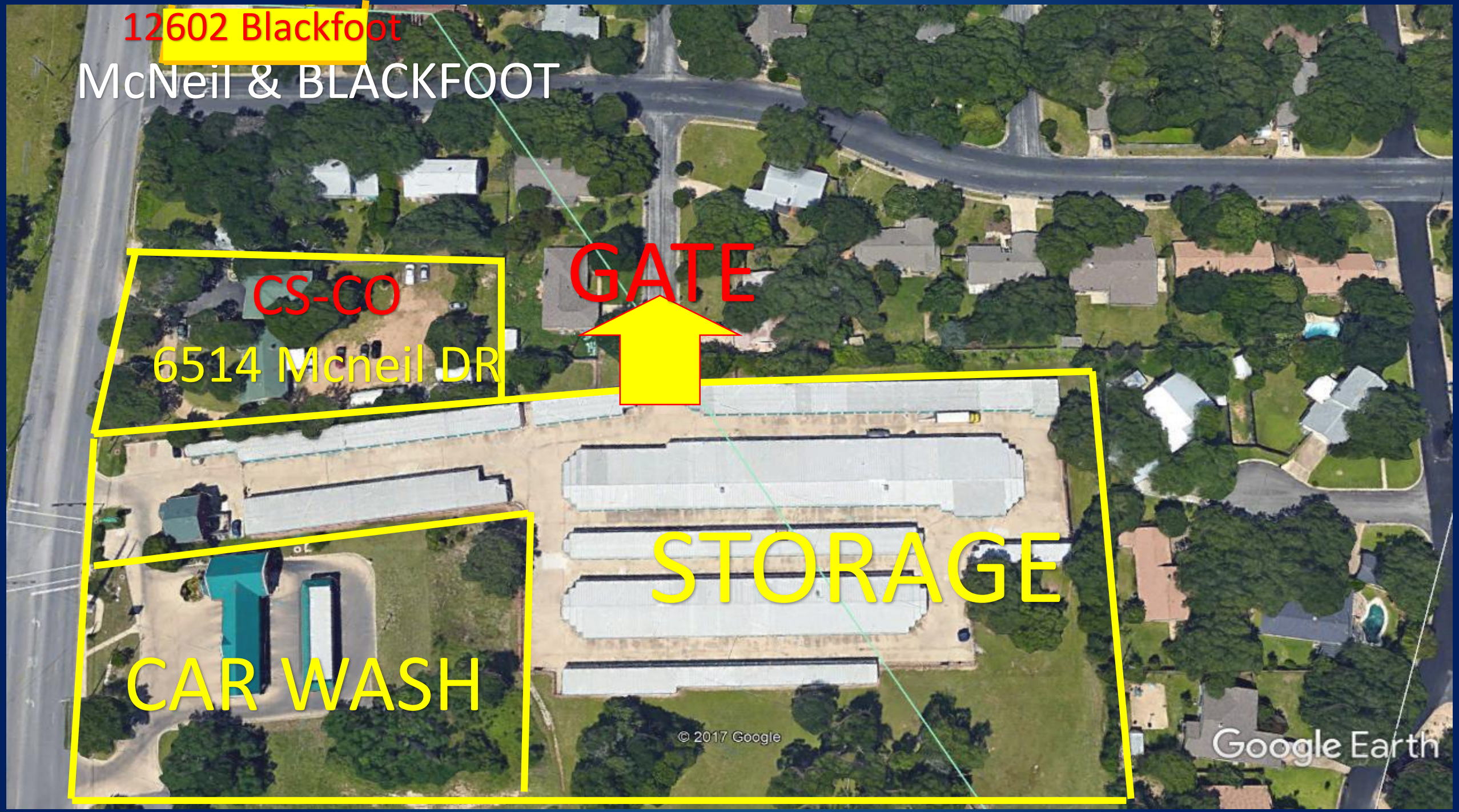
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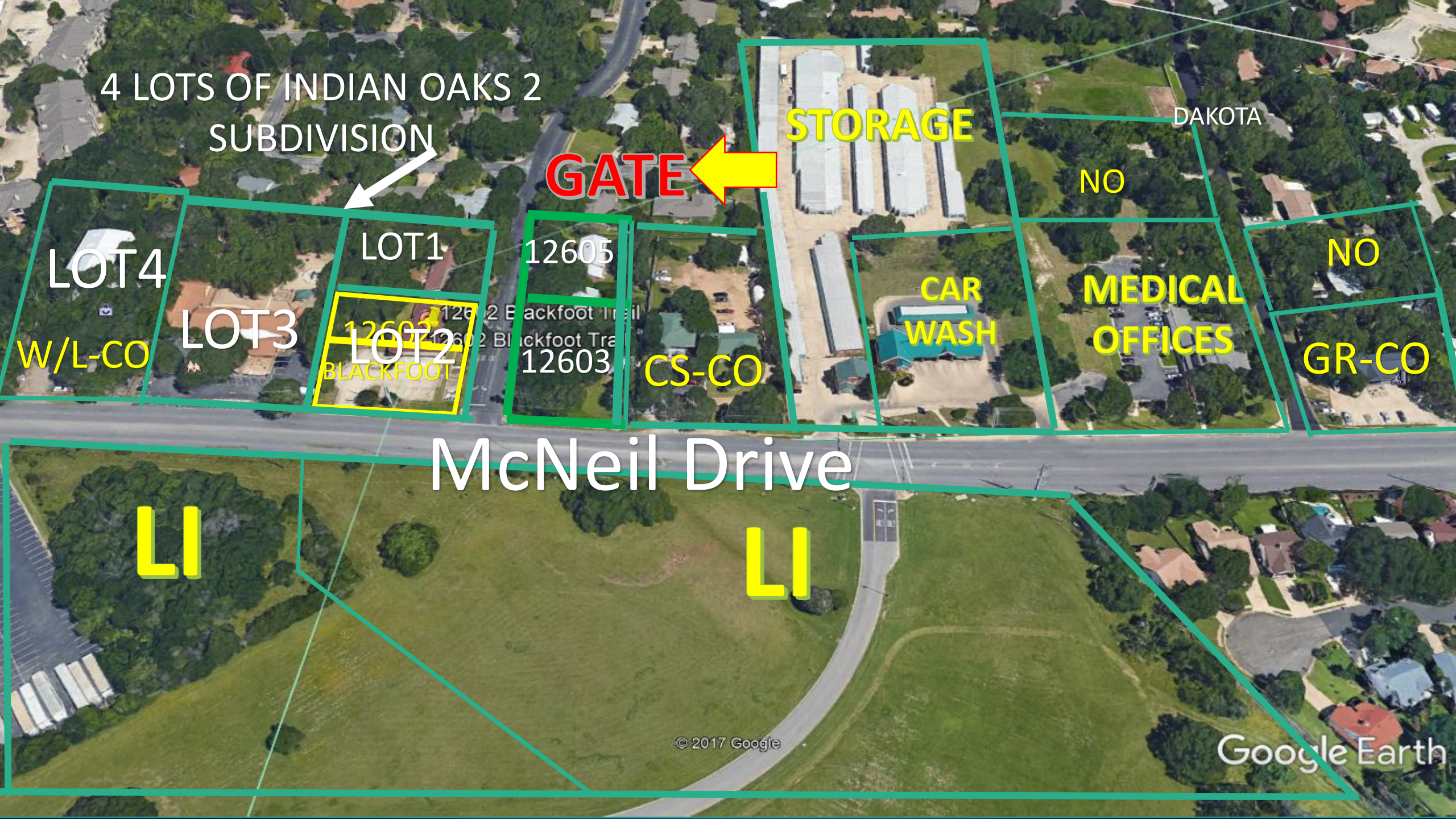
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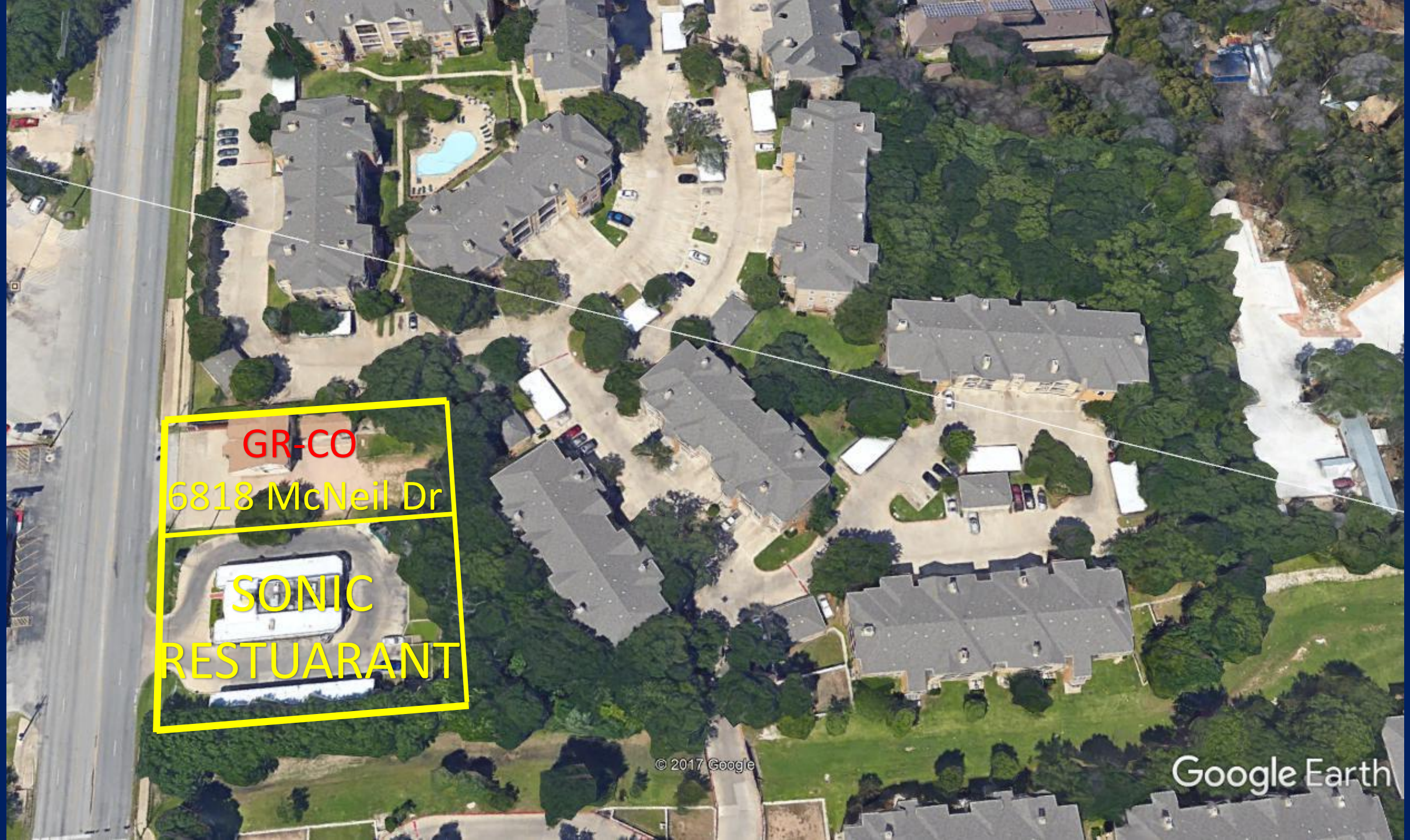
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CS-CO & GR-CO
&MEDICAL OFFICES
7318 McNeil Dr.
McNeil Dr & SAN FELIPE BLVD
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- WHY MR. BIRGANI PROPERTY HAS BEEN SINGLE OUT AND TREATED UNFAIRLY FOR LAST 20 YEARS?

- WHY MR. BIRGANI SMALL PROPERTY MUST BE DIVED BUT OTHER LARGER PROERTIES HAVE NOT BEEN DIVIDED WHEN THEY REZONED?

SINCE 1985, ENTIRE INDIAN OAKS 2 SUBDIVISION IN WHICH PROPERTY IS SITUATED WAS ZONED ENTIRELY COMMERCIAL UNTIL PRESENT TIME

Neighbors purchasing property in Indian Oaks between 1985 to present time had notice of the commercial nature of Indian Oaks 2 Subdivision and specially Mr. Birgani's commercial properties.

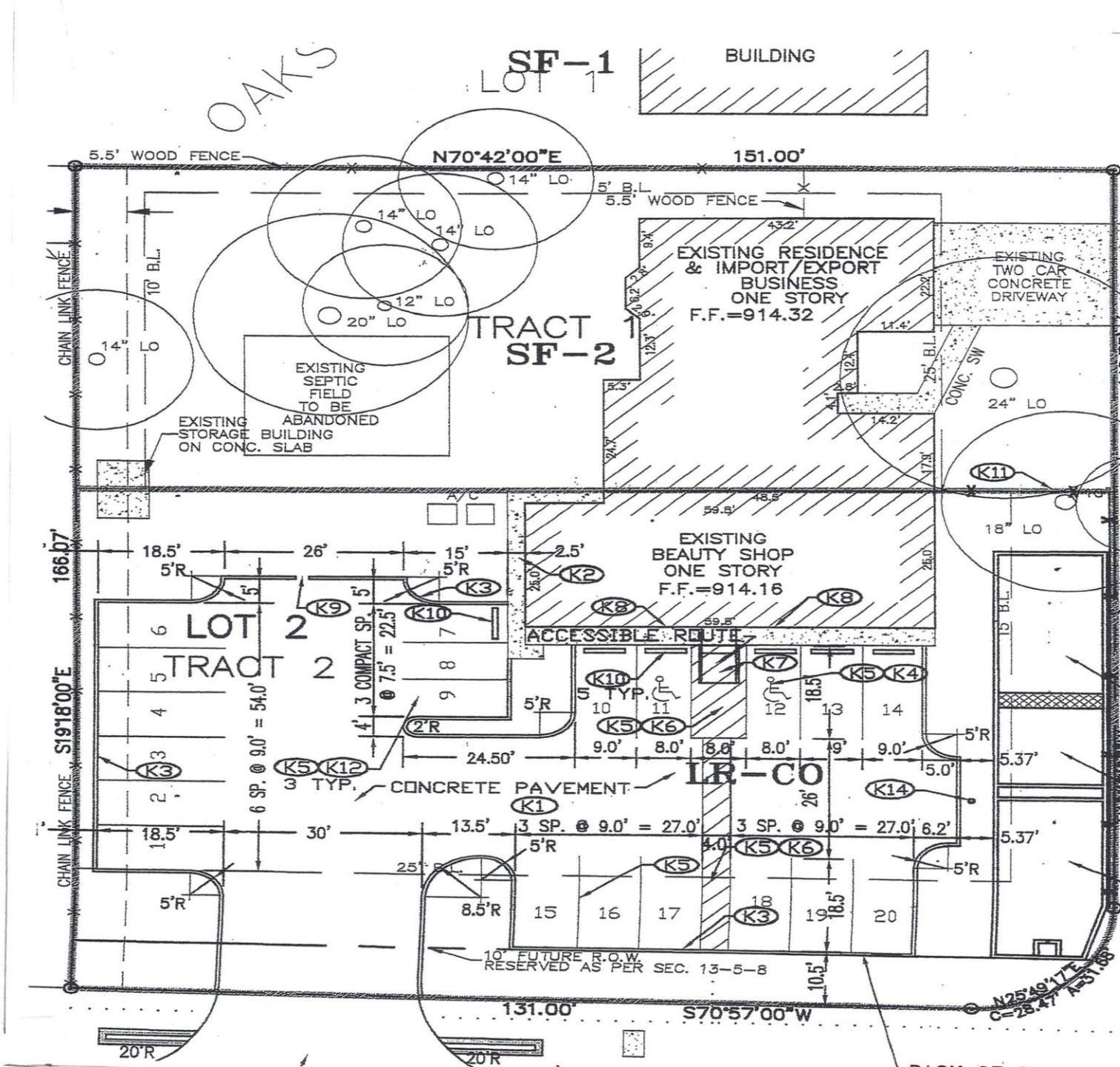
should not expect the city council shut down and destroy my commerical property

LEGAL DESCRIPTION:

LOT 2 OF INDIAN OAKS 2 SUBDIVISION, A SUBDIVISON OF WILLAIMSON COUNTY. J. BAKER SURWAY #10 RECORDED IN PLAT RECORDS, CABINET J, SLIDE 264, OF WILLIAMSON COUNTY TEXAS

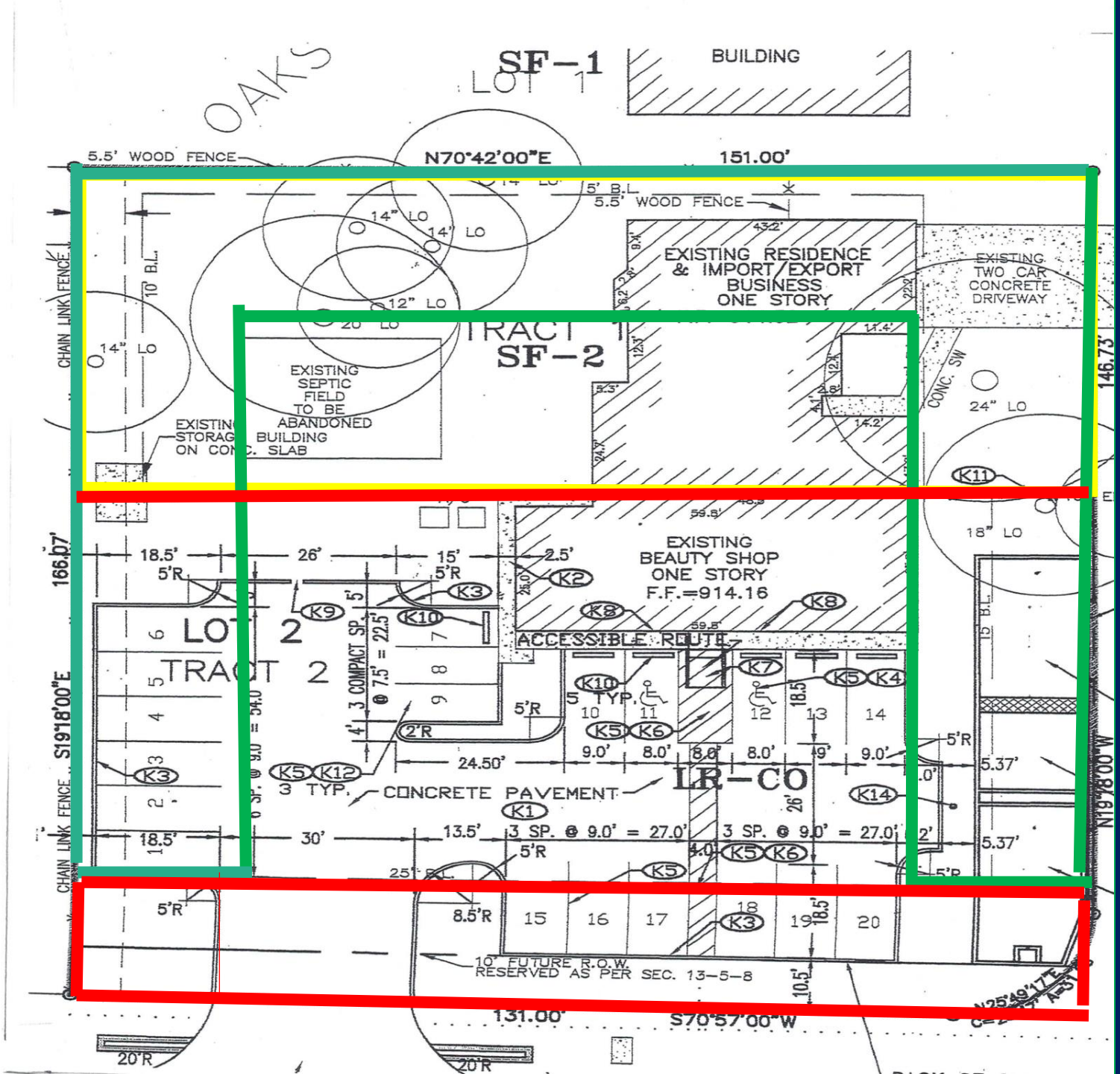
CURRENTLY THE SITE WAS DEVELOPED BASED ON CITY APPROVED SITE PLAN SP-99-2171C. FOR WHOLE PROPERTY NOT BEING DIVIDED.

1. TOTAL SITE 25,039 SF =0.574 ACRES
2. TOTAL AREA BEING DEVELOPED = 17,287 SF =0.397 ACRES = 69%
3. IMPERVIOUS COVER LIMIT UNDER RATTAN CREEK WATERSHED IS 65% TO 70%
4. 250 SF = 1% LEFT TO BE DEVELOPED AND NO LAND TO ADD BUILDING OR PARKING LOT



BASED ON ZAP RECOMMENDATION OF DIVIDING THE PROPERTY IN TWO TRACTS:

1. TRACT1= SF2= 9,664 S.F. =0.222 ACRES
   - IMPREVIOUS COVER= 2,792= 29%
2. TRACT2= 15,375 S.F. =0.352ACRES
   - 15,375-3,937= 11,438 S.F.
   - IMPEVIOUS COVER = 11,439 S.F. = 75%
   - 10% over the impervious limit for Rattan Creek Watershed
   - ON THE SOUTH SIDE (RED AREA): ADDITONAL R.O.W AND REMOVAL OF 10 % IMPREVIOUS COVER OR 25 FEET LANDSCAPE AREA FOR COMMERICAL ZONING –PLEASE SEE PAGE S 1 AND 10 OF STAFF REPORT



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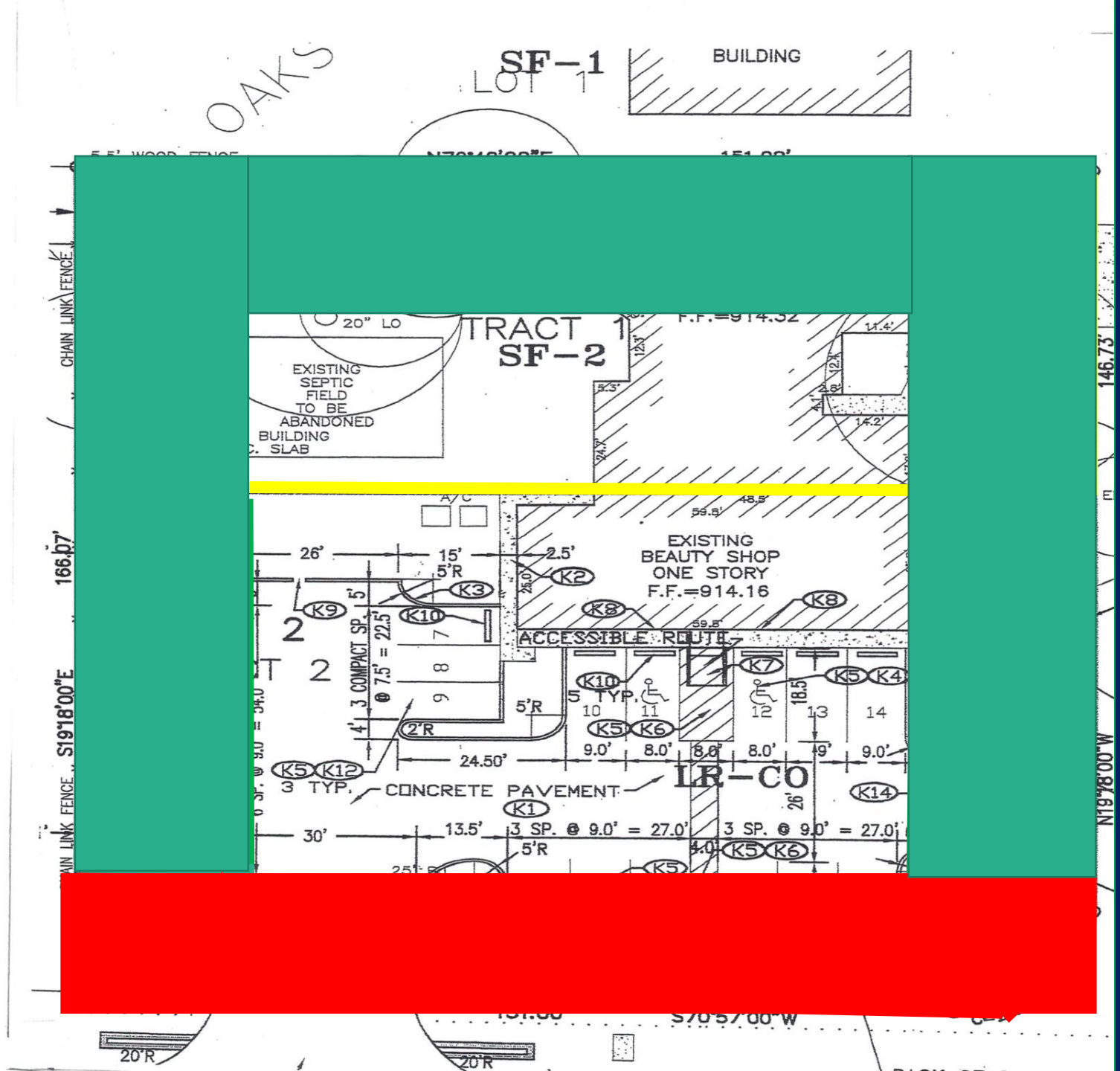
   - 15,375-3,937= 11,438 S.F.
   - IMPEVIOUS COVER = 11,439 S.F. = 75%
   - 10% over the impervious limit for Rattan Creek Watershed
   - ON THE SOUTH SIDE (RED AREA): ADDITONAL R.O.W AND REMOVAL OF 10 % IMPREVIOUS COVER OR 25 FEET LANDSCAPE AREA FOR COMMERICAL ZONING –PLEASE SEE PAGE S 1 AND 10 OF STAFF REPORT
   - GREEN AREA ON EAST AND WEST OF PROPERTY . 25 FEET LANDSCAPE REQUIREMENT FOR COMMERICAL PROPERTIES
   - ABOUT 7,777 SF REMAIN FOR COMMERICAL BUILDING, PARKING LOTS AND WATER FILTERATION AND RETENTION PONDS



BASED ON ZAP RECOMMENDATION OF DIVIDING THE PROPERTY IN TWO TRACTS:

1. TRACT1= SF2= 9,664 S.F. =0.222 ACRES
   - IMPREVIOUS COVER= 2,792= 29%
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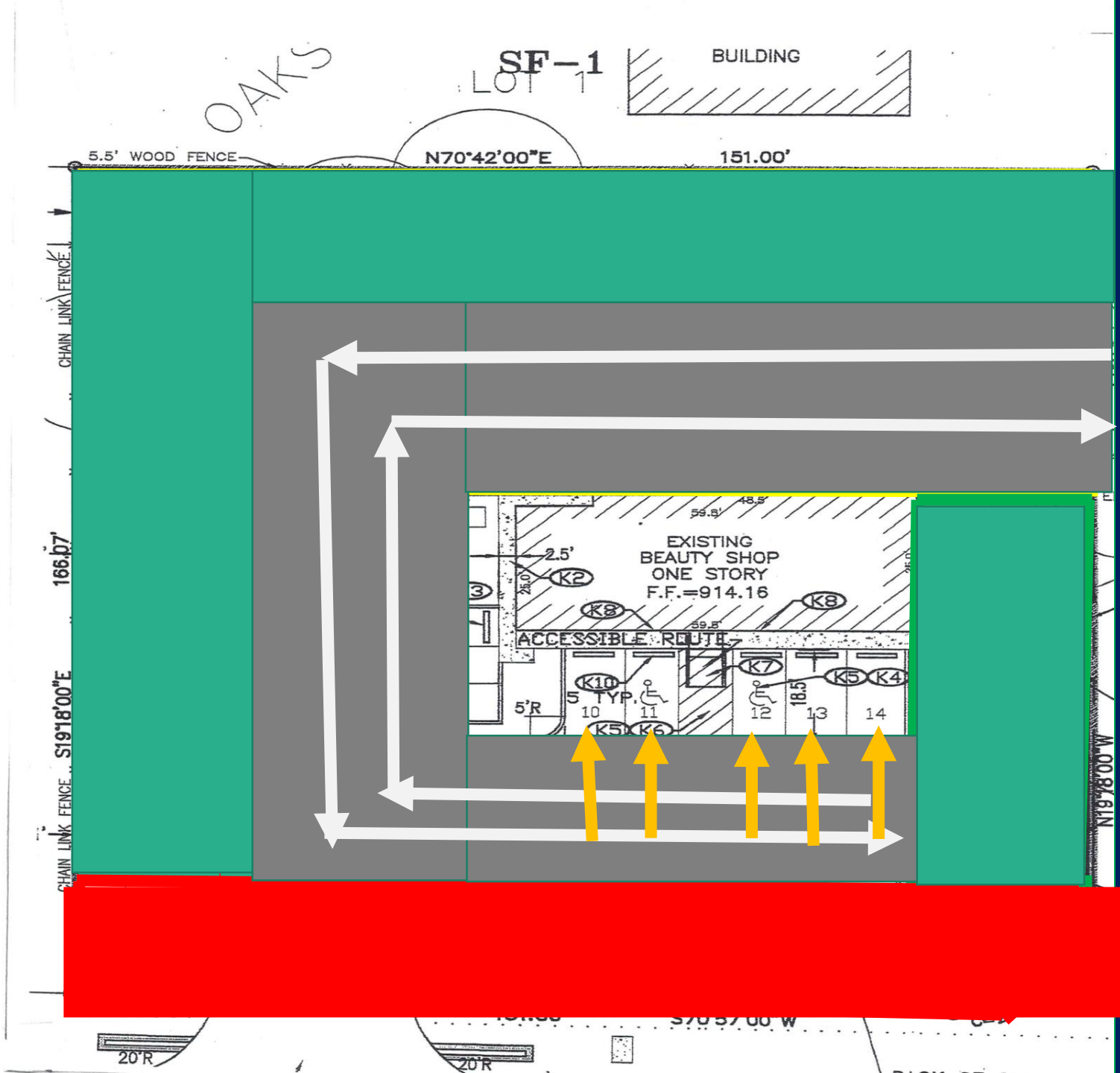


COLOR CODE:

RED = R.O.W (RIGHT OF WAY)

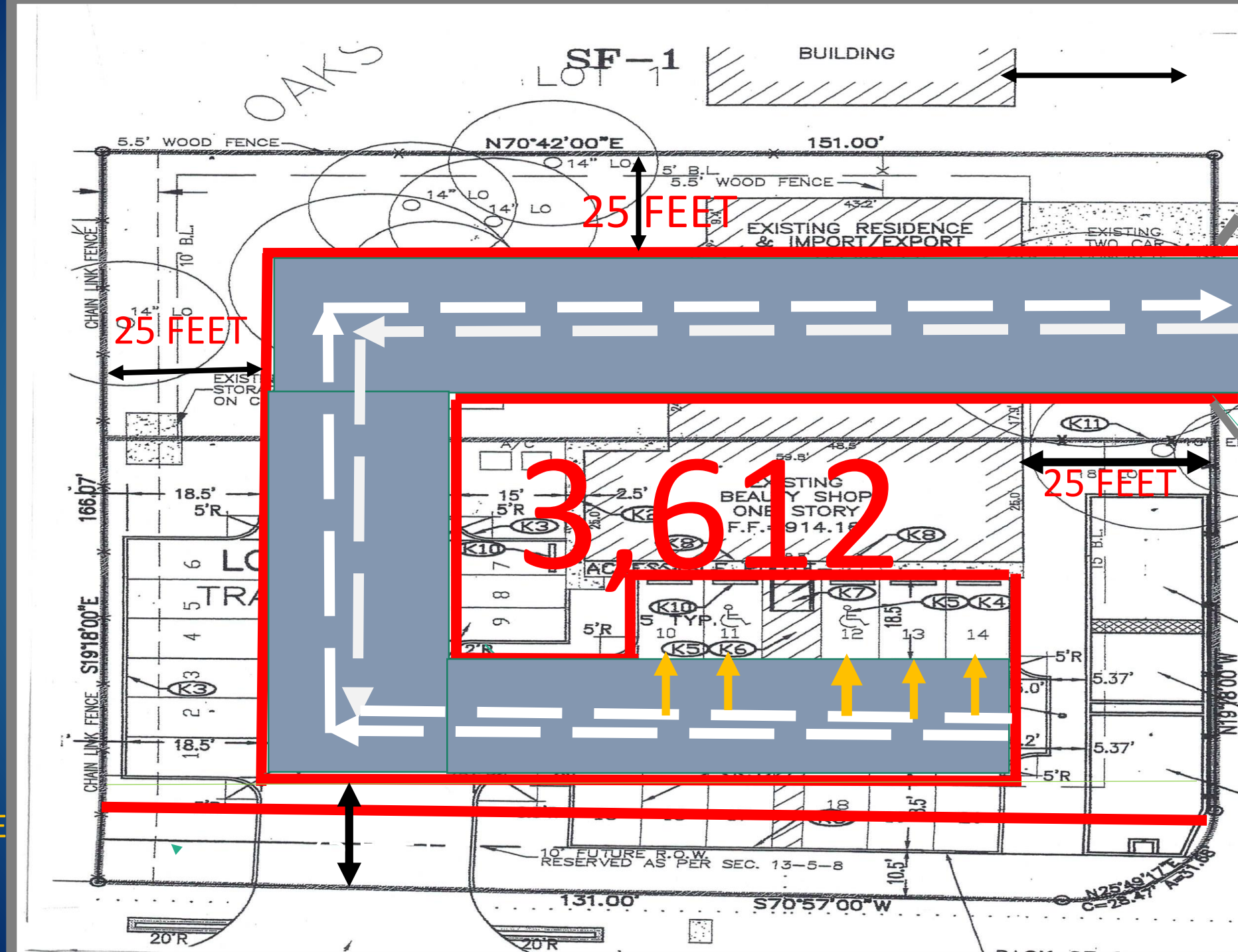
GRAY = NEW ROAD FROM BLACKFOOT TRAIL

GREEN = 25 FEET LANDSCAPE

WHITE = 3,612 SQUARE FEET LEFT OVER FROM 24,880 SF LAND FOR BUILDING, PONDS AND PARKING AREA

1. DISTROY 2,300 SF OF COMMERCIAL BUILDING WORTH $460,000
2. COST OR RECONSTRUCTON OF PONDS AND ROAD= $500,000
3. TOTAL COST $946,000

RESULT: THE PROPERTY WILL BE DISTROY



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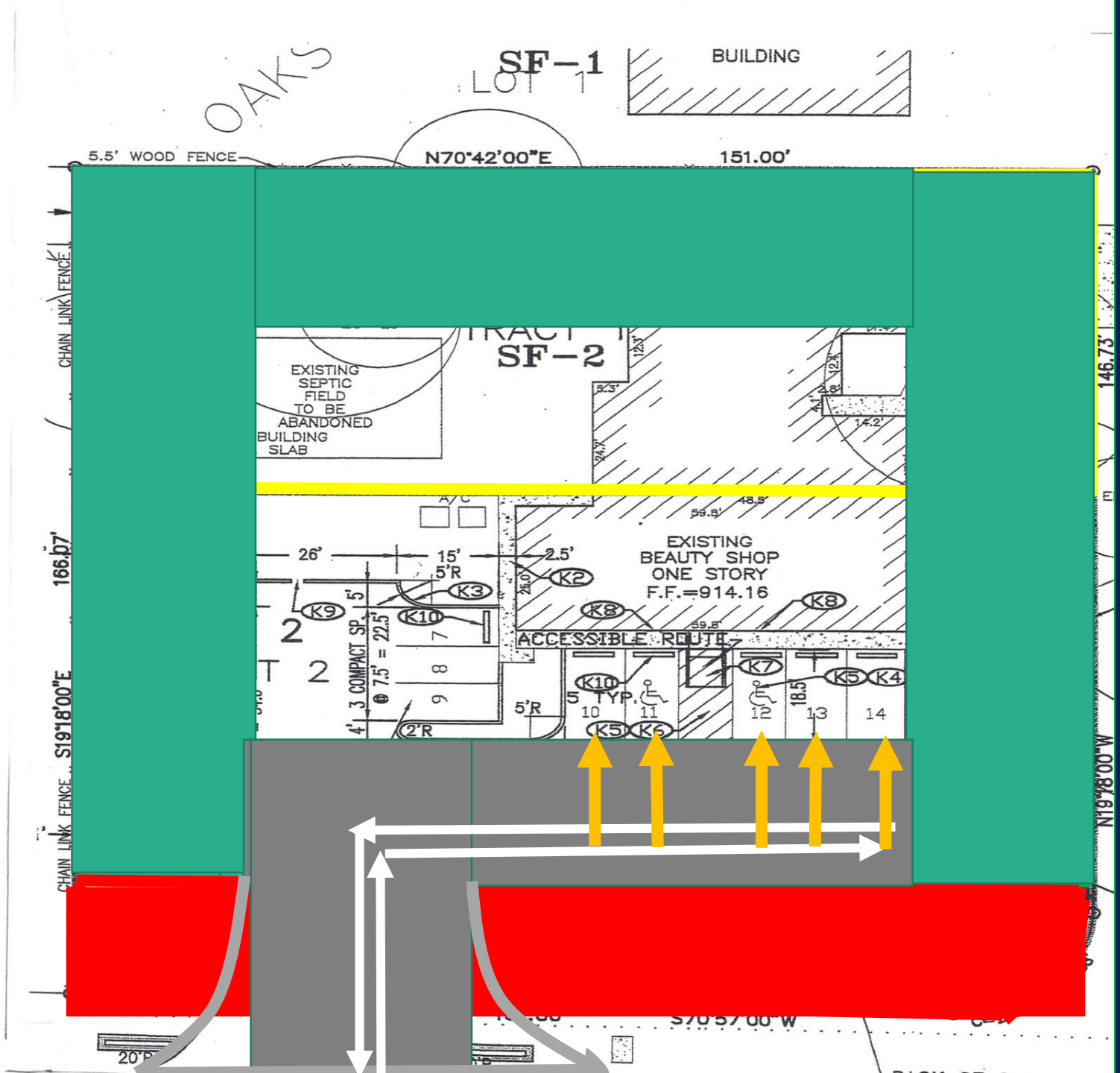
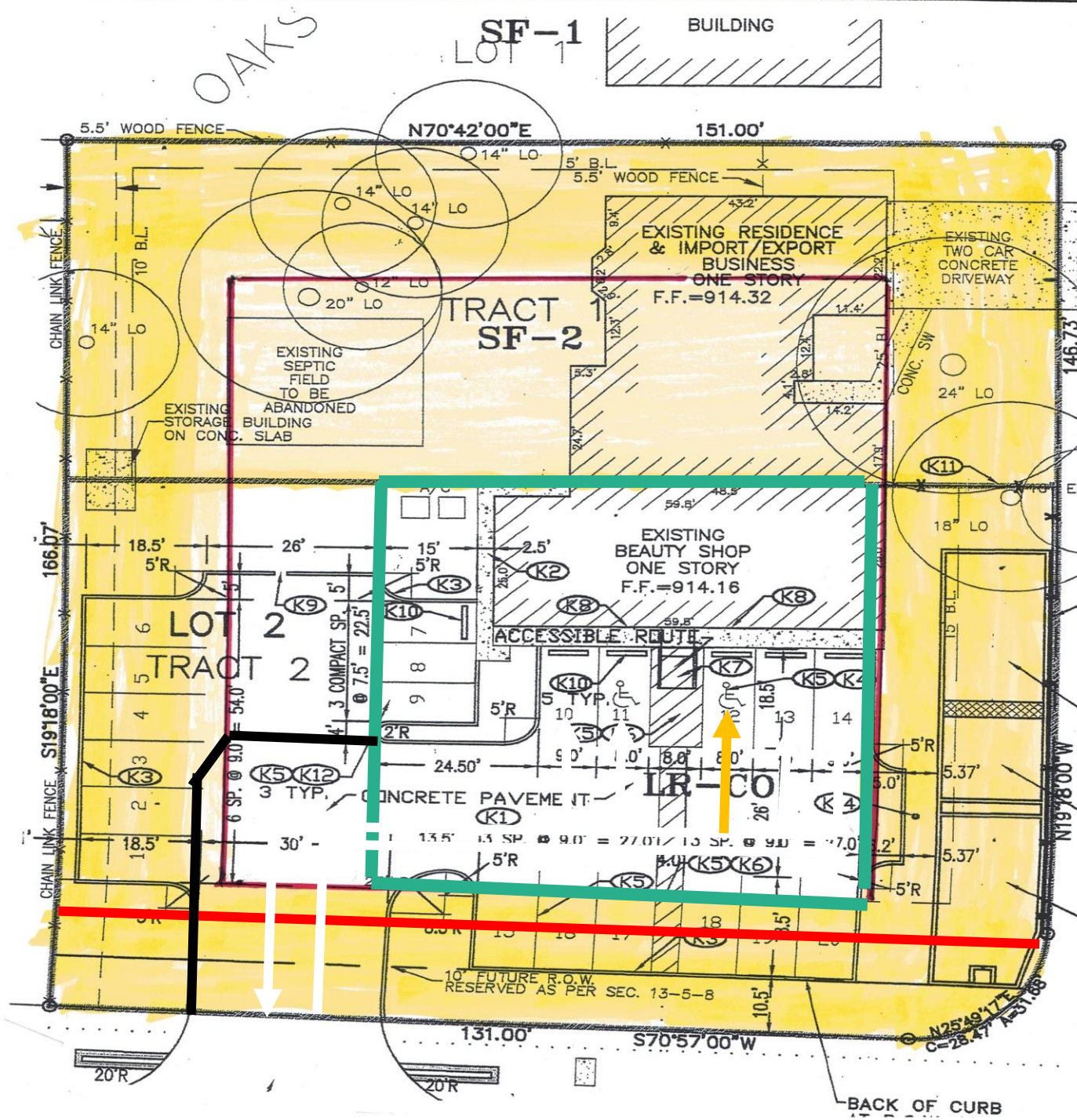
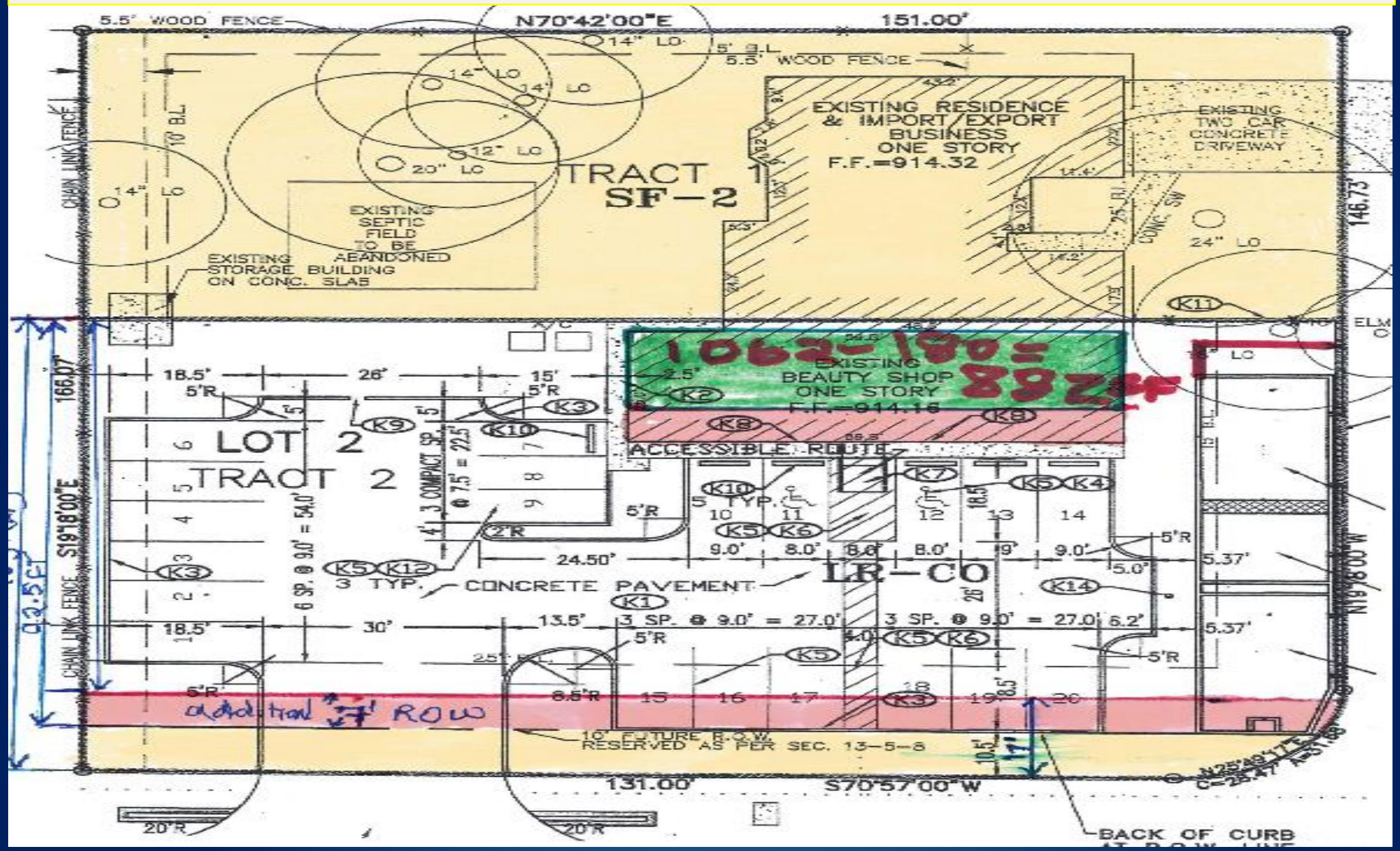


- TOTAL AREA OF LOT2= 24,880 SF
- AREA OF TRACT 1 = 9,664 SF
- AREA OF TRACT 2 = 15,164 SF
- AREA OF R.O.W, FILTERATION PONDS AND LANDSCAPING =7,388 SF
- AREA OF TRACT 2 = 7,777 SF WITH 92% IMPERVIOUS COVERAGE BUT DUE TO RATTAN CREEK WATERSHED LIMITS IS 65% WHICH 27% OVER BUILT AS RESULT OF DIVIDING THE PROPERTY IN TWO TRACTS AGAIN
- %27 REDUCTION FROM IMPREVIOUS COVERAGE = 2,100 SF
- SQUARE FEET AREA FOR BUILDING, PONDS AND 5 PARKING SPACES=5,677 SF
- AT RESULT: WORTHLESS SMALL BUILDING, 5 PARKING SPACES AND ADDITIONAL COST OF $400,000.



UNDER CURRENT RECOMMENDATION COMMERCIAL BUILDING IS REDUCED TO 930 SF WITH NO ADDITIONAL SPACE TO ADD TO THE BUILDING