

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-87-087(RCT)

P.C. DATE: May 28, 2019

DISTRICT: 1

ADDRESS: 4605, 4607, & 4609 N. IH-35 Service Road Northbound

OWNER / APPLICANT: Bahrami Behzad

AGENT: The Abali, LLC (Megan Lasch)

ZONING: SF-3-NP, LO-NP, GR-CO-NP (existing); MF-6-CO-NP (proposed)

SUMMARY STAFF RECOMMENDATION:

Staff recommends the restrictive covenant termination.

PLANNING COMMISSION RECOMMENDATION: *Approved terminating restrictive covenant. Vote: 11-0.*

ISSUES:

The proposed restrictive covenant termination (RCT) has been filed in conjunction with a rezoning case, C14-2019-0046.SH. The Restrictive Covenant affects three lots that are part of the proposed rezoning case. Staff also supports the proposed rezoning case. *Please refer to Exhibits A and B (Zoning Map and Aerial Exhibit).*

CASE MANAGER COMMENTS:

The proposed restrictive covenant termination (RCT) would eliminate requirements tied to a 1987 zoning case (City File #C14-87-087). *Please refer to Exhibit C (Restrictive Covenant).*

The associated rezoning case on the property proposes MF-6-CO-NP zoning to allow the development of a SMART Housing multifamily project. The existing RC prohibits multifamily land use and would prevent the proposed development. The RC also prohibits many other uses (listed below). In 1987, the City used RCs to attach conditions that would now be attached by conditional overlay (CO) or required administratively at time of site plan, not via a RC. Consequently, the RC clouds the property title and makes regulatory application confusing. Terminating the RC would remove the following condition:

1. The property shall be limited to the following land uses: Administrative and business offices, Arts and crafts studio (limited), Business support services, Consumer convenience services, General retail sales (convenience), Hotel-motel, Medical offices, Personal improvement services, Personal services, Professional offices, Day care services (general, limited, and commercial), Public primary educational facilities, Public secondary educational facilities, and Religious assembly.

Staff supports termination of the RC. The outdated use of a RC to limit land uses does not reflect current regulations. Additionally, the limited uses do not allow some land uses that cannot be prohibited under current Code and federal law (for example, Group Home, Telecommunication tower, etc.) Most significantly, the RC would not allow the site to be developed with the proposed SMART Housing multifamily development that would further the goal of providing more affordable housing in Austin. Please see *Exhibit C (Applicant Correspondence)*.

STAFF RECOMMENDATION:

Staff recommends the restrictive covenant amendment.

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

The conditions of the 1987 RC are outdated and have been replaced by more appropriate and effective development regulations under current code. In 1987, the City used RCs to attach conditions that would now be attached by conditional overlay (CO) or required administratively at time of site plan, not via a RC. Consequently, the RC clouds the property title and makes regulatory application confusing.

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 consistent with other properties.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
Site	SF-3-NP, LO-NP, GR-CO-NP	Single family residential, Commercial Services, Undeveloped
North	SF-3-NP, GR-MU-CO-NP, PUD	Single family residential, Greenbelt, Retail shopping center
South	SF-3-NP, LO-NP, LO-CO-NP	Single family residential, Vacant, duplex residential
East	SF-3-NP	Single family residential
West	IH 35, CS-CO-NP	IH 35

NEIGHBORHOOD ORGANIZATIONS:

Homeless Neighborhood Association
 Ridgetop Neighborhood Association
 Delwood II Neighborhood Organization
 Del Valle Community Coalition
 Claim Your Destiny Foundation
 Friends of Austin Neighborhoods
 Neighborhood Empowerment Foundation
 Central Austin Community Development Corporation
 Upper Boggy Creek Neighborhood Planning Team
 Mueller Community Associations
 Mueller Neighborhood Association
 North Austin Neighborhood Alliance
 North Loop Neighborhood Plan Contact Team

AISD
 SELTexas
 Preservation Austin
 The Midtown Alliance
 Austin Innerscity Alliance
 Anberly Airport Association
 Neighbors United for Progress
 Sierra Club
 Bike Austin
 Black Improvement Association
 Austin Neighborhoods Council

CITY COUNCIL DATE/ACTION:

June 20, 2019:

ORDINANCE READINGS: 1st 2nd 3rd

ORDINANCE NUMBER:

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

PHONE: 974-2122



Created: 5/10/2019

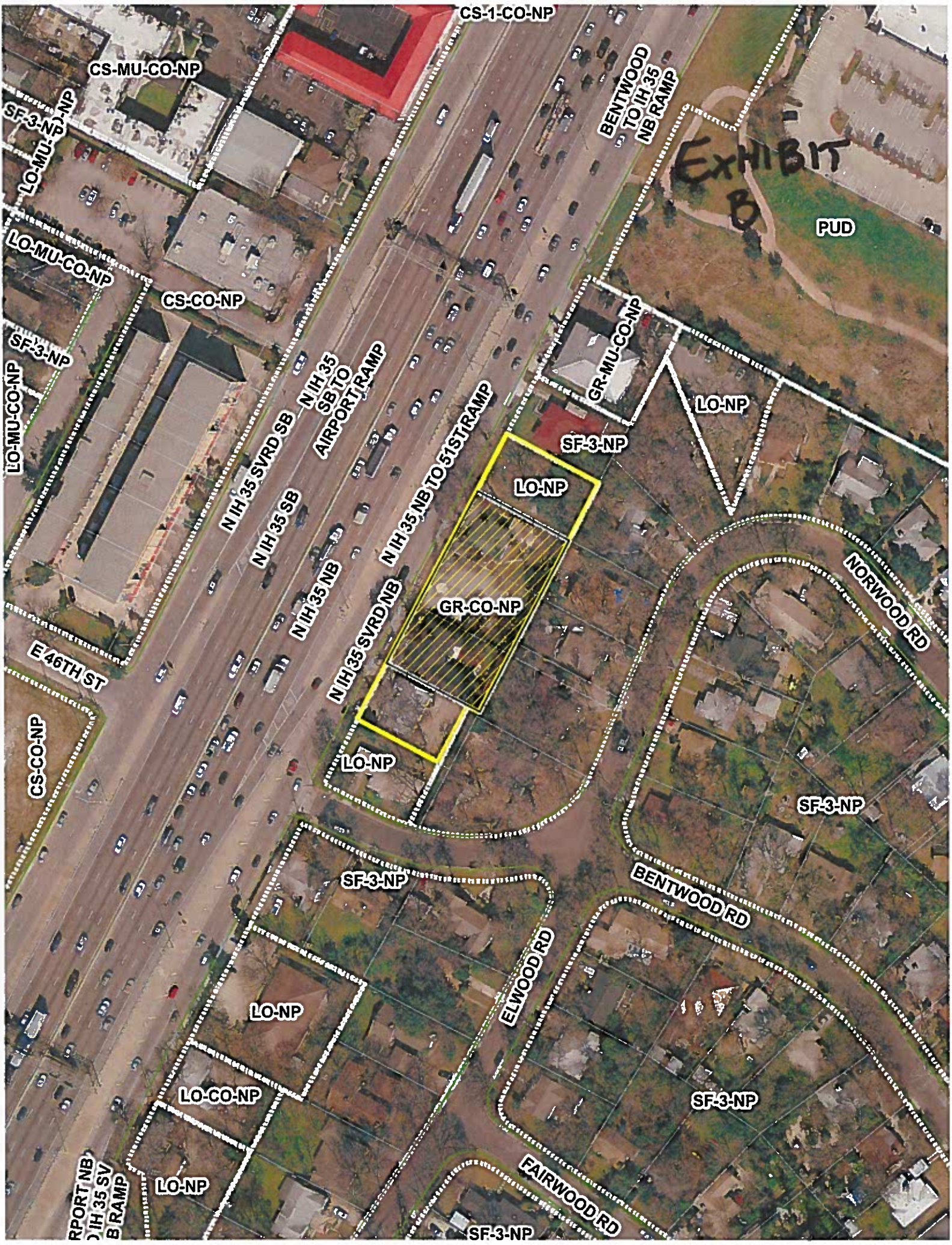


EXHIBIT
C

RESTRICTIVE COVENANT 4 28 0165

Owner: Emerald Wray

3:36 PM 0845

11.00 INDX
1 09/15/87
.99-DOC#
4640.95-CHEK

Owner's Address: 8805 Old Manor Road, Austin, Texas 78724

Consideration: One and No/100 Dollars (\$1.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

Property: Lots 3, 4 and 5 of Delwood Section 2, Block G, of record in Book 4, Page 282B of the Plat Records of Travis County, Texas.

Owner of the Property, for the consideration, impresses the Property with these covenants and restrictions running with the land:

1. The Property shall be limited to the following use types, as defined in the Austin City Code:

Commercial Uses:

Administrative and Business Offices
Arts and Crafts Studio (Limited)
Business Support Services
Consumer Convenience Services
General Retail Sales (Convenience)
Hotel-Motel
Medical Offices
Personal Improvement Services
Personal Services
Professional Offices

Civic Uses:

Day Care Services (General)
Day Care Services (Limited)
Day Care Services (Commercial)
Public Primary Educational Facilities
Public Secondary Educational Facilities
Religious Assembly

2. Development of the Property shall be subject to the Site Development Regulations of "LR" zoning district, as set forth in Section 2479 of Chapter 13-2A of the Austin City Code.
3. Upon passage of a Conditional Overlay Ordinance by the City Council which imposes a conditional overlay district on the Property and which provides for conditions identical to those imposed by this Restrictive Covenant, then the provisions of this restrictive covenant shall terminate automatically. Owner shall not object to the conditions imposed on the Property by such Conditional Overlay Ordinance.
4. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for (a) the City of Austin, a municipal corporation, its successors and assigns, or (b) any person or persons owning real property within 300 feet of the Property to prosecute proceedings at law or in equity, against such person or entity violating or attempting to violate such agreement or covenant, to prevent the

person or entity from such actions, and to collect damages for such actions.

5. If any part of this agreement or covenant shall be 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.
6. If at any time the City of Austin, its successors or assigns, 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.
7. Except as provided in Paragraph 3 of this Restrictive Covenant, this agreement may be modified, amended, or terminated only by joint action of (a) a majority of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (b) the owner(s) of the Property at the time of such modification, amendment or termination.

All citations to the Austin City Code shall refer to the Austin City Code of 1981, as amended from time to time, unless otherwise specified.

When the context requires, singular nouns and pronouns include the plural.

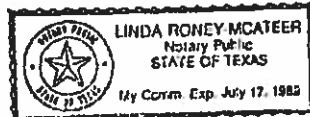
EXECUTED this 5th day of August, 1987.

Emerald Wray
Emerald Wray

THE STATE OF TEXAS

1

This instrument was acknowledged before me on August
5th, 1987, by Emerald Wray.



Linda Roney McAttee
Notary Public, State of Texas
Notary's name (printed):

Notary's commission expires:

14R87087.RC1

RESTRICTIVE COVENANT

Owner: Emerald Wray

Owner's Address: 8805 Old Manor Road, Austin, Texas 78724

Consideration: One and No/100 Dollars (\$1.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

Property: Tract 1: Lot 3 of Delwood Section 2, Block G, of record in Book 4, Page 282B of the Plat Records of Travis County, Texas.

Tract 2: Lot 4 of Delwood Section 2, Block G, of record in Book 4, Page 282B of the Plat Records of Travis County, Texas.

Tract 3: Lot 5 of Delwood Section 2, Block G, of record in Book 4, Page 282B of the Plat Records of Travis County, Texas.

Owner of the Property, for the consideration, impresses the Property with these covenants and restrictions running with the land:

1. Tracts 1, 2, and 3 of the Property shall be considered a single site when any modifications of all or part of the Site Plan approved for those tracts, as part of Zoning Case No. C14r-87-087, are reviewed administratively in accordance with Sections 6100 through 6199 of Chapter 13-2A of the Austin City Code, so that any such review shall require review of all of Tracts 1, 2, and 3 as a single site. This provision exists in spite of the definition of site in Section 1334 of Chapter 13-2A of the Austin City Code.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law or in equity, against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant shall be declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin, its successors or assigns, fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (b) by the owner(s) of the Property at the time of such modification, amendment or termination.

All citations to the Austin City Code shall refer to the Austin City Code of 1981, as amended from time to time, unless otherwise specified.

When the context requires, singular nouns and pronouns include the plural.

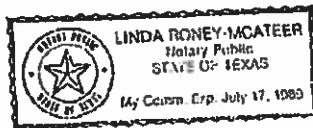
EXECUTED this 5th day of August, 1987.

Emerald Wray
Emerald Wray

THE STATE OF TEXAS

§

This instrument was acknowledged before me on August 5, 1987, by Emerald Wray.



Linda Roney-McAtee
Notary Public, State of Texas
Notary's name (printed):

Notary's commission expires:

14R87087.RC2

RECORDER'S MEMORANDUM:
At the time of recording, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions, and changes were present at the time the instrument was filed and recorded.

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

SEP 15 1987



Linda McManus
COUNTY CLERK
TRAVIS COUNTY, TEXAS

FILED

1987 SEP 15 PM 3:06

COUNTY CLERK
TRAVIS COUNTY, TEXAS

AFTER RECORDING, PLEASE RETURN TO:

CITY OF AUSTIN
DEPT. OF LAW
P. O. BOX 1068
AUSTIN, TEXAS 78767-0828

10416 0803

ATTN: Lupita Arellano



EXHIBIT
D

May 8, 2019

Greg Guernsey, Director of Planning and Zoning Department
One Texas Center
505 Barton Springs Rd.
Austin, TX 78704

RE: Addition of Termination of Restrictive Covenants to Zoning Case #C14-2019-0046.SH and
Neighborhood Plan Amendment #NPA-2019-0012.01.SH

Mr. Guernsey,

We are requesting the attached Application for Termination of Restrictive Covenants be added to our current Zoning Case (C14-2019-0046.SH) and our current Neighborhood Plan Amendment (NPA-2019-0012.01.SH). The restrictive covenant in question will prohibit certain land uses, which will be counter to the use proposed in the Zoning Case and the Neighborhood Plan Amendment. Terminating the outdated Restrictive Covenant will allow the proposed development to move forward and allow the land to be developed to its highest and best use.

Thank you for your consideration and feel free to reach out to me, should you or your staff have any questions.

Sincerely,

A handwritten signature in black ink that reads "Megan Lasch". The signature is written in a cursive, flowing style.

Megan Lasch
O-SDA Industries, LLC
5501-A Balcones Dr. #302
Austin, TX 78731