

## RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

CASE: C14-02-0183(RCA)  
1118 Tillery Street

DISTRICT: 3

ADDRESS: 1118 Tillery Street

SITE AREA: 3.781 acres

PROPERTY OWNERS:  
Theodore and Mary E. Lopez

AGENT:  
Drenner Group PC  
(Leah Bojo)

CASE MANAGER: Heather Chaffin (512-974-2122, [heather.chaffin@austintexas.gov](mailto:heather.chaffin@austintexas.gov))

STAFF RECOMMENDATION:

**Staff supports the Applicant's request to amend the restrictive covenant by removing Tracts 1, 2, 4 and 5.**

*For a summary of the basis of staff's recommendation, see case manager comments on page 2.*

PLANNING COMMISSION ACTION / RECOMMENDATION:

CITY COUNCIL ACTION:  
TBD

ORDINANCE NUMBER:

ISSUES:

The subject property is developed with plant nursery land use and was rezoned from SF-3 to CS-MU-CO-NP as part of the Govalle Neighborhood Plan in 2002-2003. No changes to this zoning are currently proposed. This public restrictive covenant (RC) was created concurrent with the rezoning and states that if use of the property as a plant nursery use is discontinued for 90 consecutive days, the owner of the property will not object to the City of Austin rezoning the Property to SF-4A-NP. The RC applies to 5 tracts, and the Applicant is requesting to remove 4 of these tracts from the RC. ***Please see Exhibit C- Redlined Restrictive Covenant.***

CASE MANAGER COMMENTS:

The subject property is located on the west side of Tillery Street between Govalle Avenue and Goodwin Avenue. North of the subject property is another CS-MU-CO-NP property that is subject to the same RC and includes residential and nursery land uses. Further north is a residential area zoned SF-3-NP. East of the property, across Tillery Street, is a residential area zoned SF-3-NP. West of the property is a residential area zoned SF-3-NP and the Austin Community College Eastview Campus, which is zoned P-NP. To the south are residential properties zoned SF-3-NP. Other land uses and zoning categories in the area include undeveloped, religious assembly and townhouse-condominium (zoned MF-3-NP, SF-3-NP and MF-3-NP, respectively). ***Please see Exhibits A and B- Zoning Map and Aerial Exhibit.***

At the time of the CS-MU-CO-NP zoning in 2002-2003 the subject property and the property to the north were under the same ownership and included nursery and residential uses. As stated previously, the property to the north is also subject to the same RC. The conditional overlays applied to these properties included the following:

1. The following uses may not exceed 5,000 square feet of gross floor area:  
Administrative and business office, Professional office.
2. The following uses are prohibited uses: Agricultural sales and services, Art and craft studio (general), Automotive repair services, Automotive washing (of any type), Automotive rentals, Automotive sales, Business or trade school, Campground, College and university facilities, Commercial off-street parking, Communication service facilities, Community recreation (public), Construction sales and services, Consumer repair services, Counseling services, Custom manufacturing, Day care services (general), Day care services (commercial), Day care services (limited), Drop-off recycling collection facility, Equipment repair services, Exterminating services, Food sales, General retail sales (convenience), Hotel-motel, Hospital services (general), Indoor entertainment, Kennels, Art and craft studio (limited), Building maintenance services, Business support services, Club or lodge, Commercial blood plasma center, Communications services, Community recreation (private), Congregate living, Consumer convenience services, Convenience storage, Cultural services, Electronic prototype assembly, Equipment sales, Financial services, Funeral services, General retail sales (general), Guidance services, Hospital services (limited), Indoor sports and recreation Laundry services, Limited warehousing and distribution, Maintenance and service facilities, Medical offices (not exceeding 5000 sq. ft. gross floor area), Medical offices (exceeding 5000 sq. ft. gross floor area), Monument retail sales, Off-site accessory parking, Outdoor sports and recreation, Personal improvement services, Pet

services, Private secondary educational facilities, Public secondary educational facilities, Residential treatment, Restaurant (general), Safety services, Software development, Transportation terminal, Veterinary services, Multifamily residential, Outdoor entertainment, Pawn shop services, Personal services, Private primary educational facilities, Public primary educational facilities, Research services, Restaurant (drive-in, fast food), Restaurant (limited), Service station, Theater, and Vehicle storage.

As a result, the only land uses permitted on the subject property are Single family residential, Duplex residential, Plant nursery, Administrative and Business Office, and Professional office. The CO also limits the office land uses to a maximum of 5,000 square feet.

In 2013-2014 the property owner to the north requested removing their property from the RC. Staff supported the request but Planning Commission and City Council denied the request.

Staff has received correspondence in opposition to the RC amendment. ***Please see Exhibit D-Correspondence.***

Staff supports the Applicant's request to remove Tracts 1, 2, 4 and 5 from the restrictive covenant. The significant number of prohibited land uses that were added with the conditional overlay limit the property to very few uses. The residential and office uses are suitable for the area.

**EXISTING ZONING AND LAND USES:**

	ZONING	LAND USES
Site	CS-MU-CO-NP	Plant nursery
North	CS-MU-CO-NP, SF-3-NP	Plant nursery, Single family residential, Religious assembly
South	SF-3-NP, MF-3-NP	Single family residential, Religious assembly
East	SF-3-NP	Single family residential, Religious assembly
West	SF-3-NP, P-NP	Single family residential, Public college/university, Undeveloped

**NEIGHBORHOOD PLANNING AREA:** Govalle/Johnston Terrace NP (Govalle)

**WATERSHED:** Boggy Creek

**NEIGHBORHOOD ORGANIZATIONS:**

Govalle/Johnston Terrace NPCT  
 Guadalupe Neighborhood Development Corporation  
 Del Valle Community Coalition  
 Govalle Neighborhood Association  
 SELTexas  
 Austin Neighborhood Council  
 El Concilio Mexican American Neighborhoods  
 Homeless Neighborhood Association

Sierra Club  
 East Austin Conservancy  
 PODER  
 AISD  
 Friends of Austin Neighborhoods  
 Neighbors United for Progress  
 Austin Lost & Found Pets  
 Preservation Austin

AREA CASE HISTORIES:

CASE NUMBER/ ADDRESS	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C14-02-0183(RCT) 1120 Tillery Street	To terminate RC.	12/10/2013: To deny request. (5-0)	1/30/2014: To deny request. (5-0)

ADDITIONAL STAFF COMMENTS:Comprehensive Planning

This request per the agent is to remove the existing Restricted Covenant (Travis County Document 2003291517) that states that if the use of the Property as a plant nursery use is discontinued for 90 consecutive days, the owner of the Property will not object to the City of Austin rezoning the Property to SF-4A-NP (Single Family Residence Small Lot-Neighborhood Plan). The purpose of this application is to amend the existing restrictive covenant to remove the Property from the restrictive covenant so as to allow a change-of-use from plant nursery to other land uses permitted in the CS-MU-CO-NP zoning district. The property is Zoned CS-MU-CO-NP (General Commercial Services – Mixed Use – Conditional Overlay – Neighborhood Plan) and is located in the Govalle Neighborhood Planning Area (NPA) of the larger Govalle / Johnston Terrace Combined NPA, and it is currently developed with a plant nursery land use. The property is designated Single Family on the Future Land Use Map (FLUM).

Imagine Austin- The property is not located along an Activity Corridor or within an Activity Center and has mixed use zoning on it, which allows for residential uses. The policies of Imagine Austin Comprehensive Plan are broad in scope and the Plan is neutral on amending a restricted covenant.

Environmental

No environmental review comments regarding the proposed amendment.

Site Plan

Site Plan comments will be provided at time of site plan submittal; no comments at this time.

Parks & Recreation

PR1: Parkland dedication will be required for any new residential units or hotel-motel keys resulting from this restrictive covenant amendment.

If the applicant wishes to discuss parkland dedication requirements in advance of any future site plan or subdivision applications, please contact this reviewer:

thomas.rowlinson@austintexas.gov. At the applicant's request, PARD can provide an early determination of whether fees in-lieu of land will be allowed.

Transportation

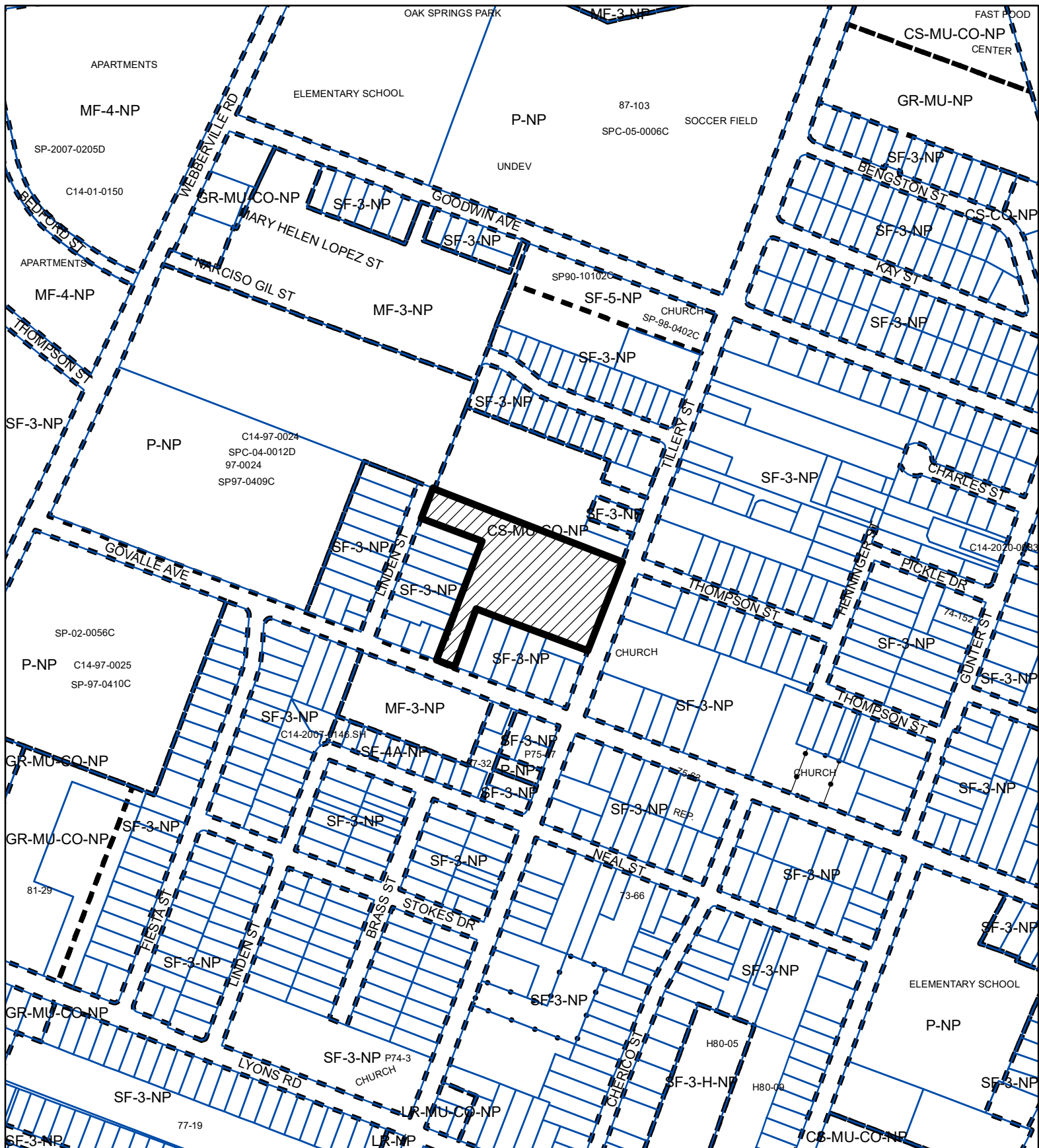
ATD Staff has no objections to the removal of the existing restrictive covenant. Upon redevelopment the site will need to comply with all transportation requirements of the Land Development Code, including right of way dedication per the Austin Strategic Mobility Plan, and any and all required studies and their associated mitigations.

Water Utility

AW1. No comment for restrictive covenant release.

INDEX OF EXHIBITS TO FOLLOW

- A: Zoning Map
- B. Aerial Exhibit
- C. Redlined Restrictive Covenant
- D. Correspondence



SUBJECT TRACT



PENDING CASE



ZONING BOUNDARY

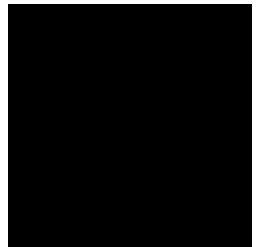
## Restrictive Covenant Amendment

CASE#: C14-02-0183(RCA)

1" = 400'

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 the Housing and Planning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or





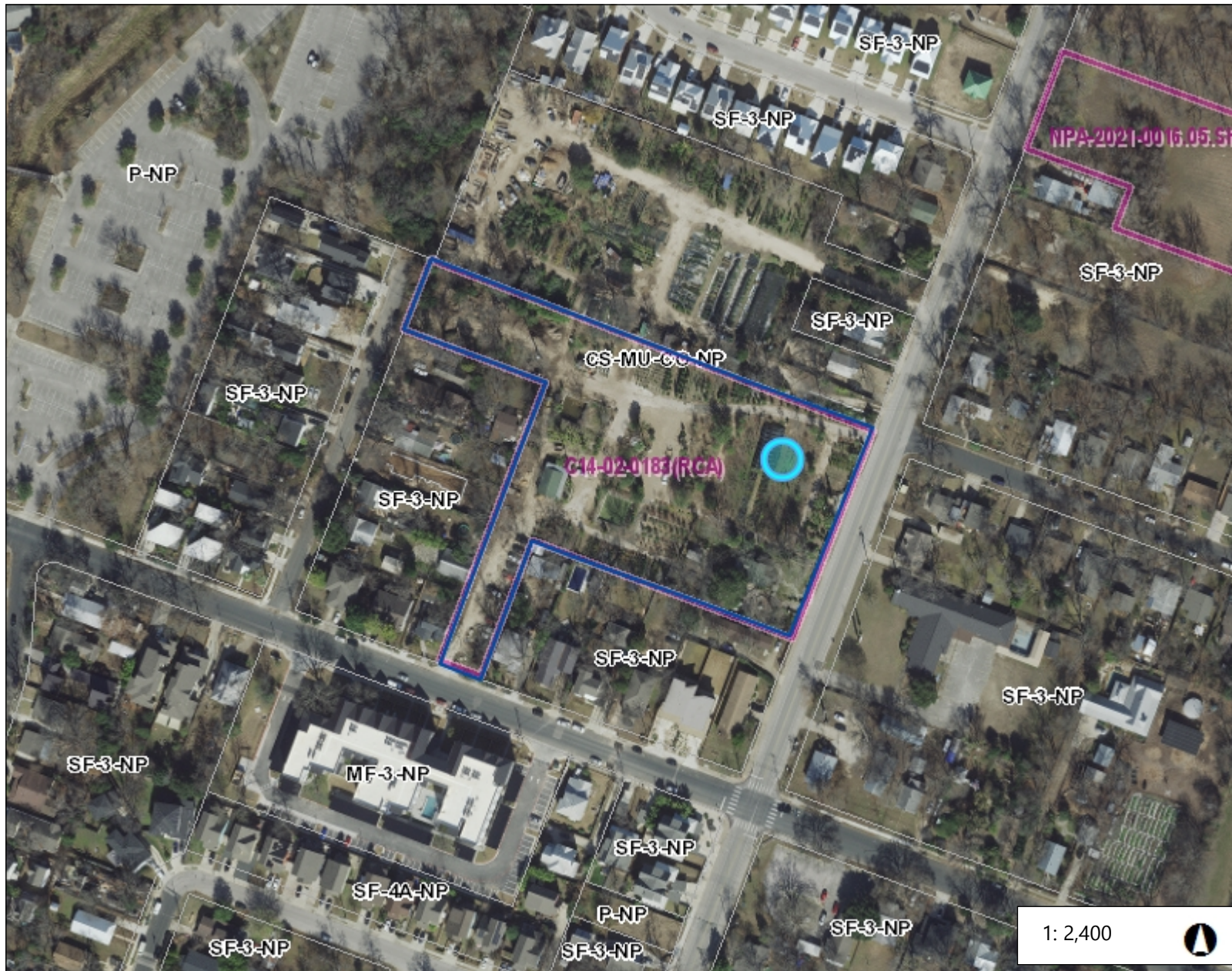
Created: 8/26/2021



# Property Profile

## Legend

-  Zoning Review Cases- IN REV
-  Zoning Text



0.1 0 0.04 0.1 Miles

NAD\_1983\_StatePlane\_Texas\_Central\_FIPS\_4203\_Feet

Date Printed:

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## Notes

Zoning Case No. C14-02-0183

**RESTRICTIVE COVENANT**

OWNER: Theodore Lopez and Mary E. Lopez

ADDRESS: 12010 Shropshire Boulevard, Austin, Texas 78753

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:

~~Tract One and Tract Two: (1116 and 1118 Tillery Street) A 1.51 acre tract of land and a 1.53 acre tract of land out of Lots 7 and 8, respectively, of the Fred Erzkus unrecorded subdivision in the City of Austin, Travis County, the tracts being more particularly described by metes and bounds in a Warranty Deed recorded in Document No. 2000108864, Official Public Records of Travis County, Texas.~~

Tract Three: (1120-1/2 Tillery Street) A 39 x 150 foot tract of land (0.13 acre) out of Outlots 46 and 51, Division A, in the City of Austin, Travis County, the tract being more particularly described by metes and bounds in a Warranty Deed recorded in Document No. 20020816130, Official Public Records of Travis County, Texas.

~~Tract Four: (1123 Linden Street) Lot 7A and Lot 7B, resubdivision of Lot 7, Block 1, Outlots 45 and 46, Division A, Cherico Subdivision No. 2, a subdivision in the City of Austin, Travis County, according to the map or plat of record in Plat Book 4, Page 61, Plat Records of Travis County, Texas.~~

~~Tract Five: (3008 Govalle Avenue) A 60 x 200 foot tract of land being generally out of Outlot 46, Division A, in the City of Austin, Travis County, being that same property described in a Warranty Deed recorded in Document 2000147956, Official Public Records of Travis County, Texas.~~

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

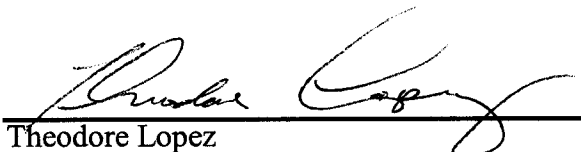
1. If use of the Property as a plant nursery use is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to single family residence small lot-neighborhood plan (SF-4A-NP) combining district as defined in Chapter 25-2 of the City Code. Normal seasonal cessation of a use, or temporary discontinuance for purposes of maintenance or rebuilding of the Property after damage or destruction may not be used in calculating of the period of discontinuance

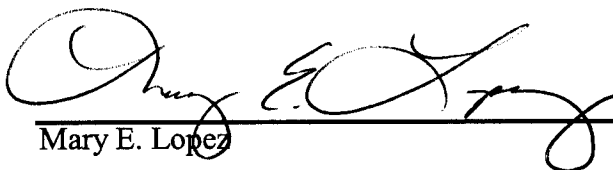
5/8/03 # 24

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 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 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.
4. 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.
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, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

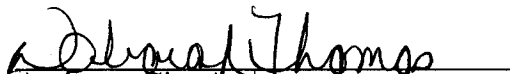
EXECUTED this the 10<sup>th</sup> day of March, 2003.

OWNER:

  
Theodore Lopez

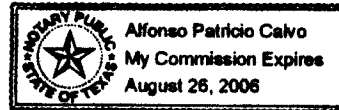
  
Mary E. Lopez

APPROVED AS TO FORM:

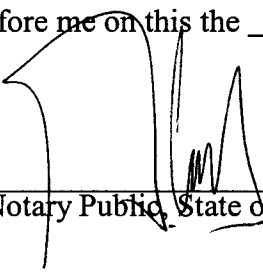
  
Assistant City Attorney  
City of Austin

THE STATE OF TEXAS  
COUNTY OF TRAVIS

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§  
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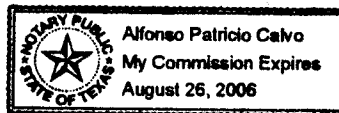


This instrument was acknowledged before me on this the 10<sup>th</sup> day of March, 2003, by Theodore Lopez.

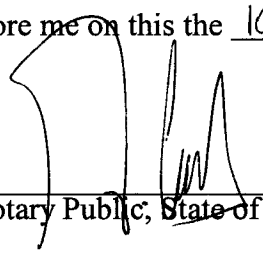
  
\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS  
COUNTY OF TRAVIS

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This instrument was acknowledged before me on this the 10<sup>th</sup> day of March, 2003, by Mary E. Lopez.

  
\_\_\_\_\_  
Notary Public, State of Texas

After Recording, Please Return to:  
City of Austin  
Department of Law  
P. O. Box 1546  
Austin, Texas 78767-1546  
Attention: Diana Minter, Legal Assistant

**FILED AND RECORDED**  
OFFICIAL PUBLIC RECORDS



12-18-2003 01:47 PM 2003291517  
TANGUMAK \$18.00  
DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

# GOVALLE NEIGHORHOOD ASSOCIATION

www.govalle.org

September 12, 2021

**Re: Ted's Trees Restrictive Covenant**  
**Permit/Case: 2021-121077 ZC**  
**Reference File Name: C14-02-0183(RCA)**

To Planning Commission, Austin City Council, Mayor and City Manager:

The Govalle Neighborhood Association listened to the applicant and discussed this case in our September meeting. The strong majority agreed **the Restrictive Covenant should NOT be amended. Please deny this proposal as you have in the recent past. In 2014, the City of Austin denied the applicant's request to terminate the restrictive covenant.**

**What you need to know:** This restrictive covenant was put in place 20 years ago when the neighborhood adopted the neighborhood plan. The neighborhood plan was the culmination of many volunteer hours, meetings and outreach. The historic Latino community wanted zoning that emphasized family and neighborhood housing and community and de-emphasized the industrial and dirty zoning regulations that had been polluting the neighborhood.

**Ted's Trees was allowed to stay as a commercial operation for 20 years, with the understanding that when that business ceases to operate, this land would become housing.**

**This land is NOT on a corridor and is located in the heart of our neighborhood, surrounded by single family, and affordable housing.**

**Our neighborhood is bleeding families. Please help us build on the work that has been done and make sure this land can become a mix of single and missing middle housing that is affordable and suitable for families.**

The neighborhood voted to DENY applicant's requests to amend the Restrictive Covenant.

Sincerely,

/Jessica L. Eley/

//Candace Fox//

Jessica L. Eley

Candace Fox

Co-Chair GNA

Co-Chair GNA



# GOVALLE NEIGHORHOOD ASSOCIATION

[www.govalle.org](http://www.govalle.org)



Based on Original art mural design by Rory Skagen

**From:** Chaffin, Heather  
**Sent:** Friday, January 21, 2022 9:47 AM  
**To:** Jessica Eley  
**Subject:** RE: Ted's Trees restrictive covenant  
Good morning,

Due to the recent increase in COVID concerns, we are switching to hybrid Planning Commission meetings where people can attend in person or call in over the phone. Since we're still setting it up, I don't have instructions on hand. I will have them in the next week or so.

Regarding a petition, there are no formal requirements for a petition against a restrictive covenant amendment (RCA). As I stated previously, there is something called a Valid Petition that can be made against a rezoning case, but it is a distinctly different thing. Valid Petitions come out of state law and have formal requirements. A Valid Petition can affect the number of votes required to approve a rezoning at the final reading by City Council.

Since the petition you are working on is not a Valid Petition there are no requirements about format, signatures, etc. There also isn't a process to make it "valid." If you want me to add it to the staff report that goes to Planning Commission and City Council, I will need a PDF or hard copy of the petition. I haven't used Change.org before, so I don't know if you can create a document from that site.

I would recommend that any petition against the RCA include the following:

1. The date
2. The case number and address – C14-02-0183(RCA) , 1118 Tillery Street
3. A brief description of your opposition
4. A place for people to provide their name (printed), signature, and address.

Again, these are not required items but are recommended. You may want to model it after a Valid Petition, so I'm attaching a copy of the preferred Valid Petition format.

Let me know if you have more questions. Staff is currently planning on putting this on the February 8<sup>th</sup> Planning Commission agenda, so notices should go out next week.

Heather

**From:** Jessica Eley  
**Sent:** Thursday, January 20, 2022 5:05 PM  
**To:** Chaffin, Heather <[Heather.Chaffin@austintexas.gov](mailto:Heather.Chaffin@austintexas.gov)>  
**Subject:** Re: Ted's Trees restrictive covenant

This answers a lot of our questions. Thank you! Just two follow up questions.

I've been checking the city website and it says there's no option to call in for PC meetings, only council meetings. This would help a lot if folks could call in.

**How do we register to call in?**

**Is there a template for petitions?**

If we gather support online through a [change.org](https://www.change.org) petition will that be valid? Or only hand written signatures count? Is there a way that something you could add to the file, or only hand signatures count?

On Thu, Jan 20, 2022 at 4:06 PM Chaffin, Heather <[Heather.Chaffin@austintexas.gov](mailto:Heather.Chaffin@austintexas.gov)> wrote:

Hello—

Yes, you can create a petition to protest the restrictive covenant amendment (RCA). For rezoning cases there is a specific kind of petition established by state law that is called a Valid Petition and affects the amount of votes required for rezoning approval. This case is not a rezoning so there is no Valid Petition aspect.

Your petition will not affect legal rules about approval, but will demonstrate neighborhood opposition. Emails or petitions sent to me expressing support or opposition will be attached to the Planning Commission (PC) and City Council (CC) staff reports.

Staff anticipates scheduling this case for the February 8<sup>th</sup> PC agenda, which will be a hybrid meeting—people can attend in person or via phone. Notices are required to be sent out with the information in advance. Please note that several cases might be postponed by commission because of Covid related issues that affected January cases.

Let me know if you have more questions or have emails or items to submit. The earlier that you can submit for the PC or CC agenda, the better.

Heather

**From:** Jessica Eley

**Sent:** Saturday, January 15, 2022 11:29 AM

**To:** Chaffin, Heather <[Heather.Chaffin@austintexas.gov](mailto:Heather.Chaffin@austintexas.gov)>

**Subject:** Ted's Trees restrictive covenant

Hi Heather,

The neighbors are organizing a petition to support the Restrictive Covenant. Is an online petition enough to show support, or is there a formal process we should go through? This is regarding....

**Re: Ted's Trees Restrictive Covenant**  
**Permit/Case:** 2021-121077 ZC  
**Reference File Name:** C14-02-0183(RCA)

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All the best,

~Jess

**From:** Jessica Eley

**Sent:** Tuesday, September 28, 2021 9:21 AM

**To:** Chaffin, Heather <Heather.Chaffin@austintexas.gov>; joy.hardin@austintexas.gov

**Cc:** Candi Fox

**Subject:** Govalle NA Letter Re: C14-02-0183(RCA)

\*\*\* External Email - Exercise Caution \*\*\*

Hi Heather,

This is not a technically a zoning change, but really it is. Because of that we haven't gotten the same letters and announcements the city usually sends out.

Can you tell me when this case is going to Planning Commission?

Also, Can you include our letter in the backup?

In the recent past (2014) the city denied removing the restrictive covenant. Now they're trying to "amend" it, but they essentially want it gutted. 20 years ago when they neighborhood plan was adopted, Ted's Trees was grandfathered in, since it was a nice business. However the Covenant they agreed to says that once they sell, it goes back to SF-4.

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Thanks,  
Jessica L. Eley  
Co-Chair

Govalle Neighborhood Association  
[www.govalle.org](http://www.govalle.org)

## PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to participate in a public hearing, you are not required to participate. This meeting will be conducted both online and in-person at which you will have the opportunity to speak FOR or AGAINST the proposed development or change. Contact the case manager for further information on how to participate in the public hearings. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

Staff is conducting a pilot program to receive case-related comments online which can be accessed through this link or QR code:  
<https://bit.ly/ATXZoningComment>.



During its public hearing, the board or commission may postpone or continue an application's hearing to a later date or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website: [www.austintexas.gov/planning](http://www.austintexas.gov/planning).

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before the public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice. Correspondence and information submitted to the City of Austin are subject to the Texas Public Information Act (Chapter 552) and will be published online

**Case Number: C14-02-0183(RCA)**

**Contact: Heather Chaffin, 512-974-2122**

**Public Hearing: February 8, Planning Commission**

Jacklyn Pocha

Your Name (please print)

☐ I am in favor  
☒ I object

Neal St.

Your address(es) affected by this application (optional)

Jacklyn Pocha

Signature

01-31-22

Date

Daytime Telephone (optional): \_\_\_\_\_

Comments:

The Restrictive Covenant should  
Not Be remove. This tract  
of Land should Be protected  
with the Restrictive Covenant to SF-4A.

If you use this form to comment, it may be returned to:

City of Austin Housing and Planning Department

Heather Chaffin

P. O. Box 1088

Austin, TX 78767-8810

Or: [heather.chaffin@austintexas.gov](mailto:heather.chaffin@austintexas.gov)

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**Case Number: C14-02-0183(RCA)**

**Contact: Heather Chaffin, 512-974-2122**

**Public Hearing: February 8, Planning Commission**

Josephine Rocha

Your Name (please print)

1009 Cherico Street A 78702

Your address(es) affected by this application (optional)

Josephine Rocha

Signature

☐ I am in favor  
☒ I object

2/1/22

Date

Daytime Telephone (optional): \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

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Heather Chaffin

P. O. Box 1088

Austin, TX 78767-8810

Or: [heather.chaffin@austintexas.gov](mailto:heather.chaffin@austintexas.gov)