

RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

CASE: C14R-86-057(RCT)

ZAP DATE: December 18, 2007

ADDRESS: 1015 East Braker Lane

OWNER/APPLICANT: Schuh Family Limited Partnership (Dwain J. Schuh)

AGENT: Richard H. Crank

NATURE OF REQUEST:

To terminate/delete a public restrictive covenant for the property located at 1015 East Braker Lane.

SUMMARY STAFF RECOMMENDATION:

The staff recommends the applicant's request to terminate the public restrictive covenant as it applies to this site.

ZONING AND PLATTING COMMISSION RECOMMENDATION:

1/17/08: Approved staff's recommendation for the restrictive covenant termination by consent (8-0);
K. Jackson-1st, J. Shieh-2nd.

DEPARTMENT COMMENTS:

The site under consideration is undeveloped. This lot is part of a larger 5.44 acre tract of land that is owned by the applicant. The property to the south, which is located in the County within the City of Austin 2-mile extraterritorial jurisdiction (ETJ), contains a warehouse structure that is utilized for furniture storage. The land to the east is developed with a commercial strip center that houses retail sales and limited restaurant uses. The City of Austin is plans to annex remainder of this site in December 2008. The applicant is in the process of requesting a rezoning of this property from the 'LO' and 'LR' to the 'GR', Community Commercial District, because he would like to develop a variety of retail, restaurant, and other commercial uses at this location.

Therefore, the property owner also is asking to terminate a public restrictive covenant that was passed with the previous zoning case (C14-86-057) in 1986. This covenant requires a rollback of the property to the "LO" district if a Pet Services use on the site is discontinued for 90 consecutive days and states that there shall be no direct access from the property to Braker Lane (Please see Restrictive Covenant for Case C14R-86-057 – Attachment A). The staff recommends the applicant's request for a restrictive covenant termination for this property. The conditions of the covenant are no longer valid because the staff is currently recommending an up zoning of this site to the GR-CO zoning district (please see staff report for zoning case C14-2007-0190). In addition, the staff granted approval of a unified site plan for the larger 5.44 acre tract of land (including the lot in question) which allows for access from this site to Braker Lane in Site Plan Case – SP-04-0333C. The access points on this property have been reviewed by the City of Austin and Travis County for compliance with traffic circulation requirements.

The applicant agrees with the staff's recommendation.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	LO, LR	Undeveloped
<i>North</i>	SF-2	Undeveloped
<i>South</i>	County	Warehouse (Furniture Storage)
<i>East</i>	County	Restaurant (Vasquez Mexican Restaurant)
<i>West</i>	SF-2	Commercial Strip Center (Austin Countertops/Ames Tools, Supplies, and Service/ Pizza Hut)

AREA STUDY: N/A**TIA:** Waived**WATERSHED:** Walnut Creek**DESIRED DEVELOPMENT ZONE:** Yes**CAPITOL VIEW CORRIDOR:** No**HILL COUNTRY ROADWAY:** No**NEIGHBORHOOD ORGANIZATIONS:**

51 - Northeast Walnut Creek Neighborhood Association
 64 - River Oaks Lakes Estates Neighborhood
 114 - North Growth Corridor Alliance
 511 - Austin Neighborhoods Council
 643 - NorthEast Action Group
 742 - Austin Independent School District
 937 - Taking Action Inc.

SCHOOLS:

Graham Elementary (approximately 1500 feet to southeast)
 Pflugerville #4 Middle School
 Dobie Middle School
 Lanier High School

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-2007-0190			
C14-06-0130	SF-2 to CS-1	7/18/06: Postponed to August 15, 2006 by the applicant (6-0, B. Baker, J. Gohil, J. Martinez-absent) 8/15/06: Case withdrawn by applicant, no action required by the Commission.	N/A
C14-04-0058	GR to CS-1	6/01/04: Approved the staff's recommendation to deny the request for CS-1 zoning (8-0, J. Pinnelli –absent)	11/18/04: Approved CS-1 on 1 st reading (Vote: 5-2, Wynn, Slusher-No), with following requirements: 1) Create a rollback public restrictive covenant stating

		<p>6/07/04: Motion made to rescind, reconsider the June 1, 2004, motion (6-2, B. Baker, C. Hammond-Nay, J. Pinnelli-absent)</p> <p>Motion made to continue case to July 20, 2004 (6-2, B. Baker, C. Hammond-Nay; J. Pinnelli-absent)</p> <p>7/20/04: Approved staff recommendation to deny CS-1 zoning (5-3, J. Gohil, J. Martinez, K. Jackson-Nay; J. Pinnelli-absent)</p>	<p>that if the use ceases in 90 days the property would be rolled back to GR zoning; 2) Encourage the applicant and neighborhood work out some private restrictive covenant agreement prior to 2nd/3rd readings.</p> <p>4/07/05: Approved 2nd reading only. Applicant asked to continue working with the neighborhood (6-1, Slusher-No)</p> <p>5/26/05: CS-1 zoning denied (7-0)</p>
C14-03-0097	MF-3-CO to GO	<p>8/12/03: Approved staff's alternated recommendation of GO-CO (9-0), CO to limit the development intensity on the site to less than 2,000 vehicle trips per day; with additional conditions as read into the record (agreed to by Neighborhood and Applicant):</p> <p>1) Prohibit the following uses: Bed and Breakfast (Group 1), Bed and Breakfast (Group 2), Administrative and Business Offices, Art and Craft Studio (Limited), Business or Trade School, Business Support Services, Communication Services, Medical Offices – exceeding 3,000 square feet of gross floor area, Off-Site Accessory Parking, Personal Services, Professional Office, Software Development, College and University Facilities, Communication Service Facilities, Cultural Services, Day Care Services (Commercial), Day Care Services (Limited), Family Home, Guidance Services, Hospital Services (Limited), Local Utility Services, Private Primary Educational Facilities, Private Secondary Educational Facilities, Public Primary Educational Facilities, Public</p>	<p>9/25/03: Approved ZAP rec. of GO-CO (7-0); all 3 readings</p>

		Secondary Educational Facilities, Safety Services; 2) Height restriction of 48 feet	
C14-02-0130	CS-1 to GR	9/10/02: Approved staff's recommendation of GR zoning by consent (6-0, D. Castaneda-absent)	10/10/02: The Council had many questions about this case because the neighborhood spoke out both for and against the rezoning. The neighborhood felt the rezoning request did not cover the entire tract subject to the prior restrictive covenant (from case C14-95-0034) and stated their opposition to the pending conditional use permit for a new cocktail lounge. Sarah Crocker raised the issue regarding DAC'S approval of a site plan exemption for a cocktail lounge use and Alice Glasco explained how this error occurred. (7-0); all 3 readings
C14-02-0033	CS, GR to CS-1	4/16/02: Approved staff rec. to deny CS-1 (5-0)	5/23/02: Denied CS-1 (7-0)
C14-98-0194	SF-2 to CS	6/15/99: Approved staff rec. of CS-CO with additional conditions prohibiting Adult Oriented Businesses, Agricultural Services, Exterminating Services, Pawn Shop Services, and Vehicle Storage (6-0)	7/15/99: Approved PC rec. of CS-CO with conditions (6-0); 1 st reading 12/02/99: Approved (6-0, WL-absent); 2 nd /3 rd readings
C14-95-0054 "Expired"	GR to CS-1	5/23/95: Denied CS-1 as requested (6-0)	6/22/95: Motion to deny failed (2-2-1, EM/RR-no, GG-abstain), no action taken
C14-95-0034	TRA: CS to CS-1 TRB: CS to CS-1	5/9/95: Denied CS-1 (6-0)	6/1/95: Approved CS-1 w/ conditions: To approve CS-1, with a restrictive covenant that provides for rollback to GR, if cocktail use does not open within 1 year of zoning case or ceases for more than 90 days. (4-1-2, BS-no, JG/BT-abstain); 1 st reading 8/17/95: Approved CS-1 (4-1-2, BS-no, JG/BT-abstain); 2 nd reading 8/24/95: Approved CS-1 (5-1, JG-Nay); 3 rd reading
C14-88-0110	GR to CS-1	9/27/88: Grant CS-1 w/ conditional overlay	10/27/88: Approved CS-1 w/conditions; all 3 readings

RELATED CASES: C14-2007-0190 (Rezoning Case)

ABUTTING STREETS:

Name	ROW	Pavement	Classification	Sidewalks	Bus Route	Bike Route
Joseph Clayton Drive	60'	30'	Collector	No	No	No

CITY COUNCIL DATE: January 17, 2008 **ACTION:**

ORDINANCE READINGS: 1st 2nd 3rd

ORDINANCE NUMBER:

CASE MANAGER: Sherri Sirwaitis

PHONE: 974-3057

EMAIL: Sherri.Sirwaitis@ci.austin.tx.us

RESTRICTIVE COVENANT

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

WHEREAS, Braker Bend Development, Inc., of Travis County, Texas, is Owner of the following described property ("Property"):

All that certain tract, piece or parcel of land, lying and being situated in the County of Travis, State of Texas, described in Exhibits "A" and "B", attached hereto and made a part hereof for all purposes, to which reference is here made for a more particular description of said property; and,

WHEREAS, the City of Austin, Texas, and the Owner of the Property have agreed that the Property should be impressed with certain covenants and restrictions running with the land, and desire to set forth such agreement in writing;

NOW, THEREFORE, in consideration of One and No/100 Dollars (\$1.00) and other good and valuable consideration paid by the City of Austin in hand to the Owner, the receipt and sufficiency of which is acknowledged, the Owner does hereby impress upon the Property, the following covenants and conditions which shall be considered to be covenants running with the land, and which shall be binding on the Owner, his heirs, personal representatives, successors and assigns, as follows:

1. In the event that the use of the Property, or any portion thereof, for pet services as defined in Sections 1713 in Chapter 13-2A of the Austin City Code of 1981, as amended, is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to "LO" Limited Office. Normal, seasonal cessation of a use, or temporary discontinuance for purposes of maintenance or rebuilding of the Property after damage or destruction shall not be included in calculating the period of discontinuance.

2. There shall be no direct access from the Property to Braker Lane.

3. If any person or entity shall violate or attempt to violate the foregoing 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.

4. 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.

5. 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.

6. 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.

EXECUTED this the 27 day of February, 1987.

BRAKER BEND DEVELOPMENT, INC.

BY: William M. Watson
William M. Watson
President

THE STATE OF TEXAS :
 :
COUNTY OF TRAVIS :

This instrument was acknowledged before me on the 27th day of February, 1987, by William M. Watson, President of Braker Bend Development, Inc., a Texas Corporation, on behalf of said corporation.



Deborah Mosebar
Notary Public, State of Texas
Deborah Mosebar
Printed Name of Notary Public
My Commission Expires: 8/21/88