

ZONING CHANGE REVIEW SHEET

NEIGHBORHOOD PLAN: Upper Boggy Creek Neighborhood Plan

CASE: NPA-2008-0012.02 and C14-2008-0171 / Project Destiny

P.C. DATE: October 28, 2008

ADDRESS: 4315 Airport Boulevard

OWNER / APPLICANT: Brian Guequierre, 512 454-7900

ZONING FROM: SF-3-NP

TO: NO-MU-CO-NP

LAND USE FROM: Single-Family

TO: Office Mixed-Use

SITE AREA: 0.2 acres (8,775 sq. ft.)

SUMMARY STAFF RECOMMENDATION:

- 1.) The original request by the applicant was LO-MU-NP. Since that time, the applicant has revised the request to NO-MU-CO-NP. The staff's recommendation is to deny the zoning change from SF-3-NP (Family Residence – Neighborhood Plan) district zoning to NO-MU-CO-NP (Neighborhood Office – Mixed Use – Conditional Overlay – Neighborhood Plan) zoning district.
- 2.) The staff's recommendation is to deny the land use change from Single-family use to Office Mixed-Use on the approved Future Land Use Map (FLUM).

SUMMARY PLANNING COMMISSION RECOMMENDATION:

October 28, 2008:

APPROVED THE APPLICANT'S REQUEST OF Office Mixed-Use; [Jay Reddy's, Chris Ewen 2nd] (5-4) (Ewen, Small, Hui and Sullivan voted against the motion (nay)).

APPROVED APPLICANT'S REQUEST OF NO-MU-CO-NP with conditions that only administrative and business offices, professional offices, single-family, duplex, and two-family residential as the only permitted uses; [Jay Reddy's, Chris Ewen 2nd] (5-4) (Ewen, Small, Hui and Sullivan voted against the motion (nay)).

DEPARTMENT COMMENTS: The approximately 0.2-acre site is currently zoned SF-3-NP (Family Residence – Neighborhood Plan) district zoning and is on the corner of Airport Boulevard and Rowood Road. The property lies within the Upper Boggy Creek (UBC) Neighborhood Plan and is surrounded by single family to the north, south, east and west.

The subject property is currently developed with a single family residence – home occupation. Under the home occupation provisions, the residential character of the lot and dwelling must be maintained. Advertising a home occupation by a sign on the premises is prohibited. The applicant wishes to change the zoning to enable the structure to display a sign on the property. The sign will indicate that the property is the place of business for a Law Office.

The staff recommendation is to deny the requested zoning change and neighborhood plan amendment. There is a private deed restriction on the lots in this subdivision which states that no lots shall be used for any business purpose. Although the deed restriction is private and not enforceable by the city, a City Council resolution adopted in December of 1987 directs staff to deny zoning cases in conflict with existing private restrictions prohibiting non-residential uses on the property.

EXISTING ZONING AND LAND USES:

	FLUM	ZONING	LAND USES
<i>Site</i>	Single-Family	SF-3-NP	Single-family residence
<i>North</i>	Single-Family	SF-3-NP	Single-family residence
<i>South</i>	Single-Family	SF-3-NP	Single-family residence
<i>East</i>	Single-Family	SF-3-NP	Single-family residence
<i>West</i>	Single-Family	SF-3-NP	Single-family residence

NEIGHBORHOOD PLAN AREA: The property lies within the Upper Boggy Creek Neighborhood Plan adopted in August 2002.

TIA: A traffic impact analysis was not required for this case because the traffic generated by the proposed zoning does not exceed the threshold of 2,000 vehicle trips per day. [LDC, 25-6-113]

WATERSHED: Boggy Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

SCENIC ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

- Mueller Neighborhoods Coalition
- Delwood II Neighborhood Organization
- Homeless Neighborhood Organization
- Mueller Community Association
- Mueller Master Community Inc
- Mueller Property Owners Association
- Keep the Land
- Upper Boggy Creek Neighborhood Planning Team
- Home Builders Association of Greater Austin
- Austin Independent School District
- Austin Neighborhoods Council
- Austin Parks Foundation
- PODER People Organized in Defense of Earth & Her Resources
- Anberly Airport Assn.
- League of Bicycling Voters

SCHOOLS: (AISD)

Maplewood Elementary School

Kealing Middle School

McCallum High School

PUBLIC MEETINGS: On October 21, 2008, the ordinance-mandated plan amendment public meeting was held in conjunction with the monthly Upper Boggy Creek Neighborhood Planning Team

(UBCNPT) meeting. Property owners and renters within 500 feet of the property were invited to attend and discuss the proposed amendment. Staff briefly presented the plan amendment process and then turned the presentation over to Mr. Guequierre who discussed his plans for to use the 4315 Airport Blvd. site for his law office. He indicated that he was already using the site as his office; however, he wanted to place a modest sign in the front yard to increase visibility. He also stated that he lived in the neighborhood and wanted to use spare bedroom in the house as extra sleeping accommodations for visitors.

A concern was expressed by some of the people in attendance that agreeing to the land use and zoning change for the subject tract could to this segment of Airport turning into a "Koenig Lane." The planning team members attempted to assuage these concerns through a discussion of the plan amendment process and how they serve as a check in the process.

The UBCNPT members and Mr. Guequierre discussed that he had already presented his case to the Team and that they had already given their support for his request. Staff pointed out the earlier discussion between the applicant and the UBCNPT took place outside the requirements of the ordinance-mandated public meeting and that the October 21, 2008 meeting was to fulfill the ordinance requirements as well as provide people who live or own property within 500 feet of the subject tract the opportunity to discuss the case. The UBCNPT said they would continue to support the case as long as the neighborhood (Delwood II) most directly affected by the proposed changes supported the request. They also stated that they would support any conditions that resulted as part of the discussions between Mr. Guequierre and Delwood II neighborhood association.

ABUTTING STREETS:

Name	ROW	Pavement	Class	Sidewalk	Bus Route	Bike Route
Airport Blvd	160'	MAD 6	Arterial	Yes	135, 350	Priority 2

CITY COUNCIL DATE: December 11, 2008

ACTION: N/A

ORDINANCE READINGS: 1st 2nd 3rd

ORDINANCE NUMBER:

NEIGHBORHOOD PLANNING CASE MANAGER: Mark Walters

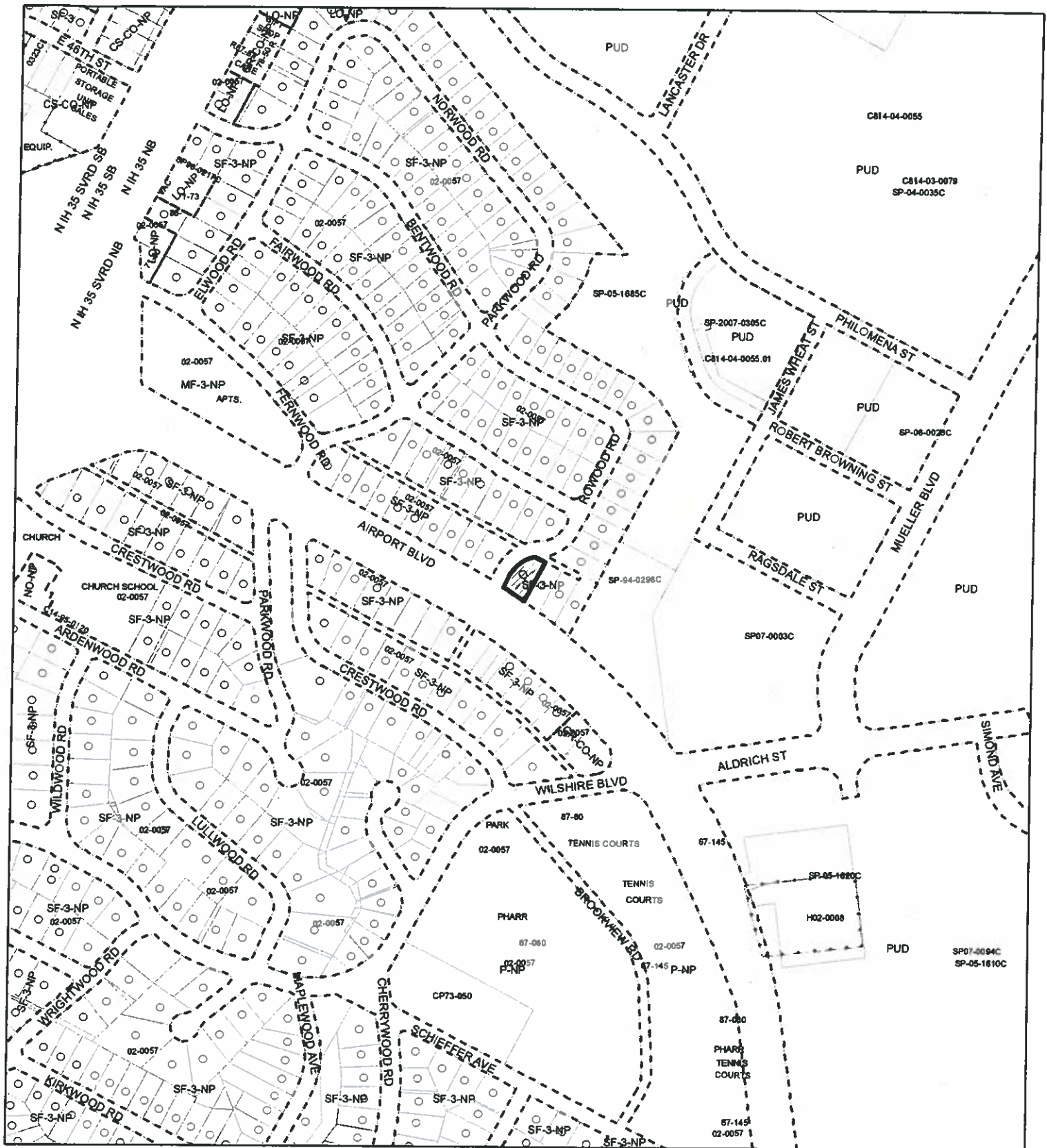
PHONE: 974-7695

E-MAIL: mark.walters@ci.austin.tx.us

ZONING CASE MANAGER: Joi Harden




PHONE: 974-2212

E-MAIL: joi.harden@ci.austin.tx.us;



ZONING

ZONING CASE#: C14-2008-0171
 ADDRESS: 4315 AIRPORT BLVD
 SUBJECT AREA: 0.20 ACRES
 GRID: K25
 MANAGER: J. HARDEN

-  SUBJECT TRACT
-  ZONING BOUNDARY
-  PENDING CASE

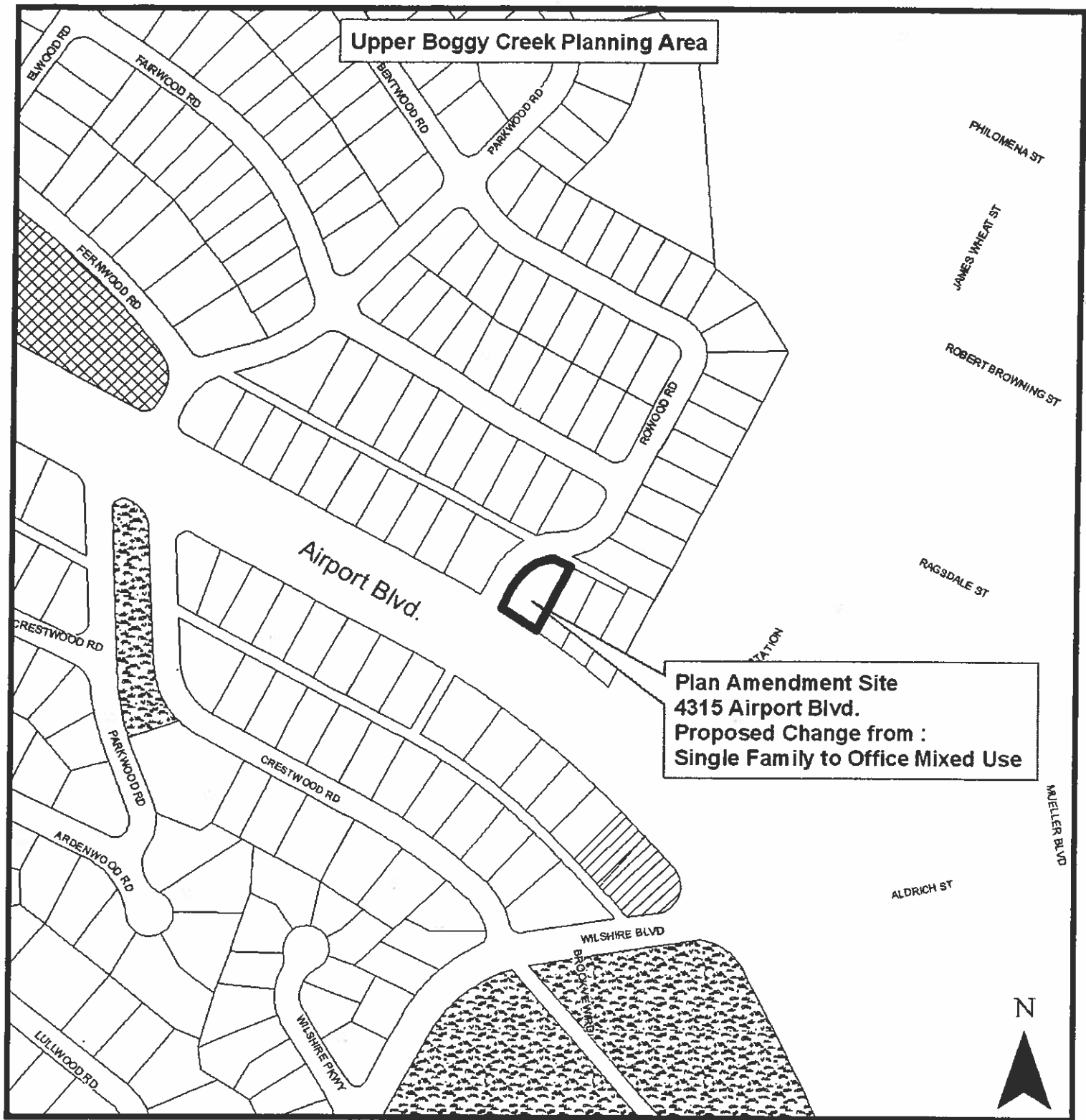
OPERATOR: S. MEEKS



1" = 400'

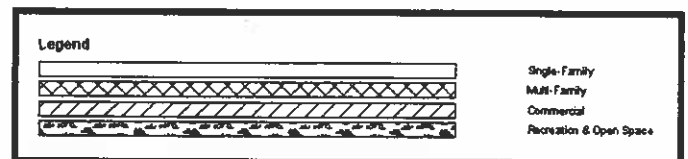
This map has been produced by G.I.S. Services for the sole purpose of geographic reference.
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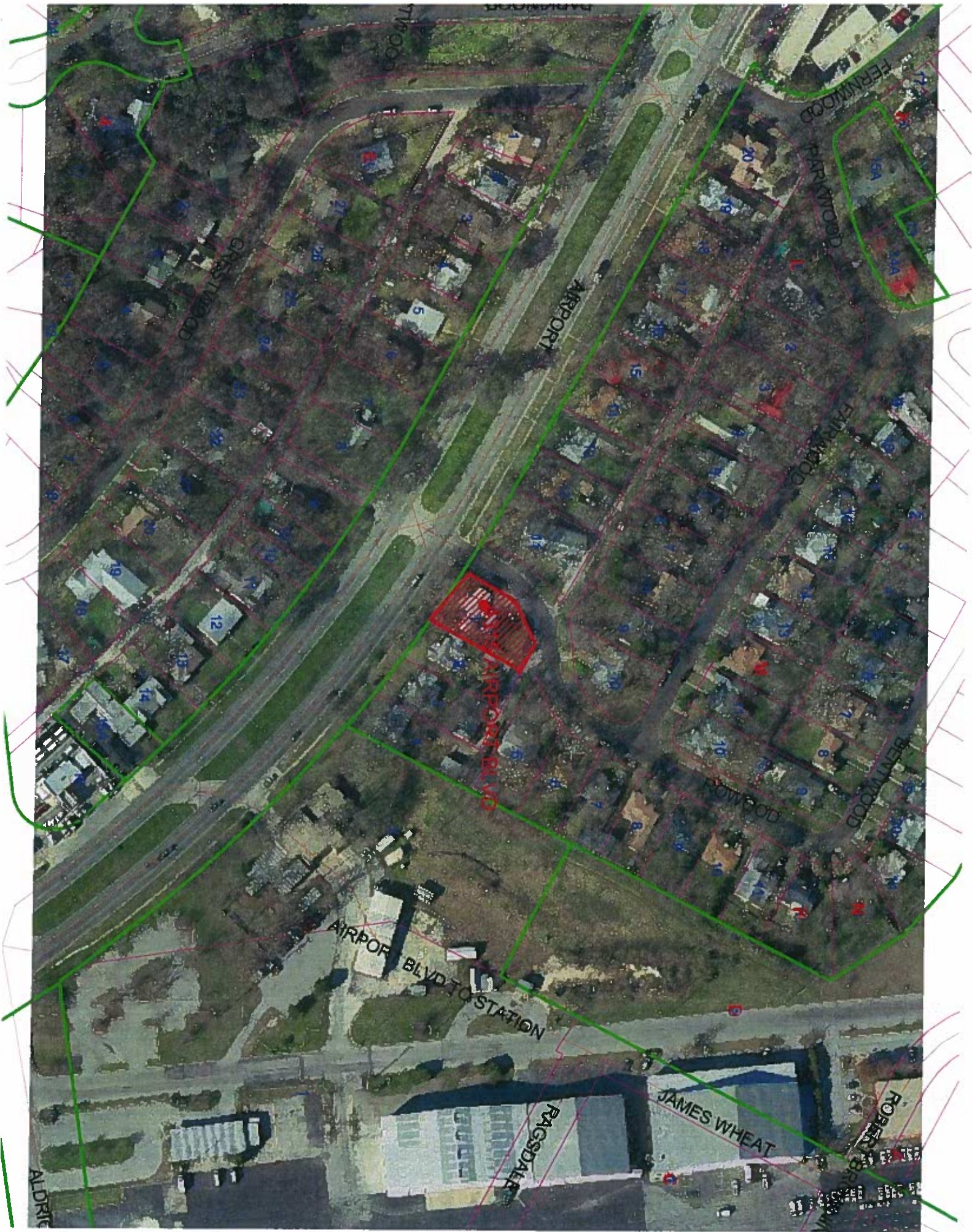
Upper Boggy Creek Neighborhood Plan Amendment NPA-2008-0012.01

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Updated on October 8, 2008





SUMMARY STAFF RECOMMENDATION

- 1.) The original request by the applicant was LO-MU-NP. Since that time, the applicant has revised the request to NO-MU-CO-NP. The staff's recommendation is to deny the zoning change from SF-3-NP (Family Residence – Neighborhood Plan) district zoning to NO-MU-CO-NP (Neighborhood Office – Mixed Use – Conditional Overlay – Neighborhood Plan) zoning district.
- 2.) The staff's recommendation is to deny the land use change from Single-family to Office Mixed-Use.

BASIS FOR LAND USE RECOMMENDATION

The UBC Neighborhood Plan's **Goal Two, Land Use** suggests that the proposed law office may be in accordance with the intent of the plan:

"Ensure that the new businesses and commercial development within the Upper Boggy Creek Neighborhood Planning Area is neighborhood-appropriate, neighborhood-scaled, neighborhood-friendly, and serves the nearby neighborhoods."

The plan states that commercial development should be limited to commercial corridors:

"Commercial development in the established residential areas is discouraged and new commercial development and redevelopment should be focused on the planning area's commercial corridors".

The plan designates Airport Blvd. south of Schieffer Avenue, approximately two-fifths of a mile south of 4315 Airport Blvd., as an appropriate location for regional-serving businesses. Nevertheless, with a 2005 TxDOT traffic count of 40,000 cars per day, it can be contended that if this segment of Airport Blvd. is not considered a commercial corridor, it could easily be seen as one. However, a small law office in a converted single-family house is not a regional-serving retail outlet and could be reasonably considered "neighborhood-appropriate, neighborhood-scaled, and neighborhood-friendly."

The UBC plan further states if residential uses are to change they should change to mixed-use:

"Property currently zoned for single or multi-family development should not be changed to allow for commercial uses unless those locations are designated as mixed-use."

However, as stated earlier in this report, it the policy of staff to recommend against a request that is contrary to any known deed restrictions or private restrictive covenants.

BASIS FOR RECOMMENDATION (ZONING PRINCIPLE)

1. *The rezoning should be consistent with the policies and principles adopted by the City Council or Planning Commission.*

In December of 1987, the City Council approved a resolution which directed staff to deny zoning cases in conflict with existing private restrictions prohibiting non-residential uses on the property.

EXISTING CONDITIONS

Site Characteristics

The site is developed with a single family structure which is used as a law office. The site is relatively flat and moderately vegetated.

Impervious Cover

The maximum impervious cover allowed by the NO zoning district is 60%.

Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Boggy Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.

This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.

According to floodplain maps, there is no floodplain within the project area.

At this time, site-specific information is unavailable regarding existing trees and other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Transportation

No additional right-of-way is needed for Airport Blvd. at this time.

A traffic impact analysis was not required for this case because the traffic generated by the proposed zoning does not exceed the threshold of 2,000 vehicle trips per day. [LDC, 25-6-113]

A Neighborhood Traffic Analysis is not required for this case because the traffic generated by the proposed zoning does not exceed the threshold of 300 vehicle trips per day. [LDC, 25-6-114]

Water and Wastewater

The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing the water and wastewater utility improvements, offsite main extensions, system upgrades, utility relocations and or abandonments required. The water and wastewater plan must be in accordance with the City of Austin utility design criteria. The water and wastewater utility plan must be reviewed and approved by the Austin Water

Utility. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

Site Plan Review

Site plans will be required for any new development other than single-family or duplex residential.

SP 2. Any development which occurs in an SF-6 or less restrictive zoning district which is across the street from, adjoining or located 540-feet or less from property zoned SF-5 or more restrictive, or on which a use permitted in an SF-5 or more restrictive zoning district is located will be subject to compatibility development regulations.

SP 3. The site is subject to compatibility standards. Along the north, south, east & west property lines, the following standards apply:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- No parking or driveways are allowed within 25 feet of the property line.
- A landscape area at least 25 feet wide is required along the property line. In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted.

- for a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive.
- An intensive recreational use, including a swimming pool, tennis court, ball court, or playground, may not be constructed 50 feet or less from adjoining SF-3 property.
- No parking or driveways are allowed within 25 feet of the property line
- A landscape area at least 15 feet in width is required along the property line if tract is zoned MF-3, MF-4, MF-5, MH, NO, or LO.
- A landscape area at least 25 feet in width is required along the property line if the tract is zoned LR, GO, GR, L, CS, CS-I, or CH.

SP 4. A site plan must comply with the ordinance requirements for compatibility standards or receive a waiver from the Planning Commission. Any waivers of required setbacks to less than five feet will require Board of Adjustment approval. [Section 25-2-1081].

SP 5. This site is in the approved Upper Boggy Creek Neighborhood Plan.

Jas. Bascom Giles

\$181.50 U. S. Int. Rev. Stamps Can.

Effie Dean Giles

THE STATE OF TEXAS

COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared Jas. Bascom Giles, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. And also before me this day personally appeared Effie Dean Giles, wife of Jas Bascom Giles, known to me to be the person whose name is subscribed to the foregoing instrument and having been examined by me privily and apart from her husband, and heving the same fully explained to her, she, the said Effie Dean Giles, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this the 19th day of August, 1946.

Leona Malmstrom

(Notary Seal)

Notary Public, Travis County, Texas

Filed for Record Sept. 7, 1946 at 12:00 M. Recorded Sept. 9, 1946 at 10:00 A. M.

THE STATE OF TEXAS

COUNTY OF TRAVIS

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TRAVIS COUNTY, TEXAS

VOL 825 PAGE 4

Whereas, the Delwood Development Company has subdivided that certain 45.59 acres of land, more or less, a portion of the Thomas L. Hawkins Survey No. 9, in the City of Austin, Travis County, Texas, which said subdivision is known as Delwood Section Two, and a plat of said subdivision together with the dedication thereof is recorded in Plat Book 4, page 282, of the Plat Records, Travis County, Texas, and

Whereas, said Delwood Development Company, being the sole owner of said addition, is desirous that said subdivision shall have proper restrictions;

Now, therefore, Know all men by these presents;

That Delwood Development Company by and through its sole owner, James D. Connolly, do hereby declare that all of the property shown on the plat of said Delwood Section Two, recorded in Plat Book 4, page 282, of the Plat Records of Travis County, Texas, shall be subject to the following restrictions;

RESTRICTIONS: DELWOOD ADDITION: SECTION TWO, Blocks F. G. H. I. J. K. L. M. & N

1. For the purposes of these restrictions and covenants a "plot" as used shall be understood to consist of a lot or lots having a contiguous frontage, and all lots in this subdivision shall be known and described as residential lots.

2. No building shall be erected, placed, altered or permitted to remain on any residential building plot other than one dwelling not to exceed two and one-half stories in height and such other buildings, including servants' quarters, as are usually and customarily in connection with the dwelling and used for residential purposes.

3. All dwellings erected, placed, altered or permitted to remain on any residential building plots shall be used exclusively for residence purposes, and no part of any building erected in this subdivision, and no lot or parts of any lot therein, shall be used for any business purpose whatsoever, except that one sales office may be erected and maintained by the owner or his agents for the exclusive sale of lots in this subdivision.

4. No building constructed as a dwelling shall be located nearer than thirty (30) feet to, nor more than fifty (50) feet from the front lot line, nor shall any such building be nearer than fifteen (15) feet to any side street;

5. No structure, either dwelling, separate or detached garage or outbuilding shall be erected, placed or maintained on any building plot which plot has an area of less than six thousand (6000) square feet and a width of less than fifty-five (55) feet at the building set back line as set out in section four (4) hereof. No corner lot shall be re-subdivided or used as to permit an additional dwelling facing on a side street.

6. No part of the premises or property covered hereby ever shall be rented, leased, sold, demised or conveyed to, or otherwise become the property of, or come into the possession of any persons other than white persons of strict Caucasian blood, except that this covenant and restriction shall not prevent occupancy of quarters by those of a different race or nationality if and when they are employed by a resident owner in this subdivision or a tenant of any owner as domestic help for said resident owner or tenant.

7. No trailer, basement, tent, shack, garage, garage apartment, barn or other outbuilding erected on said Delwood Section Two shall at any time be occupied or used as a residence by an owner or a tenant, temporarily or permanently; provided, garage apartments may be occupied and used by domestic servants of a resident owner or tenant if and when full time employees of a resident owner or a tenant of said owner.

8. All lots in Block F and Block G and Lots Nos. 1 through 14, inclusive, in Block I, and Lots 1 through 7, inclusive, in Block J, and Lots 1 through 4, inclusive, in Block K, in said subdivision shall be subject to the following restrictions and covenants, in addition to the other restrictions and covenants herein set forth and stated;

No structure, either dwelling, separate or detached garage, shall be erected, placed, or maintained on any building plot, which plot has an area of less than seven thousand (7,000) square feet and a width of less than sixty (60) feet at the building set back line as set out in Section 4 hereof. Further, no separate or detached garage, or other outbuilding shall be erected on any of said lots or plots except for ornamental or recreational purposes. The ground area of the main dwelling of any structure in its original construction or thereafter exclusive of any garage, shall not be less than one thousand (1,000) square feet in case of a one story dwelling, not less than eight hundred (800) square feet in the case of a dwelling of more than one story. One-half of the area of covered porches may be considered as a portion of said ground area. No dwelling shall be permitted that is of box construction.

9. On all other lots in said subdivision, no dwelling costing for its original construction, less than \$4,000.00 shall be permitted on any plot in said Delwood Section Two and the ground area of the main dwelling, in its original construction or thereafter, exclusive of any garage, shall not be less than eight hundred fifty (850) square feet in the case of a one story dwelling, nor less than seven hundred (700) square feet in the case of a dwelling of more than one story. One-half of the area of covered porches may be considered as a portion of said ground area. No dwelling shall be permitted that is of box construction.

10. Easements are reserved as shown on the recorded plat. A five (5) foot

11. No building to be used or occupied as a residence or dwelling place shall be erected on any residential lot in this subdivision unless such building has been designated by a licensed architect or until the external design and location thereof has been approved in writing, by the subdivider or by a majority of a committee composed of three owners of lots in said Delwood Section Two, which committee shall be selected, at intervals of three years, by a majority of the owners of lots which are subject to these restrictions and covenants; provided, however, that if the subdivider or such committee, if in existence, fails to approve or disapprove said external design within fifteen (15) days after plans have been submitted for approval, then such written approval shall not be required and shall be considered to have been finally waived.

13. If any person or persons shall violate any of the restrictions and covenants herein, it shall be lawful for any other person or persons owning real property in this subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any restriction or covenant stated herein, and either prevent him or them from so doing or to correct such violation, or to recover damages of other dues for such violation. Invalidation of any one or of any part of any one of these restrictions by a judgment, or an order of a court of competent jurisdiction shall in no way affect or invalidate any of the other restrictions herein set out, all of which shall remain in full force and effect.

15. On and after January 1, 1960, these restrictions and covenants shall automatically be extended for successive periods of ten (10) years each unless, by a vote of three-fourths the majority of the then owners of the lots or plots in this subdivision, it is agreed to amend or change these restrictions in whole or in part.

By James D. Connolly, Sole Owner

Notary Public, Travis County, Texas.

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REST COV.

RESOLUTION

WHEREAS, in considering requests for zoning and rezoning, the City Council applies its legislative discretion to protect and advance the public interest; and

WHEREAS, where property is subject to a private restriction prohibiting non-residential uses, zoning or rezoning the property to a zoning district where non-residential uses are allowed may result in litigation brought by citizens entitled to the benefits of the restriction; and

WHEREAS, the City Council believes the public interest is better served, in such instances, by deferring any change of zoning which might be inconsistent with such private restrictions until the private restrictions are removed or declared invalid by a court of competent jurisdiction; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Council hereby expresses its general policy and intention to deny any requests to zone or rezone property to allow uses which may conflict with existing private restrictions prohibiting non-residential uses on the property; and

BE IT FURTHER RESOLVED:

That the City Council will assume a private restriction prohibiting non-residential uses on property is valid, notwithstanding any other facts, until the restriction is removed or declared invalid by a court of competent jurisdiction.

ADOPTED: December 3, 1987

ATTEST:

James E. Aldridge
James E. Aldridge
City Clerk