

ZONING CHANGE REVIEW SHEET

CASE: C14-2009-0034

Z.A.P. DATE: June 16, 2009
July 7, 2009

ADDRESS: 1112 East Yager Lane

APPLICANT: City of Austin

OWNER: Roman Catholic Diocese of Austin (Bishop Gregory M. Aymond)

ZONING FROM: Tract 1: GR-CO
Tract 2: NO-CO

TO: GR-CO
NO-CO

AREA: Tract 1: 3.07 acres
Tract 2: 5.85 acres
Total: 8.92 acres

SUMMARY STAFF RECOMMENDATION:

The staff's recommendation is to grant GR-CO, Community Commercial-Conditional Overlay District, zoning for Tract 1 and NO-CO, Neighborhood Office-Conditional Overlay District, zoning for Tract 2. The conditional overlay will limit the development intensity to less than 2,000 vehicle trips per day on both tracts and prohibit automotive sales, washing, rental and repair as well as pawn shop uses prohibited on Tract 1.

ZONING AND PLATTING COMMISSION RECOMMENDATION:

June 16, 2009: *APPROVED A POSTPONEMENT REQUEST BY THE NEIGHBORHOOD TO JULY 7, 2009.*

[T. RABAGO; D. TIEMANN – 2ND] (4-0) C. HAMMOND, C. BANKS – ILL; K. JACKSON – ABSENT

July 7, 2009: *APPROVED GR-CO DISTRICT ZONING FOR TRACT 1 AND NO-CO DISTRICT ZONING FOR TRACT 2, AS STAFF RECOMMENDED.*

[B. BAKER; C. HAMMOND – 2ND] (6-0) J. GOHIL – ABSENT

ISSUES:

A valid petition of 42.82% has been filed by the adjacent property owners in opposition to this rezoning request. Petition material is provided at the back of the packet.

The Copperfield Neighborhood Association has provided a letter in support of the rezoning application.

DEPARTMENT COMMENTS:

The property in question was rezoned in 2006. At that time the property was zoned from SF-6 & DR to its current zoning. In October of 2008 Ms. Libby Quinlan brought to the staff's attention that the notification in the 2006 case failed to include all those who should have been notified. The staff agreed to take the case through the process again and request the same zoning as was granted in 2006. The Church for the Holy Vietnamese Martyrs has been constructed and is located on Tract 1. On Tract 2 there is no development at this time. The Diocese has not yet

decided on a use for Tract 2. Possible future uses that have been mentioned are a meditation/reflection walk area or recreational uses.

The staff's recommendation is to grant GR-CO zoning for Tract 1 and NO-CO zoning for Tract 2. The GR-CO zoning district on Tract 1 will allow for commercial or civic uses to be located at the intersection of two collector roadways, Yager Lane and Thompkins Drive, to serve surrounding the surrounding residential areas. Staff is also recommending the prohibition of auto related uses and pawn shops to ensure compatibility with the nearby single family should the existing church be demolished. In addition, the staff recommends NO-CO zoning for Tract 2 because the Neighborhood Office district is the designation for a small office use that serves neighborhood or community needs located in or adjacent to a residential neighborhood and on a collector street that has a width of 40 feet or more. NO-CO zoning will provide a transition in the intensity of uses away from Yager Lane to the north.

A restrictive covenant that restricted the property to residential uses was amended in 2004 to remove the prohibition. Attached are a timeline, documents related to the property and a list of conditions that Ms. Libby Quinlan has indicated she would like to see imposed on the property and a list of concerns she presented in a meeting at the church on May 18, 2009.

The owner agrees with the staff's recommendation.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	GR-CO, NO-CO	Undeveloped, Drainage Area
<i>North</i>	SF-4A	Single-Family Residential Neighborhood
<i>South</i>	LR	Church
<i>East</i>	SF-2	Single-Family Residential Neighborhood
<i>West</i>	GR	Shopping Center, Gas Station

AREA STUDY: N/A

TIA: N/A

WATERSHED: Walnut Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: N/A

HILL COUNTRY ROADWAY: N/A

NEIGHBORHOOD ORGANIZATIONS:

Copperfield Neighborhood Association
TechRidge Neighbors

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-01-0130	DR to GR	11/13/01: Approved staff's recommendation of LR-CO zoning with a 25' vegetative buffer along the northern property line, for the properties fronting Markham Lane. (8-0, J. Martinez-absent)	12/13/01: Approved ZAP recommendation by consent (7-0) 1/17/02: Approved (7-0); 2 nd /3 rd readings
C14-01-0051	LR to SF-6	6/01/01: To approve staff's recommendation for SF-6 district zoning by consent (7-0, Ortiz, Robertson-absent)	7/19/01: Approved SF-6, on all 3 readings (6-0)
C14-98-0046	DR to GR-CO	7/14/98: Approved GR-CO with staff rec.(8-0) [the staff rec. was GO-CO for Tract 1 and LO-CO for Tract 2]	8/13/98: Approved PC rec. of GR w/ conditions: 2,000 vehicle trip limit per day, 70% maximum impervious cover, prohibit all Automotive uses, Commercial Off-Street Parking and Pawn Shop Services, and preserve protected trees 6 inches or greater located within 60 feet east of the drainage easement (6-0); 1 st reading 1/21/99: Approved GR-CO (7-0); 2 nd reading 2/04/99: Approved GR-CO (7-0); 3 rd reading
C14-86-233	DR to LR	11/25/86: Approved LR (8-0)	12/04/86: Approved LR zoning on 1 st reading 1/29/87: Approved LR (6-0); 2 nd /3 rd readings
C14-86-214	GR, CS-1	11/04/86: Approved GR and CS-1 for 1,900 sq. ft. food pkg store, subject to conditions (9-0)	12/04/86: Approved GR, CS-1 (5-0); 1 st reading 2/12/87: GR & CS-1 (7-0, 2 nd /3 rd reading, emergency pass)
C14-86-158	SF-2 to SF-6	7/22/86: Approved SF-6 (6-0)	8/28/86: Approved SF-3, on all 3 readings
C14-86-039	DR to MF-3, SF-6	—	5/08/86: Approved MF-3, SF-6 with RR for floodplain, 1 st reading 9/18/86: Approved SF-6, MF-3, RR (2 nd /3 rd readings)

RELATED CASES: The rezoning ordinance for the 2006 case on same property, C14-06-0140.
The approved site plan for the church on the property, SP-07-0105C
The recorded final plat which includes Tract 1 is Block F, Lot 61 of
Copperfield Section Three-C, C8-84-073.3

ABUTTING STREETS:

STREET	RIGHT-OF-WAY	PAVEMENT WIDTH	CLASSIFICATION	DAILY TRAFFIC
Yager Lane	74'	36'	Collector	8355 (COA, 01/23/08)
Thompkins Lane	64'	42'	Collector	1880 (COA, 05/19/05)

CITY COUNCIL DATE: July 23, 2009

ACTION:

ORDINANCE READINGS: 1st

2nd

3rd

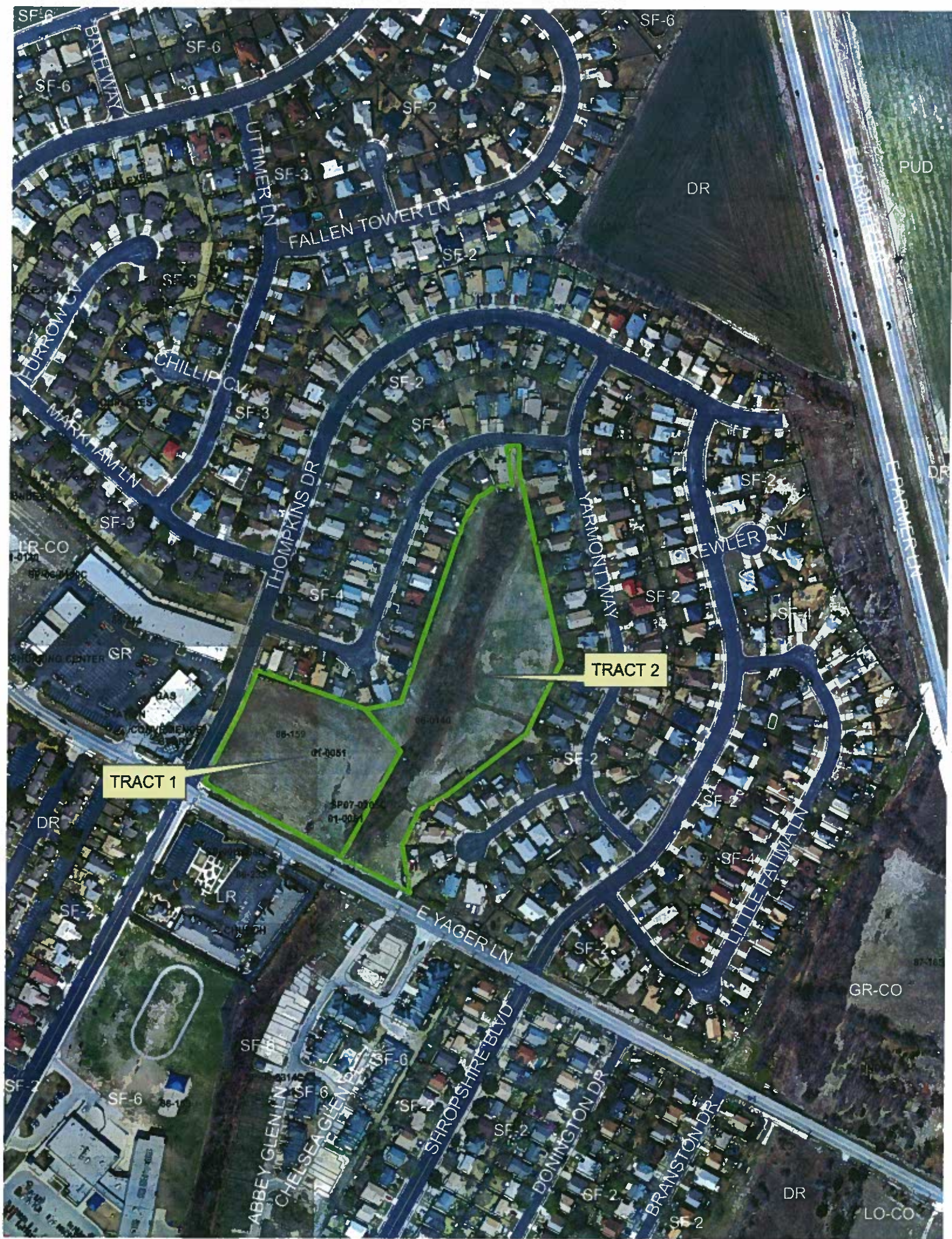
ORDINANCE NUMBER:

CASE MANAGER: Jerry Rusthoven
jerry.rusthoven@ci.austin.tx.us

PHONE: 974-3207



This map has been produced by G.I.S. Services for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



TRACT 1

TRACT 2

STAFF RECOMMENDATION

The staff's recommendation is to grant GR-CO, Community Commercial-Conditional Overlay District, zoning for Tract 1 and NO-CO, Neighborhood Office-Conditional Overlay District, zoning for Tract 2. The conditional overlay will limit the development intensity to less than 2,000 vehicle trips per day and prohibit automotive sales, washing, rental and repair as well as pawn shop uses prohibited on Tract 1.

BASIS FOR RECOMMENDATION

1. *The proposed zoning should be consistent with the purpose statement of the district sought.*

The Community Commercial (GR) district is the designation for an office or other commercial use that serves neighborhood and community needs and that generally is accessible from major traffic ways.

Neighborhood office (NO) district is the designation for a small office use that serves neighborhood or community needs, is located in or adjacent to a residential neighborhood and on a collector street that has a width of 40 feet or more, and does not unreasonably affect traffic. An office in an NO district may contain not more than one use. Site development regulations applicable to an NO district use are designed to preserve compatibility with existing neighborhoods.

2. *The proposed zoning should promote consistency and orderly planning.*

The proposed GR-CO zoning for Tract 1 would allow for commercial and civic uses to be located at the intersection of two collector roadways, Yager Lane and Thompkins Drive, to serve surrounding the surrounding residential areas. GR-CO zoning would promote consistency and orderly planning because the property in question is located to the east of existing GR district zoning and to the north of existing LR district zoning.

On Tract 2, the proposed NO-CO district will allow the applicant to develop for religious services uses on the site adjacent to existing single-family residential uses to the north, east, and west. NO-CO zoning will provide a transition in the intensity of uses away from Yager Lane to the north interior to the existing residential neighborhood.

3. *The proposed zoning should allow for a reasonable use of the property.*

GR-CO and NO-CO zoning will allow the applicant to develop a religious assembly use on a 8.92 acre property in an area with floodplain concerns adjacent to existing single-family residential uses.

EXISTING CONDITIONS

Site Characteristics

The subject tract is currently developed with a Catholic church on tract 1 and undeveloped on tract 2. The majority of the property is sparsely vegetated. The NO-CO portion of the site slopes to the east and contains a drainage/floodplain area that runs from north to south.

Hill Country Roadway

The site is not within a Hill Country Roadway Corridor.

Impervious Cover

The maximum impervious cover allowed by the GR zoning district would be 90 %. However, because the watershed impervious cover is more restrictive than the zoning district's allowable impervious cover, the impervious cover is limited by the watershed regulations.

Under current watershed regulations, development or redevelopment on this site will be subject to the following impervious cover limits:

Development Classification	% of Net Site Area	% with Transfers
Single-Family (minimum lot size 5750 sq. ft.)	50%	60%
Other Single-Family or Duplex	55%	60%
Multifamily	60%	70%
Commercial	80%	90%

Note: The most restrictive impervious cover limit applies.

Environmental

The site is not located over the Edward's Aquifer Recharge Zone. The site is in the Desired Development Zone. The site is in the Walnut Creek Watershed of the Colorado River Basin, which is classified as a Suburban Watershed by Chapter 25-8 of the City's Land Development Code.

According to flood plain maps, there is floodplain within, or adjacent to the project boundary.

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

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.

Under current watershed regulations, development or redevelopment on this site will be subject to the following water quality control requirements:

- Structural controls: Sedimentation and filtration basins with increased capture volume and 2 year detention.

At this time, no information has been provided as to whether this property has any pre-existing approvals that preempt current water quality or Code requirements.

Transportation

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

There are existing sidewalks on Thompkins Drive along the property frontage. There are no existing sidewalks along East Yager Lane.

Capital Metro bus service (route no. 392) is available along Thompkins Drive.

A traffic impact analysis was waived for this case because the applicant agreed to limit the intensity and uses for this development. If the zoning is granted, development should be limited through a conditional overlay to less than 2,000 vehicle trips per day. [LDC, 25-6-117]

Existing Street Characteristics:

Name	ROW	Pavement	Classification	Sidewalks	Bus Route	Bike Route
Yager Lane	74'	36'	Collector	No	Yes	Priority 1
Thompkins Drive	64'	42'	Collector	No	No	No

Water and Wastewater

The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at their own expense, will be responsible for providing the water and wastewater utility improvements, offsite main extension, system upgrades, utility adjustment, and utility relocation. Also, the water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. The plan must be in accordance with the City design criteria. The water and wastewater utility construction must be inspected by the City. The landowner must pay all associated and applicable City fees.

Stormwater Detention

At the time a final subdivision plat, subdivision construction plans, or site plan is submitted, the developer must demonstrate that the proposed development will not result in additional identifiable flooding of other property. Any increase in stormwater runoff will be mitigated through on-site stormwater detention ponds, or participation in the City of Austin Regional Stormwater Management Program if available.

Compatibility Standards

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

Any development which occurs in an SF-6 or less restrictive zoning district which is located 540-feet or less from property in an SF-5 or more restrictive zoning district will be subject to compatibility development regulations.

Compatibility Standards

The site is subject to compatibility standards. Along all 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.
 - 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.
 - No parking or driveways are allowed within 25 feet of 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.
- 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.

Timeline and Documents Related to the Proeprty

Church for the Holy Vietnamese Martyrs Parish

1. June 26, 2006 Diocese of Austin files zoning case for GR zoning on entire property from SF-6 on Tract 1 and DR on Tract 2. Church has outgrown property across Yager Ln where it converted an old strip center. See attached map.
2. Staff recommends GR-CO for Tract 1 and NO-CO for Tract 2. CO limits trips to 2K per day on both tracts. Diocese agrees with staff rec.
3. August 15, 2006 ZAP approves staff recommendation.
4. September 28, 2006 City Council approves staff & ZAP recommendation. See attached ordinance.
5. Site plan and building permits are obtained and Church is built. Dedication mass held in December, 2008. See attached photo.
6. In October 2008 Libby Quinlan brings to my attention a notification error on 2006 zoning case. I agree to bring case through the process again.
7. On November 18, 2008 the ZAP initiated a new zoning case for the property.
8. On March 23, 2009 a meeting with Greg Guernsey, Sue Edwards, Marc Ott and Libby Quinlan.
9. On May 18, 2009 a meeting at the Church for Libby Quinlan to meet with Church officials and other neighbors she invited to meeting. At the meeting I agreed to add auto repair, washing, rentals and sales and pawn shops as prohibited uses to the staff recommendation to the GR on Tract 1. Church agrees to additional restrictions.
10. On May 21, 2009 I attended a meeting at the Church of the Copperfield Neighborhood Organization. Libby Quinlan was present at the meeting. The CNO voted to support the zoning change.

11. On June 5, 2009 notifications mailed out for June 16, 2009 ZAP hearing and July 23, 2009 City Council meeting.
12. Libby Quinlan has repeatedly brought up issue of Acknowledgement Form signed by Bishop Aymond with original application. Purpose of the form is acknowledge that if a conflict arises between a City of Austin action and a deed restriction, restrictive covenant or plat note that it is the responsibility of the owner to resolve it. She takes issue with the fact that I will not sign a similar authorization because I do not own the property and thus cannot affect any deed restrictions or restrictive covenants.
13. A letter from an attorney representing Ms. Quinlan sent in March, 2009 to the Diocese alleges a violation of a restrictive covenant that restricts the property to residential uses. The letter and a copy of the deed are attached.
14. A response from the Diocese points out that prior to the transfer of the property and prior to the 2006 zoning case (on June 30, 2004) the Architectural Control Committee amended the restrictive covenant to exempt the Church lot from the restriction. The letter and a copy of the amended RC are attached.
15. The City of Austin is not a party to this restrictive covenant. The City is a party to an unrelated RC capping the number of units in the subdivision for wastewater purposes.
16. Ms. Quinlan takes issue with the make up of the Architectural Control Committee that amended the RC as it was made up of the original subdivision developer, the seller and parish priest.
17. The Diocese noted some intrusions into Tract 2 by property owners who had moved their fence lines into the Church property. I have been told the Church has asked those with intrusions to acknowledge the intrusion to prevent a future claim of adverse possession. In addition the Church has constructed a chain link fence adjacent to both intruding and non-intruding fences. A letter from the Diocese to Ms. Quinlan's attorney is attached.

ORDINANCE NO. 20060928-096

AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 1112 EAST YAGER LANE FROM TOWNHOUSE AND CONDOMINIUM RESIDENCE (SF-6) DISTRICT TO COMMUNITY COMMERCIAL-CONDITIONAL OVERLAY (GR-CO) COMBINING DISTRICT FOR TRACT ONE AND FROM DEVELOPMENT RESERVE (DR) DISTRICT TO NEIGHBORHOOD OFFICE-CONDITIONAL OVERLAY (NO-CO) COMBINING DISTRICT FOR TRACT TWO.

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

PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to change the base districts on the property described in Zoning Case No. C14-06-0140, on file at the Neighborhood Planning and Zoning Department, as follows:

Tract One: From townhouse and condominium residence (SF-6) district to community commercial-conditional overlay (GR-CO) combining district.

Lot 61, Block F, Copperfield Section Three-C Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Plat Book 85, Page 63B-63C, of the Plat Records of Travis County, Texas; and

Tract Two: From development reserve (DR) district to neighborhood office-conditional overlay (NO-CO) combining district.

A 5.87 acre tract of land, more or less, out of the Menucan Hunt Survey No. 83, Abstract 397, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this ordinance (the "Property"),

locally known as 1112 East Yager Lane, in the City of Austin, Travis County, Texas, and generally identified in the map attached as Exhibit "B".

PART 2. The Property within the boundaries of the conditional overlay combining district established by this ordinance is subject to the following conditions:

A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with

all existing or previously authorized development and uses, generate traffic that exceeds 2,000 trips per day.

Except as specifically restricted under this ordinance, the Property may be developed and used in accordance with the regulations established for the respective base districts and other applicable requirements of the City Code.

PART 3. This ordinance takes effect on October 9, 2006.

PASSED AND APPROVED


September 28, 2006

§
§
§




Will Wynn
Mayor

APPROVED:


David Allan Smith
City Attorney

ATTEST:


Shirley A. Gentry
City Clerk

FIELD NOTES

JOB NO: Z:\Projects_Eng\Egpt_04\40456_MENUCAN_HUNT\DOCUMENTS\FIELDNOTES.doc

DATE: August 20, 2004

PAGE: 2 OF 3

All that certain tract or parcel of land situated in Travis County, Texas, out of the Menucan Hunt Survey No. 83, Abstract 397, and being that same tract described as Tract Three, 5.87 acres, in a Special Warranty Deed granted to Copperfield IV Venture, dated September 22, 1993, and recorded in Volume 12034, Page 3040, Real Property Records of Travis County, Texas and further described by metes and bounds as follows:

BEGINNING at a 1/4" iron pin found in the north R.O.W. line of Yager Lane for the southwest corner of Lot 47, Block "F", Copperfield Section Three-C, a subdivision in Travis County, Texas as recorded in Volume 85, Pages 63B-63C, Plat Records, Travis County, Texas and the most southerly corner of Lot 46, Block "F" of said Copperfield Section Three-C for the southeast corner of said Tract Three, Copperfield IV Venture and this tract;

THENCE: N 60°04'39" W 188.45 feet with the north R.O.W. line of said Yager Lane and the south line of said Tract Three, Copperfield IV Venture, to a 1/2" iron pin with a cap inscribed "TJ Dodd" found for the southeast corner of Lot 61, Block "F" of said Copperfield Section Three-C and the southwest corner of said Tract Three, Copperfield IV Venture and this tract;

THENCE: with the west line of said Tract Three, Copperfield IV Venture in the following seven (7) courses:

- (1) N 28°46'16" E 312.47 feet to a 1/2" iron pin found for the northeast corner of said Lot 61, Block "F", Copperfield Section Three-C and an interior ell corner of said Tract Three, Copperfield IV Venture and this tract,
- (2) N 45°09'03" W 140.02 feet to a 1/2" iron pin found for an angle point in the north line of said Lot 61, Block "F", Copperfield Section Three-C and an angle point in the south line of Lot 6, Block "F", Copperfield Section Three-B, a subdivision in Travis County, Texas as recorded in Volume 85, Pages 79B-79C, said plat records and an angle point of said Tract Three, Copperfield IV Venture and this tract,
- (3) N 75°43'00" E 96.51 feet with the south line of Block "F" of said Copperfield Section Three-B to a 1/2" iron pin found for an angle point in the south line of Lot 7, Block "F", said Copperfield Section Three-B and an angle point of said Tract Three, Copperfield IV Venture and this tract,
- (4) N 19°48'27" E 492.42 feet to a 1/2" iron pin found for the southeast corner of Lot 18, Block "F", said Copperfield Section Three-B and the northeast corner of Lot 17, Block "F", said Copperfield Section Three-B, and an angle point of said Tract Three, Copperfield IV Venture,
- (5) N 36°40'15" E 79.65 feet to a 1/2" iron pin found for the southeast corner of Lot 20, Block "F", said Copperfield Section Three-B and the northeast corner of Lot 19, Block "F", said Copperfield Section Three-B, and an angle point of said Tract Three, Copperfield IV Venture and this tract,
- (6) N 84°40'33" E 80.22 feet to a 1/2" iron pin found for the southeast corner of Lot 21, Block "F", said Copperfield Section Three-B and an interior ell corner of said Tract Three, Copperfield IV Venture and this tract,
- (7) N 07°48'34" W 104.04 feet to a 1/2" iron pin found in the south R.O.W. line of Emily Way, for the northeast corner of said Lot 21, Block "F", and the northwest corner of said Tract Three, Copperfield IV Venture;

EXHIBIT "A"

FIELD NOTES

JOB NO: Z:\Projects_Eng\Egpt_04\0456_MENU CAN_HUNT\DOCUMENTS\FIELDNOTES.doc

DATE: August 20, 2004

PAGE: 3 OF 3

THENCE: S 86°23'12" E 30.12 feet with the south R.O.W. line of said Emily Way and the north line of said Tract Three, Copperfield IV Venture, to a 1/4" iron pin found for the northwest corner of Lot 24, Block "F", said Copperfield Section Three-C, and the northeast corner of said Tract Three, Copperfield IV Venture and this tract;

THENCE: with the west line of Block "F", said Copperfield Section Three-C and the east line of said Tract Three, Copperfield IV Venture in the following eight (8) courses:

- (1) S 00°53'41" E 54.32 feet to a 1/4" iron pin found for an angle point in the west line of Lot 24, Block "F", said Copperfield Section Three-C, and an angle point of said Tract Three, Copperfield IV Venture and this tract,
- (2) S 13°11'00" E 423.69 feet, being the basis of bearings cited hereon, to a 1/4" iron pin found, for the southwest corner of Lot 32, Block "F", said Copperfield Section Three-C, and an angle point of said Tract Three, Copperfield IV Venture and this tract,
- (3) S 12°02'53" E 85.46 feet to a 60 D nail found in a fence corner for the southwest corner of Lot 34, Block "F", said Copperfield Section Three-C, and the northwest corner of Lot 35, Block "F", and an angle point of said Tract Three, Copperfield IV Venture and this tract,
- (4) S 29°19'45" W 202.17 feet to a 1/4" iron pin with a yellow plastic cap inscribed "CCC 4835" set for an angle point in the west line of Lot 38, Block "F", said Copperfield Section Three-C, and an angle point of said Tract Three, Copperfield IV Venture and this tract,
- (5) S 54°12'22" W 252.84 feet to a 1/4" iron pin found for the most westerly corner of Lot 43, Block "F", said Copperfield Section Three-C and the most northerly corner of Lot 44, Block "F", said Copperfield Section Three-C, and an angle point of said Tract Three, Copperfield IV Venture and this tract,
- (6) S 62°25'38" W 87.23 feet to a 1/4" iron pin found for the most westerly corner of said Lot 44, Block "F", and the most northerly corner of Lot 45, Block "F", said Copperfield Section Three-C, and an angle point of said Tract Three, Copperfield IV Venture, and this tract,
- (7) S 23°00'43" W 99.93 feet to a 1/4" iron pin found for most southerly corner of said Lot 45, Block "F", and the northwest corner of said Lot 46, Block "F", and an angle point of said Tract Three, Copperfield IV Venture, and this tract,
- (8) S 06°31'00" E 120.12 feet to the point of beginning and containing 5.86 acres of land.

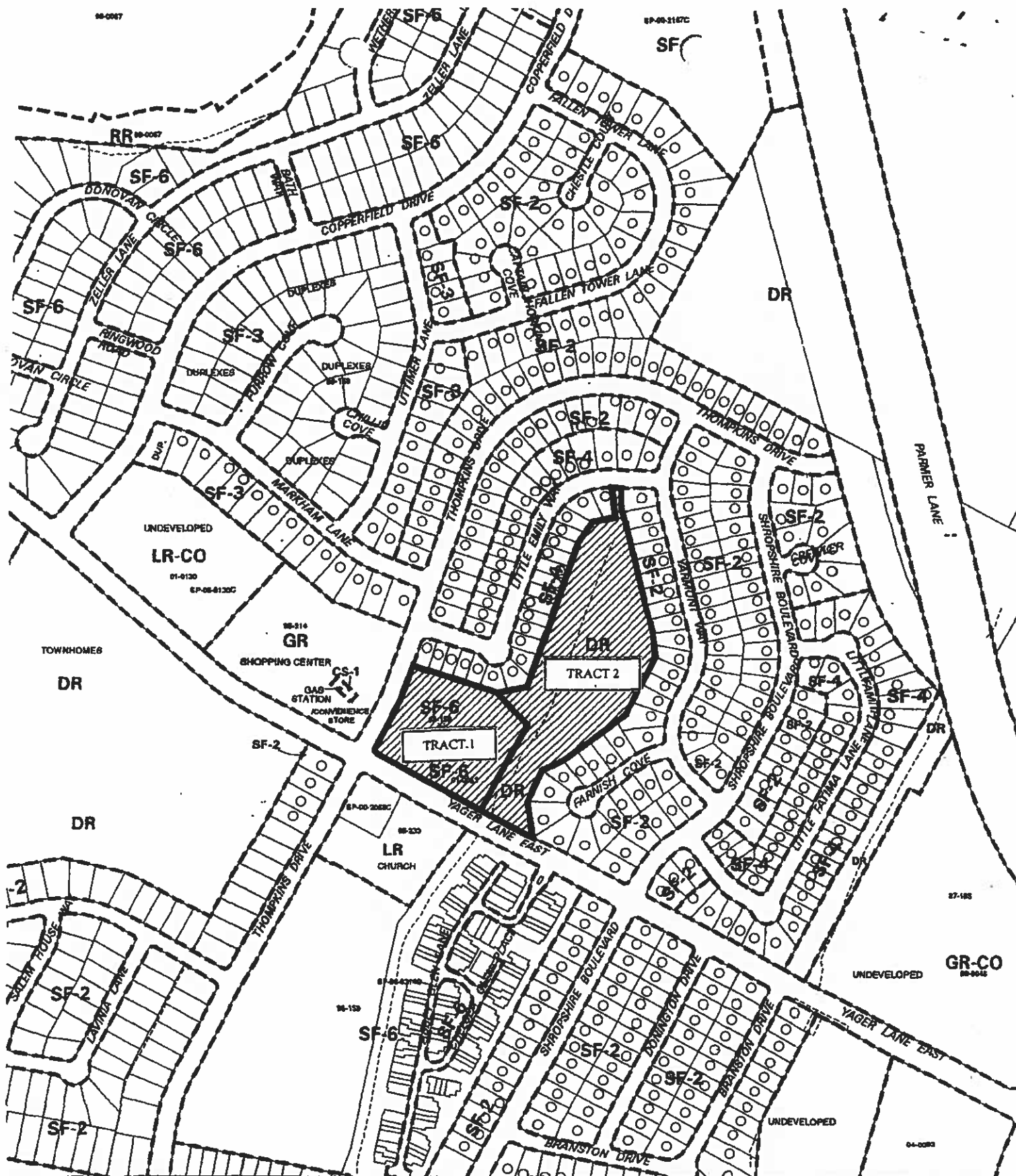
Castleberry Surveying, Ltd.
203 South IH 35, Suite 101C
Georgetown, Texas 78628



EXHIBIT "A"

Clyde C. Castleberry, Jr.
Registered Professional Land Surveyor No. 4835

CCC/tcp



 1" = 400'	SUBJECT TRACT		ZONING EXHIBIT B		CITY GRID REFERENCE NUMBER N33
	PENDING CASE				
	ZONING BOUNDARY		CASE #: C14-06-0140	DATE: 06-09	
	CASE MGR: S.SIRWAITIS	ADDRESS: 1112 E YAGER LN	INTLS: SM		
SUBJECT AREA (acres): 8.940					

(MS. A.9.7C)

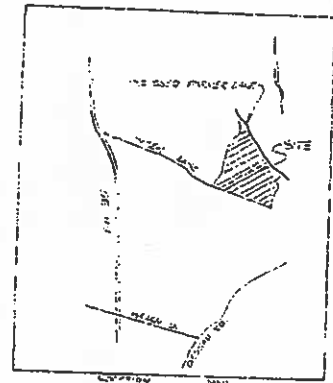
DATE: 10-16-85

84 25558

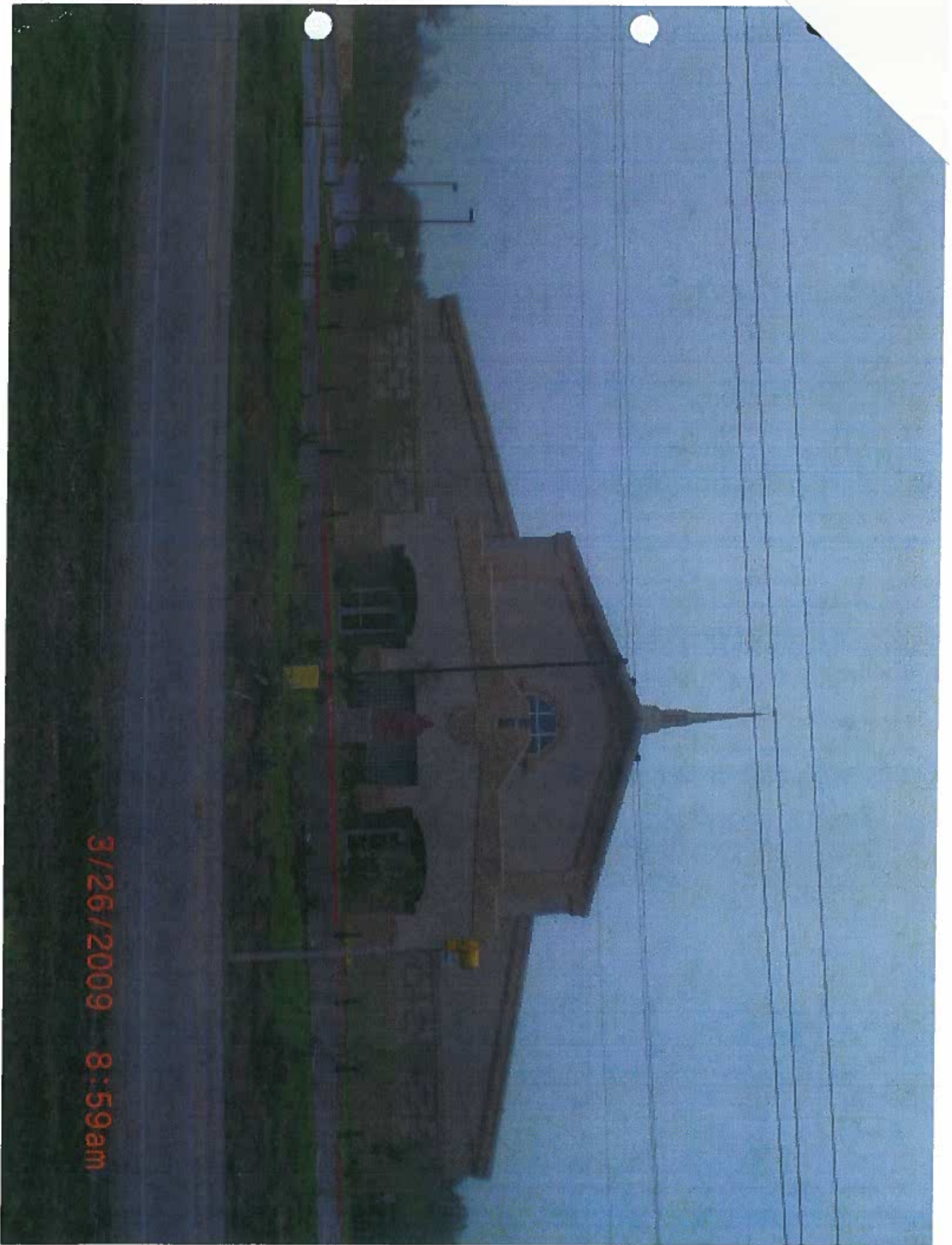
C8-84-73.3

ROKI LINEAR FOOTAGE

CREWLER COVE	125'
FARNISH COVE	380'
YAGER LANE	1100'
YARMOUTH WAY	1310'
SHROPSHIRE BLVD.	1570'
THOMPSONS DRIVE	1670'



3/26/2009 8:59am



ACKNOWLEDGMENT FORM

concerning
Subdivision Plat Notes, Deed Restrictions
Restrictive Covenants
and / or
Zoning Conditional Overlays

I, The Most Reverend Gregory M. Aymond, Bishop of the Roman Catholic Diocese of Austin, have checked the subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional overlays prohibiting certain uses and/or requiring certain development restrictions i.e. height, access, screening etc. on this property, located at:

1112 East Yager Lane

(Address or Legal Description)

If a conflict should result with the request I am submitting to the City of Austin due to subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional overlays it will be my responsibility to resolve it. I also acknowledge that I understand the implications of use and/or development restrictions that are a result of a subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional overlays.

I understand that if requested, I must provide copies of any and all subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional overlay information which may apply to this property.

JUN 22 2006



(Applicant's signature)

JUN 22 2006

(Date)

DANNY M. SHEENA, P.E.

Attorney at Law

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Houston, Texas 77002*

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www.Sheenalawfirm.com*

March 18, 2009

VIA CMRR# 7007 2560 0003 2424 6859
Chancellor Ron Walker
Bishop Gregory Aymond
P O Box 15405
Austin, TX 78761-5405

RECEIVED
BISHOP'S OFFICE

MAR 20 2009

RE: My Clients: Elizabeth M. Quinlan
Your Property: 1112 E. Yager Lane, Austin, Texas
Copperfield Sec 3-d, Lot 61, Block F

By _____

Bishop Aymond and Chancellor Walker,

I have been retained to represent Libby Quinlan regarding the church's multiple violations of the restrictive covenants for Lot 61, Block F, Copperfield 3-C.

This lot was purchased by you, Gregory Aymond, from the owner Rogers D. Wilson, pursuant to a General Warranty Deed dated June 30, 2004. The General Warranty Deed specifically states that the property is subject to the restrictive covenants recorded in Volume 9036, page 885, and 9534, page 265 of the Real Property Records.

The Restrictive Covenants recorded in Volume 9534, page 265 through 268 include the following restrictions:

No lot shall be used except for residential purposes. Except as herein provided, no building shall be erected, altered, placed, or permitted to remain on any lot, other than one detached single family dwelling not to exceed two and one-half stories in height, and a private storage garage for not more than three cars.

No vehicle of any type shall be parked in the open on a portion of any lot other than a private driveway.

No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building set back line shown on the recorded plan. In any

event, no building shall be located on any lot nearer than the 25 feet minimum, 35 feet maximum to the front lot line, or nearer than 10 feet to any side street line.

No part of any of said property shall ever be used for a business or commercial purpose or for carrying on any trade or profession, except that NASH PHILLIPS/COPUS, INC., its successors, or agents may erect and maintain sales offices and exhibit houses in said subdivisions.

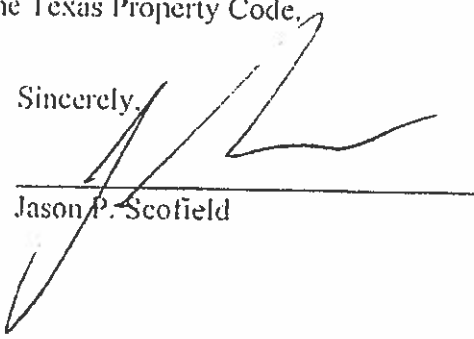
Fences, walls, and hedges shall not be built or maintained forward of the front wall of the house erected on that lot, except for trellises and/or decorative fences included in the architectural design of the house.

The structure that the owner built at 1112 East Yager is in violation of each of these restrictions. The church may be in violation of additional restrictions, including but not limited to the noxious, nuisance spotlights in the paved parking area of your commercial building.

It is abundantly clear that you, the property owner, were fully aware of the restrictive covenants on the property and decided to willfully disregard the covenants and property rights of the other owners in the subdivision.

Demand is hereby made that the above listed violations of the restrictive covenants be cured within 7 days of receipt of this letter. Should the violations not be addressed, I will file suit to enforce the restrictions. Texas property code §202.004 allows for recovery of \$200.00 per day for violations of restrictive covenants. Additionally, Texas Property Code §5.006 allows for recovery of attorney's fees in a successful action to enforce restrictive covenants. Be advised that if the offending structure and other violations are not promptly taken care of, I will seek not only injunctive relief, but also the statutory damages and attorney's fees allowed by the Texas Property Code.

Sincerely,



Jason P. Scofield

JPS
Attachments

13-82875 JTR
RETURN TO: HERITAGE TITLE
401 CONGRESS, SUITE 1500
AUSTIN, TEXAS 78701

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON,
YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION
FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC
RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE
NUMBER.



UD 2004129670
3 PGS

GENERAL WARRANTY DEED

Date: June 30, 2004

Grantor: Rogers D. Wilson

Grantor's Mailing Address (including county):

1101 E. Partner Lane, Suite 306
Austin, Texas 78759
Travis County

Grantee: The Most Reverend Gregory M. Aymond, Bishop of the Diocese of Austin, and His
Successors in Office

Grantee's Mailing Address (including county):

Attn: Charles Muller
1600 North Congress Avenue
Austin, Texas 78701
Travis County

Consideration:

The sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration,
for which no lien, express or implied, is retained.

Property (including any improvements):

Lot 61, Block "F", COPPERFIELD SECTION THREE-C, a subdivision in Travis
County, Texas, according to the map or plat thereof recorded in Volume 83, Page
63B-63C, Plat Records of Travis County, Texas. SAVE AND EXCEPT therefrom
all of that certain tract or parcel of land containing 1,231 square feet, more or less,
conveyed to the City of Austin by instrument recorded in Volume 10107, Page 790
of the Real Property Records of Travis County, Texas.

Reservations from and Exceptions to Conveyance and Warranty:

This deed and conveyance is expressly made subject to all those certain exceptions and encumbrances herein called "Permitted Exceptions" described in Exhibit A attached hereto and made a part hereof for all purposes, to the extent the same are valid and subsisting and affect the Property.

Grantor, for the Consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, grants, sells and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from and Exceptions to Conveyance and Warranty.

Wherever the context of this Deed so requires, the singular shall include the plural, the plural shall include the singular and any gender shall include all other genders.


Rogers D. Wilson

THE STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 30th day of June, 2004 by Rogers D. Wilson.


Notary Public, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

Laurie D. Tice
Rogers & Whitley, L.L.P.
2210 San Gabriel
Austin, Texas 78705



Exhibit A

Reservations from and Exceptions to Conveyance and Warranty

1. Restrictive covenants in Volume 9036, Page 885 and Volume 9534, Page 265 of the Real Property Records and Volume 85, Page(s) 63B-63C of the Plat Records, all of Travis County, Texas. (But omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons)
2. Public utility and drainage easements and building setback lines as set forth in instrument recorded in Volume 9534, Page 265 of the Real Property Records of Travis County, Texas.
3. Building setback line 25 feet in width along the northwest property line(s), as shown on the Plat(s) recorded in Volume 85, Page(s) 63B-63C of the Plat Records of Travis County, Texas.
4. Building set back line 25 feet in width along the southwest property line(s), as shown on the Plat(s) recorded in Volume 85, Page(s) 63B-63C of the Plat Records of Travis County, Texas.
5. Public utility easement 7.5 feet in width along the northeast and southeast property line(s), as shown by the Plat(s) recorded in Volume 85, Page(s) 63B-63C of the Plat Records of Travis County, Texas.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2004 JUL 08 03:45 PM

2004170670

FERGUSONL \$10.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS

RESTRICTIVE COVENANTS

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF TRAVIS

That Nash Phillips/Copus, Inc. being the sole owner of all lots in Copperfield 3-C, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of said subdivision recorded in the Plat Book 85, Page(s) 63B and 63C, Plat Records of Travis County, Texas hereby imposes the following covenants, conditions, and restrictions upon all of said property:

1) LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes. Except as herein after provided, no building shall be erected, altered, placed, or permitted to remain on any lot, other than one detached single family dwelling not to exceed two and one-half stories in height, and a private garage for not more than three cars.

2) DWELLING COST, QUALITY AND SIZE. The total floor area of any single family structure of dwelling, exclusive of one-story open porches and garages or carports, built on any lot in said subdivision shall contain not less than 850 square feet and shall cost not less than \$40,000 based upon cost levels prevailing on the date these covenants are recorded. It is the intention and purpose of this covenant to assure that all such dwellings shall be of the quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost herein for the minimum permitted dwelling size.

3) EASEMENTS. Public utility easements are reserved as shown on the recorded plat and over the rear seven and one-half feet of each lot. These easements are reserved for installation and maintenance of public utilities and public drainage facilities, and they are also reserved in each block as needed for adequate surface drainage of all lots within each block. Easements five feet in width are also reserved on each side of all side lot lines as needed for adequate surface drainage of all other lots within the block. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may change the direction of flow in the drainage channels or swales in the easements or which may obstruct or retard the flow of water through the drainage channels of section in the easements; provided, however, that a brick return of two (2) feet maximum extension and a fireplace originally constructed as part of the residence shall be allowed on each residence within this easement if adequate surface drainage is maintained. The easement area in each lot and all improvements in it shall be maintained by the owner of the lot except for those improvements for which a public authority or utility company is responsible.

4) BUILDING LOCATION. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building set back lines shown on the recorded plat. In any event, no building shall be located on any lot nearer than 25 feet minimum, 35 feet maximum, to the front lot line, or nearer than 10 feet to any side street line. No building shall be located nearer than 3 feet to an interior lot line, except that no side yard shall be required for a garage or other permitted accessory building located 50 feet or more from the minimum building set back lines. No building shall be located on any interior lot nearer than 7 1/2 feet to the rear lot line. For the purposes of this covenant, yards, steps, open porches, and the two-foot (2') brick returns and fireplaces mentioned in Section 3 above, shall not be considered as part of

the building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

5) **NUISANCES.** No noxious or offensive activity shall be carried upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle or motor repair work, other than minor emergency repairs, shall be conducted on any lot or in the street or streets adjoining any lot. No hoist, crane, hoist or other device for lifting vehicles or parts thereof, nor any disabled vehicle shall be stored or parked in the open on any lot or any street adjoining any lot. Notwithstanding any of the above, no vehicle of any type shall be parked in the open on a portion of any lot other than a private driveway constructed with the approval of the Architectural Control Committee.

6) **TEMPORARY STRUCTURES.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be placed or used on any lot at any time as a residence either temporarily or permanently.

7) **SIGNS.** No sign of any kind shall be displayed to the public view on any single family residential lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale, or rent, or signs used by a builder to advertise the property during the construction and sales period.

8) **UNSIGHTLY OBJECTS.** Motorboats, campers, trucks or trailers, and other unsightly vehicles or objects, including satellite dish receivers, shall be parked, stored or installed in the back of the front wall line of the house and shielded by a solid wood or masonry privacy fence or an enclosed building, which screens such objects from ordinary public view; provided, however, that any such fencing and/or enclosures shall comply with applicable state, county and municipal regulations.

9) **OIL AND MINING OPERATIONS.** No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, crude oil tanks, tunnels, mining excavations, or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot.

10) **COMMERCIAL USE.** No part of any of said property shall ever be used for a business or commercial purpose or for carrying on any trade or profession, except that NASH PHILLIPS/CORPUS, INC., its successors, or agents may erect and maintain sales offices and exhibit houses in said subdivision.

11) **RESUBDIVISION.** The owner or owners of any two or more adjacent lots shall have the right, without the consent of the remaining property owners in the subdivision, to resubdivide provided such resubdivision is approved by the Architectural Control Committee.

12) **LIVESTOCK AND POULTRY.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for commercial purposes.

13) **GARBAGE AND REFUSE DISPOSAL.** No lot shall be used or maintained as dumping ground for rubbish, trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

14) **SIGHT DISTANCE AT INTERSECTIONS.** No fences, wall, hedge or shrub planting which obstructs sight lines at intersections between two and six foot above roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or

in the case of a rounded property corner from the intersection of the street property lines extended. The same sightline limitation shall apply on any lot within 10 feet from the intersections of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sightlines.

15) FENCES, WALLS, AND HEDGES. Fence, walls and hedges shall not be built or maintained forward of the front wall of the house erected on that lot, except for trellizes and/or decorative fences included in the architectural design of the house. Those decorative fences shall be allowed to extend no more than fifteen feet in front of the front wall line of the house. Side yard fences on corner lots may be built on the property line as limited by the provisions of Paragraph 14.

16) EXISTING DWELLINGS. No existing dwelling shall be moved onto any lot in this subdivision.

17) ARCHITECTURAL CONTROL:

A) No building shall be erected or placed on any lot in said subdivision nor shall any existing structure be altered or removed until the building plans and specifications showing exterior design, height, building material and color scheme thereof, and a plot plan showing the location of the structure and driveways have been submitted to and approved in writing by the Architectural Control Committee.

B) The Architectural Control Committee is composed of Bill Bulloch, Tom Buffington and Mark Elbrecht. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, Nash Phillips/Copus, Inc. shall have the option of changing the membership of the Committee.

C) The Architectural Control Committee shall exercise its best judgement to see that all improvements and structures in the subdivision conform to and harmonize with the existing surrounding structures, and that trees and environment are reasonably protected; and when, in the opinion of the Committee, a waiver or modification of any of these restrictive covenants would not impair or detract from the high quality of the subdivision, it may by written instrument in recordable form waive or modify any such restriction. In the same manner, it shall have the power to approve or disapprove resubdivisions of parts of the subdivisions and to permit in the resubdivided areas, the creation of residential Planned Unit Developments as now defined in Chapter 45 of the Austin City Code. The Architectural Control Committee shall serve without compensation and shall not be liable in damages to anyone for any action taken or any failure to act.

D) If said building plans, specifications, and plot plan are not approved or disapproved within thirty days following the date on which the same are submitted

Rogers & Whitley, L.L.P.

2210 San Gabriel
Austin, Texas 78705-5012

Richard L. Whitley
Partner

Telephone (512) 334-4602
Fax (512) 334-4612
[REDACTED]

March 25, 2009

via Certified Mail, Return Receipt
Requested, #7007 0710 0000 0156 9706
and Facsimile (713) 225-1560

Jason P. Scofield
The Binz Law Center
1001 Texas Avenue, Suite 240
Houston, Texas 77002

RE: 1112 E. Yeager Lane, Austin, Texas
Copperfield Sec 3-d [sic], Lot 61, Block F (the "Property")

Dear Mr. Scofield:

This firm represents The Most Reverend Gregory M. Aymond, Bishop of the Diocese of Austin (the "Diocese"). Our client received your letter dated March 18, 2009 on March 20, 2009 claiming violations of the Restrictive Covenants dated December 3, 1985, recorded at Volume 9534, Page 265 of the Real Property Records of Travis County, Texas (the "Covenants").

It appears that your title research of the Restrictive Covenants may have been incomplete. For your convenience, I have attached a copy of the Second Amendment to Restrictive Covenants (the "Second Amendment") dated May 25, 2004 and filed of record as Document 2004129669 of the Official Public Records of Travis, County, Texas.

Paragraph 1 of the Second Amendment amends the Covenants to exclude Lot 61 from coverage of the Covenants. Therefore, the alleged violations of the Covenants contained in your letter could not occur as the Covenants do not apply to Lot 61.

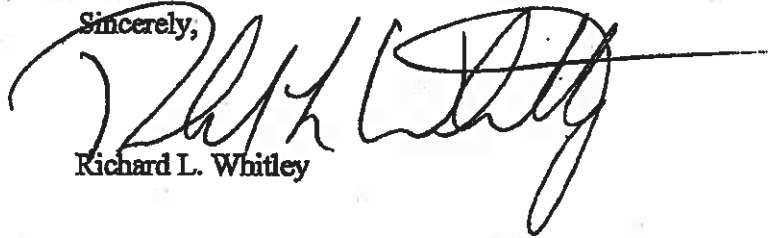
Further the General Warranty Deed that conveyed the Property to the Diocese states that the Property is subject to the Covenants "to the extent the same are valid and subsisting and affect the Property" (emphasis added). As the Second Amendment was filed prior to the General Warranty Deed, the Covenants do not "affect the Property."

The lighting in the parking lot and the improvements constructed on the Property fully comply with applicable governmental requirements. Further, the Architectural Control Committee of Copperfield 3-C approved the Plans and Specifications for the improvements constructed on the Property and such approval is contained in that certain Notice of Approval of Building Plans and Specifications recorded as Document 2004129667 of the Official Public Records of Travis, County, Texas.

We trust that this information will satisfy your demand and that no further action is necessary. The Diocese has been and will continue to be a good neighbor to the Copperfield community.

Please contact me at the number listed above if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Whitley", with a long horizontal line extending to the right.

Richard L. Whitley

RLW/mjw
Enclosure

cc: Bishop Aymond
Ron Walker

11-6FF 38875 JJK
RETURN TO: HERITAGE TITLE
401 CONGRESS, SUITE 1600
AUSTIN, TEXAS 78701



AMEND
3 PGS

2004120889

SECOND AMENDMENT TO RESTRICTIVE COVENANTS

This Second Amendment to Restrictive Covenants is made and entered into in light of the following recitals:

RECITALS


- A. Nash Phillips/Copus, Inc. imposed certain restrictive covenants on all lots in Copperfield 3-C, a subdivision in the City of Austin, Travis County, Texas according to the map or plat of said subdivision recorded in the Plat Book 85, Page(s) 63B and 63C, Plat Records of Travis County Texas, pursuant to the Restrictive Covenants dated December 3, 1985, recorded in Volume 9534, Page 265, Real Property Records, Travis County, Texas ("Restrictive Covenants").
- B. Section 17(C) of the Restrictive Covenants provides that the Restrictive Covenants may be amended by the Architectural Control Committee when, in the opinion of the Committee, a waiver or modification of any of the restrictive covenants would not impair or detract from the high quality of the Copperfield 3-C Subdivision.
- C. Rod Madden, Reverend Joe Van Anh Nguyen and Charles Muller are the current members of the Architectural Control Committee created pursuant to the Restrictive Covenants ("Architectural Control Committee").
- D. Rogers D. Wilson ("Owner") is the owner of Lot 61, Block "F", Copperfield Section 3-C, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 85, Page(s) 63B-63C of the Plat Records of Travis County, Texas, SAVE AND EXCEPT therefrom all of that certain tract or parcel of land containing 1,231 square feet, more or less, conveyed to the City of Austin by instrument recorded in Volume 10107, Page 720 of the Real Property Records of Travis County, Texas, also known as 1112 East Yager Lane, Austin, Texas 78753 ("Lot 61"), and Owner desires to convey Lot 61 to The Most Reverend Gregory M. Aymond, Bishop of the Diocese of Austin, and His Successors in Office (the "Diocese").
- E. The Architectural Control Committee has determined that the use of Lot 61 for other than residential purposes will not impair or detract from the high quality of the Copperfield 3-C subdivision.
- F. The Diocese has requested that the Architectural Control Committee modify the Restrictive Covenants to exclude Lot 61 and waive from application the Restrictive Covenants with respect to Lot 61.

NOW, THEREFORE, it is hereby declared that:

1. Pursuant to Section 17(C) of the Restrictive Covenants, application of the Restrictive Covenants as to Lot 61 are hereby waived in their entirety and the Restrictive Covenants are modified to exclude Lot 61.
2. Except as set forth herein, the Restrictive Covenants are ratified and confirmed.

EXECUTED to be effective this 25th day of May, 2004.

ARCHITECTURAL CONTROL COMMITTEE


Rod Madden, Member



Reverend Joe Van Anh Nguyen, Member


Charles Muller, Member

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was sworn to, subscribed and acknowledge before me on this the 30
day of May, 2004, by Rod Madden. x 2


June


Notary Public - State of Texas

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was sworn to, subscribed and acknowledge before me on this the 30
day of May, 2004, by Reverend Joe Van Anh Nguyen

Sine


Notary Public - State of Texas

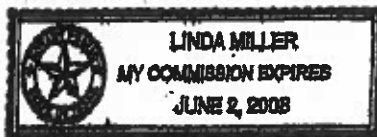


STATE OF TEXAS

COUNTY OF TRAVIS

§
§
§

This instrument was sworn to, subscribed and acknowledge before me on this the 30
day of ~~May~~, 2004, by Charles Muller.
June



Linda Miller

Notary Public - State of Texas

AFTER RECORDING, PLEASE RETURN TO:

Laurie D. Tice
Laurie D. Tice, Esq.
Rogers & Whitley, L.L.P.
2210 San Gabriel
Austin, TX 78705-5012

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2004 Jul 08 02:45 PM 2004129669

FERGUSONL \$18.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS

JASON P. SCOFIELD

ATTORNEY AT LAW

1001 Texas Avenue, Suite 240, Houston, Texas 77002

Phone: (512) 626-5810

Facsimile: (832) 213-4431

E-Mail: [REDACTED]

10/15/2008

Via Facsimile 512 821-1155

Sister Ane Nguyen

Holy Vietnamese Martyrs Catholic Church

1107 E. Yager Lane

Austin, Texas 78753

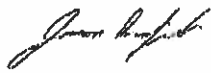
RE: My Clients: Libby Quinlan and Kerry Stennett
Property: 12341 and 12339 Little Emily Way, Austin, Texas 78743

Sister Nguyen,

I have been retained to represent Libby Quinlan and Kerry Stennett to represent them in regards to the above listed real property. Please direct all future correspondence regarding this matter to me. It has been brought to my attention that the Holy Vietnamese Martyrs Catholic Church has repeatedly attempted to force my clients to remove their fences and cede possession of portions of their property to the church. It is my understanding that the church is claiming a right of possession for the public utility easements and the adjoining strips of property closest to the church that are owned by my clients. Please provide me with documentation supporting your claim to any portion of my clients' properties.

Additionally, until this matter has been resolved, the church and its agents are not to enter onto my clients' properties for any purposes or a trespass action will be filed. Further, the church's repeated harassment of my clients must end immediately, or I will file suit for harassment and intentional infliction of emotional distress. It is a shame that the church has chosen to treat its neighbors in a manner so inconsistent with the very teachings it espouses.

Very truly yours,



Jason P. Scofield



Diocese of Austin

The Catholic Church of Central Texas
P.O. Box 13327 - Austin, TX 78711
(512) 476-4888 Fax (512) 478-5962
www.mstindioocese.org

Chancellor

October 16, 2008

Mr. Jason Scofield
Attorney at Law
1001 Texas Avenue, Suite 240
Houston, TX 77002

*Re: Holy Vietnamese Martyrs Catholic Church; Your letter dated October 15, 2008
concerning your clients, Libby Quinlan and Kerry Stennet*

Mr. Scofield:

I am in receipt of the above-referenced letter to Holy Vietnamese Martyrs Catholic Church (the Parish). I am in-house counsel for the Diocese of Austin. Please direct any future correspondence in this matter to me.

It appears as though you are misinformed. Please understand that the Diocese of Austin owns 5.85 acres of land (the Property) that lies at the rear of your clients' property in Copperfield Subdivision in Austin. The Property lies adjacent to the tract of land on which the Parish is constructing its new sanctuary. Title is held by the Diocese of Austin for the benefit of and the use by the Parish. The Property is private property.

The Parish has recently cleaned debris from the Property and cleared it so that it is attractive and potentially useable for recreation, mediation, and other purposes by parishioners.

The Parish is not asking, and has never asked or demanded, that any of the homeowners who adjoin the Property cede any portions of their own property. It is inconceivable to me that you would find such a statement or claim to be credible.

The Parish learned that a few homeowners whose adjoin the Property have wrongfully encroached upon and fenced-in portions of the Property. The Parish asked these homeowners to move their wrongfully encroaching fences back to their appropriate lot lines. The Parish has made these requests with the politeness and respect.

Most recently, the Parish decided to construct a fence around the Property. Apparently, some anxious owners, who have wrongfully encroached onto the Property, have either intentionally or mistakenly asserted that the Parish intended to remove existing fences over the objection of some homeowners. The Parish is not stating, nor has it stated, that it will remove an existing fence

Mr. Jason Scofield
Attorney at Law

Page 2

*Re: Holy Vietnamese Martyrs Catholic Church; Your letter dated October 16, 2008
concerning your clients, Libby Quinlan and Kerry Stennet*

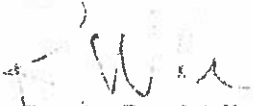
over the objection of an adjoining homeowner (even though the homeowner's fence may encroach onto the Property). The Parish simply intends to fence around the Property, which it clearly owns. For the time being, the Parish will fence around any existing fences in any disputed areas; including those disputed areas to which your clients may claim.

Most of the adjoining homeowners who had encroached onto the Property have been amicable and neighborly. The Parish has worked with them in correcting and resolving rights to any disputed areas. It is our hope that the few outstanding disputes can be resolved in the near future with those few homeowners who have, so far, refused to dialogue with the Parish.

I know that you will agree that any pending dispute does not and should not affect the Parish's right to place a fence around the Property along lines that are not in dispute. Unfortunately, a few aggressive individuals have trespassed onto the Property and have attempted to destroy or remove posts and lines placed on the Property by the Parish's contractor. I have instructed the Parish to watch for such trespassers and to call the local police department if they learn that any person is destroying Parish property, including but not limited to fence posts or fence enclosures. I trust that your clients have no knowledge of such activity.

I am available to discuss this issue with you if your clients wish to reach an expedient resolution. As you uncover more information related to this matter I am confident that you will find that the Parish has been an asset in the community, improved property around the subdivision, and has kept the community generally informed of its intentions. It is unfortunate for one, especially a professional, to jump to conclusions and make statements that are unfounded and unnecessary with respect to another's teachings or intentions.

Sincerely,



Deacon Ron Walker
Chancellor

cc: By Fax: 832-213-4431

**Proposed Conditions and Issues from Ms.
Libby Quinalan**

1. Tract Two shall be preserved as a buffer between development on Tract One and the adjoining residential properties to the north and east of the tract identified as Copperfield Sec 3-C, Block F, Lot 61.)
2. A 50-foot wide vegetative buffer shall be provided and maintained in a natural state between Tract 1 & residential properties to the north, and along the perimeter of Tract adjacent to residential properties. Improvements permitted within the buffer zone are limited to a fence, drainage, underground utility improvements or those improvements that may be otherwise required by the City of Austin or specifically authorized in this ordinance. An eight foot high privacy fence shall be provided and maintained along the north property line of Tract One.

3. Outdoor sports and recreation use and outdoor entertainment use are prohibited uses
On Tract 1 & Tract 2.

4. Prohibit pedestrian access from 1101 and/or 1107 E Yager Lane to and from 1112 E Yager Lane by any means other than the Thompkins Drive/E

Yager Lane intersection pedestrian crosswalk.

5. Prohibit parishioners from parking in, on or in front of any private driveway in Copperfield; enforced by APD and municipal court, with legal contract/agreement making the church responsible for fines and neighbors' court costs.

6. Prohibit church civilian traffic police on public property.

7. Prohibit motorized vehicles on Tract 2. Prohibit vehicle traffic from Tract 1 to Tract 2.

8. Prohibit parking on any area of Tracts 1 & 2, excepting the parking lot on the approved 2007 site plan.

10. Prohibit parking on any area of Tracts 1 & 2, excepting the parking lot on the approved 2007 site plan for 1112 E Yager Lane.

11. Prohibit anything other than emergency and utility vehicle access to and from Tract 1 to Tract 2 and to and from Little Emily Way to Tract 2.

12. Exterior lighting must be hooded or shielded so that the light source is not directly visible from adjacent properties and be limited to twelve feet high

13. **MAXIMUM HEIGHT LIMIT OF 25-FEET within 200 feet of residential properties.** 35 feet above ground level for the remaining property within the area beginning at 200 feet from any residential lot. (RE: C14-05-0145)

?? RECOMMENDATION MADE TO CITY COUNCIL THAT THE APPLICANT AND NEIGHBORHOOD ENTER INTO A RESTRICTIVE COVENANT TO PROHIBIT RELIGIOUS USES ON THE NORTHERN PORTION OF TRACT 2; AND TO PROHIBIT RELIGIOUS USES WITHIN 100 FEET OF E Yager Lane, Farnish Cove, C14-05-0145

Little Emily Way and Yarmont Way;

15. The restrictive covenants dated prior to May 2004 for lot 61, see Vol 9534, Pages 265 269 will be added to Tract 2.

16. The Architectural Control Committee members will allow owners and residents of properties in Sec 3-C and Sec 3-B to nominate, and elect by majority vote, the 3 successors to the existing members from property owners of residential lots in Sec 3-B and 3-C. Only residential property owners may serve to represent neighbors' interests as members in the residential subdivision.

17. Tract 2 Property may not be developed without site plan.

18. Direct and encourage pedestrian traffic uses, not jaywalking, vehicle and parking traffic along the property perimeter.

1. 50 feet of green vegetative buffer between the residential lots and Tract 2.

Vegetative buffer is to be maintained by the owner/developer and to be left in its natural state.

[This can be placed in a conditional overlay in the zoning ordinance for this case]

19. An 8 foot high stone fence (unless 8' height not approved by all affected homeowners) to be built and maintained by the owner on the northernmost Boundary of Lot 61, Tract 1. [The fence requirement can be in a public restrictive covenant, however the material (stone) would have to be placed in a private restrictive covenant between the neighborhood and the applicant.]

20. No lighting of any kind shall face directly toward or be placed more than 12 feet above the ground within 300 feet of residential property in Copperfield Subdivision. Street and parking lot security lights to have appropriate shading/directional covers. [The City Compatibility Standards (LDC-Sec 25-2-1067) already require that exterior lighting be hooded or shielded so that the light source is not directly visible from adjacent properties. Any additional requirements by the neighborhood would have to be placed in a private restrictive covenant with the applicant.]

21. No new roads to be built into either Tract 1 or Tract 2.

[This is a City subdivision requirement (connectivity) and can not be part of the zoning case.

The City could prohibit access through a conditional overlay.]

22. Drainage, flooding and water overflow concerns will be addressed to ensure no additional problems are created. (require inspections and studies of property that one would have to develop a site plan before any land development:: require permits if a site plan is waived. (Drainage for commercial properties are reviewed by the City during the Site Plan process of development. Any additional requirements would have to be placed in a private restrictive

covenant between the applicant and neighborhood]

23. **MAXIMUM HEIGHT LIMIT OF 25-FEET** within 200 feet of residential properties. CASE: C14-05-0145 & C14-05-0145

Case No. C14-06-0134 – Lakeline Mall Area <http://www.ci.austin.tx.us/edims/document.cfm?id=98660>

Request the owner submit an Application for Zoning to change the allow commercial office buildings on the 5.87 acre greenbelt Tract 2, after the property has been platted or until the owner a site plan exemption with details of their development plans that reflect the immediate residential community architecture, heights, lighting, and property designs. Request to be informed of the future plans for this Tract 2 before any base district zoning changes, so the public/neighbors to be informed of the proposed development behind their homes. This includes driveways.

Reasons for Protest

1). The 5.87 acre Tract 2, located off of a residential subdivision collector street with is completely surrounded by a total of 97, ninety-seven single-family residential properties homes including thirty-one, 31 SF-2 homes to the north on Yarmont Way and west on Farnish Cove, twenty-one, 21 SF-4A homes east on Little Emily Way, one SF-6 lot east on Thompkins Drive and 45 Townhomes south. Any commercial development on Tracts 1 or 2 would be inconsistent and an intrusion to the residential neighborhood. The 2006 zoning review sheet, composed by city staff, states that their recommendation for NO-CO, Neighborhood Office zoning would "allow the applicant to develop offices and a meditation garden on the site adjacent to existing single-family residential uses to the north, east and west," the undeveloped greenbelt behind 46 single family house. Since the owner's attorney and representative stated they have no plans to build on Tract 2 the currently DR district is appropriate, almost perfect, for land that is not to be left undeveloped.. there is no need to change the base zoning district

2). Keeping the existing SF-6 zoning, with its proximity to residential lots, allows building for religious assembly, with "complementary scale and appearance with the residential environment" with up to 55% maximum impervious cover. The new church has less 56%, so SF-6 would be a perfect fit for their needs. The same owner constructed a building for religious assembly on SF-2 zoned property at Metric Blvd and Bittern Hollow. RE: C14-03-0183.

3) In 2001, NPZ staff argued to support request for SF-6, on this very same lot, Tract 1: "because it will down zone the property to a less intensive use and the site in question is adjacent to existing residential uses and is appropriate... it will allow less intensive uses on this site... consistent with the residential character of the area." RE: C14-01-0051 & ORDINANCE NO.870507-H. Now they are opposing their own argument.

4). 25 years ago, Copperfield, Section 3-C was planned as a Residential Subdivision with deeds that included Restrictive Covenants for each and every property. RE: Vol. 85 Page 63B Plan Record Travis County, Texas. (C8-84 & C8-84-73.3). Only one section of Copperfield Sec 3-A's two lots, adjacent to duplexes and SF-3 lots, were designated as Commercial. Tract 2 was originally intended to be platted as Lot 23*and would likely have the exact same deed restrictions as Tract 1, and the other residential lots in Copperfield Sec 3-C. The restrictive covenants state: "no lot shall be used except for residential purposes and no building other than one detached single family dwelling or duplex with garage or carport for not more than 4 cars." Copperfield Sec 3-C Restrictive Covenants

5). Subject property Tract 2 has significant CEFs (Critical Environmental Features) and is located within the Walnut Creek Watershed, a 100-year floodplain, and has been drainage property for more than 64 surrounding acres, with more than 16 marked feeder drains and four

*** RECOMMENDATION MADE TO CITY COUNCIL THAT THE APPLICANT AND NEIGHBORHOOD ENTER INTO A RESTRICTIVE COVENANT TO PROHIBIT RELIGIOUS USES ON THE SOUTHERN PORTION OF THE TRACT; AND TO PROHIBIT RELIGIOUS USES WITHIN 200 FEET OF E Yager Lane, Farnish Cove, Little Emily Way and Yarmont Way.. C14-05-0145. ??**

unmarked drains.

64 NPZ Staff argued to deny request for SF-2 to LR on another Austin property completely surrounded by residential zoned properties, with a 100-year flood plain, on a 120 foot ROW, 95 foot pavement, 4-lane with a vegetation median major arterial road, at West William Canon Drive, but supports this DR to NO-CO change for subject property surrounded by residential lots, similar circumstances, located on a smaller, 74 foot ROW, 36 foot pavement two lane collector street without shoulders or sidewalks. Request equitable treatment of our neighborhood properties like the southwest Austin properties intended for residential use. Under BASIS FOR LAND USE RECOMMENDATION (ZONING PRINCIPLES) Staff cited 1. The proposed zoning should be consistent with the purpose statement of the district sought....commercial district site development regulations and performance standards are designed to ensure that the (development, building, traffic, noise, lighting) is complementary in scale and appearance with the residential environment. 71 We oppose all Commercial Uses on Tract 1 and Tract 2; We oppose all industrial uses on Tracts 1 and 2. We oppose all civic uses On Tracts 1 and 2.

Request to amend the zoning district and to establish Conditional Overlay combining districts on the properties described in File C14-2006-0014 & C14-2009-0034 as follows:

A) PRIMARY SETBACKS, for any development other than a single family house with parking for four vehicles, means the front, side and back property lines of residential lots surrounding these two tracts including Little Emily Way, Yarnmont Way, Farnish Cove, and around the sole entryway to Tract 2 at 1200-1206 E Yager Lane with the following prescribed distances:
1. Require a barrier to the sight of the commercial development, within a 25 foot vegetation easement; provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.
2. This fence may be either a privacy fence of 8 feet in height or a berm, or dense vegetation a minimum of 6 feet in height with dense, 6 foot or higher vegetation for a fence, 50% of which are not deciduous. Provide
B) SECONDARY SETBACK means the Walnut Creek Bed that runs from the Northeast Corner of Tract 2 and ends at East Yager Lane, setbacks on Tract 2, within the boundaries of said Tract, with the following prescribed distances: 100 feet from the Walnut Creek bed
C) Prohibit any "land development", i.e: removal of vegetation and improper pruning of trees, activity described as "cleamp" or on Tract 2 without a permit or site plan to prevent repeated removal of vegetation and red flags, on Tract 2, for failure to comply with Land Development Code Sections 25-1-21 & 25-8-321 -

D) Ordinance and amendment of the restrictive covenant on Tract 2, to include:

1. Prohibit any motorized vehicular access from Tract 1 to Tract 2, prohibit parking and grass or impervious cover driveway, streets or parking areas on Tract 2 to prevent noisy commercial traffic and a parking lot, which is unfair and unreasonable use of the sight because of its location behind residential homes.

2. Prohibit any motorized vehicular access to Tract 2 from Little Emily Way, a residential side street, to stop traffic from driving over the street curb, into side yards between houses and over tree drip lines and to prohibit business traffic onto residential side streets and our homes side and backyards.

3. Designate the southernmost property line of Tract 2, at 1200-1206 East Yager Lane, as the sole and singular entrance and exit to the 5.87 acreage property; prohibit all but emergency vehicle access to and from Tract 2, to and from Tract 1 and Tract 2, and to and from Little Emily Way on to Tract 4. Protect all trees, with a diameter of 6 inches or greater located within 60 feet of the creek bed, and 6 inches or greater trees within 25 feet Of the residential fences, including between the residential property fences and the owner's 6 foot chain link fence, are protected

Trees and the provisions of Section 13-7-46 of the City Code apply. RE: ORDINANCE NO. 990204-1

5. Development on the properties within 200 feet of the northern, eastern, southern and westernmost property lines shall not exceed 25 feet in height above ground level. RE: ORDINANCE NO. 990204-1

6) Screening public from view of off-street parking. Provide "privacy fence" at least 4 feet in height consisting of dense vegetation or stone or brick walls.

7) Require domed and shielded exterior lights on buildings and property to prevent light spillage on adjacent properties, block light Source from the view of adjacent properties and limit light source to a height of 12 feet

8) Prohibit civilian crossing guards (guests of the owner) from directing hundreds of their guest's vehicular and pedestrian traffic back and forth across the street at an unmarked crossing area. Prohibit civilians from stopping traffic on busy neighborhood street; it is a danger to the pedestrians and drivers, on a public street for the hundreds of the owner's guests on this commercial property between

1101-1107 E. Yager Lane and 1100-1206 E. Yager Lane. Please request they use the public traffic lights at the 4-way lighted intersection at the corner of both properties. Please request owner and his guests use the new pedestrian crosswalk located at the corner of both properties

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