RESTRICTIVE COVENANT

THE STATE OF TEXAS COUNTY OF TRAVIS

C14-83-307

0 3 91 8188

WHEREAS, Willie J. Kopecky, Jr., Gustavo L. Garcia, and Pedro Tress Hernsndez, all of Travis County, Texas, are co-owners of the following described property, to wit:

2.79 acres more or less, out of the THOMAS HAWKINS SURVEY NO. 9, Abstract No 346, Travis County, Texas, further described by metes and bounds in Exhibit "A", attached hereto, incorporated by reference herein and made a part hereof for all purposes.

WHEREAS, the City of Austin and Willie J. Kopecky, Jr., Gustavo L. Garcia and Pedro Tress Hernandez have agreed that the above described property should be impressed with certain covenants and restrictions running with the land and desire to set forth such agreement in writing;

NOW, THEREFORE, Willie J. Kopecky, Jr., Gustavo L. Garcia and Pedro Tress Hernandez, for and in consideration of One and No/100 Dollar (\$1.00) and other good and valuable consideration in hand to the undersigned paid by the City of Austin, the receipt of which is hereby acknowledged, do hereby agree with respect to said property described above, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on them, their successors and assigns, as follows, to-wit:

1. No building or portion thereof shall be used and no building or portion thereof shall be constructed except for one or more of the uses allowed under the "O-1" Office District zoning and first height and area of the City of Austin Zoning Ordinance Sec. 13-2-61.1 and Sec. 13-2-62, except that no building or portion thereof shall be used and no building or portion thereof shall be constructed for any of the following uses:

REAL PROPERTY RECORDS Travis County, Texas AY 211-85-5-10 Onen

19.00

- a. Hotels
- b. An office for the conduct of the occupations of physical therapist, barber, cosmetologist, hairdresser or manicurist.
- Studios for art, dance, drama, music, photography.
- d. A rental library or book shop.
- a prescription pharmacy or dental or medical laboratory.
- f. Community buildings or art galleries.
- g. Clubs and fraternal organizations.
- h. Dental and medical clinics, children's homes, convalescent homes, maternity homes and homes for the aged.
- Business machines display, sales and rental, and instant printing-copy duplicating service.
- Service and repair of office or business machines.
- k. Employee or customer training facilities.
- Any and all uses permitted by special permit only.
- m. Meeting or union halls.

There shall be constructed a six foot high fence designed and placed es indicated by the attached site plan (see EXHIBIT A, T.K.G. PROPERTIES SITE PLAN). The undersigned owners, their heirs and assigns, will properly maintain the fence as well as all grounds within the above-described property.

All building windows facing adjacent private residential property shall be designed so that a person of average height (5'10"), sitting or standing in a normal posture, cannot see neighboring yards or windows of nearby homes. This shall be accomplished by the use of louvres, placement above normal eye level, or any other effective means. Any fixtures installed for this purpose shall be permanent and shall not be adjusted or removed by building tenants or owners.

No building or land shall be used for any purpose that requires 24-hour a day activity or for any purpose that requires

RESTRICTIVE COVENANT - 2 Kopecky, Garcia, and Tress TKG/DOCS1/101184

other than normal hours of operation. For the purpose of this agreement normal hours of operation are defined as from 7:00 a.m. to 7:00 p.m., Monday through Friday.

Any and all outside lighting constructed on said property shall be directed away from the adjoining residences, shall be low level lighting, and no high pressure sodium lighting shall be used.

No portable structures or structures of a temporary nature shall be constructed on said property.

No building or land shall be used and no building shall be erected or structurally altered for any use that will require the on-site storage of heavy equipment including, but not limited to drilling rigs, generators, trucks, tractors, and construction equipment or for any use which will generate excessive noise, dust or air pollutants.

No improvements shall be constructed on the above-described property except those indicated on a site plan approved by the Austin City Council.

Exterior walls shall be constructed of brick and roofs shall be pitched and of olay or concrete tile similar to mission or spanish tile. No building shall have more than two (2) stories nor shall it exceed City of Austin first height and area requirements. The gross building area, based on outside wall measurements of all buildings shall not exceed 40,000 square feet.

All site trash receptacles shall be placed behind fences, wall, or screens so that they will not be visible.

No signs shall be erected which are in violation of the City of Austin Sign Ordinance.

The owners of the property shall provide for periodic security patrols of the building premises as required to ensure the peace and tranquility of the adjoining property owners.

The site plan for the described property is attached to this

RESTRICTIVE COVENANT - 3 Kopecky, Garcia, and Tress TKG/DOCS1/101184 Restrictive Covenant and labled "EXHIBIT A, T.K.G. PROPERTIES SITE PLAN." That site plan is hereby incorporated into this document by reference as if copied and set forth in full. All restrictions, requirements and designs appearing on that site plan are hereby mandated by this Covenant.

All zoning ordinances, building codes, or any other requirements referred to in this Restrictive Covenant or in the Site Plan, are those which were in effect on September 1, 1984, provided, however, that this provision does not relieve owner of its obligation to meet new code and ordinance requirements which may be in effect at the time of any new construction. Owner shall comply with the terms of this Covenant or the requirements of applicable codes or zoning restrictions, whichever may be stricter.

- 2. If any person, persons, corporation or entity of any other character shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for any person owning property within 200 feet of said property, his successors and assigns, and for the City of Austin, e municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate such agreement or covenant and to prevent said person or entity from violating or attempting to violate such agreement or covenant.
- 3. If any part or provision of this agreement or covenant herein contained shall be declared invalid, by judgment or court order, the same shall in nowise affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full force and effect.
- 4. The failure at any time to enforce this agreement by the City of Austin, its successors and assigns, or by any person owning property within 200 feet of the above described property, his successors and assigns whether any violations hereof are

RESTRICTIVE COVENANT - 4 Kopecky, Garcia, and Tress TKG/DOCS1/101184 known or not, shall not constitute a waiver or estoppel of the right to do so.

only by action of three-fourths of the members of the City
Council of the City of Austin, or such other governing body as
may succeed the City Council of the City of Austin, after notice
and opportunity for hearing before such governing body has been
given to the owners of property within 200 feet of the described
property. A condition precedent to the consideration by the
Austin City Council, or its successors, of any proposed
modification, amendment or termination of this agreement, shall
be the requirement that the owners of the subject property shall
first exhaust all administrative remedies and avenues available
through the City of Austin Planning Commission, City Plenning
Department and related or successor offices.

EXECUTED, this the 15^{±5} day of October, 1964.

WILLIE J KOPECKY

Burland L. Barria

GUSTAVO L. GARCIA

PEDRO TRESS HERNANDEZ

K

THE STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, a Notary Public in and for said. County and State, on this day personally appeared WILLIE J. KOPECKY, GUSTAVO L. GARCIA, and PEDro Trass Heavenber & known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they have executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 15th SEAL day of October 1984.

Notary Public in and for

the State of Texas

My commission expires: 1/28/8

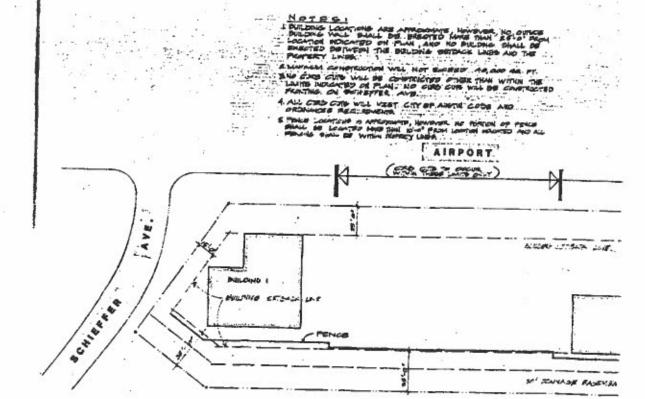
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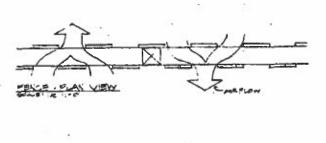
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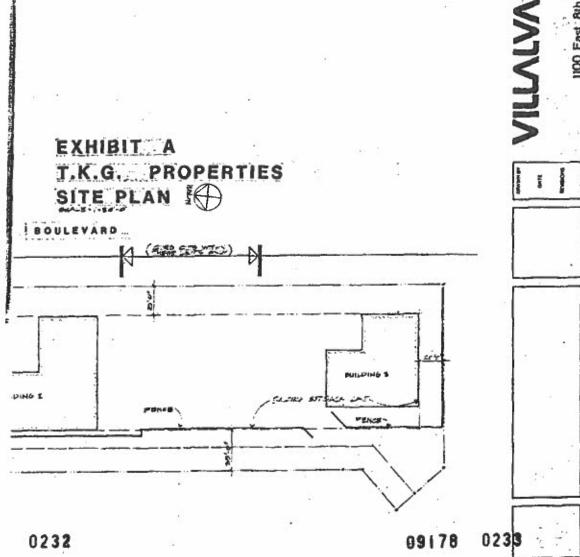
RESTRICTIVE COVENANT - 5 Kopecky, Garcia, and Tress TKG/DOCS1/101184

* REPRESENTED by GUSTAVO L. G. "A, HOLDER

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ARCHITECTS AND PLANNE

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Hearing Date: March 11, 2010

File Number: <u>C14-2009-0102</u> Tract 3

Address of

Rezoning request: 4020 Airport Blvd.

Address

To Austin City Council

We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any other than <u>LO-NP</u>.

Reasons for protest:

Signature

We are a neighborhood of 1 story homes. VMU would allow multi-stories which would overshadow our homes just as "Mc-Mansions" have done in our older neighborhoods. This narrow tract of land is immediately adjacent to many of our back yards.

The height of VMU buildings will make our homes and yards viewable from their higher stories, resulting in significant loss of our privacy. In addition, the higher density will increase noise, congestion, and glaring lights, and possibly, animal and sanitation problems from large outdoor garbage containers.

The land is a narrow strip with a creek and water drainage issues. Allowing more density and relaxed restrictions will cause added drainage problems.

(PLEASE USE BLACK INK WHEN SIGNING PETITION)

Printed Name

Sugar O. Bradby	SUZANO BRADBUEY	4009 VINELAND
	RAYMONDS JOSEPH	
	eph-vivian N. Jos	
11 - 21	Phomas JoHNSON	
Bruce Mille 1	BRUCE MILLER 400	of Vineland Dr.
Mary E. Harnes M	ARVE-HAYNES A	4005 Vinefred DR
malilla Attal M	HILDA ATTAL	4003 VINELAND
Date	Contact Name	
	Phone Number_	

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Drinted Name

Signatur C	I I IIII CO I VAIII C	Addiess
Carl Burg	EARL BURG	4007 Viveland dr
Teresam	. Con IERESA	M COOF 4011 VINELANT
Shardes & Jones	CHARLES L. JONES	GOLD VINGEAND DR
Mill Ends	MICHOEL ENEWBER	
Jon W. Hatinoto	Jim Martindal	e 40(2 Vineford Dr.
Kathle Boungeloo	ALVIN YOUNGBLOOD I	R 4015 VINELAND OR
Robert P. Dail		1 1 1 1 1
Date	Contact Na	1
	Phone Nun	nber

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_	Signature	Printed Name	Address
2	501	ERK BARTH	1804 E 40TH ST
_	Manno	Ryan Steglich	4008 Vineland Dr.
R	Chifulyn	CHRISTA PALAZZONO	
	Den Boton	David Roston	4001 Uneland
-	Patrician Johnson	Patricia Johnson	1814 E-40m St.
	Caroly Breeze	Carolyn Greens	3507 Vineland Ir.
_	Salar) Laure Correc	
D	Pate	Contact Name	
		Phone Number	

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	<u>Signature</u>	Printed Name	Address
	Mrs Ross Mc See	MRS. ROSS MEI	FROX 3911 GRAYSON LAN
	R.E. MEBAN	v REThlen	1818 E. 40 TH.
	nich Mil	_ NICKI MEBAN	E 4000 VINELAND
	Elas	FORESTE WARD	4018 VINELAND
,	Fierre & Z	taynes PiERCES. H	IAMNES 4005 VINELANDA.
	Robin & Graham	Moore Robin E. Graha	m-Moore 1817 E 40th St
	Orian Ersham-	Moor Brian Graha	m-Moore 1817 E 40th St M-Moore 1817 E 40th ST
	Date	Conta	ct Name
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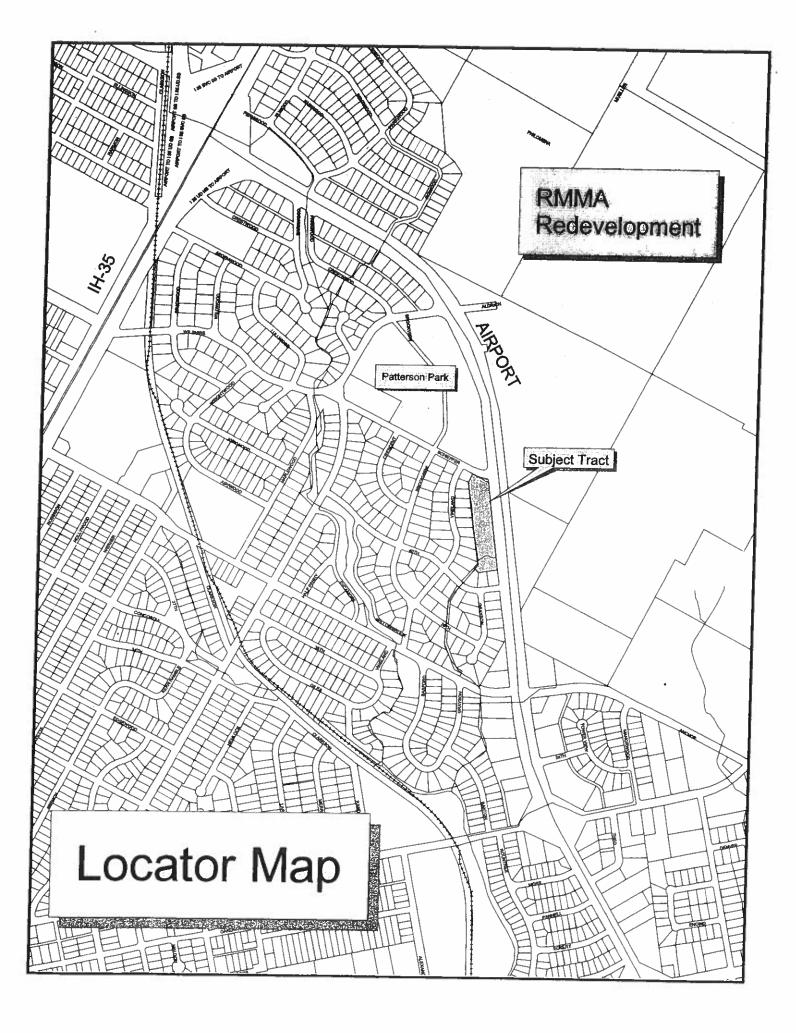
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Signature	Printed Name	Address	
Katherine Robert	non Katherine Rol	bertson 4006 Vine	78722 land Austin
Afrid Homanda	- Alfred Hermandez	_ 4019 Vineland I	Dr. Austin 78722
	mult Straplet		
Ven yo	amedERA AR.	NOLU 4021 Vin	eland Di
Flow	Tim Jones	4017 Vino	land Dr.
Date	Cor	ntact Name	
	Pho	one Number	

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1815 E. Yoth 1USTAV, TX79722





Neighborhood Planning & Zoning Department

P.O. Box 1088 Austin, TX 78767

EXPLANATION OF VMU PETITIONS

BACKGROUND---DESIGN STANDARDS AND MIXED USE

On August 31, 2006, Austin's City Council adopted Subchapter E of Chapter 25-2 of the City Code (*Design Standards and Mixed Use*), commonly called the Design Standards. The Design Standards became effective on January 13, 2007.

One of the purposes of the Design Standards was to foster the development of vertical mixed use (VMU) buildings. VMU buildings are allowed as a matter of right in a vertical mixed use overlay district. VMU buildings may also be allowed in a mixed use combining district or by conditional use permit under certain conditions. The Design Standards establish certain development incentives for VMU buildings that provide for affordable housing.

Under the Code amendment that established the Design Standards, regulations regarding applicability of the development incentives are not established until the "opt-in/opt-out process" takes place. The Code provides that a person may not take advantage of the incentives until the opt-in/opt-out process is concluded. Before finalizing the regulations, the Council wanted to obtain recommendations from the neighborhoods and the Planning Commission about how the development incentive regulations would apply to properties in the neighborhoods. After hearing the recommendations, the Council will then establish the regulations for each neighborhood.

WHAT IS A VALID PETITION?

Section 211.0069(d) of the *Local Government Code* provides that a proposed change in a zoning regulation or boundary must be approved by at least three-fourths of the members of the Council if the change is protested by 20 percent of the owners of either (1) the area of the land covered by the proposed change or (2) the area of the land immediately adjoining the area covered by the proposed change and extending for 200 feet.

CAN A PERSON PROTEST THE NEIGHBORHOOD RECOMMENDATIONS REGARDING THE APPLICABILITY OF THE DEVELOPMENT INCENTIVES TO AN INDIVIDUAL PROPERTY (OPT-OUT RECOMMENDATIONS)?

No, the opt-out recommendations are not proposals concerning the zoning for individual properties. The Council's determinations regarding the applicability of the development incentives are the finalization of the Code amendment process that established the Design Standards. The determinations are not the zoning of individual property. The Council is setting

the standards that apply in the VMU overlay districts. This is similar, for example, to the Council setting the height or impervious cover limitations of the SF-3 zoning district.

As with all amendments to the zoning regulations of the Code, citizens could have protested the adoption of the Design Standards in August 2006. A valid protest would require a written opposition by 20 percent of the owners of land in the City.

CAN A PERSON PROTEST A RECOMMENDATION TO EXCLUDE A PROPERTY FROM A VMU OVERLAY DISTRICT?

Yes, either the owners of the affected property or the owners of property within 200 feet of the affected property can protest the complete exclusion of a property from a VMU overlay district. The Design Standards provides that property along a Core Transit Corridor that meets certain criteria is a part of a VMU overlay district. A recommendation to modify the VMU overlay district by excluding property is a proposal to change the zoning of an individual property. A protest will be "valid" if it complies with the requirements of the Local Government Code as stated above.

Some citizens who support a neighborhood recommendation to exclude a property from the district have asked if they can have a valid petition to require a three-fourths vote of Council not to exclude the property. No, a three-fourths vote can only be required if there is a protest opposing a proposed change. In this case, the "protesters" are in support of the proposed change.

CAN A PERSON PROTEST A RECOMMENDATION TO ALLOW A PROPERTY THAT IS NOT IN A VMU OVERLAY DISTRICT TO USE THE DEVELOPMENT INCENTIVES (OPT-IN RECOMMENDATIONS)?

Yes, a property that is not in a VMU overlay district must be given permission to use the development incentives. This is a change in the zoning of the individual property. Either the owners of the affected property or the owners of property within 200 feet of the affected property can protest the recommendation.

FOR QUESTIONS OR ADDITIONAL INFORMATION PLEASE CONTACT

George Adams, Assistant Director, Neighborhood Planning and Zoning Department, (512) 974-2146 or george.adams@ci.austin.tx.us.

PLANNING COMMISSION HEARING

DATE: Tuesday, February 9, 2010

TIME: 6:00 P.M.

LOCATION: City Hall, Rm. 1002, Council Chambers

301 W. 2nd Street, Austin

CITY COUNCIL HEARING

DATE: Thursday, March 11, 2010 TIME: 2:00 P.M

LOCATION: City Hall, Rm. 1002, Council Chambers

301 W. 2nd Street, Austin

File # C14.2009 0102

For questions regarding the vertical mixed use application for the Upper Boggy Creek Neighborhood Planning Area, please call Jacob Browning at (512) 974-7657 or email at: jacob.browning@ci.austin.tx.us. Si Ud. necesita información en español, favor de llamar a Jacob Browning (512) 974-7657. Office hours are 8:00 AM to 5:00 PM Monday through Friday. Please be sure to refer to the File Number on the first page when you call. See attached sheets for more information.

PLANNING COMMISSION COMMENT FORM

You may send your written comments to the Planning and Development Review Department, P. O. Box 1088, C/O Jacob Browning, Austin, TX 78767-8835.

FHC# C14-2009-0102	Liaming Countingsion Lies	suma ns	ice: rebruary 9, 2010
Name (please print)	Axil Gerdan		I am in favor of VMU
Address 220 4	chastant Ave		(Estoy de acuerdo) I object to VMU
Comments We weld	I mare mixed-use density	+ uf	(No estoy de acuerdo) for dable
		Ŧi.	housing.

INFORMATION ON PUBLIC HEARINGS

THE PLANNING AND DEVELOPMENT REVIEW DEPARTMENT HAS FILED AN APPLICATION TO IMPLEMENT THE VERTICAL MIXED-USE (VMU) LAND USE REGULATIONS. THIS NOTICE HAS BEEN MAILED TO YOU BECAUSE YOU OWN PROPERTY, ARE A REGISTERED ENVIRONMENTAL OR NEIGHBORHOOD ORGANIZATION, OR HAVE A UTILITY SERVICE ADDRESS WITHIN 500 FEET OF A VMU ELIGIBLE PROPERTY.

This request for zoning/rezoning will be reviewed and acted upon at two public hearings: First, before the Planning Commission and then before the City Council. After a public hearing, the Planning Commission reviews and evaluates City staff recommendation and public input and then sends its own recommendation on the proposed VMU land use regulations to the City Council. Meeting dates and locations are shown on this notice.

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Planning Commission Hearing Date: February 9, 2010

Name (pleas	e print)	ion el Tar	16-2	_ 🗷	I am in favor of VML
Address	2942	m055 st	7× 787		(Estoy de acuerdo) I object to VMU
Comments					(No estoy de acuerdo)

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File # C14-2009-010.	2	Plan	ning Commission He	aring Da	te: February 9, 2010
Name (please print) _	Sustin	Clemen	>	_ 🗷	I am in favor of VMU
Address 711 E.	43'0	Augt. n	TX 7879		(Estoy de acuerdo) I object to VMU
Comments					(No estoy de acuerdo)

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PI.	ANNING	CON	AMISSION (COM	MENT FORM
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File # C14-2009-0102	Planning Commission Hearing Date: February 9, 2010
Name (please print) 649 h	Beny #5 5/2 43/-52/8 I am in favor of VMU
Address 2109 Eg 5/ 21	(Estoy de acuerdo) I object to VMU
Comments Great weighbor how	(No estoy de acuerdo)

PLANNING COMMISSION COM	MENT FORM
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File # C14-2009-0102	Planning Commission Hearing Date: February 9, 2010
Name (please print) GFR AUD	
Address 3402 ROBINSON	## (Estoy de acuerdo) AVE
Comments	(No estoy de acuerdo)
PLANNING COMMISSION COMM	IENT FORM
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File # C14-2009-0102	Planning Commission Hearing Date: February 9, 2010
Name (please print) DEBORT	TH MEELT'SH I am in favor of VMU
Address 4309 Arport	Blud, Austin Tx 78.722 [(Estoy de acuerdo)
, , ((No estoy de acuerdo)
is meet the need	

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You may send your written comments to the Planning and Development Review Department, P. O. Box 1088, C/O Jacob Browning, Austin, TX 78767-8835.					
File # C14-2009-0102 Planning Commission Hea	ring Date: February 9, 2010				
Name (please print) CALLOS M. RIVERO Address 1917 MANUR RD AUSTIN, 7x 78722 Comments	I am in favor of VMU (Estoy de acuerdo) I object to VMU (No estoy de acuerdo)				

INFORMATION ON PUBLIC HEARINGS

THE PLANNING AND DEVELOPMENT REVIEW DEPARTMENT HAS FILED AN APPLICATION TO IMPLEMENT THE VERTICAL MIXED-USE (VMU) LAND USE REGULATIONS. THIS NOTICE HAS BEEN MAILED TO YOU BECAUSE YOU OWN PROPERTY, ARE A REGISTERED ENVIRONMENTAL OR NEIGHBORHOOD ORGANIZATION, OR HAVE A UTILITY SERVICE ADDRESS WITHIN 500 FEET OF A VMU ELIGIBLE PROPERTY.

This request for zoning/rezoning will be reviewed and acted upon at two public hearings: First, before the Planning Commission and then before the City Council. After a public hearing, the Planning Commission reviews and evaluates City staff recommendation and public input and then sends its own recommendation on the proposed VMU land use regulations to the City Council. Meeting dates and locations are shown on this notice.

PLANNING COMMISSION HEARING	
The filtre on the second secon	6:00 P.M.
LOCATION: City Hall, Rm. 1002, Council Cham	bers
301 W. 2nd Street, Austin	
CITY COUNCIL HEARING DATE: Thursday, March 11, 2010 TIME: 1 LOCATION: City Hall, Rm. 1002, Council Chaml 301 W. 2nd Street, Austin	2:00 P.M pers
For questions regarding the vertical mixed use application for Planning Area, please call Jacob Browning at (512) 974-7657	nr email at:
Jacob.browning@ci.austin.tx.us. Si Ud. necesita información	on ecnopal favor de llamen - Tarak
Drowning (312) 9/4-705/. Office hours are 8:00 AM to 5:00	PM Monday through Friday Dlagge La
sure to refer to the File Number on the first page when you call information.	. See attached sheets for more
PLANNING COMMISSION COMMENT FORM	
You may send your written comments to the Planning and Deve	plonment Person Demonstration
P. O. Box 1088, C/O Jacob Browning, Austin, TX 78767-8835.	copilient Review Department,
	
T touring Commis	sion Hearing Date: February 9, 2010
Name (please print) JAMES KOCURGE Address 3406 Robinson Avenue	I am in favor of VMU
Address 340/2 Robins America	(Estoy de acuerdo)
Addition / Colinges NUESCE	I object to VMU
Comments	(No estoy de acuerdo)

PLANNING COMMISSION HEARING

DATE: Tuesday, February 9, 2010 TIME: 6:00 P.M.

LOCATION: City Hall, Rm. 1002, Council Chambers

301 W. 2nd Street, Austin

CITY COUNCIL HEARING

DATE: Thursday, March 11, 2010 TIME: 2:00 P.M

LOCATION: City Hall, Rm. 1002, Council Chambers

301 W. 2nd Street, Austin

For questions regarding the vertical mixed use application for the Upper Boggy Creek Neighborhood Planning Area, please call Jacob Browning at (512) 974-7657 or email at: jacob.browning@ci.austin.tx.us. Si Ud. necesita información en español, favor de llamar a Jacob Browning (512) 974-7657. Office hours are 8:00 AM to 5:00 PM Monday through Friday. Please be sure to refer to the File Number on the first page when you call. See attached sheets for more information.

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File # C14-2009-0102	Planning Commission Hearing Da	ite: February 9, 2010
Name (please print) Chool Ball	1.	I am in favor of VMU
Address 2204 Chestnut	A 10	(Estoy de acuerdo) I object to VMU
Proposed UMU, And I A	expected to the special density	(No estoy de acuerdo)
PLS Call } F you winformati	ON ON PUBLIC HEARINGS	el assistance

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PLANNING COMMISSION HEARING

DATE: Tuesday, February 9, 2010 TIME: 6:00 P.M.

LOCATION: City Hall, Rm. 1002, Council Chambers

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PLANNING COMMISSION COMMENT FORM

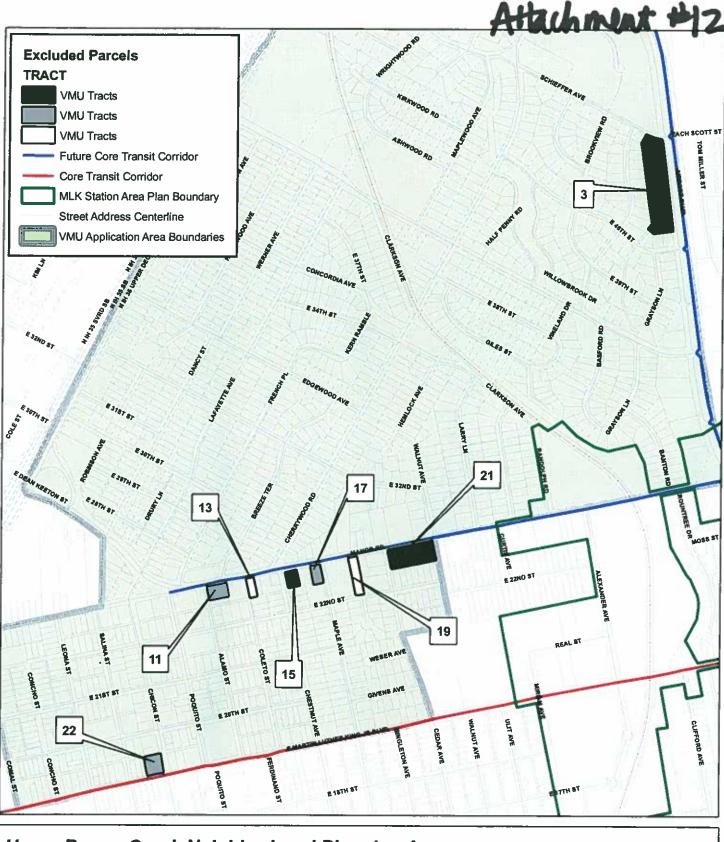
You may send your written comments to the Planning and Development Review Department, P. O. Box 1088, C/O Jacob Browning, Austin, TX 78767-8835.

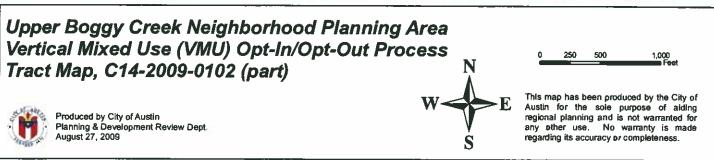
File # C14-2009-0102	Planning Commission Hearing Date: February 9, 2010			
Name (please print) WACTER	JOHN	KNETEN	K	I am in favor of VMU (Estoy de acuerdo)
Address 3504 BANTON	RN			I object to VMU
Comments				(No estoy de acuerdo)

INFORMATION ON PUBLIC HEARINGS

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Attachment 413





SUBJECT TRACT

ZONING BOUNDARY

PENDING CASE

OPERATOR: S. MEEKS

ZONING

ZONING CASE#: C14-2009-0102

ADDRESS: UPPER BOGGY CREEK

PLANNING AREA

SUBJECT AREA: 51.39 ACRES
GRID: K23-25 & L24



