

## **ZONING CHANGE REVIEW SHEET**

**CASE:** C14-2009-0135

**Z.A.P. DATE:** April 20, 2010  
May 4, 2010

**ADDRESS:** East Wells Branch Parkway

**OWNER/APPLICANT:** HW Tosca Investments LP (Shannon Martinez)

**AGENT:** Metcalfe Williams, LLP (Michele Rogerson)

**ZONING FROM:** GR, MF-2    **TO:** GR-MU-CO\*    **AREA:** 36.36 acres

\* The applicant proposes to prohibit the following uses on the site: Automotive Rentals, Automotive Repair Services, Automotive Sales, Automotive Washing-of any type (over 2,000 sq. ft. in size), Drop-Off Recycling Collection Facility, Commercial Off-Street Parking, Funeral Services, Exterminating Services, Pawn Shop Services, Off-Site Accessory Parking, and Research Services.

### **SUMMARY STAFF RECOMMENDATION:**

The staff's recommendation is to grant GR-MU-CO, Community Commercial-Mixed Use-Conditional Overlay Combining District, zoning. The conditional overlay would prohibit Automotive Rentals, Automotive Repair Services, Automotive Sales, Automotive Washing-of any type (over 2,000 sq. ft. in size), Commercial Off-Street Parking, Drop-Off Recycling Collection Facility, Exterminating Services, Funeral Services, Off-Site Accessory Parking, Pawn Shop Services, and Research Services uses on the site.

In addition, the staff recommends that the conditions of the Transportation Impact Analysis (TIA) for this case be adopted and placed in a public restrictive covenant [Please see TIA Memorandum-Attachment A].

### **ZONING AND PLATTING COMMISSION RECOMMENDATION:**

4/20/10: Postponed to May 4, 2010 at the neighbor's request (7-0); S. Baldrige-1<sup>st</sup>, D. Tiemann-2<sup>nd</sup>.

5/04/10: Approved staff's recommendation of GR-MU-CO zoning, with the following additional conditions: 1) Require a 25-foot building setback and the south and east property lines; 2) make Outdoor Sports and Recreation, Guidance Services, and Residential Treatment conditional uses on the site; 3) require a minimum of 20% of the site to be developed with multi-family residential uses (6-1, B. Baker-No); G. Bourgeois-1<sup>st</sup>, B. Baker-2<sup>nd</sup>.

### **DEPARTMENT COMMENTS:**

The property in question is a large undeveloped tract of land located at the recently constructed intersection of Wells Branch Parkway and Heatherwilde Boulevard. There is GR-CO and IP-CO zoning to the west of the site, across Heatherwilde Boulevard. The tracts of land to the north, south and east are located within the County. All of the surrounding properties are currently undeveloped. The applicant is requesting GR-MU zoning for this site because they would develop the property with a mixture of retail, multi-family and commercial uses.

The staff recommends the applicant's request for GR-MU zoning for this tract of land because the site meets the intent of the GR-MU combining district. The property is located at the intersection of two arterial roadways, East Wells Branch Parkway and Heatherwilde Boulevard. The mixture of proposed retail and commercial uses will provide services to the single-family residential areas in Pflugerville to the north and further to the south along Heatherwilde Boulevard, near Howard Lane.

The applicant agrees with the staff's recommendation.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	GR, MF-2	Undeveloped
<i>North</i>	I-RR, County	Undeveloped
<i>South</i>	County	Undeveloped Tract, Single-Family Residential Neighborhood
<i>East</i>	IP-CO, GR-CO	Undeveloped
<i>West</i>	County	Undeveloped

**AREA STUDY:** N/A

**TIA:** Required

**WATERSHED:** Harris Branch

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** N/A

**HILL COUNTRY ROADWAY:** N/A

**NEIGHBORHOOD ORGANIZATIONS:**

Austin Monorail Project  
 Austin Parks Foundation  
 Home Builders Association of Greater Austin  
 Homeless Neighborhood Association  
 League of Bicycling Voters  
 Pflugerville Independent School District  
 Sierra Club, Austin Regional Group  
 The Real Estate Council of Austin, Inc.

**CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
C14-06-0070	LI-CO to SF-2	7/18/06: Approved staff's recommendation of SF-2-CO by consent, the CO is a fifty (50) foot building setback from the southern property line and a twenty-five foot vegetative buffer, within the building setback, along the southern property line to separate the proposed residential uses from the existing industrial uses developed to the south. (6-0, B. Baker, J. Martinez, J.	8/24/06: Approved SF-2-CO zoning (6-0, Kim-off dias); all 3 readings

		Gohil-absent); M. Hawthorne-1 <sup>st</sup> , J. Pinnelli-2 <sup>nd</sup>	
C14-04-0212	I-RR to Tract 1: MF-2, Tract 2: LI	3/29/05: Approved staff's recommendation for MF-2-CO zoning for Tract 1 and LI-CO zoning for Tract 2 by consent (9-0)	4/28/05: Granted MF-2-CO for Tract 1 and LI-CO for Tract 2 (5-0-McCracken/Wynn-off the dias ); all 3 readings
C14-04-0120	I-LI to LI	9/7/04: Approved staff's recommendation of LI-CO by consent (8-0, J. Martinez-absent)	10/21/04: Approved LI-CO zoning (7-0); all 3 readings
C14-00-2079	I-RR to IP, GR	12/05/00: Approved staff rec. of GR-CO (TR1) & IP-CO (TR2), with TIA conditions and prohibiting the following uses on Tract 2: Agricultural Sales and Services, Art and Craft Studio(Industrial), Automotive Rentals, Automotive Repair Services, Convenience Storage, Medical Offices(exceeding 5,000 sq.ft.), Off-Site Accessory Parking, Outdoor Sports and Recreation, Personal Services, Plant Nursery, Restaurant(Drive-in, Fast Food), Service Station, Community Recreation (Public), Congregate Living, Day Care Service (Commercial), Maintenance and Service Facilities, Railroad Facilities, Residential Treatment (Vote:8-0)	7/19/01: Approved GR-CO (TR1) & IP-CO (TR2), (6-0); all 3 readings
C14-99-2016	I-RR to RR	1/25/00: Approved staff rec. of RR (TR1) & DR (TR2) by consent (6-2, GW/BB-Nay)	3/02/00: Approved PC rec. of RR (TR1) & DR (TR2) on 1 <sup>st</sup> reading (7-0)  6/29/00: Approved 2 <sup>nd</sup> /3 <sup>rd</sup> readings (7-0)
C14-98-0265	AV to LI	5/25/99: Approved staff rec. of LI-PDA w/ condition regarding bicycle parking	6/3/03: Approved LI-PDA w/ conditions (7-0); all 3 readings-on emergency passage
C14-98-0150	I-RR to MF-2, GR	4/20/99: Approved staff rec. of MF-2 (TR1) & GR (TR2) by consent (7-0)	5/20/99: Approved PC rec. of MF-2 (TR1) & GR (TR2) w/conditions (7-0); 1 <sup>st</sup> reading  7/01/99: Approved MF-2 (TR1) & GR (TR2) w/conditions (6-0); 2 <sup>nd</sup> /3 <sup>rd</sup> readings

**RELATED CASES:** C14-98-0150 (Previous Zoning Case)

**ABUTTING STREETS:**

NAME	ROW	PAVEMENT	CLASSIFICATION
Howard Lane	130'	<u>2@30'</u>	Arterial
Heatherwilde/Arterial #14	Not yet constructed	Not yet constructed	Arterial

**CITY COUNCIL DATE:** May 13, 2010

**ACTION:**

**ORDINANCE READINGS:** 1st

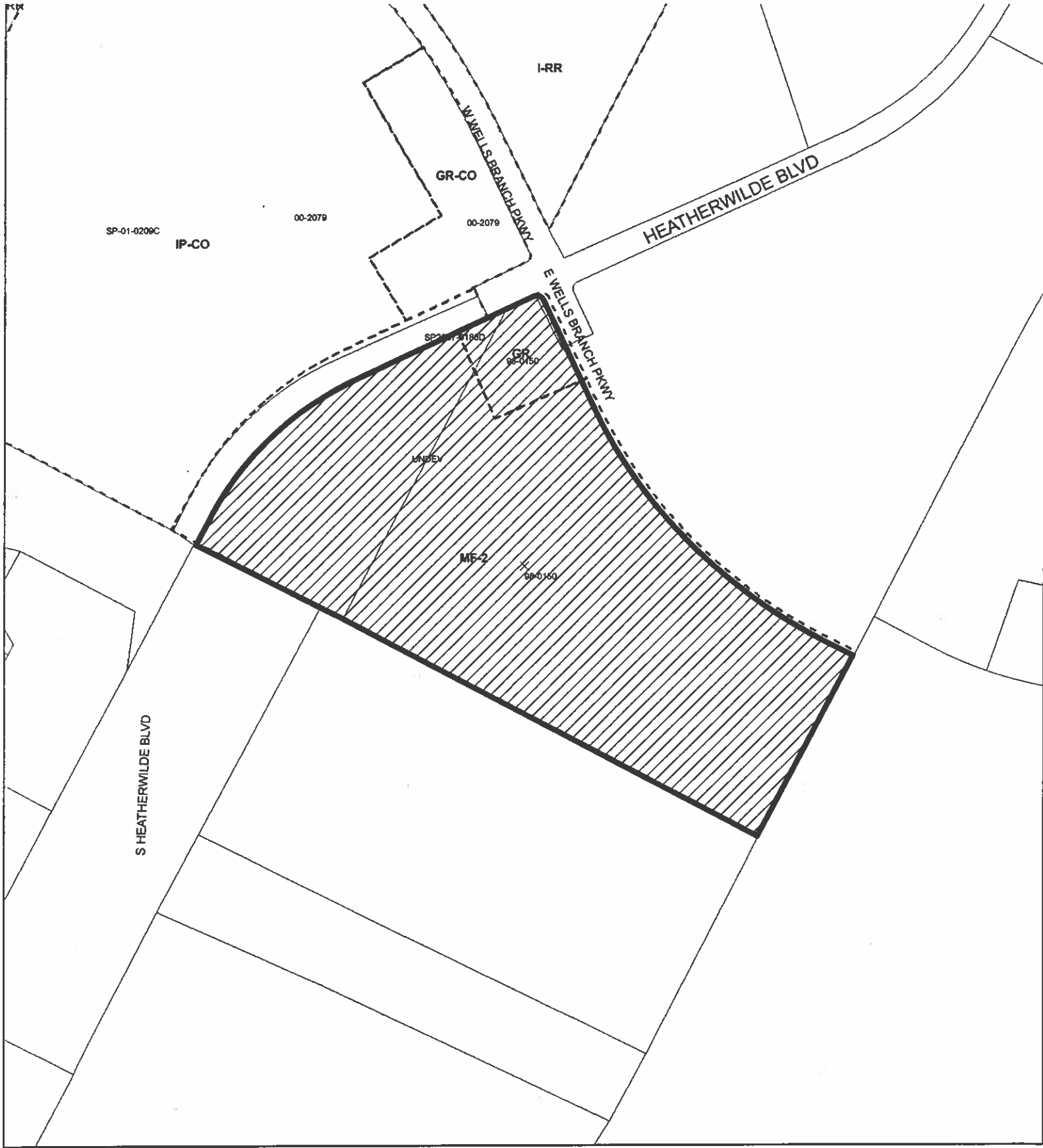
2<sup>nd</sup>




3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Sherri Sirwaitis

**PHONE:** 974-3057,  
[sherri.sirwaitis@ci.austin.tx.us](mailto:sherri.sirwaitis@ci.austin.tx.us)

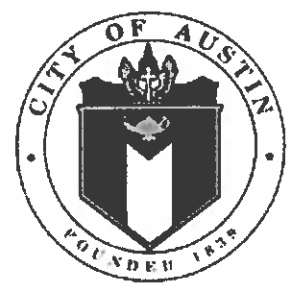


-  **SUBJECT TRACT**
-  **ZONING BOUNDARY**
-  **PENDING CASE**

**OPERATOR: S. MEEKS**

**ZONING**

**ZONING CASE#:** C14-2009-0135  
**ADDRESS:** E WELLS BRANCH PKWY  
**SUBJECT AREA:** 36.46 ACRES  
**GRID:** N36  
**MANAGER:** S. SIRWAITIS



1" = 400'

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.



SP-04-0202D

NORTH



SF-6-CO

SP-06-0477D

SP-06-0474D

SP-06-0476D

E WELLS BRANCH PKWY

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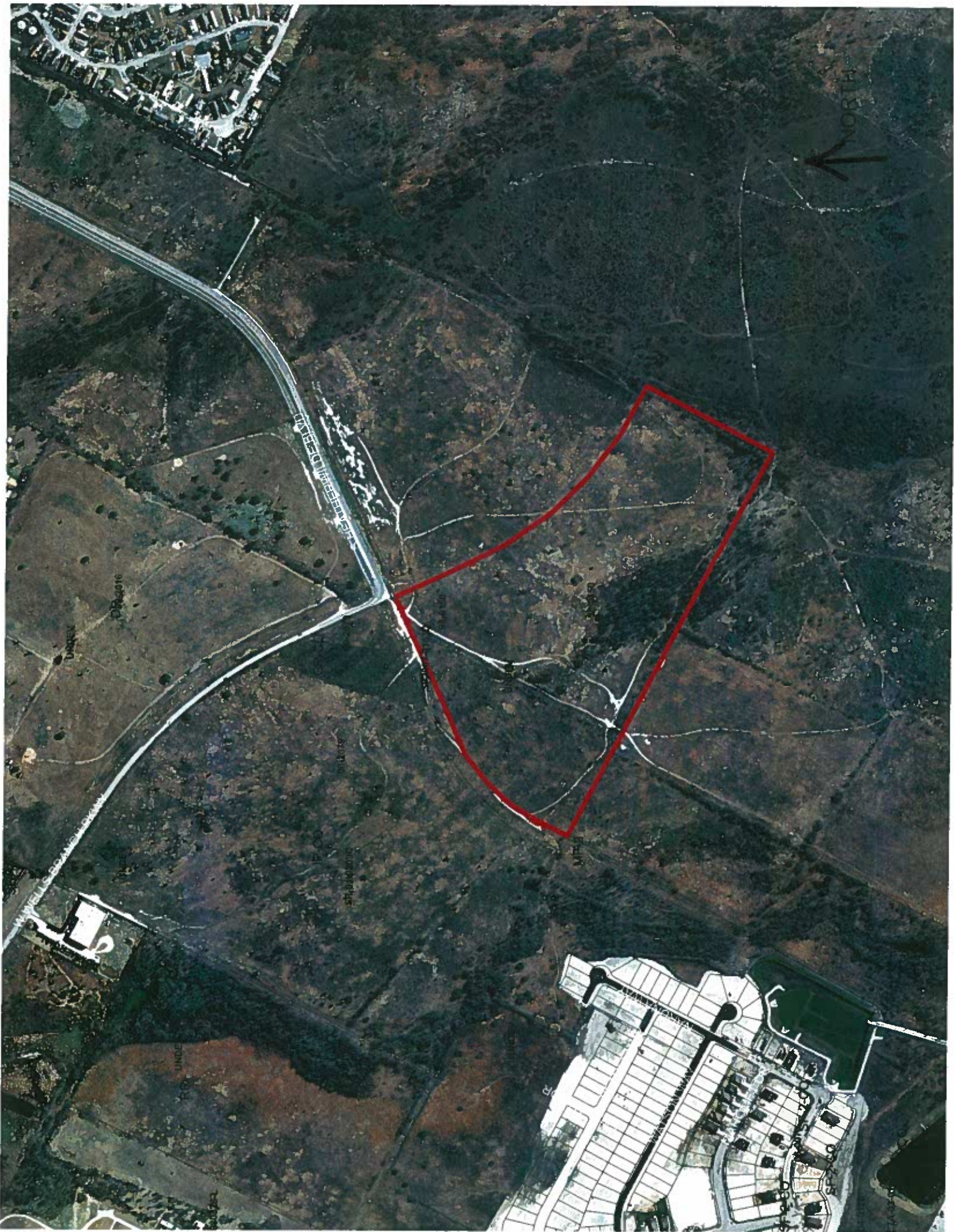
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## **STAFF RECOMMENDATION**

The staff's recommendation is to grant GR-MU-CO, Community Commercial-Mixed Use-Conditional Overlay Combining District, zoning. The conditional overlay would prohibit Automotive Rentals, Automotive Repair Services, Automotive Sales, Automotive Washing-of any type (over 2,000 sq. ft. in size), Commercial Off-Street Parking, Drop-Off Recycling Collection Facility, Exterminating Services, Funeral Services, Off-Site Accessory Parking, Pawn Shop Services, and Research Services uses on the site.

In addition, the staff recommends that the conditions of the Transportation Impact Analysis (TIA) for this case be adopted and placed in a public restrictive covenant [Please see TIA Memorandum-Attachment A].

## **BASIS FOR RECOMMENDATION**

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

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.

The purpose of the Mixed Use (MU) Combining district is to allow office, retail, commercial, and residential uses to be combined in a single development.

2. *Zoning should promote the policy of locating retail and more intensive zoning near the intersections of arterial roadways or at the intersections of arterials and major collectors.*

The property under consideration is located at the intersection of two arterial roadways, Wells Branch Parkway and Heatherwilde Boulevard.

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

The proposed GR-MU zoning will allow for a reasonable use of the property in question because it will permit the applicant to develop a combination of multifamily residential, retail and commercial uses on this site. The mixture of retail and commercial uses will provide services to the single-family residential areas in Pflugerville to the north and further to the south along Heatherwilde Boulevard, near Howard Lane.

## **EXISTING CONDITIONS**

### **Site Characteristics**

The site in question is currently undeveloped and moderately vegetated. The surrounding properties to the north, south, east and west are large undeveloped parcels of land.

### **Environmental**

The site is not located over the Edwards Aquifer Recharge Zone. The site is in the Desired Development Zone. The site is in the Harris Branch 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 no 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.

Numerous trees will likely be impacted with a proposed development associated with this rezoning case. Please be aware that an approved rezoning status does not eliminate a proposed development's requirements to meet the intent of the tree ordinances. If further explanation or specificity is needed, please contact the City Arborist at 974-1876. At this time, site specific information is unavailable regarding 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.

### **Impervious Cover**

The maximum impervious cover allowed by the GR-MU 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:

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

### **Site Plan/Compatibility Standards**

Any new development is subject to Subchapter E. Design Standards and Mixed Use. Additional comments will be made when the site plan is submitted.

### **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.

### **Transportation**

A traffic impact analysis is required and has been received. Additional right-of-way, participation in roadway improvements, or limitations on development intensity may be recommended based on review of the TIA. [LDC, Sec. 25-6-142]. Comments will be provided in a separate memo (Please see Attachment A).

### **Water and Wastewater**

The landowner intends to serve the site with City of Austin water and wastewater utilities. City water service is not currently to this property. A service extension request will be required to determine how the property may be served. For more information pertaining to the Service Extension Request process and submittal requirements contact James Grabbs with Austin Water Utility, Utility Development Services at 625 E. 10th St. 5th floor. Ph: 512-972-0207. The landowner, at own expense, will be responsible for providing any water and wastewater utility improvements, offsite main extensions, utility relocations and or abandonments required. Water and wastewater utility plans must be reviewed and approved by the Austin Water Utility for compliance with City criteria. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.



**Date:** April 14, 2010  
**To:** Sherri Sirwaitis, Case Manager  
**CC:** Kathy Hornaday, P.E., HDR Engineering, Inc.  
**Reference:** Wells Point Mixed Use Development Case # C14-2009-0135

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The Transportation Review Section has reviewed the Traffic Impact Analysis for Wells Point Mixed Use Development rezoning, dated October 12, 2009, prepared by Kathy Hornaday, P.E., HDR Engineering, Inc.

The proposed Wells Point Mixed Use Development (37-acre site) is located at the southeast corner of Wells Branch Parkway and Heatherwilde Boulevard in Austin, Texas. The proposed development will consist a mix of land uses including supermarket, retail, restaurants, bank, and apartments. The property is currently vacant and is anticipated to be complete by 2012.

### TRIP GENERATION

Based on the standard trip generation rates established by the Institute of Transportation Engineers (ITE), the development will generate approximately 24,101 unadjusted average daily trips (ADT). The table below shows the adjusted trip generation by land use for the proposed development:

Table 1 Trip Generation						
Land Use	Size	ADT	AM Peak		PM Peak	
			Enter	Exit	Enter	Exit
Supermarket	80,000 SF	6,371	166	106	261	250
Shopping Center	75,000 SF	4,442	75	48	161	168
Fast-food Restaurant with drive through	12,000 SF	2,856	287	276	100	93
High Turnover Restaurant	13,000 SF	1,233	74	68	47	32
Drive-in Bank	5,000 SF	539	33	26	33	33
Apartments	300 DU	1,942	30	121	119	64
<b>Total</b>		<b>17,383</b>	<b>665</b>	<b>645</b>	<b>721</b>	<b>640</b>

## ASSUMPTIONS

1. Traffic growth rates for the area were assumed at 3 percent annually.
2. In addition to these growth rates, background traffic volumes for Year 2010 included estimated traffic volumes for the following projects: 77-Acre Heatherwilde Tract LR Zoning (C14-2000-2079), Village at Northtown (C8J-2003-0159.01), Lakes at Tech Ridge (C8J-2006-0015), Lakes at Northtown (C8J-2006-0041), Precision Roofing (SP-2006-0325C), Wells Branch Commercial (SP-2007-0688C), Randolph Brooks Federal Credit Union (SP-2008-0336C).
3. The following pass-by reductions were assumed for the project:

Table 2 - Summary of Pass-By, Internal Capture, and Transit Reductions				
Land Use	Transit Reductions %	Pass-By Reductions %		Internal Capture Reduction%
		AM	PM	
Shopping Center	0	0	34	5
Fast-food Restaurant with Drive-thru	0	49	50	5
High Turnover Restaurant	0	0	43	5
Drive-in Bank	0	0	47	5
Supermarket	0	0	36	5

## EXISTING AND PLANNED ROADWAYS

**IH 35** – The Austin Metropolitan Area Transportation Plan (AMATP) and Capital Area Metropolitan Planning Organization (CAMPO) 2030 Mobility Plan classify IH 35 as a six-lane freeway from Parmer Lane to SH 45. According to TxDOT counts, the 2007 daily traffic volume count on IH 35, south of Wells Branch Parkway, was approximately 171,000 vehicles per day (vpd). The CAMPO 2030 Mobility Plan recommends IH 35 be upgraded to a six-lane freeway with one managed lane by 2030. However, this improvement was not assumed in the analysis.

**FM 1825** – The AMATP and CAMPO 2030 Mobility Plan classify FM 1825 as a four-lane major divided arterial from IH 35 to Heatherwilde Boulevard. According to TxDOT counts, the 2007 daily traffic volume count on FM 1825, north of Wells Branch Parkway, was approximately 28,000 vpd. Currently, no improvements are planned for this roadway. The Austin Bicycle Plan recommends Priority 2 Route 456 from IH 35 to Heatherwilde Boulevard.



**Wells Branch Parkway** – The AMATP classifies Wells Branch Parkway as a four-lane major divided arterial from IH 35 to FM 1825, and as a four-lane major divided arterial and two-lane major undivided arterial from FM 1825 to Heatherwilde Boulevard. Wells Branch Boulevard transitions from four lanes to two lanes east of FM 1825. 21,200 vpd are estimated on Wells Branch Parkway, between IH 35 and FM 1825. The CAMPO 2030 Mobility Plan recommends Wells Branch Parkway be upgraded to a six-lane major divided arterial between FM 1825 and Dessau Road by 2030. This improvement was not assumed to be completed upon build-out of the site in 2012. The Austin Bicycle Plan recommends Priority 1 Route 114 from Heatherwilde Boulevard to Tudor House Road.

**Heatherwilde Boulevard** – AMATP and CAMPO 2030 Mobility Plan classify Heatherwilde Boulevard as a four-lane major divided arterial and two-lane minor divided arterial from FM 1825 to Wells Branch Parkway. At the time of data collection, Heatherwilde Boulevard ended south of Wells Branch Parkway. The CAMPO 2030 Mobility Plan recommends Heatherwilde Boulevard be upgraded and constructed as a four-lane major divided arterial from FM 1825 to Parmer Lane by 2030. This improvement is in place. 12,700 vpd are estimated on Heatherwilde Boulevard, north of Wells Branch Parkway. The Austin Bicycle Plan recommends Priority 1 Route 57 from Howard Lane to Wells Branch Parkway.

**Howard Lane Boulevard** – The AMATP and CAMPO 2030 Mobility Plan classify Howard Lane as a four-lane major divided arterial from IH 35 to Dessau Road. 24-hour traffic data are not available at this location; however, based on a review of peak period traffic counts, 13,000 vpd are estimated on Howard Lane, west of McCallen Pass. No improvements are currently planned for this roadway in the vicinity of the site.

**McCallen Pass** – McCallen Pass is currently a four-lane divided roadway, south of Howard Lane. 24-hour traffic data are not available at this location; however, based on a review of peak period traffic counts, 5,700 vpd are estimated on McCallen Pass, south of Howard Lane. Heatherwilde Boulevard will be constructed to align with McCallen Pass, north of Howard Lane by 2012.

**Drusillas Drive** – Drusillas Drive is currently a two-lane undivided roadway, north of Wells Branch Parkway. 2,000 vpd are estimated on Drusillas Drive, north of Wells Branch Parkway. No improvements are currently planned for this roadway in the vicinity of the site.

**Tudor House Road** – Tudor House Road is currently a two-lane undivided roadway, south of Wells Branch Parkway. 2,400 vpd are estimated on Tudor House Road, south of Wells Branch Parkway. No improvements are currently planned for this roadway in the vicinity of the site.

Access to the site is provided via one (1) driveway on Heatherwilde Boulevard, and two (2) driveways on Wells Branch Parkway.

### **INTERSECTION LEVEL OF SERVICE (LOS)**

The TIA analyzed six (6) intersections of which three (3) are currently signalized. Existing and projected levels of service are summarized in Table below. The build-out condition level of service (LOS) assumed that all roadway and intersection improvements recommended in the TIA are constructed.

<b>Table 3 – Intersection Levels of Service</b>								
<b>Intersection</b>	<b>2009 Existing</b>		<b>2012 Forecasted (Without site traffic)</b>		<b>2012 Site + Forecasted (Without Improvements)</b>		<b>2012 Forecasted (With Improvements)</b>	
	<b>AM</b>	<b>PM</b>	<b>AM</b>	<b>PM</b>	<b>AM</b>	<b>PM</b>	<b>AM</b>	<b>PM</b>
IH 35 and Wells Branch Pkwy	D	E	F	F	F	F	F	F
FM 1825 and Wells Branch Pkwy	E	D	F	F	F	F	F	F
Heatherwilde Blvd. & Wells Branch Pkwy*	-	-	B	C	C	E	C	D
Howard Lane and McCallen Pass	B	B	D	D	D	D	D	D
Drusillas Drive and Wells Branch Pkwy*	A	A	A	A	A	B	A	B
Tudor House Rd and Wells Branch Pkwy*	-	-	B	B	A	A	A	A
Heatherwilde Blvd and Driveway A	-	-	-	-	A	C	A	C
Wells Branch Pkwy and Driveway B	-	-	-	-	A	A	A	A
Wells Branch Pkwy and Driveway C	-	-	-	-	A	A	A	A


\*Unsignalized Intersections

## RECOMMENDATIONS

1. Prior to 3rd reading at City Council, pro-rated share of fiscal is required to be posted by the developer for the following improvements:
  - ***Heatherwilde Boulevard and Wells Branch Parkway*** – Construction of an eastbound right-turn lane on Wells Branch Parkway with 102 feet of taper and 150 feet of storage.
2. Prior to approval of the site development permit on any portion of the site, fiscal is required to be posted for the following improvements:
  - ***FM 1825 and Wells Branch Parkway*** - Restripe EB departure lanes to convert the NBRT to a free right turn.
  - ***Heatherwilde Boulevard and Driveway A*** - Construction of a left-turn lane for access into the site with 100 feet of storage and 102 feet of taper.
  - ***Wells Branch Parkway and Driveway B***– Construction of a left-turn lane for access into the site with 160 feet of storage and 102 feet of taper.
  - ***Wells Branch Parkway and Driveway C*** – Construction of a left-turn lane for access into the site with 100 feet of storage and 102 feet of taper.
3. Driveway alignment and minimum widths are recommended as stated in the TIA.
4. Two copies of the final TIA are required to be provided prior to 3rd Reading at City Council.
5. City of Austin Traffic Signals Division and TX DOT have approved this TIA.
6. Developer shall incorporate Transportation Demand Management (TDM) techniques like car sharing, car-pooling, bus passes, etc to further mitigate failing levels of service at the time of site plan.
7. Development of this property should be limited to uses and intensities which will not exceed or vary from the projected traffic conditions assumed in the TIA, including peak hour trip generations, traffic distribution, roadway conditions, and other traffic related characteristics.

If you have any questions or require additional information, please contact me at 974-2219.

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Sangeeta Jain, AICP

Senior Planner, Planning and Development Review Department



JACKSON WALKER L.L.P.  
ATTORNEYS & COUNSELORS

James M. Nias  
(512) 236-2350 (Direct Dial)  
(512) 391-2136 (Direct Fax)  
jnias@jw.com

April 19, 2010

**Via Hand Delivery**

Zoning and Platting Commission  
City of Austin  
c/o Sherri Sirwaitis, Case Manager  
505 Barton Springs Road  
Austin, Texas 78704

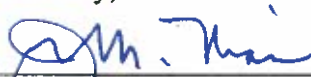
Re: Zoning case number C14-2009-0135; Item C4 on ZAPCO agenda of April 20, 2010

Dear Chair and Members of the Commission:

Our firm represents Village @ Northtown, Ltd., which is the owner of the land adjacent to the eastern boundary of the tract which is the subject of the above-referenced zoning case, and the owner of the land adjacent to approximately 3/4 of the southern boundary of the subject tract. Our client's property is planned for multi-family residential use.

We are respectfully requesting a reasonable postponement of your public hearing on this case so that we may have an opportunity to try to negotiate conditions providing appropriate buffering and compatibility between our client's planned residential use and the non-residential uses which could be conducted on the subject tract under the proposed zoning change from mostly MF-2 to all GR-MU.

Sincerely,

  
\_\_\_\_\_  
James M. Nias  
Attorney at Law

  
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Katherine P. Loayza  
Land Use Consultant

JMN:tm

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# Metcalfe Williams LLP

ATTORNEYS AT LAW

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MICHELE M. ROGERSON  
Director of Land Use and Entitlements  
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April 28, 2010

Ms. Katherine Loayza  
Jackson Walker, LLP  
100 Congress, Suite 1100  
Austin, Texas 78701

*Via electronic and hand delivery*

Re: HW Tosca rezoning C14-2009-0135; Proposed conditions request.


Dear Katherine:

Thank you for meeting with us on April 23, 2010 to discuss the concerns and proposed conditions of your client (Village at Northtown, Ltd.) who owns property adjacent to the project.

We have reviewed your proposed conditions related potential uses within our project. We also discussed your proposed conditions with our client. In addition, we reviewed the restrictions and conditions between the Village at Northtown Ltd, and the Northtown Municipal Utility District (MUD) (Document No. 2003145929) you provided on April 26, 2010.

In the spirit of making the use of our adjoining tracts compatible with yours, we offer a response to those conditions that we believe is fair based on the requirements of Austin's City Code and the MUD requirements and conditions imposed on your client's land. We respectfully make this proposal based upon your client's full support of the pending rezoning request and the agreement of these conditions within a private restrictive covenant between the two landowners.

Please feel free to contact us with any questions upon review of the request so that we can strive to work out the commitments prior to the scheduled Zoning and Platting Commission hearing on May 5, 2010.

Sincerely,  
  
Michele M. Rogerson

Enclosure  
cc: Steven C. Metcalfe, Firm

Possible Conditional Overlays or Restrictive Covenants

\* Conditional overlays are condition written into the ordinance which re-zones the property and are enforceable by the City

\*\* Restrictive covenants are recorded agreements with another property owner like the Village and could be enforced by the Village, its successors or assigns

A. Land Uses

1. Current list of prohibited uses (already included in staff recommendation for conditional overlays):

Automotive Rentals  
Automotive Repair Services  
Automotive Sales  
Automotive Washing – of any type over 2,000 sq.ft.  
Commercial Off-Street Parking  
Drop-Off Recycling Collection Facility  
Exterminating Services  
Funeral Services  
Off-Site Accessory Parking  
Pawn Shop Services  
Research Services

2. Possible additional prohibited uses:

Outdoor Sports and Recreation (things like driving ranges, softball complexes, etc. which produce a great deal of light at night)

**Response: We are not amenable to prohibiting this use. However, we believe lighting concerns are addressed by the lighting required by City Code to design and shield recreational area lighting according to City of Austin Commercial Design Standards Section 2.5.**

Guidance Services (daytime rehabilitation services for mental illness, alcoholism, drug addiction)

**Response: We are not amenable to prohibiting this use.**

Residential Treatment (live-in halfway house for mental illness, alcoholism, drug addiction)

**Response: We are not amenable to prohibiting this use.**

4. For nonresidential uses (not including MF), screen all views of parking, mechanical equipment, storage and refuse collection with dense vegetation or solid 6' fencing along the south and east property lines. For multifamily or other residential uses, screen all of the same things except parking.

**Response:** We are not amenable to this condition. However, we are required by City Code to provide screening to adjacent properties (regardless of type of use on adjacent properties) per Commercial Design Standards Section 2.6.2B. This Code Section requires the screening to be incorporated into the overall design of the building and be the same as, or of equal quality to, the materials used for the principal building rather than buffering with vegetation or fencing, which could restrict future connectivity. We request that your client also commit to these screening requirements via a restrictive covenant since the MUD restrictions, which regulate land contain no such requirement.

5. Lighting: all exterior lighting will comply with City compatibility standards to prevent excessive glare.

**Response:** We are not amenable to this condition. However, we are required by City Code to design and shield lighting according to City of Austin Commercial Design Standards Section 2.5. We request that your client also commit to these screening requirements via a restrictive covenant.



3. Require a minimum of 12 acres or 300 dwelling units of multi-family use as designated in the TIA Land Use summary. Provide a buffer between the Village property and the HW Tosca tract with MF uses to the greatest extent possible.

**Response:** We are not amenable to a minimum acres or dwelling unit requirement. The proposed zoning is intended to be flexible in the design and layout of future uses and is controlled by the approved TIA. Should any uses be amended in the TIA, the threshold of the overall trips approved must still be met. We are amenable to a buffer, which is detailed in Section B below.

#### B. Setbacks and Screening

1. No nonresidential structure, and no parking or driveways for any use to be located within 25' of the south and east property lines.

**Response:** We are amenable to a 12.5' vegetative buffer from non residential structures located along the south and east property lines. We request that your client also agree to a 12.5' vegetative buffer along the south and east property lines, which will result in an aggregate 25' buffer between our adjoining developments. This item can be handled via a restrictive covenant.

2. No nonresidential structure in excess of 30' in height may be constructed within 50' of the south and east property lines.

**Response:** This item and Item 3 below are Austin City Code Compatibility Standards, which apply to development adjoining single family development. Since you are not a single family development, they are probably not appropriate here. Nevertheless, we are amenable to requiring that no nonresidential structures in excess of 40' in height may be constructed within 50' of the south and east property lines. We request that your client also commit to this condition. This item can be handled via a restrictive covenant.

3. No nonresidential structure in excess of 40' in height may be constructed within 100' of the south and east property lines.

**Response:** This item and Item 2 above are Austin City Code Compatibility Standards, which apply to development adjoining single family development. Since you are not a single family development, they are probably not appropriate here. Therefore, we are not amenable to this condition.