

## **RESTRICTIVE COVENANT TERMINATION REVIEW SHEET**

**CASE:** C14-98-0150 (RCT)

**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)

**EXISTING ZONING:** GR, MF-2

**AREA:** 36.36 acres

### **SUMMARY STAFF RECOMMENDATION:**

Staff recommends the applicant's request to terminate the restrictive covenant to eliminate the restrictions placed upon the property in question.

### **DEPARTMENT COMMENTS:**

The property in question is a large undeveloped tract of land located at the recently constructed intersection of East 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 to terminate this public restrictive covenant because they are in the process of re-zoning the property in question to the GR-MU, Community Commercial-Mixed Use Combing District (Zoning Case C14-2009-0135). The current restrictive covenant contains conditions for a Traffic Impact Analysis that are associated with zoning case C14-98-0150. If the re-zoning of this property is approved, then the conditions for a new TIA will be adopted in a new restrictive covenant for this site.

The staff recommends the applicant's request to terminate the restrictive covenant for this tract of land because the conditions of the existing covenant will be replaced by a new public restrictive covenant with the accompanying re-zoning case. The termination of this RC will allow for a new TIA to be conducted that will take into account a mixture retail, multifamily and commercial uses to be permitted on the overall site.

The applicant agrees with the staff's recommendation.

### **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 the restrictive covenant termination (7-0); T. Rabago-1<sup>st</sup>, S. Baldrige-2<sup>nd</sup>.

**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:** N/A**WATERSHED:** Harris Creek**DESIRED DEVELOPMENT ZONE:** No**CAPITOL VIEW CORRIDOR:** N/A**HILL COUNTRY ROADWAY:** Yes**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. Gohil-absent); M. Hawthorne-1 <sup>st</sup> , J. Pinnelli-2 <sup>nd</sup>	8/24/06: Approved SF-2-CO zoning (6-0, Kim-off dias); all 3 readings
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 (Original Zoning Case)  
C14-2009-0135 (Current Re-zoning Case)

**ABUTTING STREETS:**

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

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

**ACTION:** Postponed to May 27, 2010 at the applicant's request on consent (7-0); Morrison-1<sup>st</sup>, Spelman-2<sup>nd</sup>.

May 27, 2010

**ACTION:**

**ORDINANCE READINGS:** 1<sup>st</sup>

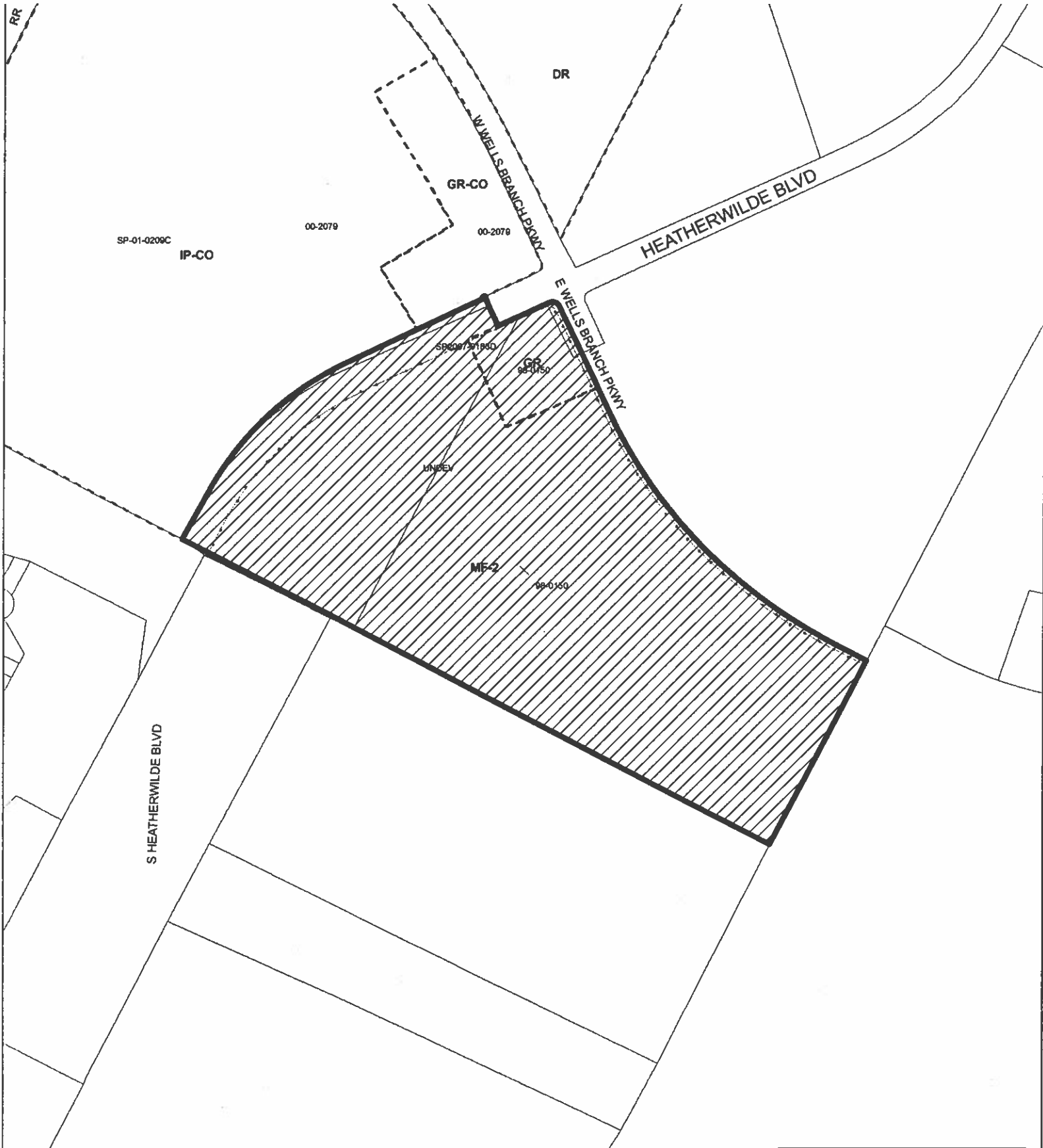
2<sup>nd</sup>




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#:** C14-98-0150(RCT)  
**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.









October 13, 2009

Mr. Greg Guernsey  
Planning & Development Review Department  
City of Austin  
505 Barton Springs Road, 5<sup>th</sup> Floor  
Austin, TX 78704

**VIA HAND DELIVERY**

RE: HW-Tosca, 36.46 acres located at 100 E. Wells Branch Parkway near the southeast corner of S. Heatherwilde Boulevard and E. Wells Branch Parkway ("Property"), request for rezoning from GR and MF-2 to GR-MU.

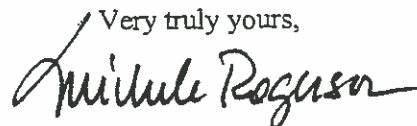
Dear Mr. Guernsey:

As representatives of the owner of the above-captioned Property, we respectfully submit this letter and enclosed rezoning application. The project is entitled HW-Tosca. The owner intends to develop the Property with a mix of uses including retail, multi-family and commercial.

The proposed rezoning to allow a mix of uses in this area is intended to complement the needs of the area. The Property is bounded on the north by the City of Pflugerville and on the east and south by City of Austin 2-mile ETJ.

A Traffic Impact Analysis (TIA) is required with this rezoning case. Currently, there is a TIA restrictive covenant on the Property that was associated with a previous zoning case. A Restrictive Covenant Termination application will be filed with the rezoning application to terminate document number 1999065165. We respectfully request that both applications run concurrently through the process.

Please let me know if you or your team members require additional information or have any questions. Thank you for your time and attention to this project.

Very truly yours,  


Michele Rogerson

Enclosures

cc: Sherri Sirwaittis, Planning and Development Review Department (*via hand delivery without enclosures*)  
Shannon Martinez, Spertus Investments LLC (*via electronic mail without enclosures*)  
Steven C. Metcalfe, firm



Zoning Case No. C14-98-0150

9907d-85

**RESTRICTIVE COVENANT**

**OWNER:** NEW WELLS POINT PARTNERS, LTD., a Texas Limited Partnership

**ADDRESS:** 5300 Bee Caves Road, Bldg. 1, Suite 220, Austin, Texas 78746

**CONSIDERATION:** Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

**PROPERTY:** Tract 1: A 37.29 acre tract of land out of the L.C. Cunningham Survey No. 63, in Travis County, Texas, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this ordinance,

Tract 2: A 2.07 acre tract of land out of the L.C. Cunningham Survey No. 63, in Travis County, Texas, the tract of land being more particularly described by metes and bounds in Exhibit "B" incorporated into this ordinance,

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. Notwithstanding any other provision of the City Code applicable to the Property on the effective date of this restrictive covenant or at the time an application for approval of a site plan or building permit is submitted, no site plan for development of the Property or any portion of the Property shall be approved or released, and no building permit for construction of a building on the Property, shall be issued if the completed development or uses authorized by the proposed site plan or building permit, considered cumulatively with all existing or previously authorized development and uses of the Property, generates traffic exceeding the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by Robert J. Halls & Associates, dated December 1998 and revised March 17, 1999. The TIA shall be kept on file at the Department of Review and Inspection and shall be available for public review.
2. All development on the Property is subject to the recommendations contained in a memorandum from the Transportation Review Section of the Development Review and Inspection Department, dated April 1, 1999.
3. At the request of the Owner of the affected Property, an updated or amended TIA may be approved administratively by the Director of the Development Review and Inspection Department.
4. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such

person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.

5. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
6. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
7. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this the 24<sup>th</sup> day of June, 1999.

OWNER:

**NEW WELLS POINT PARTNERS, LTD.**  
a Texas Limited Partnership

By: SMCI, General Partner

By: Spertus Investments LLC,  
a Texas limited liability corporation,  
Managing Agent

By: Karen L. Burks  
Karen L. Burks, President

APPROVED AS TO FORM:

David Allan Smith

Printed name: DAVID ALLAN SMITH  
Assistant City Attorney  
City of Austin

THE STATE OF TEXAS

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COUNTY OF TRAVIS

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This instrument was acknowledged before me on this the 24<sup>th</sup> day of June, 1999, by KAREN L. BURKS, President of Spertus Investments LLC, a limited liability corporation, on behalf of said corporation, and the corporation acknowledged this instrument as managing agent on behalf of SMCI, General Partner, of New Wells Point Partners Ltd., a Texas limited partnership.



  
Notary Public, State of Texas

After Recording, Please Return to:  
City of Austin  
Department of Law  
P. O. Box 1546  
Austin, Texas 78767-1546  
Attention: Diana Minter, Legal Assistant