

(Amended)

C15-2012-0041

VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):

REASONABLE USE:

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

The existing ordinance for a adult oriented business prohibits being located (2) that is within 1,000 feet of a lot on which a school, church, public park or playground, or licensed day care center is located; -section 25-2-801 of land use and development code-zoning.

HARDSHIP:

2. (a) The hardship for which the variance is requested is unique to the property in that:

The property is located within from 936.62' to 863.65' of Mabel Davis Park. The encroached area (63.38' to 136.35') of parkland is a creek bed located adjacent to a covered landfill. It is not used as parkland, nor can be developed for park use.

Highway 71 separates the park from the property and the walking distance to the property is well over 1,000'.

The zoning ordinance as applied to this particular property is unduly oppressive, arbitrary and/or confiscatory since the literary application of the ordinance would be unreasonable in light of the general statutory purpose derived from the 1986 study in which the ordinance was created.

- (b) The hardship is not general to the area in which the property is located because:

The surrounding area where the property is located is primarily industrial. The area which surrounds the parkland is residential. The areas are divided by Highway 71-a major highway also known as Ben White Blvd. There is no pedestrian traffic allowed to cross the road save and except the intersections. The property is not located at an intersection.

A hardship is defined as used in zoning ordinances as grounds for a variance; it refers to the fact that the restrictions applied to a particular property is unduly oppressive, arbitrary or confiscatory:

It is oppressive because the 1000' feet requirement in this instance is an excessive use of authority, as the intended use of the ordinance based on the 1986 study used to create the 1,000' restriction was to dissuade foot traffic. The distance to travel by foot is

well in excess of 1,000'. It is arbitrary in this instance because it is without consideration and regard for the particular topography and the facts and circumstances present, such as the encroachment area of the parkland is a creek bed and adjacent covered landfill. The intended use of the ordinance was to dissuade foot traffic and the distance to travel by foot is well in excess of 1,000'. It is confiscatory because it is condemning the property owner's right to use the property as a sexually oriented business. Denial of the use of the property is the hardship, especially considering the aforementioned facts, and ultimately it will not harm the public interest.

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

The property is abutted by commercial buildings and commercial property. Applicant is also the owner of the property to the west; highway 71 abuts to the north; storage units are to the east and railroad tracks lie to the south.

PARKING:

DOES NOT APPLY

APPLICANT CERTIFICATE - I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed: _____ Mail address: 4213 Ave G Austin, TX 78751

Printed Name: Charlie Nohra Phone: (512) 659-0973 Date: 2/14/12

OWNERS CERTIFICATE - I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed: _____ Mail address: 28 Reese Drive, Austin, Texas 78745


Printed name: Rosemary Follis Phone: (512) 659-0973 Date: 2/14/12

THIS IS FROM THE PROPERTY OWNER AND IS AN EXTENSION OF THE APPLICATION EXPLAINING THIS UNIQUE HARDSHIP – VERY IMPORTANT

Unique is defined in Websters Collegiate Dictionary as “Very unusual. Notable.”

Hardship is defined as “Something that causes a suffering or privation.” Privation is defined as “Deprivation, the act of depriving.”

I represent the property located at 2201 East Ben White. This property is zoned CS-1 and is the location of a western themed night club. What is unique about the property is that we are unable to acquire a conditional use permit due to very unique circumstances. The subject property needs to be at least 1,000 feet from a school, church, day care, another conditional use property, and from a park. When drawing an imaginary circle around 2201 East Ben White with a radius outward of 1,000 feet a problem arises. The circle encroaches at the very most 140 feet to the north a covered landfill that is erroneously designated as Mabel Davis Park. The encroached area of the park appears to be a dried creek-bed but in actuality is a covered wasteland that has been known to emit toxic gases from large amounts of pesticides and lead case batteries dumped there decades ago. The discovered emission of poisonous gasses lead to the removal of all of the park equipment nearest that south area of the park. The encroached area (confirmed by Parks Department officials D'Anne Williams and Ricardo Soliz) has never, is not, and will never be used as public park land. That area due to the potential safety risks to citizens can never be used as public parkland. For that reason we should be exempt and excluded from the distance requirement as it pertains to the park. Even after a \$10 million, 5½-year environmental cleanup of the contaminated site placing a clay cap over the old landfill did nothing more than cover the problem. The cap is not allowed to be irrigated, disturbed or penetrated with fence posts or any other structures. The softball fields, basketball courts, playground, picnic tables and other amenities were permanently removed. No athletic fields or any other playground amenities are allowed to ever be built on the contaminated area of the “park”. Again, we only encroach an area at the most 140 feet of the toxic creek bed that is mislabeled as a public park. It should also be pointed out that eight lanes of highway 71, ~~four~~ ⁶ lanes of access road, and 4.63 acres of private property separate us from that toxic area. Walking (or driving) across ~~12~~ ¹⁴ lanes of traffic on a major highway is illegal and deadly, and traversing the 4.63 acres of private property is trespassing. I would like to note that the actual shortest distance to travel from 2201 East Ben White to the park is over 3,300 feet to the closest entrance, and over 4,700 feet to the next closest entrance.



The hardship is we have no reasonable adequate remedy at law under the zoning ordinances. There is no allowance for a variance so the Board of Adjustments is our only legal recourse. There is no provision to ask the planning commission or city council for a variance from the 1,000 foot requirement. It would be time consuming and very improbable to successfully lobby for the enactment of a new ordinance. Another

possibility, but again time consuming and improbable, would be to ask a court of law if the ordinance as applied to this unique hardship is overreaching of authority. Time is of the essence as the current tenants lease has expired and if the property lays dormant for 90 days the zoning reverts backwards further limiting the property uses, expanding the hardship created by this unique situation to the property. As the owner of this property I hope reasonable property rights will ultimately prevail.

I respectfully request a Conditional Use Permit, as I can and will meet all other requirements. If for any reason the board will not or can not issue me the Conditional Use Permit then at the very least I ask for a variance. This variance would enable and empower us to legally apply through the proper channels for a Conditional Use Permit, not holding the Mabel Davis Park landfill area's proximity count against us.

FILM CODE

00004617207

Zoning Case No. C14-90-0013

DOC. NO.

90064387

RESTRICTIVE COVENANT

Owner: Rosemary Follis

Owner's Address: 788 Oakdale Drive, Austin, Texas, 78745

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

Property: Tract 2: 24,144 square feet [0.554 acre tract] of land out of Lot 1, St. Edwards Heights Subdivision, a subdivision in the City of Austin, Travis County, Texas according to the map or plat of record in Book 78, Page 39, of the Plat Records of Travis County, Texas, said 24,144 square feet of land being more particularly by metes and bounds in "Exhibit A" attached and incorporated herein for all purposes.

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

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. If use of Tract 2 as Cocktail Lounge is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to "CS" ~~General~~ Commercial Services district as defined in Chapter 13-2 of the Austin City Code. Normal, seasonal cessation of a use, or temporary discontinuance for purpose of maintenance or rebuilding of the Property after damage or destruction shall not be included in calculating the period of discontinuance.
2. 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.
3. 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.
4. 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.
5. 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 at the time of such modification, amendment or termination.

All citations to the Austin City Code shall refer to the Austin City Code of 1981, as amended from time to time, unless otherwise specified.

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

EXECUTED this the 13 day of July, 1990.

BY: Rosemary Follis
Rosemary Follis

THE STATE OF TEXAS
COUNTY OF TRAVIS

§
§

This instrument was acknowledged before me on this the 13th day of July, 1990, by Rosemary Follis.

Betty Baker
Notary Public Signature

Betty Baker
Type or Print of Notary
My Commission Expires: 4-5-93

NOTARY SEAL

After recording, please return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas, 78767-8828

Attention: Joe Jimenez

Building
Tract 2

DESCRIPTION

DESCRIPTION OF 24,144 SQUARE FEET OR 0.554 ACRES OF LAND OUT OF LOT 1, ST. EDWARDS HEIGHTS, A SUBDIVISION OF RECORD IN BOOK 78, PAGE 39, PLAT RECORDS OF TRAVIS COUNTY, TEXAS; SAID 24,144 SQUARE FEET OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING for reference at the northwest corner of Lot 1, St. Edwards Heights, a Subdivision of record in Book 78, Page 39, Plat Records of Travis County, Texas, same point being also the northeast corner of Lot 2, Monarch Addition, a subdivision of record in Book 78, Pages 16-17, Plat Records of Travis County, Texas, same point being also in the south right-of-way line of Ben White Boulevard;

THENCE, with the west line of said Lot 1, St Edwards Heights and the east line of said Lot 2, Monarch Addition, S05°25'50"W 173.06;

THENCE, through the interior of said Lot 1, St. Edwards Heights, S84°34'10"E 14.64 feet to the northwest corner of a building for the POINT OF BEGINNING of this tract;

THENCE, with the perimeter of said building, the following four (4) courses:

- 1) S84°32'24"E 200.20 feet to the northeast corner of this tract and of said building;
- 2) S05°27'36"W 120.60 feet to the southeast corner of this tract and of said building;
- 3) N84°32'24"W 200.20 feet to the southwest corner of this tract and of said building;
- 4) N05°27'36"E 120.60 feet to the POINT OF BEGINNING and containing 24,144 square feet of land within these metes and bounds.

SURVEYED BY: McGRAY & McGRAY LAND SURVEYORS, INC.
3301 Hancock Drive, Suite 6
Austin, Texas 78731 (512)451-8591

Gerald L. McGray
Gerald L. McGray, Reg. Public Surveyor No. 2092

2/09/90
Date



90-130-2

RETURN To:

CITY OF AUSTIN
DEPT. OF LAW
P. O. BOX 1038

AUSTIN, TEXAS 78767-0828

ATTN: JOE JIMENEZ

"EXHIBIT A"

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11239 0050

0000 0020

FILED

JUL 30 10 29 AM '90

DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS

COUNTY OF TRAVIS

I hereby certify that this instrument was FILED on
the date and at the time stamped herein by me; and
was duly RECORDED, in the Volume and Page of the
record RECORDS of Travis County, Texas, on

JUL 30 1990



Dana Debeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11239 0051

(iii) female breast below a point immediately above the top of the areola; or

(b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(B) On-premises advertisements, displays, or other promotional materials for an adult-oriented business that emphasize specified sexual activities or specified anatomical areas must not be visible from public or semi-public places outside the business.

(C) Except as provided in Subsection (E), an adult-oriented business other than an adult lounge is a permitted use in a CBD, DMU, CS, CS-1, or CH zoning district.

(D) Except as provided in Subsection (E), an adult lounge is a permitted use in a CBD zoning district, and a conditional use in a DMU, CS-1, or CH zoning district.

(E) An adult-oriented business may not be located on a lot:

(1) that is within 1,000 feet of a lot on which another adult-oriented business is located;

(2) that is within 1,000 feet of a lot on which a school, church, public park or playground, or licensed day-care center is located; or

(3) where 50 percent or more of the lots within a 1,000 foot radius are zoned or used for a residential use.

(F) A radius or distance described in Subsection (E) is measured from the midpoint of a line joining the two most distant points on the boundaries of the lot.

Source: Section 13-2-265; Ord. 990225-70; Ord. 031211-11.

§ 25-2-802 ART GALLERY AND ART WORKSHOP USES.

(A) For an art gallery use in a general office (GO) or more restrictive district, the sale of art supplies, equipment, or accessories is prohibited.

(B) This subsection applies to an art workshop use in a community commercial (GR) or more restrictive district.

(1) The use may not:

(a) exceed 5,000 square feet of gross floor area; or

(b) produce external noise, vibration, smoke, dust, odor, heat, glare, fumes, electrical interference, or waste runoff.

(2) The following are prohibited:

(a) the outdoor storage of materials; and

(b) the use of welding equipment, fiberglass, or epoxy.

Source: Ord. 040617-Z-1.

§ 25-2-803 COMMERCIAL BLOOD PLASMA CENTER CONDITIONAL USE REQUIREMENTS.

A commercial blood plasma center is a conditional use if the use is within:

(1) one-half mile of another commercial blood plasma center; or

(2) 540 feet of a lot zoned or used for a residence, church, public or private school, public park or playground, or day-care facility.

Source: Sections 13-2-233 and 13-2-333; Ord. 990225-70; Ord. 031211-11.

AUSTIN CITY COUNCIL

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Jorge Carrasco



REPORT ON ADULT ORIENTED
BUSINESSES IN AUSTIN

Prepared By

Office of Land Development Services

May 19, 1986

In order to assess the impact of adult businesses on property values, questionnaires were mailed to 120 real estate appraisal and lending firms. Eight-eight percent of those responding indicated a belief that an adult bookstore would decrease residential property values within one block, and 59% felt that residential property values would decrease within three blocks. Respondents based their opinions on several factors. They noted that adult businesses made homes less attractive to families, thus lowering demand and property values. Others stated that the existence of adult businesses leads mortgage underwriters to believe that the neighborhood is in decline, thus making 95% financing difficult.

Trade Area Characteristics

In order to make appropriate recommendations for assignment of adult businesses to specific zoning districts, a study of trade area characteristics was conducted. Three adult businesses - a bookstore, theater and a topless bar - were examined to determine customer addresses by an observation of vehicle license numbers. Of the 81 observations made, only three customers had an address within one mile of an adult business. Nearly half (44%) of all customer addresses were located outside the City of Austin.

Recommendations

Based on the findings of this study, the following recommendations are made:



1. Adult businesses should be limited to highway or regionally-oriented zone districts.
2. Adult businesses should be dispersed to avoid the over concentration of such business.
3. Conditional use permits should be required for adult businesses in certain specified zone districts.

CHAPTER I INTRODUCTION

As is the case in many large American cities, Austin has witnessed a rapid rise in the number and type of adult entertainment businesses over the past decade. These businesses present a particular problem due, in part, to the moral implications associated with such enterprises in the minds of many members of the community. In addition, the proliferation and alleged detrimental effects of these businesses upon surrounding neighborhoods have been the focus of community attention for quite some time. This attention has resulted in numerous requests for the City to regulate adult businesses.

The regulation of adult entertainment businesses is a controversial matter. While legal and constitutional bases for municipalities to control the use of land within their jurisdictions in order to protect the "public health, safety, morals, and general welfare of their citizens" has been firmly established, the Supreme Court has upheld the right of adult entertainment businesses to operate in the community by virtue of the First and Fourteenth Amendments of the U.S. Constitution. Resolving conflicts between the legal rights of municipal governments and those of adult business operators and patrons has been a difficult task.

Austin enacted a "Sexually Oriented Commercial Establishments Ordinance" on May 22, 1980. This ordinance prohibits adult businesses from being closer than 1,000 feet from a residential use. On October, 25, 1983, a lawsuit was filed attacking the validity of the Ordinance. The lawsuit was filed after the Building Inspection Department issued a "Code Violation Notice" for an adult bookstore located at 8004 Research Blvd. This violation notice was filed because the bookstore was located within 1,000 feet of property zoned and used for residential purposes. The suit disputed the city's assertion of harm to areas zoned and used for residential purposes.

On January 10, 1985, a trial was held. Because the court was unable to make a factual finding on the validity of the City's assertion, it

http://www.runtastic.com/en/users/Charlie-Nohra-2/sport-sessions/10732853

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Activity by Charlie Nohra (28 Mar, 2012) Cycling | 0.91 mi

Page Safety Tools

SPRING AWAKENING Buy 6 months - get 12 months! TODAY LEFT ONLY



CYCLING

28 March, 2012 19:18:53



Charlie Nohra is

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TRAINING PLANS

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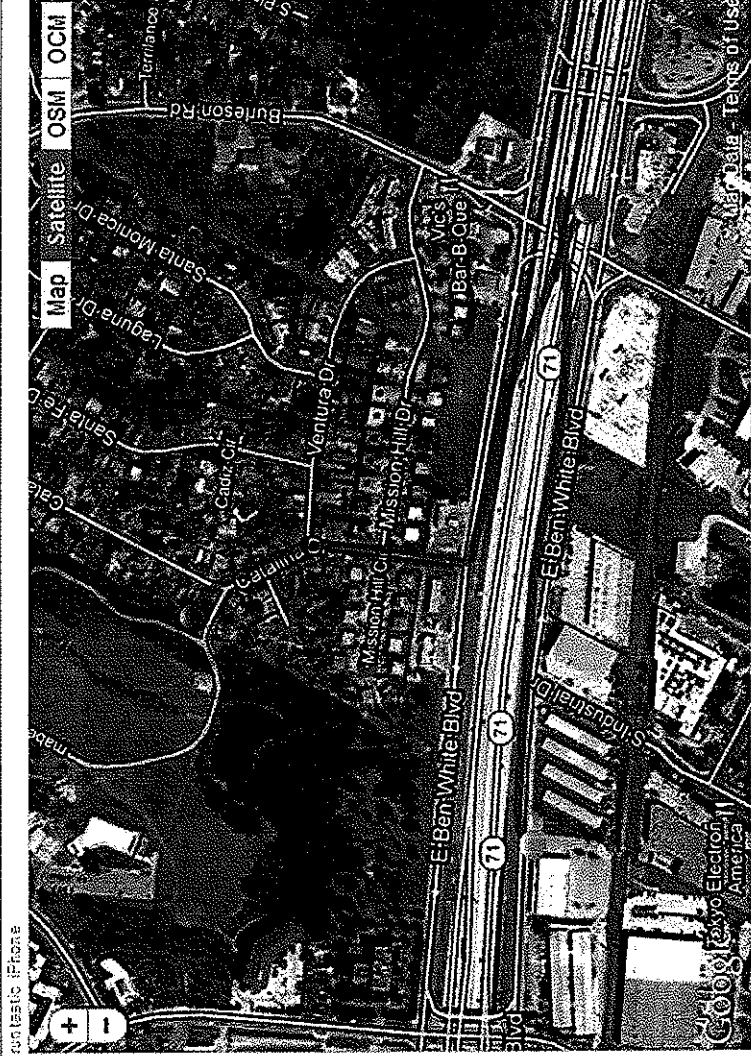
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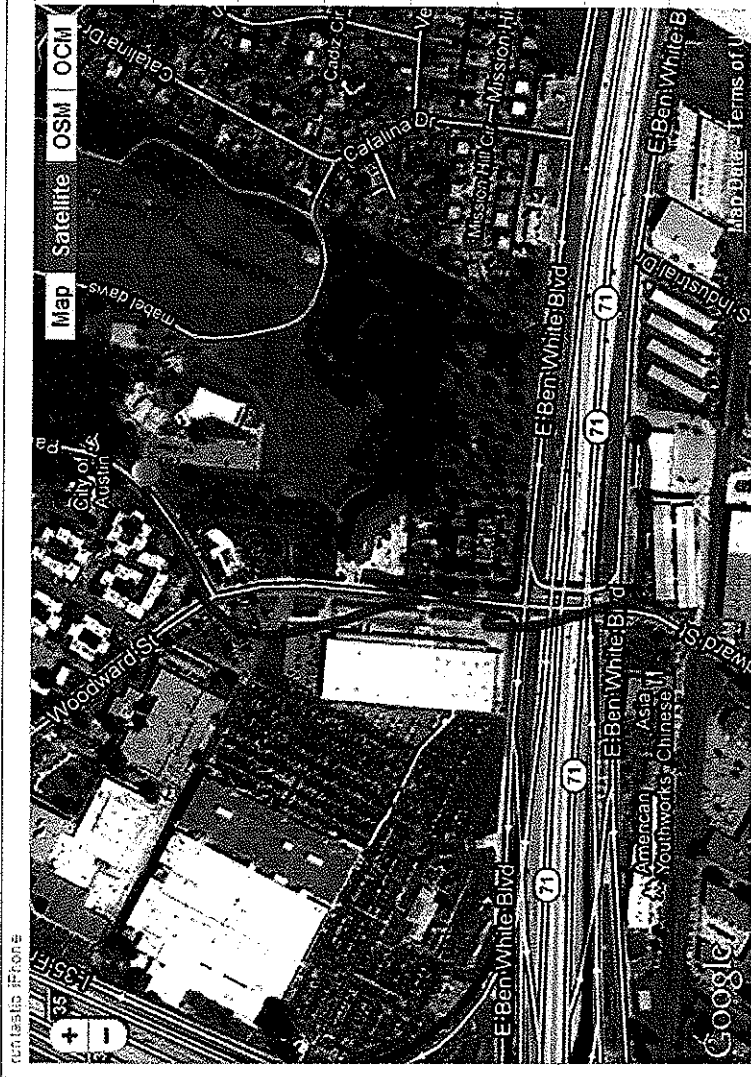
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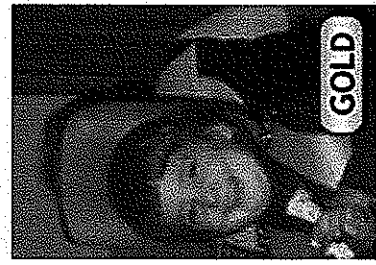
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Charlie Mohra

ACTIVITIES

FRIENDS

PHOTOS

TRAINING PLANS

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Mabel Davis Park Cap Boundaries



Legend

Mabel Davis Cap Boundaries

Type

- Landfill
- Pesticide
- Mabel Davis Park
- Creeks

0 100 200 400 Feet

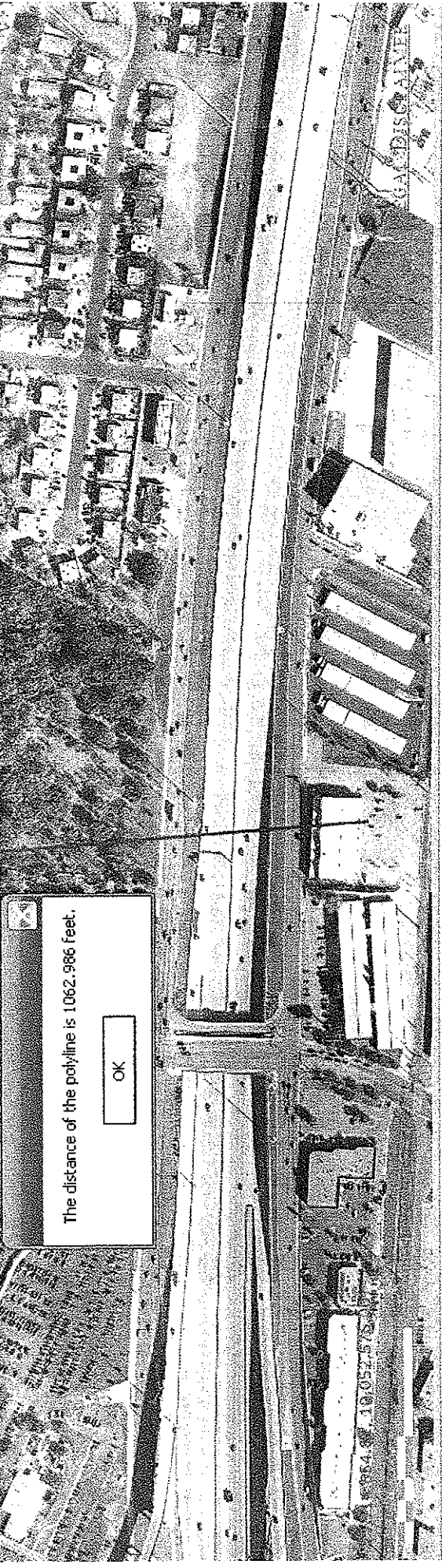


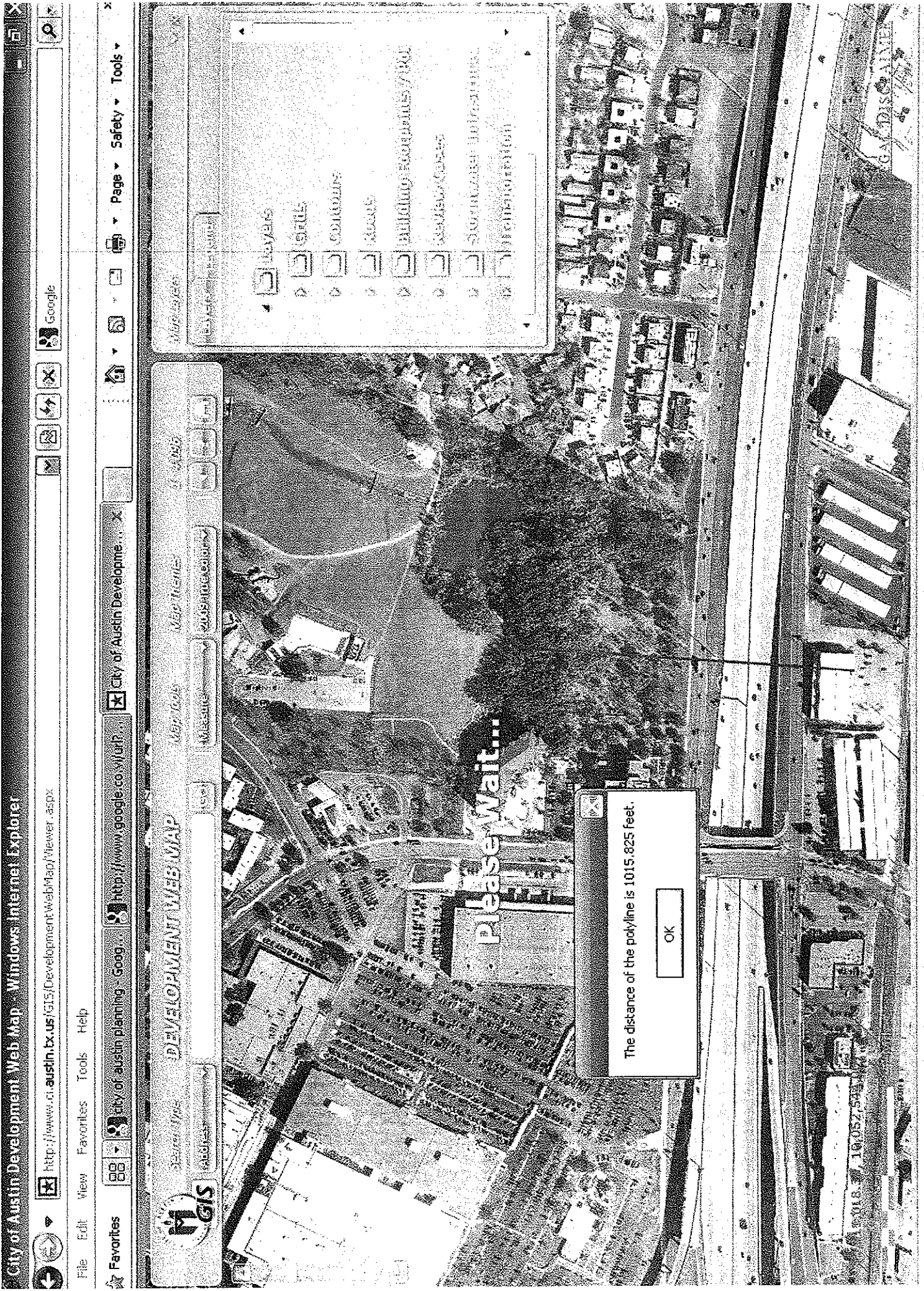
Watershed Protection Department
The City of Austin produced this map for public use and
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Date: 06.23.2011

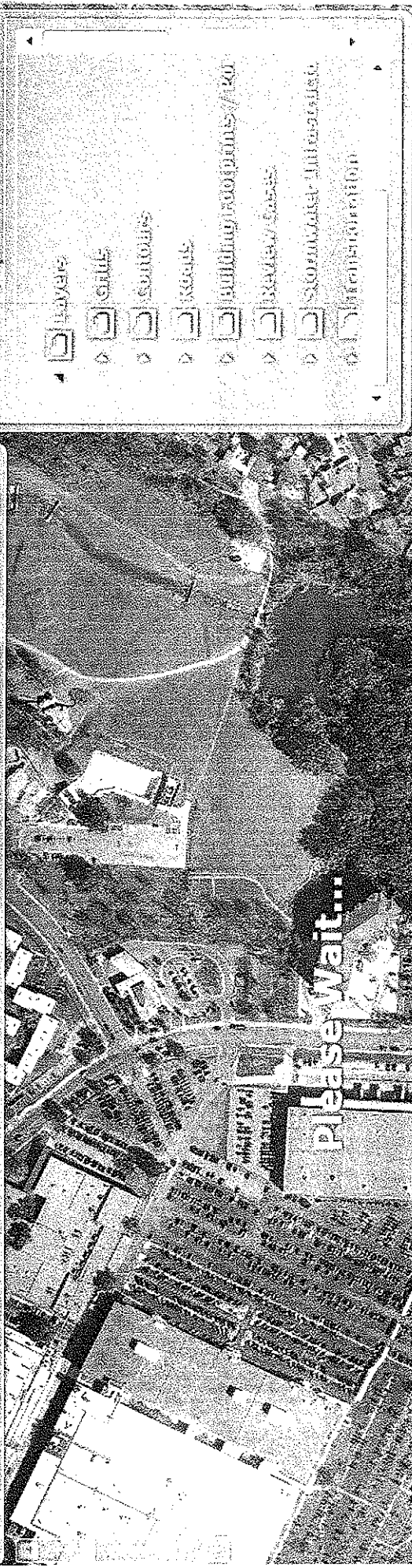
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- ☐ Stormwater Infrastructure
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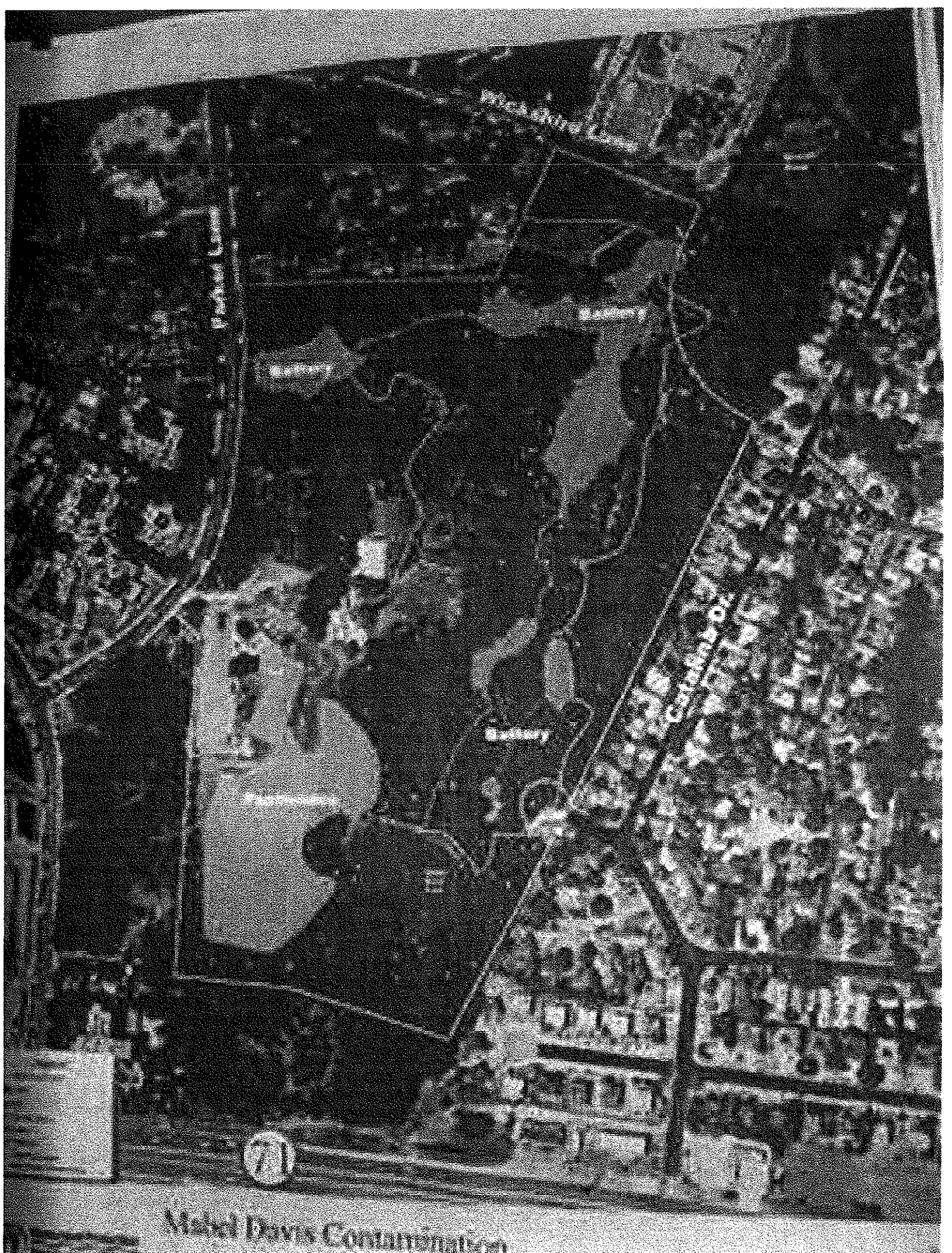
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