

SECOND/THIRD READING SUMMARY SHEET

ZONING CASE NUMBER: C14-2011-0088 (Tillery Street)

REQUEST:

Approve second/third readings of an ordinance amending Chapter 25-2 of the Austin City Code, zoning the property locally known as 2200 Tillery Street from LO-MU-NP, Limited Office-Mixed Use, Neighborhood Plan Combining District, zoning to CS-MU-CO-NP, Community Commercial-Mixed Use-Conditional Overlay-Neighborhood Plan District, zoning.

The ordinance and public restrictive covenant reflect the conditions imposed by the City Council on 1st reading.

PROPERTY OWNER: DCR III Mortgage, Sub I, LLC (Lance B. Amano)

AGENT: Richard H. Crank

DEPARTMENT COMMENTS:

The property in question is currently developed with an approximately 20,000 square foot office/warehouse structure, with two loading docks. The applicant is seeking CS-MU-NP zoning to bring the existing Limited Warehousing and Distribution use on the site into conformance with City of Austin Land Development Code use regulations. The property was rezoned from the MF-2 district to the LO district in 1985 through zoning case C14-84-361. Along with the rezoning case, the applicant entered into a public restrictive covenant with the City of Austin that limited uses on the site, stated that businesses be conducted within a building, required a lighted parking area, and designated a six foot privacy fence adjacent to the residential neighborhood. In 1986, this public restrictive covenant was amended to permit the State Bar of Texas to develop a print shop facility on the site. The property was consequently developed with an office/warehouse structure. On November 7, 2002, the property was rezoned again through the East MLK Combined Neighborhood Plan to the LO-MU-NP district designation.

On January 13, 2012, the applicant sent the staff an e-mail stating that they would be willing to restrict the property through the following through a conditional overlay for this case (Please see Proposed Conditional Overlay for C14-2011-0088 –Attachment C):

- A. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds 2,000 trips per day.
- B. All permitted uses and conditional uses which are allowed only in the general commercial services (CS) base district or less restrictive base districts are prohibited uses of the Property, except for the one following use which is permitted:

Limited Warehousing and Distribution
- C. In addition, the following uses are prohibited uses of the Property:
Automotive Rentals
Automotive Repair Services

Automotive Sales
Automotive Washing (any type)
Commercial Off-street Parking
Exterminating Services
Funeral Services
Off-site Accessory Parking
Outdoor Entertainment
Outdoor Sports and Recreation
Pawn Shop Services
Service Station

*On February 20, 2012, the applicant submitted a revised list of conditions that they are offering to impose on this site that prohibits the following additional uses (Please see revised

Attachment C):

Bail Bond Services
Consumer Convenience Services
Drop-Off Recycling Collection Facility
Hotel-Motel
Indoor Entertainment
Pet Services
Restaurant (General)

- D. The minimum interior side yard setback from the south line of the Property shall be 5 feet.
- E. The maximum height on the site will be limited to 40 feet or 3 stories.

In addition, the applicant is proposing a public restrictive covenant to limit the following on the property (Please see Proposed Restrictive Covenant –Attachment D):

1. All principal business uses shall be conducted within a building. Accessory uses may occur outside of a building. Business activities shall not create a nuisance.
2. A minimum of 10 percent of the gross floor area of the building on the Property shall be used for office uses. The term “gross floor area” shall have the meaning given to it by the City Code as of the date hereof.
3. Deliveries to and from the Property by large trucks (meaning 18-wheel trucks) shall be restricted to the hours between 8:00 a.m. and 6:00 p.m. Outdoor loading and unloading with the use of mechanized equipment shall also be restricted to the hours between 8:00 a.m. and 6:00 p.m.
4. Traffic signage shall be erected and maintained on the Property which directs large trucks (meaning 18-wheel trucks) exiting the Property to proceed toward Manor Road rather than toward Martin Luther King Boulevard.
5. Visual screening shall be installed and maintained between the existing parking area on the Property and Tillery Street, except within the permitted driveway onto the Property. Visual screening may consist of vegetation, a privacy fence or decorative wall, any of which shall be a minimum of 4 feet in height.

6. A privacy fence of 6 feet in height shall be installed and maintained along any Property line which is adjacent to other property zoned or used for residentially.

On March 7, 2012, the agent for this case sent an e-mail with a revised public restrictive covenant that includes new conditions pertaining to music, access, and a revision to the nuisance provision (Please see Revised Proposed Restrictive Covenant – Attachment D). In addition, the applicant has included a private restrictive covenant that was requested by the J.J. Seabrook Neighborhood Association for the Commission's review (Please see Proposed Private Restrictive Covenant – Attachment G).

The staff recommends CS-MU-CO-NP zoning for this site, permitting Limited Warehousing and Distribution use as the only 'CS' district use, limiting the site to 'GR' district and 'MU' combining district uses with the exception of the following specific uses:

- Automotive Rentals
- Automotive Repair Services
- Automotive Sales
- Automotive Washing (of any type)
- Commercial Off-Street Parking
- Exterminating Services
- Funeral Services
- Off-site Accessory Parking
- Outdoor Entertainment
- Outdoor Sports and Recreation
- Pawn Shop Services
- Service Station

The staff is supportive of a limited CS-MU-CO-NP zoning at this location because the proposed zoning is consistent with the CS-MU-V-NP zoning to the north and the GR-V-NP zoning to the west of this site. The proposed zoning will permit the applicant to continue the existing Limited Warehousing and Distribution use on the site while limiting the property to GR-MU district uses. The property is located adjacent to existing commercial uses to the north and west and will take access to Tillery Street a collector roadway, a block off of Manor Road, a major arterial roadway. The property in question will be subject to Compatibility Standards along the eastern property line for any new redevelopment on the site.

The applicant agrees with the City Council's recommendation at 1st reading.

DATE OF FIRST READING: April 26, 2012

ACTION: Approved CS-MU-CO-NP zoning on consent on 1st reading (7-0); B. Spelman-1st, C. Riley-2nd.

CITY COUNCIL DATE: June 28, 2012

CITY COUNCIL ACTION:

ASSIGNED STAFF: Sherri Sirwaitis

PHONE: 974-3057
sherri.sirwaitis@ci.austin.tx.us

ZONING CHANGE REVIEW SHEET

CASE: C14-2011-0088 (Tillery Street)

P.C. DATE: January 10, 2012
January 24, 2012
February 28, 2012
March 13, 2012

ADDRESS: 2200 Tillery Street

OWNER/APPLICANT: DCR III Mortgage, Sub I, LLC (Lance B. Amano)

AGENT: Richard H. Crank

ZONING FROM: LO-MU-NP **TO:** W/LO-CO-NP* **AREA:** 1.217 acres

*On December 12, 2011, the applicant sent the staff a letter asking to amend their rezoning request to CS-MU-NP (Please see Amendment Request Letter –Attachment B).

SUMMARY STAFF RECOMMENDATION:

The staff's recommendation is to grant CS-MU-CO-NP, Community Commercial-Mixed Use-Conditional Overlay-Neighborhood Plan District, zoning. The conditional overlay will limit development on the site to less than 2,000 vehicle trips per day, will permit Limited Warehousing and Distribution use as the only 'CS' district use, and limit the site to 'GR' district and 'MU' combining district uses with the exception of the following specific uses:

- Automotive Rentals
- Automotive Repair Services
- Automotive Sales
- Automotive Washing (of any type)
- Commercial Off-Street Parking
- Exterminating Services
- Funeral Services
- Off-site Accessory Parking
- Outdoor Entertainment
- Outdoor Sports and Recreation
- Pawn Shop Services
- Service Station

In addition, the condition overlay will require that a minimum of 10% of the gross floor area of the building on the Property be utilized for office uses.

PLANNING COMMISSION RECOMMENDATION:

01/10/12: Postponed to January 24, 2012 at the staff's request (8-0, M. Dealey-absent);
R. Hatfield-1st, S. Kirk-2nd.

01/24/12: Postponed to February 28, 2012 at the neighborhood's request (8-0, S. Kirk-absent);
D. Chimenti-1st, J. Stevens-2nd.

02/28/12: Postponed to March 13, 2012 at the joint request of the applicant and the neighborhood (9-0), S. Kirk-1st, R. Hattfield-2nd.

3/13/12: Approved staff's recommendation of CS-MU-CO-NP zoning, with the addition of the conditions agreed to by the applicant and the neighborhood, on consent (7-0); J. Stevens-1st, R. Hattfield-2nd (7-0; D. Anderson, D. Chimenti-off dais)

ISSUES:

On March 7, 2012, the agent for this case sent an e-mail with a revised public restrictive covenant that includes new conditions pertaining to music, access, and a revision to the nuisance provision (Please see Revised Proposed Restrictive Covenant – Attachment D). In addition, the applicant has included a private restrictive covenant that was requested by the J.J. Seabrook Neighborhood Association for the Commission's review (Please see Proposed Private Restrictive Covenant – Attachment G).

The East MLK Contact Team provided a letter that states their opposition to the proposed land use change and zoning change to the W/LO-NP district. Then on January 24, 2012, the East MLK Combined Contact Team sent the staff an e-mail that stated that they propose that the case move forward with the summary staff recommendation and that their recommendation is to grant CS-MU-CO-NP zoning without changing the FLUM (Please see correspondence from East MLK Contact Team Chair - Attachment E).

The staff received a letter from the J.J. Seabrook Neighborhood Association stating their opposition to the requested rezoning, proposed FLUM change and restrictive covenant termination (Please see Letter from the J.J. Seabrook Neighborhood Association – Attachment F).

DEPARTMENT COMMENTS:

The property in question is currently developed with an approximately 20,000 square foot office/warehouse structure, with two loading docks. The applicant is seeking CS-MU-NP zoning to bring the existing Limited Warehousing and Distribution use on the site into conformance with City of Austin Land Development Code use regulations. The property was rezoned from the MF-2 district to the LO district in 1985 through zoning case C14-84-361. Along with the rezoning case, the applicant entered into a public restrictive covenant with the City of Austin that limited uses on the site, stated that businesses be conducted within a building, required a lighted parking area, and designated a six foot privacy fence adjacent to the residential neighborhood. In 1986, this public restrictive covenant was amended to permit the State Bar of Texas to develop a print shop facility on the site. The property was consequently developed with an office/warehouse structure. On November 7, 2002, the property was rezoned again through the East MLK Combined Neighborhood Plan to the LO-MU-NP district designation.

On January 13, 2012, the applicant sent the staff an e-mail stating that they would be willing to restrict the property through the following through a conditional overlay for this case (Please see Proposed Conditional Overlay for C14-2011-0088 –Attachment C):

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- D. The minimum interior side yard setback from the south line of the Property shall be 5 feet.
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5. Visual screening shall be installed and maintained between the existing parking area on the Property and Tillery Street, except within the permitted driveway onto the Property. Visual screening may consist of vegetation, a privacy fence or decorative wall, any of which shall be a minimum of 4 feet in height.
6. A privacy fence of 6 feet in height shall be installed and maintained along any Property line which is adjacent to other property zoned or used for residentially.

The staff recommends CS-MU-CO-NP zoning for this site, permitting Limited Warehousing and Distribution use as the only 'CS' district use, limiting the site to 'GR' district and 'MU' combining district uses with the exception of the following specific uses:

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 Pawn Shop Services
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The staff is supportive of a limited CS-MU-CO-NP zoning at this location because the proposed zoning is consistent with the CS-MU-V-NP zoning to the north and the GR-V-NP zoning to the west of this site. The proposed zoning will permit the applicant to continue the existing Limited Warehousing and Distribution use on the site while limiting the property to GR-MU district uses. The property is located adjacent to existing commercial uses to the north and west and will take access to Tillery Street a collector roadway, a block off of Manor Road, a major arterial roadway. The property in question will be subject to Compatibility Standards along the eastern property line for any new redevelopment on the site.

The applicant agrees with the staff's recommendation.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	LO-MU-NP	Office/Warehouse Structure
<i>North</i>	CS-V-CO-NP	Construction Sales and Services / Landscaping Company (TexaScapes)
<i>South</i>	MF-2-NP	Single-Family Residence
<i>East</i>	CS-CO-NP, SF-3-NP	Undeveloped Lot, Single-Family Residence
<i>West</i>	GR-V-NP	Automotive Repair and Outdoor Storage (Truck and Equipment Tire Sales and Storage)

AREA STUDY: East MLK Combined Neighborhood Plan – The property lies within the MLK neighborhood plan area. The future land use map calls for mixed use land use for this property. The requested CS-MU-NP zoning is in compliance with the adopted neighborhood plan.

TIA: Not Required

WATERSHED: Boggy Creek, Tannehill Branch

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: N/A

HILL COUNTRY ROADWAY: N/A

NEIGHBORHOOD ORGANIZATIONS:

Anberly Airport Association
 Austin Independent School District
 Austin Monorail Project
 Austin Neighborhoods Council
 Austin Parks Foundation
 Del Valle Community Coalition
 East MLK Combined Neighborhood Association
 East MLK Combined Neighborhood Contact Team
 East MLK Neighborhood Combined COA Liaison
 Home Builders Association of Greater Austin
 Homeless Neighborhood Association
 J. J. Seabrook Neighborhood Association
 League of Bicycling Voters
 MLK JR. Boulevard TOD Staff Liaison
 Mueller Master Community Inc.
 Mueller Property Owners Association
 PODER
 Sierra Club, Austin Regional Group
 Super Duper Neighborhood Objectors and Appealers Organization
 The Real Estate Council of Austin, Inc.

SCHOOLS:

Maplewood Elementary School
 Kealing Middle School
 McCallum High School

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-2007-0076 (Smart Mail Building), C14-84-361(RCT): 2200 Tillery Street	LO-MU-NP to CS-MU-CO-NP and termination of the public restrictive covenant from zoning case C14-84-361	8/28/07: Approved staff's rec. for the termination of the public RC and approved staff's rec. for GR-MU-CO-NP district zoning (6-2, M. Dealey, P. Hui-Nay); J. Reddy-1 st , T. Atkins-2 nd .	11/08/07: Postponed indefinitely and removed from the agenda at the applicant's request (7-0) 5/08/08: Case expired administratively per LDC 25-2-246(A(2))

C14-02-0057 (Airport Boulevard)	Upper Boggy Creek Neighborhood Plan Combining District Rezoning	6/12/02: Approved LO-MU-CO-NP, LO-H-MU-CO-NP, LO-CO-NP, LR-MU-CO-NP, LR-CO-NP, GR-CO-NP, GR-MU-CO-NP, CS-CO-NP, CS-MU-NP, CS-MU-CO-NP, CS-1-MU-CO-NP, LI-CO-NP and Lots 16 and 17 with conditions (8-0)	8/01/02: Approved SF-3-NP, MF-3-NP, MF-4-NP, LO-MU-CO-NP, LO-H-MU-CO-NP, LO-CO-NP, GO-CO-NP, LR-CO-NP, LR-MU-CO-NP, GR-CO-NP, GR-MU-CO-NP, CS-MU-NP, CS-MU-CO-NP, CS-1-MU-CO-NP, LI-CO-NP, Tract 3 zoned LO-NP, Tract 16 & 17 postponed to 8/22/02 (7-0); all 3 readings 8/22/02: Approved LR-MU-CO-NP for Tract 16 and SF-3-NP for Tract 17 on 1 st reading (6-0) 10/24/02: Approved LR-MU-CO-NP for part of Tract 16: 2917 Cherrywood Road (6-0); 2 nd /3 rd readings
C14-02-0142	East MLK Neighborhood Plan Combining District Rezoning	10/09/02: Approved staff rec. for rezonings plus the following changes: 1) Add visual screening and 25 foot vegetative buffer along eastern boundary of Tracts 154 and 159. 2) Rezone Tract 208 to GR-MU-CO-NP with the "B" conditional overlay. 3) Revise conditional "B" to prohibit Pawn Shop Services. 4) Add conditional overlay "B" to Tracts 22 and 29. 5) Add conditional overlays "H", "I" and "J". 6) Add General Warehouse and Distribution use to Tracts 154 and 159. VOTE: 5-3-1 (MC-1st, MM-2nd); MA, RP and CR- opposed, DS-left early)	11/07/02: Approved SF-3-NP, SF-4A-NP, SF-6-NP, MF-2-NP, MF-3-NP, MF-3-CO-NP, NO-MU-NP, LO-MU-NP, GO-NP, LR-NP, LR-CO-NP, LR-MU-NP, GR-NP, GR-CO-NP, GR-MU-NP, GR-MU-CO-NP, CS-NP, CS-CO-NP, CS-MU-NP, CS-1-MU-NP, IP-NP, LI-NP, LI-PDA-NP, PUD-NP, P-NP, w/ conditions on Tracts 5/6/8/15-17/20/22/26-7/28B/29/110/145B/146/208-209/235 (7-0); all 3 readings

C14-01-0150 (Airport Boulevard at Manor Road)	Rosewood Neighborhood Plan Combining District Rezonings	11/14/01: Approved neighborhood plan with Tract 53 rezoned to CS-MU-CO-NP and staff rec. on Tract 56 (8-0)	11/29/01: Approved CS-CO-NP, CS-MU-NP, CS-MU-CO-NP, LR-MU-NP-LR-MU-CO-NP, GR-MU-CO-NP, MF-3-NP, P-NP, SF-3-NP, CS-1-CO-NP, GO-MU-NP, LI-CO-NP, LO-MU-NP, P-H-NP (7-0); 1 st reading 1/10/02: Approved 2 nd /3 rd readings (7-0)
C14-01-0033 (1994 Land Fund II, Dallas 1, LP: 3300 Block of Manor Road)	GR to CS-CO	4/17/01: Approved CS-CO, with conditions: 2,000 vehicle trip per day limit, 15-foot vegetative buffer along west property line along Tillery Street and along south property line adjacent to single-family residences, permit construction sales and services as the only CS district use and permit all other GR district uses, prohibit the following uses: agricultural sales and services, automotive rentals, automotive repair services, automotive sales, automotive washing, campground, convenience storage, drop-off recycling collection facility, equipment repair services, exterminating services, funeral services, kennels, outdoor entertainment, outdoor sports and recreation, pawn shop services and scrap and salvage uses (8-0-1, SG-abstain)	5/17/01: Approved CS-CO, with other conditions: 1) Limit the site to 2,000 vehicle trips per day; 2) require a 15-foot vegetative buffer along west property line along Tillery Street and along south property line adjacent to single-family residences, 3) prohibit the following uses: agricultural sales and services, art and craft studio (general), automotive rentals, automotive repair services, automotive sales, automotive washing, business maintenance services, campground, convenience storage, drop-off recycling collection facility, electronic prototype assembly, equipment repair services, equipment sales, exterminating services, funeral services, kennels, laundry service, monument retail sales, outdoor entertainment, outdoor sports and recreation, pawn shop services, vehicle storage, veterinary services,

			limited warehousing and distribution, maintenance and service facilities, transitional housing and transportation terminal (6-0); all 3 readings
C14-00-2083 (Texascapes, Inc.- Office: 3219 Manor Road)	GR to CS-CO	5/23/00: Approved staff rec. of CS-CO zoning (8-0, SA-absent), with the following conditions: limit development of the property to uses that generate less than 2,000 vehicle trips per day, prohibit vehicular access from Tillery Street, require a 15-foot wide vegetative buffer along the property line adjacent to Tillery Street, and prohibit the following uses: Agricultural Sales and Service, Automotive Sales, Campground, Convenience Storage, Drop off Recycling Collection Facility, Equipment Repair Services, Exterminating Services, Funeral Services and Kennels	6/22/00: Approved CS-CO, with the following conditions: limit development of the property to uses that generate less than 2,000 vehicle trips per day, prohibit vehicular access from Tillery Street, require a 15-foot wide vegetative buffer along the property line adjacent to Tillery Street, and prohibit the following uses: Agricultural Sales and Service, Automotive Sales, Campground, Convenience Storage, Drop off Recycling Collection Facility, Equipment Repair Services, Exterminating Services, Funeral Services, Kennels, Outdoor Entertainment, Outdoor Sports and Recreation, Pawn Shop Services, Scrap and Salvage (7-0); all 3 readings

RELATED CASES: Current Restrictive Covenant Termination Case: C14-84-361(RCT)
Zoning Case: C14-2007-0076 (Smart Mail Building: 2200 Tillery Street)
Neighborhood Plan: C14-02-0142 (East MLK Combined Neighborhood Plan Rezoning)
Zoning Case: C14-84-361 (Jimmy Youngquist: 2200 Tillery Street)

ABUTTING STREETS:

Name	ROW	Pavement	Classification	ADT
Manor Road	88'	MAU4	Major Arterial	6,450
Tillery Street	Varies	33'	Collector Street	1,091

CITY COUNCIL DATE: February 9, 2012**ACTION:** Postponed to March 8, 2012 at the staff's request (6-0, Cole-off dais); Spelman-1st, Morrison-2nd.

March 8, 2012

ACTION: Postponed to April 5, 2012 at the staff's request (7-0), Spelman-1st.

April 5, 2012

ACTION: Postponed to April 26, 2012 at the staff's request (7-0); B. Spelman-1st, S. Cole-2nd.

April 26, 2012

ACTION: Approved CS-MU-CO-NP zoning on consent on 1st reading (7-0); B. Spelman-1st, C. Riley-2nd.

May 24, 2012

ACTION: Postponed to June 28, 2012 at the staff's request (7-0); B. Spelman-1st, M. Martinez-2nd.

June 28, 2012

ACTION:**ORDINANCE READINGS:** 1st 4/26/122nd3rd**ORDINANCE NUMBER:****CASE MANAGER:** Sherri Sirwaitis**PHONE:** 974-3057sherri.sirwaitis@austintexas.org

This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



STAFF RECOMMENDATION

The staff's recommendation is to grant CS-MU-CO-NP, Community Commercial-Mixed Use-Conditional Overlay-Neighborhood Plan District, zoning. The conditional overlay will limit development on the site to less than 2,000 vehicle trips per day, will permit Limited Warehousing and Distribution use as the only 'CS' district use, and limit the site to 'GR' district and 'MU' combining district uses with the exception of the following specific uses:

Automotive Rentals
Automotive Repair Services
Automotive Sales
Automotive Washing (of any type)
Commercial Off-Street Parking
Exterminating Services
Funeral Services
Off-site Accessory Parking
Outdoor Entertainment
Outdoor Sports and Recreation
Pawn Shop Services
Service Station

In addition, the condition overlay will require that a minimum of 10% of the gross floor area of the building on the Property be utilized for office uses.

BASIS FOR RECOMMENDATION

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

The proposed zoning will be consistent with the current zoning trends in the area as there is CS-MU-V-NP zoning to the north and the GR-V-NP zoning to the west of this site.

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

The property in question is located adjacent to existing commercial uses to the north and west and will take access to Tillery Street a collector roadway, a block to the south of Manor Road, a major arterial roadway.

3. *Zoning should allow for reasonable use of the property.*

The proposed zoning will permit the applicant the applicant to utilize the existing office/warehouse structure for as a Limited Warehousing and Distribution use while limiting the property to GR-MU district uses. CS-MU-CO-NP district zoning will bring the current use on the site into conformance with City of Austin Land Development Code regulations.

EXISTING CONDITIONS

Site Characteristics

The site under consideration is currently developed with an office/warehouse structure that has two loading docks and a small parking area.

Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Boggy Creek and Tannehill Branch Watersheds of the Colorado River Basin, which are classified as Urban Watersheds by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 sq. ft. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.

According to flood plain maps, there is no flood plain within the project area.

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.

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

Impervious Cover

Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.

Site Plan

Please clarify if the restrictive covenant associated with this property will be terminated.

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

The site is subject to compatibility standards. Along the south and east property line, the following standards apply:

- No structure may be built within 25 feet of the property line zoned or used as single family..
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- No parking or driveways are allowed within 25 feet of the property line zoned or used as single family.
- In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted.

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

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

A traffic impact analysis was not required for this case because the traffic generated by the proposed zoning does not exceed the threshold of 2,000 vehicle trips per day. [LDC, 25-6-113]

Manor Road is classified in the Bicycle Plan as Bike Route No. 42. Tillery Street is classified in the Bicycle Plan as Bike Route No 346.

Capital Metro bus service (Route No. 20) is available along Manor Road.

There are existing sidewalks along Manor Road and Tillery Street

Existing Street Characteristics:

<u>Name</u>	<u>ROW</u>	<u>Pavement</u>	<u>Classification</u>	<u>ADT</u>
Manor Road	88'	MAU4	Major Arterial	6,450
Tillery Street	Varies	33'	Collector Street	1,091

Water and Wastewater

FYI: The landowner intends to serve the site with City of Austin water and wastewater utilities. 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 by the proposed land use. 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.



2200 TILLERY ST.

NEIGHBORHOOD PLAN/ZONING INFORMATION SUMMARY

July 25, 2011

Background

The property to be rezoned is located on the west side of Tillery St., just south of Manor Rd. It is a 1.217 acre parcel that has not been formally subdivided, but received a Land Status Determination on May 24, 2007, stating that platting was not required. The property is located within the boundary of the East MLK Combined Neighborhood Planning Area, and is currently designated as Mixed Use on the Future Land Use Map and zoned LO-MU-NP. It is currently improved as a 20,000 SF office/warehouse building with two loading docks and related parking.

The property is located within a transition area that ranges from single family use and zoning to the south and east, to commercial use and zoning to the north and west. The property across Tillery St. to the east is zoned SF-3-NP and CS-CO-NP. The adjacent property to the south is zoned MF-2-NP and appears to be used as a single family residence and possibly a business. The adjacent property to the west is zoned GR-V-NP and is used as a truck and equipment tire business; while the adjacent property to the north is zoned CS-V-CO-NP and is used as a large scale landscape business.

The property was zoned from MF-2 to LO in 1985 (C14-84-361), and a restrictive covenant was also entered into with the City of Austin. The restrictive covenant was amended in 1986 to allow for the State Bar of Texas to use it for its purposes, including a print shop facility. The property was then developed as currently improved, presumably by or for the State Bar of Texas, and used by the State Bar of Texas as an office/warehouse including a print shop facility. The East MLK Combined Neighborhood Plan was adopted on November 7, 2002, which changed the zoning from LO to LO-MU-NP.

The State Bar of Texas sold the property to an individual in 2000, who in turn requested a change in zoning from LO-MU-NP to CS-MU-CO-NP (C14-2007-0076), and termination of the restrictive covenant. Zoning review staff proposed an alternate recommendation of GR-MU-CO-NP and also recommended the termination of the restrictive covenant, both of which were later recommended by the Planning Commission, and scheduled for City Council in November 2007. The applicant requested a postponement, it appears that the City Council never voted on the request, and the applications for rezoning and termination of the restrictive covenant appear to have expired. The property was recently foreclosed in February 2011, is vacant, and currently owned by a mortgage company that has it listed for sale.

Proposed Plan Amendment And Zoning

The property as currently improved cannot be fully utilized under LO zoning, which does not allow for warehouse use. It also has a substantial parking deficiency for office or retail use. The 20,000 SF building is served by approximately 32 parking spaces, or 1 space per 625SF of building area. Office use allowed under the current LO zoning, and many uses allowed under the previously recommended GR zoning, require 1 parking space per 275SF of building area or about 73 spaces. The required parking can be reduced to 80% or 58 spaces as allowed within the Urban Core, which still leaves much of the building area without parking. Therefore, the applicant is requesting a change in zoning to WLO-CO-NP, to allow for the building to be used as an office/warehouse, which will also allow for uses that have a required parking ratio based on the actual uses of the building area as per Appendix A, Tables Of Off-street Parking and Loading Requirements, Schedule A.

Since the WLO zoning district is not considered to be typically located within the Mixed Use designation on the FLUM, as per the Land Use And Zoning Matrix, the rezoning will require a Plan Amendment to change the FLUM from Mixed Use to Commercial. The property is adjacent to commercial zoning and uses on two sides, and it is unlikely that the current improvements are suitable for residential use in the foreseeable future. The applicant believes that the WLO zoning is suitable for the property since it allows for it to be used as an office/warehouse which serves as a suitable transition from the single family uses to the construction and automotive uses within the immediate area. The definition for WLO allows for it to be permitted adjacent to some residential uses, and the adjacent residential use is zoned MF-2. The applicant is willing to prohibit some allowable uses within the WLO district that are less compatible with the nearby single family residential use, which will be identified after further discussion with the area residents. The applicant has met with the Contact Team to preliminarily review the requested Plan Amendment and rezoning, and has scheduled a meeting with the JJ SEABROOK NEIGHBORHOOD ASSOCIATION to discuss the request prior to the formal Plan Amendment meeting to be scheduled by COA staff.

The applicant is also submitting an application requesting the termination of the existing restrictive covenant since it does not allow for office/warehouse use, and a Neighborhood Plan has been adopted since the restrictive covenant was put in place over 25 years ago. Termination of the restrictive covenant was previously recommended by COA staff and the Planning Commission.

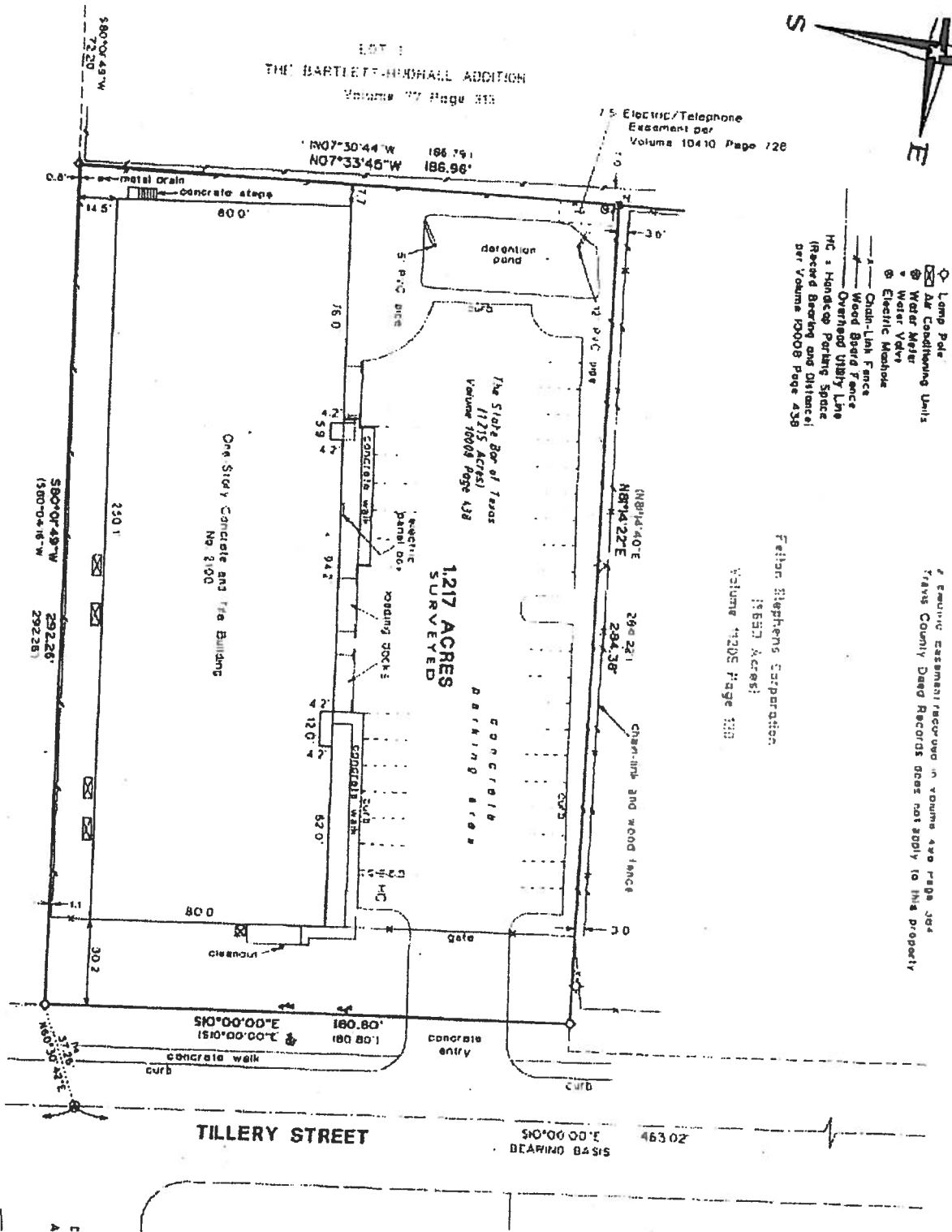
Conclusion

The proposed Plan Amendment to Commercial Land Use, rezoning to WLO-CO-NP and termination of the restrictive covenant are reasonable and appropriate for this property for the following reasons:

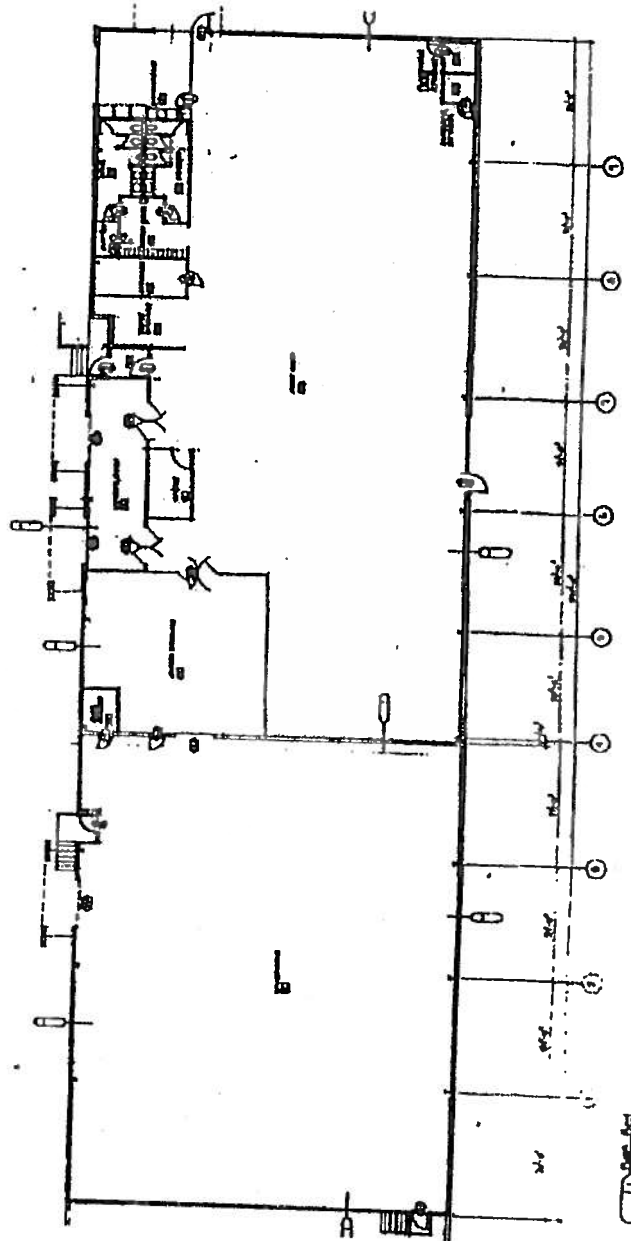
- The property is already developed with office/warehouse use, and has been used as such for many years

- The proposed zoning is an appropriate transition zoning given the existing zoning and uses surrounding the property.
- The Commercial Land Use designation is only needed because the WLO does not combine with Mixed Use, and it is unlikely that the property will be used for residential purposes in the foreseeable future
- Some allowable WLO uses will be prohibited in the Conditional Overlay
- The site generated traffic for office/warehouse use is very low
- WLO only allows for indoor storage use
- The restrictive covenant is cumbersome to modify, was put in place before the adoption of the Neighborhood Plan, and was recommended to be terminated in 2007

SURVEY



FLOOR PLAN (TAKEN FROM 2006 APPRAISAL)



RICHARD H. CRANK, ASLA



December 12, 2011

Ms. Sherri Sirwaitis
Planning and Development Review Department
City of Austin
One Texas Center-Suite #525
505 Barton Springs Road
Austin, Texas 78704

RE: 2200 Tillery St.; Zoning Case No. C14-2011-0088

Dear Ms. Sirwaitis:

As agent for the above referenced application for rezoning, I am respectfully requesting an amendment from the previously requested zoning of Warehouse/Limited Office-Neighborhood Plan (WLO-NP), to General Commercial Services-Mixed Use-Neighborhood Plan (CS-MU-NP). The purpose of the requested CS zoning is to allow for Limited Warehousing and Distribution use in order for the existing office-warehouse improvements to continue to be utilized. Please let me know if you have any questions or need additional information.

Thank you for your assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard H. Crank".

Richard H. Crank, ASLA

**PROPOSED ORDINANCE PROVISION CREATING
CONDITIONAL OVERLAY FOR C14-2011-0088 (2200 TILLERY STREET)**

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

- A. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds 2,000 trips per day.
- B. All permitted uses and conditional uses which are allowed only in the general commercial services (CS) base district or less restrictive base districts are prohibited uses of the Property, except for the one following use which is permitted:

Limited warehousing and distribution
- C. In addition, the following uses are prohibited uses of the Property:

Automotive rentals
Automotive repair services
Automotive sales
Automotive washing (any type)
Bail bond services
Commercial off-street parking
Consumer convenience services
Drop-off recycling collection facility
Exterminating services
Funeral services
Hotel-motel
Indoor entertainment
Off-site accessory parking
Outdoor entertainment
Outdoor sports and recreation
Pawn shop services
Pet services
Restaurant (general)
Service station
- D. The minimum interior side yard setback from the south line of the Property is 5 feet.
- E. The maximum height is 40 feet or 3 stories.

Except as specifically restricted under this ordinance, the Property may be developed and used in accordance with the regulations established for the general commercial services (CS) base district, and other applicable requirements of the City Code.

RESTRICTIVE COVENANT

(Revised 3/7/12)

OWNER: DRC III Mortgage SUB I, LLC

OWNER'S ADDRESS: 12396 World Trade Drive, Suite 114, San Diego, CA 92128

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

PROPERTY: That certain 1.217 acres of land more particularly described by metes and bounds in Exhibit "A" which is attached hereto and made a part hereof, and locally known as 2200 Tillery Street in the City of Austin, Travis County, Texas.

WHEREAS, the Owner of the Property and the City have agreed that the Property should be impressed with certain covenants and restrictions in connection with the rezoning of the Property in City of Austin Zoning Case No. C14-2011-0088;

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 successors and assigns.

1. All principal business uses of the Property shall be conducted within a building. Accessory uses such as parking, loading and unloading, signage, and placement of dumpsters may occur outside of a building. Nothing herein shall be construed to prohibit typical outdoor activities by residential or civic uses, as such uses are defined by the City Code. Business activities conducted on the Property shall not be allowed to create a nuisance, including without limitation excessively loud noise, foul odors, or noxious fumes to the degree that such things would be offensive to a person of normal sensibilities.
2. A minimum of 10 percent of the gross floor area of any building or portion of a building on the Property which is used for "limited warehousing and distribution" shall be office space for the limited warehousing and distribution use. The terms "gross floor area" and "limited warehousing and distribution" shall have the meanings given to them by the City Code as of the date hereof.
3. Deliveries to and from the Property by large trucks (meaning 18-wheel trucks) shall be restricted to the hours between 8:00 a.m. and 6:00 p.m. Outdoor loading and unloading with the use of mechanized equipment shall also be restricted to the hours between 8:00 a.m. and 6:00 p.m.
4. Traffic signage shall be erected and maintained on the Property which directs large trucks (meaning 18-wheel trucks) exiting the Property to proceed toward Manor Road rather than toward Martin Luther King Blvd.

5. Visual screening shall be installed and maintained between the existing parking area on the Property and Tillery Street, except within the permitted driveway onto the Property, which visual screening may be vegetation, a privacy fence or a decorative wall, any of which shall be a minimum of 4 feet in height.
6. A privacy fence of 6 feet in height shall be installed and maintained along any Property line which is adjacent to other property zoned or used residentially.
7. The Property shall not be used as a commercial venue for amplified music or outdoor music, even as a secondary use in connection with a primary use such as a restaurant, or on an intermittent basis for events such as the annual "South by Southwest" music festival. Provided, this restriction shall not be construed to prevent any resident of the Property from playing musical instruments.
8. Vehicular access to or from Tillery Street shall not be permitted through the Property for any land which is adjacent to or otherwise in the vicinity of the Property, except for emergency services vehicles.
9. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City 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.
10. If any part of this agreement or covenant shall be 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.
11. If at any time the City 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.
12. 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, and (b) the owner(s) of the Property at the time of such modification, amendment or termination.

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

EXECUTED this _____ day of _____, 2012.

DRC III Mortgage SUB I, LLC

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me this _____, 2012
by _____, the _____ of DRC III
Mortgage SUB I, LLC, a _____ limited liability company, on behalf of said limited
liability company.

Notary Public - State of _____

Exhibit A

HOLT CARSON, INC. PROFESSIONAL LAND SURVEYORS

1904 FORTVIEW ROAD
AUSTIN, TX 78704
TELEPHONE: (512) 442-0990
FACSIMILE: (512) 442-1084

FIELD NOTE DESCRIPTION OF 1 217 ACRES OF LAND OUT OF OUTLOT 50 DIVISION "B" OF THE GOVERNMENT OUTLOTS ADJOINING THE CITY OF AUSTIN ACCORDING TO THE MAP OR PLAT THEREOF FILED IN THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, BEING ALL OF THAT CERTAIN (1 217 ACRE) TRACT OF LAND AS CONVEYED TO LAWRENCE C. MATHIS BY SPECIAL WARRANTY DEED RECORDED IN 2000050461 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" in the present West right-of-way line of Tillery Street for the Southeast corner of that certain (1 217 acre) tract of land as conveyed to Lawrence C Mathis by Special Warranty Deed recorded in Document No. 2000050461 of the Official Public Records of Travis County, Texas, and for the Northeast corner of that certain (0.966 acre) tract of land as conveyed to Malik Khurshid by Warranty Deed recorded in Document No. 2002188636 of the Official Public Records of Travis County, Texas, and being the Southeast corner and PLACE OF BEGINNING of the herein described tract, and from which a 3/4" iron pipe found for the Northeast corner of Lot 20, Encino Terrace, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 30 Page 22 of the Plat Records of Travis County, Texas, bears S 14 deg. 50' 55" E 121.69 ft. (direct tie);

THENCE leaving the West right-of-way line of Tillery Street with the common line of said Mathis (1 217 acre) tract and said Khurshid (0.966 acre) tract, S 80 deg. 01' 49" W 292.26 ft. to a 1/2" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" for the Southwest corner of said Mathis (1.217 acre) tract and for the Southeast corner of Lot 1, The Bartlett-Hudnall Addition, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 77 Page 313 of the Plat Records of Travis County, Texas, and being the Southwest corner of this tract, and from which a 1/2" iron rod found for the Northwest corner of said Khurshid (0.966 acre) tract bears S 80 deg 01' 49" W 72.20 ft.

THENCE with the West line of said Mathis (1 217 acre) tract, N 07 deg. 33' 45" W 186.96 ft. to a 2" iron pipe found for the Northwest corner of said Mathis (1 217 acre) tract and for the Southwest corner of that certain (1.658 acre) tract of land as conveyed to 3219 Manor Road L L C. by deed recorded in Document No. 2000132086 of the Official Public Records of Travis County, Texas, and being the Northwest corner of this tract,

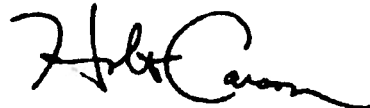
end of Page 1

Page 2 of 2
1.217 ACRES

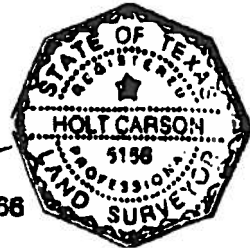
THENCE with the common line of said Mathis (1.217 acre) tract and said 3219 Manor Road L.L.C. (1.658 acre) tract, N 81 deg. 14' 22" E 284.38 ft. to a 1/2" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" in the present West right-of-way line of Tillery Street for the Northeast corner of said Mathis (1.217 acre) tract and being the Northeast corner of this tract,

THENCE with the West right-of-way line of Tillery Street and with the East line of said Mathis (1.217 acre) tract, S 10 deg. 00' 00" E 180.80 ft. to the PLACE OF BEGINNING, containing 1.217 acres of land.

SURVEYED: May 3, 2007.



Holt Carson
Registered Professional Land Surveyor No. 5168



Restrictive Covenant

This Restrictive Covenant is executed by DCR REAL ESTATE III SUB I, LLC (the "Owner"), for the benefit of the JJ Seabrook Neighborhood Association (the "Association").

Recitals:

A. The Owner owns the real property more fully described as follows (the "Property"):

That certain 1.217 acres of land more particularly described by metes and bounds in **Exhibit "A"** which is attached hereto and made a part hereof, and locally known as 2200 Tillery Street in the City of Austin, Travis County, Texas.

B. The Owner is seeking CS-CO-MU-NP zoning for the Property in connection with the City of Austin Zoning Case No. C14-2011-0088 (the "Zoning Case"). The Association has agreed not to oppose the rezoning in consideration of the various concessions and agreements made by the Owner which are more fully set forth herein.

Agreements:

NOW, THEREFORE, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Association to the Owner, the receipt and sufficiency of which are acknowledged, Owner covenants and agrees as follows:

1. It is acknowledged that, in connection with the Zoning Case, the Owner has executed a restrictive covenant in favor of the City of Austin (the "Public Restrictive Covenant") which places the following restrictions on the use of the Property which are enforceable by the City of Austin (hereinafter the "City"):

(A) All principal business uses of the Property shall be conducted within a building. Accessory uses such as parking, loading and unloading, signage, and placement of dumpsters may occur outside of a building. Nothing herein shall be construed to prohibit typical outdoor activities by residential or civic uses, as such uses are defined by the City Code. Business activities conducted on the Property shall not be allowed to create a nuisance, including without limitation excessively loud noise, foul odors, or noxious fumes to the degree that such things would be offensive to a person of normal sensibilities.

(B) A minimum of 10 percent of the gross floor area of any building or portion of a building on the Property which is used for "limited warehousing and distribution" shall be office space for the limited warehousing and distribution use. The terms "gross floor area" and "limited warehousing and distribution" shall have the meanings given to them by the City Code as of the date hereof.

(C) Deliveries to and from the Property by large trucks (meaning 18-wheel trucks) shall be restricted to the hours between 8:00 a.m. and 6:00 p.m. Outdoor loading and unloading with the use of mechanized equipment shall also be restricted to the hours between 8:00 a.m. and 6:00 p.m.

(D) Traffic signage shall be erected and maintained on the Property which directs large trucks (meaning 18-wheel trucks) exiting the Property to proceed toward Manor Road rather than toward Martin Luther King Blvd.

(E) Visual screening shall be installed and maintained between the existing parking area on the Property and Tillery Street, except within the permitted driveway onto the Property, which visual screening may be vegetation, a privacy fence or a decorative wall, any of which shall be a minimum of 4 feet in height.

(F) A privacy fence of 6 feet in height shall be installed and maintained along any Property line which is adjacent to other property zoned or used residentially.

(G) The Property shall not be used as a commercial venue for amplified music or outdoor music, even as a secondary use in connection with a primary use such as a restaurant, or on an intermittent basis for events such as the annual "South by Southwest" music festival. Provided, this restriction shall not be construed to prevent any resident of the Property from playing musical instruments.

(H) Vehicular access to or from Tillery Street shall not be permitted through the Property for any land which is adjacent to or otherwise in the vicinity of the Property, except for emergency services vehicles.

2. In the event that the City fails to enforce or unreasonably delays its enforcement of the Public Restrictive Covenant, the Association, or its successor organizations, may enforce the same restrictions as contained in the Public Restrictive Covenant (set forth in Paragraph 1 above) by proceedings at law or in equity against any person or entity violating or attempting to violate any of such restrictions. Provided, the Association must provide the City and the Owner with prior notice of its intention to enforce any of the said restrictions and an opportunity to cure which is reasonable under the circumstances then and there existing. Provided further, it is understood that any of the restrictions which require construction, such as the installation of fencing, screening or signage, shall not be operative unless and until a use of the Property is instituted (that is, the Property is no longer vacant and unused). Provided further, nothing in Paragraph 1(A) above shall be construed as diminishing the doctrine of attractive nuisance as it applies under Texas law.
3. This agreement may be modified, amended, or terminated only by joint action of both (a) the Board of Directors or a similar body of the Association or such other organization as may succeed the Association, and (b) the owner(s) of the Property at the time of such modification, amendment or termination.

4. This Restrictive Covenant shall be a covenant running with the land and shall be binding upon and inure to the benefit of the Owner, the Association, and their respective successors and assigns.
5. If any part of this agreement or covenant shall be 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.

EXECUTED this _____ day of _____, 2012.

Owner:

DCR REAL ESTATE III SUB I, LLC

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me this _____, 2012
by _____, the _____ of DCR
REAL ESTATE III SUB I, LLC, a Delaware limited liability company, on behalf of said limited
liability company.

Notary Public - State of _____

Consent of Lienholder

The undersigned, being the holder of a lien ("Lienholder") on the Property which is described by the foregoing Restrictive Covenant ("Restrictive Covenant"), as evidenced by the Deed of Trust, Security Agreement, Assignment of Leases, and Financing Statement ("Deed of Trust") dated February 17, 2011 and recorded at Document No. 2011027580 of the Official Public Records of Travis County, Texas, hereby consents to the Restrictive Covenant and agrees that its Deed of Trust is subject to and subordinate to the Restrictive Covenant and that any foreclosure of the Deed of Trust will not extinguish the Restrictive Covenant, and represents that the undersigned has authority to execute and deliver this Consent of Lienholder and that all necessary acts necessary to bind the Lienholder have been taken.

Wells Fargo Capital Finance, LLC

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

20

This instrument was acknowledged before me this _____, 2012
by _____, the _____ of Wells
Fargo Capital Finance, LLC, a _____ limited liability company, on behalf
of said limited liability company.

Notary Public - State of _____

To: City of Austin Planning Commission
Re: Case Number NPA-2011-0015.02
Date: November 6, 2011

On October 17, 2011 the East MLK Combined Neighborhood Contact Team held a meeting in which Ben Heimsath of the JJ Seabrook Neighborhood Association presented the NA Subcommittee position regarding the 2200 Tillery Case. This meeting followed the City-arranged meeting on September 17, 2011 in which Richard Crank presented his case to the Neighborhood. Richard Crank's client owns the property at 2200 Tillery. It is currently zoned as LO-MU-NP, but Mr. Crank's client wishes to change the land use from Mixed Use to Commercial and also change the zoning to W/LO-NP. The JJ Seabrook Subcommittee opposes the proposed land use and zoning changes.

The East MLK Combined Neighborhood Contact Team voted to oppose the proposed land use and zoning change because it would entail the loss of the Mixed Use land use for 2200 Tillery. JJ Seabrook Neighborhood has witnessed tremendous change since the old Austin airport closed. What was once a very commercial and industrial area has changed into a much more residential-friendly neighborhood (even though the neighborhood existed all along). The Mixed Use appropriation for the property at 2200 Tillery is appropriate as Mixed Use allows for various development, including that of a live/work type of structure in which the neighborhood would most like to see at the aforementioned property. By changing the land use to commercial, the live/work development model would be prohibited. Additionally, the buffer zone that Mixed Use currently lends to the primarily residential properties that surround 2200 Tillery would be lost.

The Contact Team believes that such a change in the land use and zoning is a step back in time. The JJ Seabrook Neighborhood Plan states that "many of the commercial uses that [currently] exist in the area were related to the former airport and may no longer be appropriate." Therefore, the fact that the property at 2200 Tillery could be converted into commercial does not reflect the current needs and character of the neighborhood. Furthermore, the Plan goes on to say that while development will occur due to the conversion of Mueller, "existing commercial properties should be encouraged to redevelop with mixed use." To re-iterate—changing the property to commercial would completely contradict what the Neighborhood Plan envisions for the area.

Please contact us if you have any questions or concerns.

Respectfully submitted,

Joy Casnovsky, East MLK Combined Neighborhood Contact Team Chair
512.589.1090
soyjoyc@gmail.com

Sirwaitis, Sherri

From: Joy Casnovsky [soyjoyc@gmail.com]
Sent: Tuesday, January 24, 2012 1:51 PM
To: Sirwaitis, Sherri
Cc: donna.plancom@gmail.com; commjms@sbcglobal.net; alfonsohernandez@gmail.com; mnrgatfield@yahoo.com; dave.anderson.07@gmail.com; amdealey@aol.com; vskirk@att.net; dchimenti@austin.rr.com; sully.jumpnet@sbcglobal.net; moody andrews richardcrank@austin.rr.com
Subject: 2200 Tillery Case
Attachments: C14-2011-0088 (Tillery Street).doc; C14-84-361 (RCT)-(Tillery Street Restrictive Covenant Termination).doc; permittedusechart.pdf

Hi Sherri et al.,

Based on the attached staff report, the East MLK Combined Contact Team proposes to move forward with the city summary staff recommendation with the strong suggestion that the JJ Seabrook neighborhood association's 2200 Tillery case team meet with Mr. Crank during the time between now and any city council review to refine content of the Conditional Overlay and Restrictive Covenants.

In other words, the East MLK Combined CT supports the staff's recommendation is to grant CS-MU-CO-NP, Community Commercial-Mixed Use-Conditional Overlay-Neighborhood Plan District WITHOUT changing the FLUM.

Thank you,

Joy Casnovsky

Chair, East MLK CCT

Moody Andrews, Vice-Chair EMLK CCT

Matt Macioge, Secretary, EMLK CCT

<http://joyfulinthekitchengarden.wordpress.com>

2/28/2012

J.J. Seabrook Neighborhood Association

January 23, 2012

FROM: Dan Daniels, President,
P.O. Box 6219, Austin, TX 78762

(512) 708-8926

RE: 2200 Tillery Street;
Case No. NPA-2011-0015.02 and associated cases; C14-2011-2088; C14-84-361
RCT);
Request for Rezoning, re-FLUMing, and abandonment of restrictive
covenant (represented by Richard Crank).

TO: City Planning Staff, Planning Commissioners, and City Council Members

The J.J. Seabrook Neighborhood Association has adopted the position that no change should be made to the FLUM or to the zoning for 2200 Tillery Street, nor should the restrictive covenant be abandoned for that property. JJSNA's position reflects the fact that 2200 Tillery is a property on an "interior neighborhood street, not on a flanking arterial roadway. Tillery Street at this location is very narrow (not the same as the "other Tillery Street" south of Oak Springs). Moreover, it is a street without sidewalks, and pedestrians must walk in the roadway. Injecting more/commercial traffic into this residential neighborhood would be a dangerous decision and a terrible plan.

The existing building was built by the State Bar of Texas (which was obviously exempt from zoning constraints) for a specific use. Consequently, the building is an anomaly. A concurrently created public restrictive covenant promised quality-of-life protection to neighboring residents, and the city should not turn its back on its obligations thereunder. These historical developments on this lot may have made sense when the old airport still existed, but that was then. The current property owner is a mortgage-buyer, a debt buyer, not even an original lender. It is an out of state operation offering no vision whatsoever for this lot, nor any benefits to the city nor to the neighborhood. The existing zoning and the FLUM and the building itself reflect an outdated vision for this part of town, and the owner is mired in a problem of his own creation. Decisions being made by the city now for this 2200 Tillery site should be forward-looking, not simply acquiesce in the need of a debt-buyer to make a big profit.

This neighborhood remains a predominantly black neighborhood and most of the properties protected by the restrictive covenant are still owned by the same families who owned those properties when it was created in the 1980's. This has been a uniquely stable, very successful black neighborhood that deserves recognition, not to be treated cavalierly and destroyed. Unlike the average American who moves every - how often, 7? years), many of these neighbors have been in their homes for four decades. The city's African American Quality of Life Initiative

wisely recognizes that the city needs to maintain a conscious focus on “neighborhood sustainability.” <http://www.ci.austin.tx.us/aaql/> We should not lose sight of this important city priority.

The JJ Seabrook Neighborhood Association is all about protecting and reinvigorating the quality of life in this neighborhood. To that end, we have drafted a neighborhood master plan and will present it soon to the newly reinvigorated East MLK Combined Neighborhoods Contact Team. Kicking off the implementation of this grass-roots-driven forward-looking 21st Century planning effort, revitalization will be launched by the soon-to-be-implemented Austin Watershed Department’s JJ Seabrook Stream Restoration and Rain Garden Project. The repurposed JJ Seabrook greenbelt/park will serve as a community-reinforcing neighborhood asset at the heart of this residential neighborhood.

The 21st century vision for this part of town has yet to be fully incorporated into any existing master plans for areas outside of Mueller, or the outdated FLUM. JJSNA’s position regarding 2200 Tillery is that rezoning for a warehouse/industrial/commercial use is **inconsistent with both the existing** single-family residential uses of adjacent and nearby properties, **and also inconsistent with the potential future** TOD rezoning and redevelopment of adjacent properties on Manor Road when/if the Metro-Rail Red Line is built.

IN CONCLUSION, Warehouse/commercial usage for this property is not a forward-looking use for this site, and subordinates too many interests to that of the mortgagee/owner. The city should not renege on its commitment in the restrictive covenant given to this stable, successful black neighborhood to protect its quality of life from the depredation that can too easily happen when a commercial property-owner’s interest subordinates the interests of neighboring residential property owners. The requested changes do not serve the public interest in any cognizable way and should be rejected.

Dan Daniels

JJSNA President

Restrictive Covenant

This Restrictive Covenant is executed by DRC III Mortgage SUB I, LLC (the "Owner"), for the benefit of the JJ Seabrook Neighborhood Association (the "Association").

Recitals:

A. The Owner owns the real property more fully described as follows (the "Property"):

That certain 1.217 acres of land more particularly described by metes and bounds in **Exhibit "A"** which is attached hereto and made a part hereof, and locally known as 2200 Tillery Street in the City of Austin, Travis County, Texas.

B. The Owner is seeking CS-CO-MU-NP zoning for the Property in connection with the City of Austin Zoning Case No. C14-2011-0088 (the "Zoning Case"). The Association has agreed not to oppose the rezoning in consideration of the various concessions and agreements made by the Owner which are more fully set forth herein.

Agreements:

NOW, THEREFORE, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Association to the Owner, the receipt and sufficiency of which are acknowledged, Owner covenants and agrees as follows:

1. It is acknowledged that, in connection with the Zoning Case, the Owner has executed a restrictive covenant in favor of the City of Austin (the "Public Restrictive Covenant") which places the following restrictions on the use of the Property which are enforceable by the City of Austin (hereinafter the "City"):

(A) All principal business uses of the Property shall be conducted within a building. Accessory uses such as parking, loading and unloading, signage, and placement of dumpsters may occur outside of a building. Nothing herein shall be construed to prohibit typical outdoor activities by residential or civic uses, as such uses are defined by the City Code. Business activities conducted on the Property shall not be allowed to create a nuisance, including without limitation excessively loud noise, foul odors, or noxious fumes to the degree that such things would be offensive to a person of normal sensibilities.

(B) A minimum of 10 percent of the gross floor area of any building or portion of a building on the Property which is used for "limited warehousing and distribution" shall be office space for the limited warehousing and distribution use. The terms "gross floor area" and "limited warehousing and distribution" shall have the meanings given to them by the City Code as of the date hereof.

(C) Deliveries to and from the Property by large trucks (meaning 18-wheel trucks) shall be restricted to the hours between 8:00 a.m. and 6:00 p.m. Outdoor loading and unloading with the use of mechanized equipment shall also be restricted to the hours between 8:00 a.m. and 6:00 p.m.

(D) Traffic signage shall be erected and maintained on the Property which directs large trucks (meaning 18-wheel trucks) exiting the Property to proceed toward Manor Road rather than toward Martin Luther King Blvd.

(E) Visual screening shall be installed and maintained between the existing parking area on the Property and Tillery Street, except within the permitted driveway onto the Property, which visual screening may be vegetation, a privacy fence or a decorative wall, any of which shall be a minimum of 4 feet in height.

(F) A privacy fence of 6 feet in height shall be installed and maintained along any Property line which is adjacent to other property zoned or used residentially.

(G) The Property shall not be used as a commercial venue for amplified music or outdoor music, even as a secondary use in connection with a primary use such as a restaurant, or on an intermittent basis for events such as the annual "South by Southwest" music festival. Provided, this restriction shall not be construed to prevent any resident of the Property from playing musical instruments.

(H) Vehicular access to or from Tillery Street shall not be permitted through the Property for any land which is adjacent to or otherwise in the vicinity of the Property, except for emergency services vehicles.

2. In the event that the City fails to enforce or unreasonably delays its enforcement of the Public Restrictive Covenant, the Association, or its successor organizations, may enforce the same restrictions as contained in the Public Restrictive Covenant (set forth in Paragraph 1 above) by proceedings at law or in equity against any person or entity violating or attempting to violate any of such restrictions. Provided, the Association must provide the City and the Owner with prior notice of its intention to enforce any of the said restrictions and an opportunity to cure which is reasonable under the circumstances then and there existing. Provided further, it is understood that any of the restrictions which require construction, such as the installation of fencing, screening or signage, shall not be operative unless and until a use of the Property is instituted (that is, the Property is no longer vacant and unused).
3. This agreement may be modified, amended, or terminated only by joint action of both (a) the Board of Directors or a similar body of the Association or such other organization as may succeed the Association, and (b) the owner(s) of the Property at the time of such modification, amendment or termination.
4. This Restrictive Covenant shall be a covenant running with the land and shall be binding upon and inure to the benefit of the Owner, the Association, and their respective successors and assigns.

5. If any part of this agreement or covenant shall be 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.

EXECUTED this _____ day of _____, 2012.

Owner:

DRC III Mortgage SUB I, LLC

By: _____

Name: _____

Title: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me this _____, 2012
by _____, the _____ of DRC III
Mortgage SUB I, LLC, a _____ limited liability company, on behalf of said limited
liability company.

Notary Public - State of _____

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

www.ci.austin.tx.us/development

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2011-0088

Contact: Sherri Sirwaitis, (512) 974-3057

Public Hearing: Jan 10, 2012, Planning Commission
Feb 9, 2012, City Council

RECEIVED
2/28/12

Martin Woodlee

Your Name (please print)

2019 Encino Circle, Austin

Your address(es) affected by this application

2/25/12

Date

Signature

Daytime Telephone: *512-589-4423*

Comments: *I oppose the requested changes except if the conditions set out in the 2200 Tillery Rezoning Opposition Petition are met.*

If you use this form to comment, it may be returned to:

City of Austin
Planning & Development Review Department
Sherri Sirwaitis
P. O. Box 1088
Austin, TX 78767-8810

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

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www.ci.austin.tx.us/development

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2011-0088

Contact: Sherri Sirwaitis, (512) 974-3057

Public Hearing: Jan 10, 2012, Planning Commission

Feb 9, 2012, City Council

Kindle, Eliza Mae

Your Name (please print)

2005 Encino Creek, Austin, 78723

Your address(es) affected by this application

Eliza Mae Kindle Wilborn

Signature

Date

Daytime Telephone: 512-472-3665

Comments:

I think the re-zoning would increase traffic for this area. The majority of the people in this area are service citizens. It is very difficult to find areas to walk and get exercise. If the traffic is increased it will be impossible for services like myself and my neighbors to get exercise.

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Sherri Sirwaitis

P. O. Box 1088

Austin, TX 78767-8810

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

www.ci.austin.tx.us/development

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2011-0088

Contact: Sherri Sirwaitis, (512) 974-3057

Public Hearing: Jan 10, 2012, Planning Commission

Feb 9, 2012, City Council

Wilborn Alexander
Your Name (please print)

☐ I am in favor
☒ I object

2005 Gracino Circle, Austin 78723
Your address(es) affected by this application

Alexander Wilborn
Signature

12/24/11
Date

Daytime Telephone: (512) 472-3665

Comments: The Traffic will be increased parking will be a problem with the outlet either to the North at Manor Rd and Hillery the South at MK BVD will be impacted with a heavy flow of traffic East and West MK BVD and Manor Rd. Safety on both outlet of Hillery are going to be a huge problem. Already people have been spotted on apprise to be traffic deaths everything OK. Why not get out from behind your desk, get lawn chair and observe. If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Sherri Sirwaitis

P. O. Box 1088

Austin, TX 78767-8810

Thank You

PUBLIC HEARING INFORMATION

The proposed amendment will be reviewed and acted upon at two public hearings: first, before the Planning Commission and then before the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed amendment. You may also contact a registered neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a plan amendment request, or approve an alternative to the amendment requested.

If you have any questions concerning this notice, please contact the City of Austin Planning and Development Review Department at the number shown on the first page. If you would like to express your support or opposition to this request, you may do so in several ways:

- by attending the Public Hearing and conveying your concerns at that meeting
- by submitting the Public Hearing Comment Form
- by writing to the city contact listed on the previous page

For additional information on Neighborhood Plans, visit the website: <http://www.ci.austin.tx.us/planning/planning.htm>.

PUBLIC HEARING COMMENT FORM

If you use this form to comment, it may be submitted to:

City of Austin
Planning and Development Review Department
Maureen Meredith
P. O. Box 1088
Austin, TX 78767-8810

If you do not use this form to submit your comments, you must include the name of the body conducting the public hearing, its scheduled date, the Case Number and the contact person listed on the notice in your submission.

Case Number: NPA-2011-0015.02

Contact: Maureen Meredith

Public Hearings -

Planning Commission: Jan. 10, 2012

City Council: Feb. 9, 2012

☐ I am in favor
☒ I object

Wilborn Alexander
Your Name (please print)

2005 Encino Circle, Austin 78723
Your address(es) affected by this application

Alexander Wilborn Signature

12/24/11 Date

Comments: The traffic will be increased, parking will be a problem. The center lot will be to the North at Manor Rd and South at MLK will be impacted with a heavy flow of traffic East and West on MLK and Manor Rd. Safety on both streets of Dilley are going to be a very huge problem. Many kids have been sent for study here. Some one should get out from the back, get a lawn chair and observe.

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

www.ci.austin.tx.us/development

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2011-0088

Contact: Sherri Sirwaitis, (512) 974-3057

Public Hearing: Jan 10, 2012, Planning Commission

Feb 9, 2012, City Council

Centruide Truitt-Green

Your Name (please print)

2034 Evelyn Cir. Austin TX 78727

Your address(es) affected by this application

Centruide Truitt-Green 12/20/11

Signature

Daytime Telephone: 512 477-7752

Comments:

I am against changing the zoning. When it was purchased the buyer knew it was zoning. It is too risky for all the traffic. There are no sidewalks. The building can not get in/out of the street. The zoning is a waste of money. I am against changing the zoning. I am against changing the zoning.

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Sherri Sirwaitis

P. O. Box 1088

Austin, TX 78767-8810

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

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Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2011-0088

Contact: Sherri Sirwaitis, (512) 974-3057

Public Hearing: Jan 10, 2012, Planning Commission

Feb 9, 2012, City Council

Brian Murphy

Your Name (please print)

2036 Encino Circle, Austin, TX

Your Address(es) affected by this application

Brian Murphy

Signature

1/21/2012

Date

Daytime Telephone: 512-228 6705

Comments: Tillery is a residential street in a well-established subdivision. The lot requesting re-zoning does not face any commercial road such as Manor, MLK, or Airport. Also, the existing zoning is already permissive.

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Sherri Sirwaitis

P. O. Box 1088

Austin, TX 78767-8810

☐ I am in favor
☒ I object

COPY

Restrictive Covenant

This Restrictive Covenant is executed by DCR REAL ESTATE III SUB I, LLC (the "Owner"), for the benefit of the JJ Seabrook Neighborhood Association (the "Association").

Recitals:

A. The Owner owns the real property more fully described as follows (the "Property"):

That certain 1.217 acres of land more particularly described by metes and bounds in **Exhibit "A"** which is attached hereto and made a part hereof, and locally known as 2200 Tillery Street in the City of Austin, Travis County, Texas.

B. The Owner is seeking CS-CO-MU-NP zoning for the Property in connection with the City of Austin Zoning Case No. C14-2011-0088 (the "Zoning Case"). The Association has agreed not to oppose the rezoning in consideration of the various concessions and agreements made by the Owner which are more fully set forth herein.

Agreements:

NOW, THEREFORE, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Association to the Owner, the receipt and sufficiency of which are acknowledged, Owner covenants and agrees as follows:

1. It is acknowledged that, in connection with the Zoning Case, the Owner has executed a restrictive covenant in favor of the City of Austin (the "Public Restrictive Covenant") which places the following restrictions on the use of the Property which are enforceable by the City of Austin (hereinafter the "City"):

(A) All principal commercial uses of the Property shall be conducted within a building.

(B) A minimum of 10 percent of the gross floor area of any limited warehousing and distribution use in the building on the Property shall be for office use. The terms "gross floor area" and "limited warehousing and distribution" shall have the meanings given to them by the City Code as of the date hereof.

(C) Deliveries to and from the Property by trucks of 1 ton or greater capacity are restricted to the hours between 8:00 a.m. and 6:00 p.m.

(D) Outdoor loading and unloading of any type with the use of mechanized equipment is restricted to the hours between 8:00 a.m. and 6:00 p.m.

(E) Traffic signage shall be erected and maintained on the Property along the exits

directing trucks of 1 ton or greater capacity exiting the Property to proceed toward Manor Road.

(F) Visual screening shall be installed and maintained between the existing parking area on the Property and Tillery Street, except within the permitted driveway onto the Property. Visual screening may consist of vegetation, a privacy fence or decorative wall, any of which shall be a minimum of 4 feet in height.

(G) A 6 foot solid privacy fence shall be provided and maintained along any property line which is adjacent to other property zoned or used for a residential use.

(H) Live outdoor amplified music is prohibited on the Property, including as a temporary use.

(I) Vehicular access to or from Tillery Street shall not be permitted through the Property from adjacent sites to the north, south or west of the Property, except for emergency service vehicles.

(J) Commercial activities conducted on the Property shall not be allowed to create a nuisance, including without limitation excessively loud noise, foul odors, or noxious fumes to the degree that such things would be offensive to a person of normal sensibilities.

(K) The Owner shall not permit vehicular access to or from Tillery Street through the Property for any land which is adjacent to or otherwise in the vicinity of the Property, except for emergency service vehicles.

2. In the event that the City fails to enforce or unreasonably delays its enforcement of the Public Restrictive Covenant, the Association, or its successor organizations, may enforce the same restrictions as contained in the Public Restrictive Covenant (set forth in Paragraph 1 above) by proceedings at law or in equity against any person or entity violating or attempting to violate any of such restrictions. Provided, the Association must provide the City and the Owner with prior notice of its intention to enforce any of the said restrictions and an opportunity to cure which is reasonable under the circumstances then and there existing. Provided further, it is understood that any of the restrictions which require construction, such as the installation of fencing, screening or signage, shall not be operative unless and until a use of the Property is instituted (that is, the Property is no longer vacant and unused). Provided further, nothing in Paragraph 1(J) above shall be construed as diminishing the doctrine of attractive nuisance as it applies under Texas law.

3. Notwithstanding anything in the foregoing Paragraph 2 to the contrary, it is understood that the language included in the Public Restrictive Covenant by the City concerning music on the Property (as copied verbatim in Paragraph 1(H) above) was not exactly consistent with the agreements reached between the Owner and the Association in that regard. Therefore, the Owner agrees that the Property shall not be used as a commercial venue for amplified music or outdoor music, even as a secondary use in connection with a primary use such as a restaurant, or on an intermittent basis for events such as the annual "South by Southwest" music festival. Provided, this restriction shall not be construed to prevent any residential occupant of the Property from playing musical instruments. The Association, or its successor organizations, may

COPY

enforce the provisions of this Paragraph 3 by proceedings at law or in equity against any person or entity violating or attempting to violate any of such restrictions, regardless of whether or not the City fails to enforce or unreasonably delays its enforcement of the Public Restrictive Covenant.

4. This agreement may be modified, amended, or terminated only by joint action of both (a) the Board of Directors or a similar body of the Association or such other organization as may succeed the Association, and (b) the owner(s) of the Property at the time of such modification, amendment or termination.

5. This Restrictive Covenant shall be a covenant running with the land and shall be binding upon and inure to the benefit of the Owner, the Association, and their respective successors and assigns.

6. If any part of this agreement or covenant shall be 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.

EXECUTED this 31st day of MAY, 2012.

Owner:

DCR REAL ESTATE III SUB I, LLC

By: [Signature]

Name: FRED S. RAZOOK JR

Title: MANAGER

STATE OF Florida

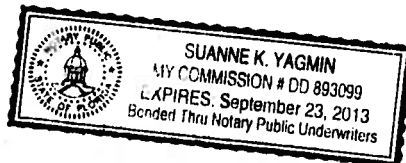
§

COUNTY OF Pinellas

§

§

This instrument was acknowledged before me this May 31, 2012 by Fred S. Razook, Jr., the Manager of DCR REAL ESTATE III SUB I, LLC, a Delaware limited liability company, on behalf of said limited liability company.



[Signature]
Notary Public - State of Florida

COPY

Consent of Lienholder

The undersigned, being the holder of a lien ("Lienholder") on the Property which is described by the foregoing Restrictive Covenant ("Restrictive Covenant"), as evidenced by the Deed of Trust, Security Agreement, Assignment of Leases, and Financing Statement ("Deed of Trust") dated February 17, 2011 and recorded at Document No. 2011027580 of the Official Public Records of Travis County, Texas, hereby consents to the Restrictive Covenant and agrees that its Deed of Trust is subject to and subordinate to the Restrictive Covenant and that any foreclosure of the Deed of Trust will not extinguish the Restrictive Covenant, and represents that the undersigned has authority to execute and deliver this Consent of Lienholder and that all necessary acts necessary to bind the Lienholder have been taken.

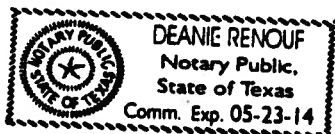
Wells Fargo Capital Finance, LLC

By: M. Mok
Name: Melissa Mok
Title: Vice President

STATE OF Texas
COUNTY OF Dallas

§
§
§

This instrument was acknowledged before me this June 5, 2012
by Melissa Mok, the VP of Wells
Fargo Capital Finance, LLC, a Delaware limited liability company, on behalf
of said limited liability company.



Deanie Renouf
Notary Public - State of TX

COPY

**HOLT CARSON, INC.
PROFESSIONAL LAND SURVEYORS**

1904 FORTVIEW ROAD
AUSTIN, TX 78704
TELEPHONE: (512) 442-0990
FACSIMILE: (512) 442-1084

FIELD NOTE DESCRIPTION OF 1.217 ACRES OF LAND OUT OF OUTLOT 50 DIVISION "B" OF THE GOVERNMENT OUTLOTS ADJOINING THE CITY OF AUSTIN ACCORDING TO THE MAP OR PLAT THEREOF FILED IN THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, BEING ALL OF THAT CERTAIN (1.217 ACRE) TRACT OF LAND AS CONVEYED TO LAWRENCE C. MATHIS BY SPECIAL WARRANTY DEED RECORDED IN 2000050461 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" in the present West right-of-way line of Tillery Street for the Southeast corner of that certain (1.217 acre) tract of land as conveyed to Lawrence C. Mathis by Special Warranty Deed recorded in Document No. 2000050461 of the Official Public Records of Travis County, Texas, and for the Northeast corner of that certain (0.966 acre) tract of land as conveyed to Malik Khurshid by Warranty Deed recorded in Document No. 2002188636 of the Official Public Records of Travis County, Texas, and being the Southeast corner and **PLACE OF BEGINNING** of the herein described tract, and from which a 3/4" iron pipe found for the Northeast corner of Lot 20, Encino Terrace, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 30 Page 22 of the Plat Records of Travis County, Texas, bears S 14 deg. 50' 55" E 121.69 ft. (direct tie);

THENCE leaving the West right-of-way line of Tillery Street with the common line of said Mathis (1.217 acre) tract and said Khurshid (0.966 acre) tract, S 80 deg. 01' 49" W 292.26 ft. to a 1/2" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" for the Southwest corner of said Mathis (1.217 acre) tract and for the Southeast corner of Lot 1, The Bartlett-Hudnall Addition, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 77 Page 313 of the Plat Records of Travis County, Texas, and being the Southwest corner of this tract, and from which a 1/2" iron rod found for the Northwest corner of said Khurshid (0.966 acre) tract bears S 80 deg. 01' 49" W 72.20 ft.;

THENCE with the West line of said Mathis (1.217 acre) tract, N 07 deg. 33' 45" W 186.96 ft. to a 2" iron pipe found for the Northwest corner of said Mathis (1.217 acre) tract and for the Southwest corner of that certain (1.658 acre) tract of land as conveyed to 3219 Manor Road L.L.C. by deed recorded in Document No. 2000132086 of the Official Public Records of Travis County, Texas, and being the Northwest corner of this tract;

end of Page 1

Exhibit A

COPY

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1.217 ACRES

THENCE with the common line of said Mathis (1.217 acre) tract and said 3219 Manor Road L.L.C. (1.658 acre) tract, N 81 deg. 14' 22" E 284.38 ft. to a ½" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" in the present West right-of-way line of Tillery Street for the Northeast corner of said Mathis (1.217 acre) tract and being the Northeast corner of this tract;

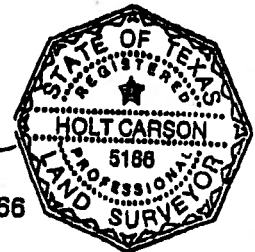
THENCE with the West right-of-way line of Tillery Street and with the East line of said Mathis (1.217 acre) tract, S 10 deg. 00' 00" E 180.80 ft. to the PLACE OF BEGINNING, containing 1.217 acres of land.

SURVEYED: May 3, 2007.

Holt Carson

Holt Carson

Registered Professional Land Surveyor No. 5166



see accompanying map: A 624040