

C2  
1

**ZONING AND PLATTING COMMISSION SITE PLAN  
SITE PLAN REVIEW SHEET**

**CASE NUMBER:** SP-2011-0177DS      **ZAP COMMISSION DATE:** 11/6/2012

**PROJECT NAME:** Boat Dock for 5 Humboldt Lane

**ADDRESS:** 5 Humboldt Lane

**WATERSHED:** Lake Austin (Drinking Water Protection Zone)

**EXISTING ZONING:** LA

**PROJECT DESCRIPTION:** The applicant has proposed to construct a two-slip residential boat dock and walkway/staircase on Lake Austin. However, based upon a restrictive covenant which prohibits development below the 675-foot contour in the Rob Roy subdivision, and because of the encroachment of the boat dock into the gradient boundary of Lake Austin, the site plan was denied. The applicant is thereby appealing the site plan denial.

**APPLICANT:** Maureen Alexander  
8801 Mendocino Drive  
Austin, Texas 78735

**AGENT:** David Braun  
Braun & Gresham  
P.O. Box 1148  
Dripping Springs, Texas 78701  
Phone: (512) 894-5426

**NEIGHBORHOOD ORGANIZATIONS:**

Austin Heritage Tree Foundation  
Austin Monorail Project  
Rob Roy Homeowners, Association, Inc.  
Lake Austin Collective  
Glenlake Neighborhood Association  
League of Bicycling Voters  
City of Rollingwood  
The Real Estate Council of Austin, Inc.  
Austin Parks Foundation  
Sierra Club, Austin Regional Group  
Super Duper Neighborhood Objectors and Appealers Organization  
Homeless Neighborhood Organization  
Save Our Springs Alliance

C2  
2

**SUMMARY STAFF RECOMMENDATION:** Staff does not recommend approval of the site plan because it does not comply with the applicable restrictions. The subject property is Lot 51, Block E, of the Rob Roy Subdivision, Phase II, and a restrictive covenant recorded in Volume 6673, Page 1697 of the Travis County Deed Records notes the following:

*(Section) 2.04 Lake Austin Bluff Lines: There shall be no development, improvement, or structure, temporary or permanent, below the line shown on the Plat as designating the Lake Austin Bluff Line. Such areas are to be left totally and completely in their natural state. All activity and improvement, including but not limited to, ladders, elevators, stairs, walkways, etc. are expressly prohibited.*

The document further defines the "Lake Austin Bluff Lines" as the 675-foot contour line. A copy of this restrictive covenant is included with the backup.

Additionally, the proposed boat dock has been designed to extend approximately 22 feet beyond the 482-foot contour (the "gradient boundary"), which is recognized as the line of demarcation between private and public properties of the inundated lands within Lake Austin. According to City of Austin policy, the proposed dock would encroach into City property, and staff has pointed out to the applicant that a license agreement may be required for such encroachment.

**ADDITIONAL COMMENTS:** An application for site development permit for the boat dock was submitted on June 29, 2011. The site plans and accompanying materials were reviewed by Land Use Review staff, and a report was provided to the applicant on August 18, 2011. Shortly after release of the report, staff was contacted by a representative of the Rob Roy Architectural Committee and made aware of the above-referenced restrictive covenant.

The applicant's attorney has disputed the validity of the restrictive covenant, as it references a "...line shown on the Plat as designating the Lake Austin Bluff Line", and no such line was depicted on the subdivision plat. Also, the subdivision plat referenced an applicable restrictive covenant, but the recording information was not filled in on the final plat. The applicant's engineer has disputed the validity of the gradient boundary, and noted that it was only City policy, and not a codified development regulation.

The applicant's attorney also noted that the City of Austin had permitted a boat dock on another lot within this subdivision in January 2007 (SP-06-0666DS). This permit was suspended when the restrictive covenant was discovered, but was later reinstated when the landowner secured a deed which proved he owned the land under which the dock was to be constructed.

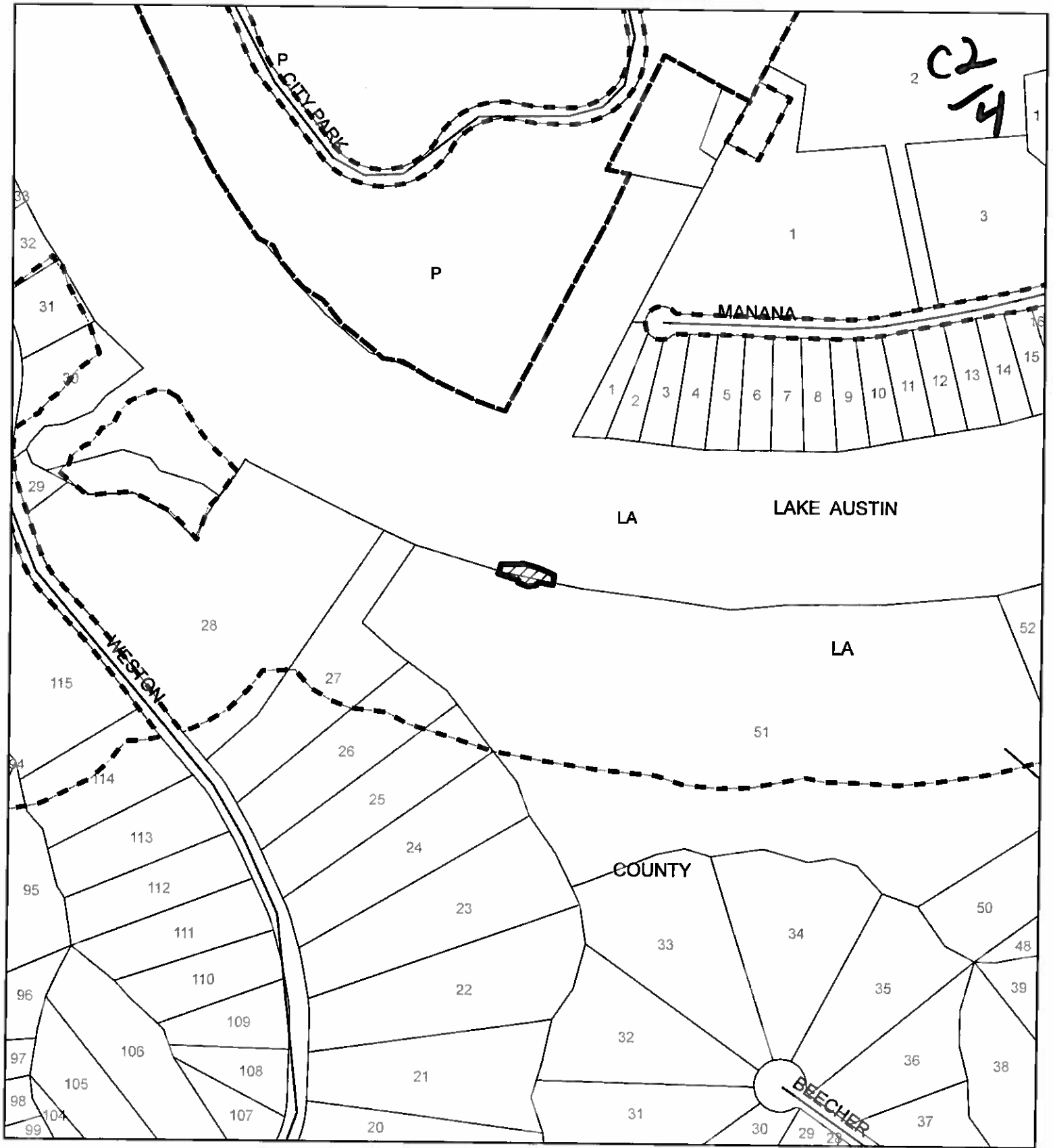
On January 26, 2012, the applicant's attorney requested that he receive a formal denial of the site plan, and the Director complied on February 17, 2012. That letter is included within this backup.

C2/3

The applicant is therefore appealing the denial of the site plan as per Section 25-5-112(C) of the Land Development Code.

It should also be pointed out that access to the proposed boat dock from land would be extremely difficult due to the approximately 80 percent slopes that lead downward from the 675-ft. contour line to the shoreline. Although staff commented on this access issue in their review report to the applicant, no response has been received to date in regard to this matter. It appears that the existing topography is too steep to traverse safely without providing stairs, trams or similar access methods, all of which are disallowed within the shoreline setback established by LA zoning, and expressly prohibited in Section 2.04 of the restrictive covenant.

**CASE MANAGER:** Michael Simmons-Smith  
[michael.simmons-smith@austintexas.gov](mailto:michael.simmons-smith@austintexas.gov)



0 85 170 340 Feet





## APPEAL OF SITE PLAN DENIAL

CASE NO.: SP-2011-0177DS  
 ADDRESS: 5 HUMBOLDT LANE  
 GRID: D27

CASE MANAGER: MICHAEL SIMMONS-SMITH



 SUBJECT TRACT  
 ZONING BOUNDARY



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

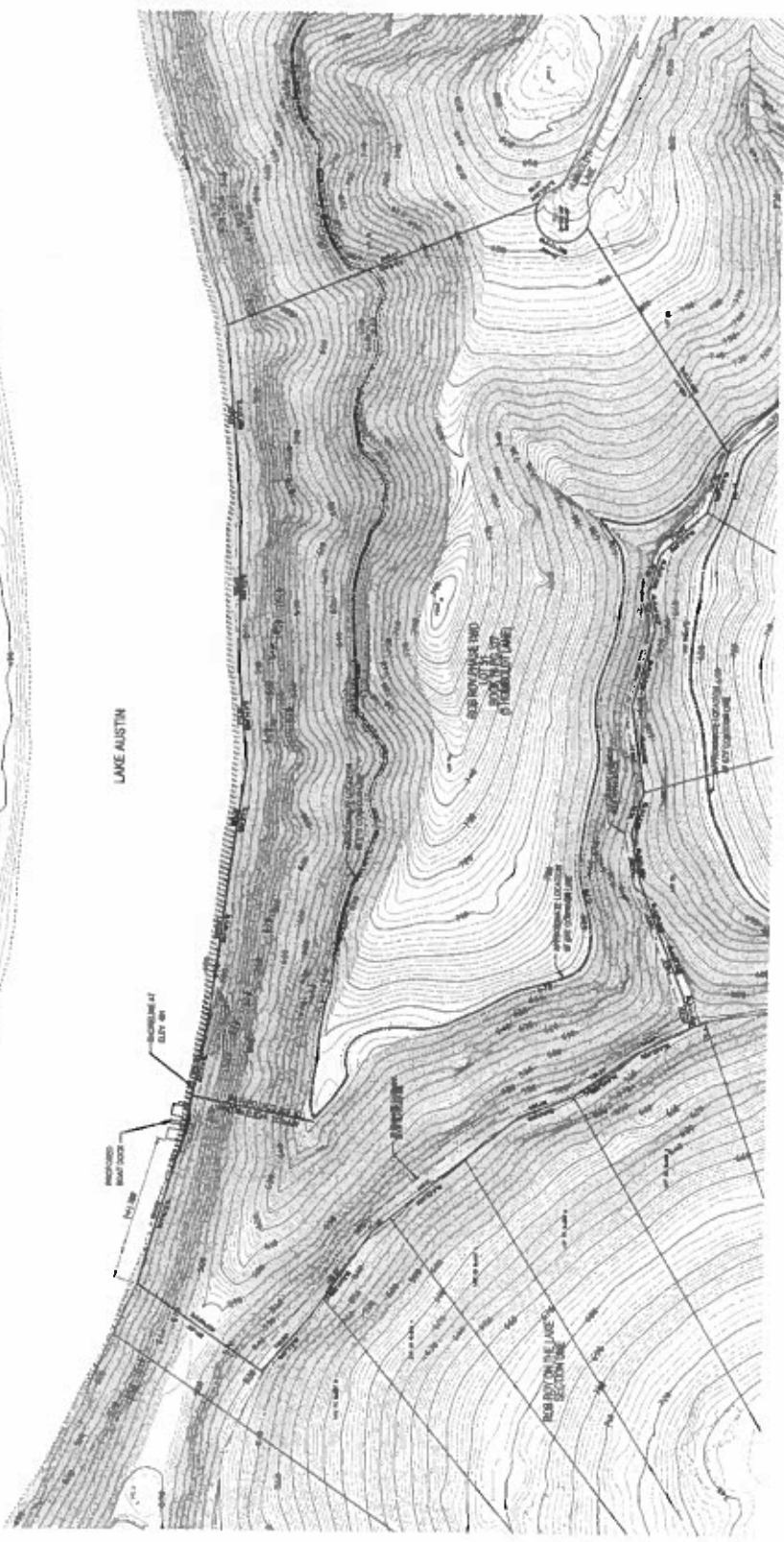
2/5

DATE: 7-10-00  
 DRAWN BY: JMS  
 CHECKED BY: JMS  
 SCALE: 1" = 100'

PROJECT: BOAT DOCK FOR 5 HUBBOLD LANE  
 LOCATION: 5 HUBBOLD LANE, AUSTIN, TEXAS, 78744  
 SHEET: 2 OF 5  
 PREPARED BY: JMS  
 DATE: 7-10-00

REVISIONS/CORRECTIONS	BY	DATE

NOTE: LOT DIMENSIONS FROM RECORD MAP.  
 TOPO FROM CITY OF AUSTIN GIS DATA.



BOAT DOCK FOR 5 HUBBOLD LANE  
 5 HUBBOLD LANE, AUSTIN, TEXAS, 78744  
 OVERALL LOT SITE PLAN

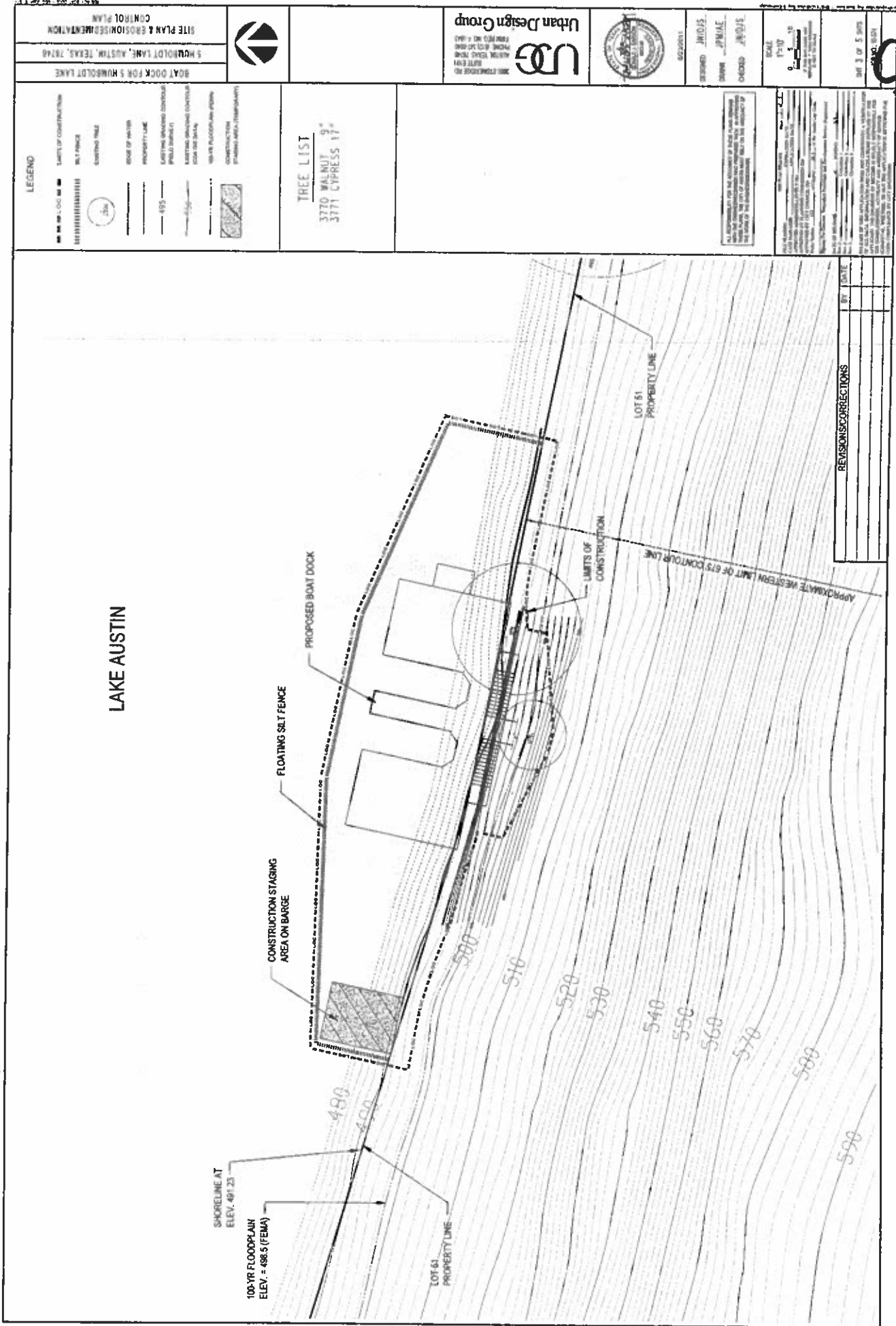


Urban Design Group  
 10000 N. MOORE AVE., SUITE 100  
 AUSTIN, TEXAS 78753  
 PHONE: 512.452.1000  
 FAX: 512.452.1001  
 WWW.URBANDSIGN.COM



ENGINEER  
 JMS  
 REGISTERED PROFESSIONAL ENGINEER  
 STATE OF TEXAS  
 NO. 12345

2/6



REVISIONS/CORRECTIONS	BY	DATE

ALL INFORMATION FOR THE PURPOSES OF THIS PLAN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT. THE ENGINEER ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE ENGINEER'S RESPONSIBILITY IS LIMITED TO THE DESIGN OF THE PROJECT AS SHOWN ON THIS PLAN. THE ENGINEER DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE ENGINEER'S RESPONSIBILITY IS LIMITED TO THE DESIGN OF THE PROJECT AS SHOWN ON THIS PLAN.

ALL INFORMATION FOR THE PURPOSES OF THIS PLAN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT. THE ENGINEER ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE ENGINEER'S RESPONSIBILITY IS LIMITED TO THE DESIGN OF THE PROJECT AS SHOWN ON THIS PLAN. THE ENGINEER DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE ENGINEER'S RESPONSIBILITY IS LIMITED TO THE DESIGN OF THE PROJECT AS SHOWN ON THIS PLAN.

TREE LIST  
3770 WALNUT 9"  
3771 CYPRESS 17"

- LEGEND**
- LIMITS OF CONSTRUCTION
  - F&T FENCE
  - SHORELINE
  - 100-YR FLOODPLAIN
  - PROPERTY LINE
  - 487.23
  - 488.5 (FEMA)
  - 489
  - 490
  - 495
  - 500
  - 510
  - 520
  - 530
  - 540
  - 550
  - 560
  - 570
  - 580
  - 590

Urban Design Group  
2001 TOWNHOMES RD.  
SUITE 100  
AUSTIN, TEXAS 78748  
TEL: 512.452.1111  
WWW.URBANDSIGN.COM



DESIGNED: J. R. JONES  
DRAWN: J. R. JONES  
CHECKED: J. R. JONES  
DATE: 10/15/11

SCALE: 1" = 40'  
SHEET 3 OF 5 SHEETS  
PROJECT: 100-YR FLOODPLAIN  
SUBJECT: 100-YR FLOODPLAIN



BOAT DOCK FOR 5 HUNDRED LAKES  
5 HUNDRED LAKES, AUSTIN, TEXAS, 78748  
SITE PLAN & EROSION/SEDIMENTATION  
CONTROL PLAN

RESTRICTIVE COVENANT FOR  
ROB ROY SUBDIVISION

THE STATE OF TEXAS AUG 29-79 6158 \* 9.00

2-09-16643

COUNTY OF TRAVIS : KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION, made this 14th day of August,  
1979, by AUSTIN ROB ROY CORPORATION, a Texas corporation, herein-  
after referred to as "Declarant".

RECITALS

1. Declarant is the owner of all that certain real property  
located in Travis County, Texas, described as follows:

Rob Roy Subdivision, Block A, Lots 1 through  
18; Block B, Lots 1 through 8; Block C, Lots  
1 through 18; Block D, Lots 2 through 52;  
Block E, Lots 1 through 68; Block F, Lots 1  
through 17; Block G, Lots 1 through 31; Block  
H, Lots 1 through 2 and Block I, Lots 1 through  
34, an addition in Travis County, Texas, accord-  
ing to the map or plat thereof, recorded in  
Book \_\_\_\_\_, Page \_\_\_\_\_ of the Plat Records  
of Travis County, Texas.

2. Declarant will convey the above described Property, sub-  
ject to certain restrictions as hereinafter set forth.

NOW, THEREFORE, it is hereby declared that all of the Prop-  
erty described above shall be held, sold and conveyed, subject to  
the following restrictions for the purposes set forth above and  
for protection of the value and desirability of the Property. The  
following restrictions shall run with the Property and shall be  
binding on all parties having any right, title or interest in or  
to the above described Property or any part thereof, and their  
heirs, successors and assigns; and which restrictions shall inure  
to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

1.01 "Owner(s)" shall mean and refer to the recorded Owner,  
whether one or more persons, associations or entites, of legal,  
equitable or beneficial title of or to any lot. Owner shall in-  
clude purchaser of a lot under an executory contract for sale of



C2/8

real property. The foregoing does not include persons or entities who hold interest in any lot merely for the security for the performance of an obligation.

1.02 "Property" shall mean and refer to that certain real property described in Recital 1 above. 2-09-6644

1.03 "Lot" shall mean each parcel of land shown as a lot on the recorded final plat map of the Property and designated on said map by a separate number, or any subsequent subdivision thereof.

1.04 "Improvements" shall mean the buildings, garages, carports, roads, antennas, driveways, parking areas, walls, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across or from the land.

1.05 "Single Family" shall mean a group of one or more persons related to each other by blood, marriage, or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants to maintain a common household in a dwelling.

1.06 "Single Family Residential Use" shall mean the occupation or use of an Improvement by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other State, County or Municipal laws, rules, regulations, codes or ordinances.

1.07 "Building Site" shall mean and refer to that portion of any of the above defined lots within the front setback and other lot lines upon which a single family residence may be constructed.

1.08 "Lake Austin Bluff Line" shall be the areas designated on the Plat as the Lake Austin Bluff Line, which shall be the 675 foot contour line.



C2  
1/9

ARTICLE II  
RESTRICTIONS

2.01 Building Foundations: All building foundations on slopes of 15% or greater or on fill placed upon such slopes shall utilize design and construction practices certified by a registered professional engineer qualified to practice in this field and such design shall be placed on file with the City of Austin Engineering Department. 2-09-6645

2.02 Fills and Cuts: No fill on any lot shall exceed a maximum of three feet of depth. Except for structural excavation, no cut on any lot shall be greater than six feet.

2.03 Driveway Grades: Every lot shall be reasonably accessible by vehicle from the roadway to the probable Building Site. For a minimum travel distance of twenty-five feet from the roadway edge, the driveway grade may exceed (14%) only with specific approval of surface and geometric design proposals by the Director of the Engineering Department or his designee.

2.04 Lake Austin Bluff Lines: There shall be no development, Improvement, or Structure, temporary or permanent, below the line shown on the Plat as designating the Lake Austin Bluff Line. Such areas are to be left totally and completely in their natural state. All activity and Improvement, including, but not limited to, ladders, elevators, stairs, walkways, etc., are expressly prohibited.

ARTICLE III  
MISCELLANEOUS

3.01 Modification: The restrictions of this restrictive covenant are derived from the City of Austin, Texas, Ordinance No. 780105-C. In the event that said ordinance becomes less restrictive concerning building foundations, building sites and driveways, this covenant shall be amended to follow such less restrictive ordinance, but in the event that such possible ordinance changes become more restrictive, the restrictions of this covenant shall remain in effect. This covenant may be modified, amended or terminated only by a majority vote of a quorum of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and joined by the undersigned Declarant.

C2  
10

3.02 Enforcement: If any persons, person, firm, corporation or entity of any other character shall violate or attempt to violate the restrictions contained herein, the City of Austin, a municipal corporation, its successors and assigns, shall have the right to enforce these restrictions by proceedings at law or in equity to prevent said violation or attempted violation thereof.

2-09-16646

EXECUTED this 14th day of August, 1979.

ATTEST:

AUSTIN ROB ROY CORPORATION

By Gary Bradley  
Secretary, Gary Bradley

NO SEAL

By John C. Wooley  
John C. Wooley

THE STATE OF TEXAS :

COUNTY OF TRAVIS :

BEFORE ME, the undersigned authority, on this day personally appeared JOHN C. WOOLEY & GARY BRADLEY, President & Secretary of AUSTIN ROB ROY CORPORATION, a Texas corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of August, 1979.

NOTARY SEAL

Patricia Langford  
Notary Public, Travis County, Texas  
Patricia Langford

My Commission Expires:

5-10-81

STATE OF TEXAS  
I hereby certify that this instrument was FILED on the  
date and at the time stamped hereon by me; and was duly  
RECORDED, in the Volume and Page of the named RECORDS  
of Travis County, Texas, as stamped hereon by me, on

COUNTY OF TRAVIS

AUG 28 1979



Louis H. Hargrave  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

FILED  
AUG 29 3 00 PM '79  
Louis H. Hargrave  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

6673 1700



City of Austin  
Founded by Congress, Republic of Texas, 1839  
Planning and Development Review Department  
One Texas Center, 505 Barton Springs Road  
P.O. Box 1088, Austin, Texas 78767

C2  
11

February 17, 2012

David Braun  
Braun and Gresham, PLLC  
P.O. Box 1148  
Dripping Springs, Texas 78620

RECEIVED

FEB 24 2012

Braun & Gresham

RE: Proposed Boat Dock for 5 Humboldt Lane  
Case No. SP-2011-0177DS

Dear Mr. Braun:

As discussed in my correspondence to you dated January 24, 2012, and based upon the restrictive covenant recorded in Volume 6673, Page 1697, which prohibits development in the Rob Roy Phase Two subdivision below the 675-foot contour line, we cannot approve the above-referenced site plan.

There is no administrative process by which the application can be approved, unless the restrictive covenant is modified. And, if no further action is taken by the applicant to prepare a plan that is in compliance, then the site development permit application for the proposed boat dock will expire on June 23, 2012.

Please accept this letter notifying the applicant that the site plan, as it is currently depicted in the most recent submittal dated August 9, 2011, is thereby denied.

Sincerely,

Gregory I. Guernsey, AICP, Director  
Planning and Development Review Department

cc: Mitzi Cotton, Assistant City Attorney  
Judd Leach, Assistant City Attorney  
Michael Simons-Smith, Senior Planner, PDRD  
George Zapalac, Development Services Manager  
Susan Scallon, Environmental Program Coordinator

BRAUN & GRESHAM  
ATTORNEYS AT LAW

C2  
12

June 22, 2012

**VIA HAND DELIVERY**

Gregory I. Guernsey, AICP, Director  
Planning and Development Review Department  
City of Austin  
One Texas Center, 505 Barton Springs Road  
P.O. Box 1088, Austin, Texas, 78767

**Re: Appeal to the Land Use Commission  
(Zoning and Platting Commission)  
Proposed Boat Dock for 5 Humboldt Lane  
Lot 51, Block E, Phase II, Rob Roy subdivision  
Case Number SP-2011-0177DS**

Dear Mr. Guernsey:

We received your denial of the Site Plan application for a boat dock at 5 Humboldt Lane (Lot 51), Case Number SP-2011-0177DS, which was formalized on February 17, 2012, by the attached letter. Your letter indicates that our application expires on June 23, 2012, unless we further amend our site plan. However, your letter also states that there is no administrative procedure by which our site plan can be approved. We are unclear whether this letter is the final decision of the City of Austin and therefore, the end of the available administrative remedies. We have talked with Judd Leach, an attorney for the City of Austin, and he was also unclear whether your letter indicates that we have exhausted our administrative remedies with the City of Austin.

Therefore, in an abundance of caution, this letter serves as our appeal to the Land Use Commission of your denial, in accordance with § 25-5-112(C) of the Land Development Code of the City of Austin. Our appeal is based on the following grounds:

1. The restrictive covenant that is the basis of your denial is too ambiguous to enforce and, in any case, we believe that it does not apply to the portion of Lot 51 where the boat dock is proposed. The language in the restrictive covenant depends on a line being depicted on the plat to delineate the affected property. That line was never placed on the plat and therefore, it is not possible to tell what the parties intended with regards to the western third of Lot 51. The parties did not apply this restrictive covenant to adjacent and nearby properties with the similar topography as the western third of Lot 51. As a result of the ambiguity and the evidence that the restriction was not applied to similar properties, the covenant should not be applied.

C 2  
13

2. The City of Austin's exercise of its discretionary authority to enforce the restrictive covenant is not permissible under Section 202.004 of the Texas Property Code because it is arbitrary, capricious and discriminatory. The Director approved a boat dock on Lot 55, in 2010 (Case #SP-06-0666DS) which has exactly the same restrictive covenant as Lot 51.
3. The City of Austin has waived the enforcement of the restrictive covenant by allowing a boat dock to be built on Lot 55.

We are unclear if we need to ask for an extension of time for the appeal of our application to be considered. If such an extension is required, we are also requesting it in this letter.

We request that the Land Use Commission hear our appeal as soon as possible, so we can move expeditiously to resolve this matter. Please let us know if we have exhausted our administrative remedies with the City and should seek relief of our claims in District Court.

Very truly yours,



David Braun  
Attorney and Counselor

## PUBLIC HEARING INFORMATION

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 a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. 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.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

A zoning ordinance amendment may include a conditional overlay which would include conditions approved by the Land Use Commission or the City Council. If final approval is by a City Council's action, there is no appeal of the Land Use Commission's action.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (it may be delivered to the contact listed on a notice); or
- appearing and speaking for the record at the public hearing;

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 14 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: [www.austintexas.gov/development](http://www.austintexas.gov/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 name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: SP-2011-0177DS

Contact: Michael Simmons-Smith, 512-974-1225

Elsa Garza, 512-974-2308

Public Hearing: Zoning and Platting Commission, Nov 6, 2012

Clay Davis

Your Name (please print)

1603 Manana St. 78730

Your address(es) affected by this application

Clay Davis

Signature

Date

31-Oct-12

Daytime Telephone: 512-422-6677

Comments:

I am concerned about the environmental impact of what ever is done to get access down the ridge.

I could be mistaken but I don't think these properties extend to the lake shore.

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

City of Austin

Planning and Development Review - 4<sup>th</sup> floor

Michael Simmons-Smith

P. O. Box 1088

Austin, TX 78767-1088

C2  
14