

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-99-0132(RCT) – Prosperity Business Park **Z.A.P. DATE:** March 19, 2013

ADDRESS: 9101 – 9201 South IH 35 Service Road Northbound

OWNER: NL Land Holdings, Ltd. (John Lewis) **AGENT:** Alice Glasco Consulting
(Alice Glasco)

EXISTING ZONING: CS-CO

PROPOSED ZONING: CS-CO, to
modify the Conditional Overlay
and remove the provisions which
prohibit vehicular access to Oak Hill
Lane and limit signage

AREA: 1.88 acres

SUMMARY STAFF RECOMMENDATION:

Staff recommends a Termination of the Restrictive Covenant.

ZONING AND PLATTING COMMISSION RECOMMENDATION:

March 19, 2013: *APPROVED STAFF RECOMMENDATION TO TERMINATE THE
RESTRICTIVE COVENANT*

[S. COMPTON; C. BANKS – 2ND] (6-0) P. SEEGER – ABSENT

ISSUES:

The Traffic Impact Analysis on the related rezoning case (C14-2013-0009) will be deferred until the time of site plan application. The Applicant will be required to mitigate any adverse effects of the proposed development at that time.

DEPARTMENT COMMENTS:

The Restrictive Covenant area covers an undeveloped, unplatted tract. Please refer to Exhibits A and A-1 (Zoning Map and Aerial Map). The tract has frontage on the northbound IH 35 service road and a private roadway easement known as Oak Hill Lane. The tract was rezoned to general commercial services – conditional overlay (CS-CO) district in March 2001 (Case No. C14-99-0132 – Oak Hill Lane 6 AC.). The restrictive covenant attached to the zoning ordinance subjects the property to a rollback to the warehouse/limited office (W/LO) district if a CS use is discontinued for 90 consecutive days. Please refer to Exhibit B (2001 Restrictive Covenant).

The 1.88 acre area covered by the Restrictive Covenant has remained undeveloped and the owner now wishes to proceed with a unified commercial development that would also

include an adjacent 14.115 acre tract in unincorporated Travis County. A rezoning case to modify signage and access provisions of the Conditional Overlay and a preliminary plan are also in process (C14-2013-0009 and C8J-2012-0170, both known as Prosperity Business Park).

The owner proposes to remove the Restrictive Covenant because commercial uses, rather than warehouse/limited office development are proposed. The Restrictive Covenant was established at a time when several of the surrounding properties in the City limits were undeveloped and the unincorporated areas to the east were largely residential in character. The adjacent property to the north located at the southeast corner of IH 35 and East Slaughter Lane is zoned CS-CO, and properties at the northeast corner of the intersection are zoned CS-CO and none are encumbered by a restrictive covenant which calls for a rollback to W/LO. For these reasons, Staff supports the Applicant's request for termination of the Restrictive Covenant.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS-CO	Undeveloped
<i>North</i>	CS-CO; I-RR	Convenience storage; Truck rental; Undeveloped
<i>South</i>	SF-2	Undeveloped
<i>East</i>	County	A few residences; Two auto repair businesses, Trucking company
<i>West</i>	N/A	IH-35 Northbound service road and main lanes

AREA STUDY: N/A

TIA: Is not required

WATERSHED: Onion Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

SCENIC ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

26 – Far South Austin Community Association
 511 – Austin Neighborhoods Council
 627 – Onion Creek Homeowners Association
 742 – Austin Independent School District
 1037 – Homeless Neighborhood Association
 1075 – League of Bicycling Voters
 1200 – Super Duper Neighborhood Objectors and Appealers Organization
 1224 – Austin Monorail Project
 1228 – Sierra Group, Austin Regional Group
 1236 – The Real Estate Council of Austin, Inc.
 1258 – Del Valle Community Coalition
 1340 – Austin Heritage Tree Foundation
 1363 – SEL Texas

SCHOOLS:

Blazier Elementary School

Bedichek Middle School

Crockett High School

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-02-0070 – Home Depot #6563 at Slaughter Lane – 8801 S. IH 35 and 100-200 E. Slaughter Ln.	I-RR to CS	To Grant CS-CO with CO for list of prohibited uses	Approved CS-CO (7- 11-2002).
C14-97-0081 – IH 35 South at Slaughter Lane – 9000-9100 Block of S IH 35 Service Road Northbound	SF-2 to CS	To Grant CS-CO	Approved CS-CO w/CO for 2,000 trips, list of prohibited uses, no vehicular access to Oak Hill Ln. until improved to City standards, 45' height limit for structures, 40' wide setback for structures from IH 35 r-o-w (10-16-1997).
C14-96-0086 – South Bend – Northeast corner of IH 35 and E Slaughter Ln.	DR to CS	To Grant CS for two tracts; RR for one tract	Approved CS with Restrictive Covenant for the conditions of the TIA (10-10-1996).

RELATED CASES:

The rezoning area was annexed into the full-purpose City limits on June 3, 1982 (C7a-80-023 – Ordinance No. 820603-P).

The area was rezoned from SF-2 to CS-CO on March 1, 2001 (C14-99-0132 – Oak Hill Lane 6 AC.). The Conditional Overlay: 1) establishes a 2,000 trips per day limit; 2) prohibits auto rentals, repair services, sales, washing (of any type), adult-oriented uses, commercial off-street parking, drop-off recycling collection facility, pawn shops and residential treatment; 3) limits height of signage to 35 feet above ground level; 4) prohibits access to Oak Hill Lane and 5) requires a 15-foot wide vegetative buffer along the IH 35 frontage. A Restrictive Covenant subjects the property to a rollback to the warehouse/limited office (W/LO) district if a CS use is discontinued for 90 consecutive days. A zoning change to remove signage restrictions and access restrictions is also in process (C14-2013-0009 – Prosperity Business Park).

The subject property as well as abutting property to the east within the County is in the subdivision review process (C8J-2012-0170 – Prosperity Business Park preliminary plan). The subdivision consists of six lots on a total of 15.995 acres and includes the platting of Oak Hill Lane. The subject rezoning area is 1.88 acres of Lot 1, Block A. The remaining 14.115

acres is within unincorporated Travis County. There are no site plan applications approved or in process on the subject property.

ABUTTING STREETS:

Name	ROW	Pavement	Class	Sidewalk?	Bus Route?	Bike Route?
Oak Hill Lane	80 feet	20 feet	Collector	No	No	No
IH 35 Northbound Service Road	Varies	FWY 6	Freeway	No	No	No

CITY COUNCIL DATE: April 11, 2013

ACTION: Approved an Indefinite Postponement request by the Applicant (6-0, Council Member Tovo – off the dais).

August 8, 2013

ORDINANCE READINGS: 1st

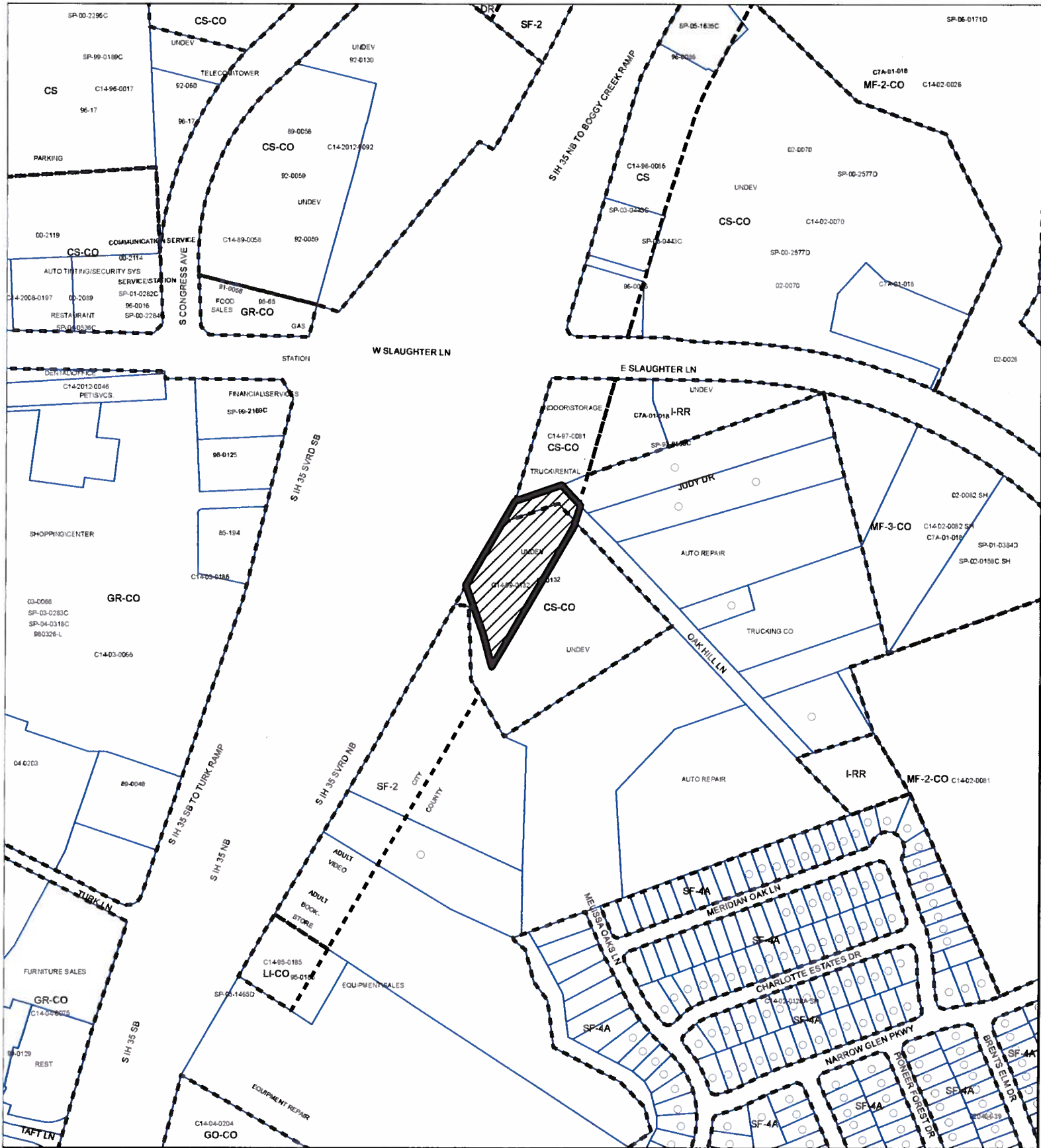
2nd

3rd

ORDINANCE NUMBER:

CASE MANAGER: Wendy Rhoades
e-mail: wendy.rhoades@austintexas.gov




PHONE: 974-7719



ZONING

EXHIBIT A

ZONING CASE#: C14-99-0132(RCT)

-  SUBJECT TRACT
-  PENDING CASE
-  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.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



1" = 400'



Zoning Case No. C14-99-0132

80010301-13

RESTRICTIVE COVENANT

OWNER: JANOE TRUCK SALES AND SERVICE, INC., a Texas corporation, dba Janoe Kenworth Trucks

ADDRESS: 5036 Roosevelt Avenue, San Antonio, Texas 78214

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

PROPERTY: A 6.39 acre tract of land out of the Santiago del Valle Grant, said tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant.

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

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

1. If use of the Property as general commercial services (CS) use is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to warehouse limited office (W/LO) district as defined in Chapter 25-2 of the City Code. Normal cessation of a use, or temporary discontinuance for purpose of maintenance or rebuilding of the Property after damage or destruction shall not be included in calculating the period of discontinuance.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 27th day of FEBRUARY, 2001.

OWNER:

**JANOE TRUCK SALES AND
SERVICE, INC.** a Texas corporation,
dba Janoe Kenworth Trucks

By: Tom D. Janoe
Tom D. Janoe, President

APPROVED AS TO FORM:

Michael Thomas
Assistant City Attorney
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 27th day of February, 2001, by Tom D. Janoe, President of Janoe Truck Sales and Service, Inc., a Texas corporation, dba Janoe Kenworth Trucks, on behalf of said corporation.

Johnna Sims
Notary Public, State of Texas



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

Alice Glasco Consulting

5117 Valburn Court, Suite A
Austin, TX 78731
aliceglasco@mindspring.com
512-231-8110 • 512-857-0187 Fax

February 15, 2013

Greg Guernsey, Director
Planning and Development Review Department
505 Barton Spring Road, Suite 500
Austin, Texas 78704

RE: Restrictive Covenant Termination – 9101-9201 IH-35 South
(C14-99-0132)

Dear Greg:

I represent NL Land Holdings, Ltd, the owner of the above referenced property. In 1999, the subject property was encumbered with a restrictive covenant that is associated with zoning case number C14-99-0132. As part of the rezoning process, a rollback condition was approved by the City Council and it reads as follows:

If use of the property as general commercial services (CS) use is discontinued for 90 consecutive days, the owner of the property will not object to the City of Austin rezoning the property to warehouse limited office (W/LO) district as defined in Chapter 25-2 of the City Code. Normal cessation of a use, or temporary discontinuance for purpose of maintenance or rebuilding of the property after damage or destruction shall not be included in calculating the period of discontinuance.

Justification:

The use described in the restrictive covenant never commenced. The property has remained undeveloped since 1999/2001 when the property was zoned CS-CO. The land area affected by the restrictive covenant, which comprises 1.88 acres, is part of a larger site that is in the ETJ. The entire site, including the area in the city limits consists of 15.995 acres. My client, NL Land Holdings, Ltd. acquired the property in 2007 and intends to sell the entire 15.995 acres to someone who plans on developing the site as a business park with a mix of commercial uses (see attached conceptual site plan).

It is also important to note that according to the planning commission motion and council action, which adopted the planning commission motion, calls for a rollback to W/LO **only if the use is convenient storage.** However, the signed and recorded restrictive covenant has completely different language from what was actually approved by both the

Greg Guernsey, Director
Planning and Development Review Department

and recorded restrictive covenant has completely different language from what was actually approved by both the planning commission and city council (see attached planning commission minutes and city council action reflected on second/third reading summary sheet).

3. The rollback to W/LO as written in the restrictive covenant creates uncertainty for the potential buyer. There is a fear that the city could at any time pursue the zoning rollback.
4. Finally, similarly situated properties should be treated similarly. The properties to the north of the site and west of IH 35 (South Park Meadows and Double Creek Village, next to Akins High School) are zoned CS-CO without a rollback requirement. Therefore, terminating the restrictive covenant would be equitable treatment of the subject property.

The recorded restrictive covenant my client, NL Land Holdings, Ltd., is seeking to terminate is attached. Please let me know if you have any questions or need additional information.

Sincerely,



Alice Glasco, President
AG Consulting

Cc: John Lewis
Jerry Rusthoven, Zoning Division Manager
Wendy Rhoades, Zoning Planner