

## RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

**CASE:** C14-84-346(RCA2)  
East Parke Residential

**Z.A.P. DATE:** November 18, 2014

**ADDRESS:** 5601 Durango Pass

**AREA:** 10.49 acres

**DISTRICT:** 1

**OWNER:** Continental Homes of Texas, LP (Richard Maier)

**AGENT:** A. Glasco Consulting (Alice Glasco)

**ZONING:** SF-3and MF-3

### **SUMMARY STAFF RECOMMENDATION:**

Staff recommends the restrictive covenant amendment.

### **ZONING AND PLATTING COMMISSION RECOMMENDATION:**

November 18, 2014: *TO GRANT THE RESTRICTIVE COVENANT AMENDMENT. (5-0) [G. Rojas- 1<sup>st</sup>, P. Seeger- 2<sup>nd</sup>; S. Compton, R. McDaniel- Absent]*

### **ISSUES:**

The proposed restrictive covenant amendment (RCA) would eliminate requirements tied to a 1984 zoning case (City File #C14-84-346). A proposed rezoning request, C14-2014-0158, has been filed with the City to supersede the 1984 case and restrictive covenant. Several other restrictive covenant amendments (RCAs) are proposed to allow consolidation of the parcels for redevelopment with single family residences. These are being processed under the following City File numbers: C14-75-042(RCA1), C14-75-042(RCA3), C14-76-083(RCA), and C14-84-346(RCA1). Please refer to *Exhibit A (Restrictive Covenant)*.

### **DEPARTMENT COMMENTS**

The original restrictive covenant applied to 24.24 acres of land. The Applicant proposes removing the following requirements from only land owned by the Owner listed above (see shaded area on attached map). The remaining land will not be affected. Please refer to *Exhibits B (Zoning Map)*.

The proposed restrictive covenant amendment (RCA) would eliminate requirements tied to a 1984 zoning case and a subdivision (City Files (C14-84-346 and C84.158.1(85)). The subdivision plat has expired. A proposed rezoning request, C14-2014-0158 has been filed with the City; a resubdivision is planned, but has not been filed yet with the City of Austin. Please see *Exhibit C (Expired Subdivision)*.

If approved, the requirements that would be removed include: 1. Lots 8-20 of Block B in the Northeast Territory Subdivision shall contain 1 fourplex per lot; 2. Durango Pass shall be completed prior to construction of the subdivision; and 3. Those lots in the subdivision shall be landscaped with St. Augustine grass and 4 trees / 8 shrubs each. Please see *Exhibit D (Applicant Correspondence)*.

The subject property is located roughly 400-500 feet northeast of the intersection of US 183 and Loyola, but does not have access to either roadway. The property has access to Durango Pass and Coolbrook Drive, residential streets that are part of the residential neighborhood to the east. Properties in this neighborhood are mostly zoned SF-2, with a few SF-3 properties as well, and are developed with duplexes and single family residences. South of the property are parcels zoned P that are developed with park/open space features. To the west of the rezoning tract is undeveloped land. This area to the west is the remainder of the 1975 and 1984 zoning cases described in

the previous section, and is comprised of parcels zoned GR, LO, MF-3, and SF-3. Immediately north of the rezoning tract is another residential area. Properties in this neighborhood are zoned SF-2 and SF-3, and are developed with duplexes and single family residences. LBJ High School is also located to the north, and is also SF-3.

### **STAFF RECOMMENDATION:**

Staff recommends the restrictive covenant amendment.

#### *1. The proposed zoning should promote consistent and orderly planning.*

The conditions of the 1984 are outdated and have been replaced by more stringent and effective development regulations under current code. The existing restrictive covenants are a patchwork of outdated requirements that make cloud the property title and make regulatory application confusing. Since the Applicant owns only a portion of the property covered by the original restrictive covenant, it is not possible to recommend a restrictive covenant termination.

#### *2. The proposed rezoning does not grant an unequal benefit to the landowner.*

Removal and/or modification of the restrictive covenant will make the property subject to current City codes and regulations, which is more equal to other properties.

### **EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	MF-3, SF-3	Undeveloped
<i>North</i>	SF-2, SF-3	Duplex, Single family, LBJ High School
<i>South</i>	P	Parkland/ open space
<i>East</i>	SF-2, SF-3	Duplex, Single family
<i>West</i>	GR, LO, MF-3, SF-3	Undeveloped

### **NEIGHBORHOOD ORGANIZATIONS:**

Del Valle Community Coalition  
 East Austin Conservancy  
 East MLK Combined Neighborhood Association  
 University Hills Neighborhood Association  
 Austin Neighborhoods Council  
 FRS Property Owners Association

PODER  
 East MLK Combined Neighborhood Contact Team  
 University Hills Neighborhood Plan Contact Team  
 Bluebonnet Hills Association  
 LBJ Neighborhood Association

### **CITY COUNCIL DATE/ACTION:**

February 12, 2015:

January 29, 2015: *POSTPONED TO FEBRUARY 12, 2015, ON CONSENT (11-0) [O. Houston- 1<sup>st</sup>, D. Zimmerman- 2<sup>nd</sup>]*

December 11, 2014: *POSTPONED TO JANUARY 29, 2015, ON CONSENT (7-0) [L. Morrison- 1<sup>st</sup>, B. Spelman- 2<sup>nd</sup>]*

### **ORDINANCE READINGS: 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup>**

### **ORDINANCE NUMBER:**

**CASE MANAGER:** Heather Chaffin  
 e-mail: [heather.chaffin@austintexas.gov](mailto:heather.chaffin@austintexas.gov)

**PHONE:** 974-2122

902

Zoning Case No. C14-84-346

RESTRICTIVE COVENANT

4 18 3317

THE STATE OF TEXAS

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109653

9.00 RTEA  
1 02/06/87

COUNTY OF TRAVIS

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KNOW ALL PERSONS BY THESE PRESENTS

WHEREAS, Northeast Territory Joint Venture of Travis  
County, Texas, is the owner of the following described property,  
to-wit:

All that property in the Northeast Territory Subdivision,  
Lots 8-20 of Block B as described in City of Austin final  
subdivision plat number C8-84-158.1 (85). Field notes  
describing this property are attached as Exhibit "A".

WHEREAS, the City of Austin and Owners have agreed that the  
above described property should be impressed with certain  
covenants and restrictions running with the land and desire to  
set forth such agreement in writing;

NOW, THEREFORE, Owners for and in consideration of One and  
No/100 Dollars (\$1.00) and other good and valuable consideration  
in hand to the undersigned paid by the City of Austin, the  
receipt of which is hereby acknowledged, does hereby agree with  
respect to said proeprty described above, such agreement to be  
deemed and considered as a covenant running with the land, and  
which shall be binding on him, his successors and assigns, as  
follows, to-wit:

1. Lots 8-20 of Block B of the Northeast Territory  
Subdivision, described above, shall contain one Fourplex on each  
lot.
2. The street identified as "Durango Pass" on the Northeast  
Territory Subdivision plat, described above, shall be completed  
prior to construction of the fourplexes mentioned above in 1.
3. Each of the lots 8-20 in Block B of the Northeast  
Territory Subdivision shall be sodded in its entirety only with  
St. Augustine grass; each of these lots shall be landscaped with  
four (4) trees and eight (8) shrubs.
4. If any person, persons, corporation or entity of any  
other character shall violate or attempt to violate the foregoing  
agreement and covenant, it shall be lawful for the City of  
Austin, a municipal corporation, its successors and assigns, to

REAL PROPERTY RECORDS  
Travis County, Texas

10094 0946

SCANNED

prosecute proceedings at law, or in equity, against said person or entity violating or attempting to violate such agreement or covenant and to prevent said person or entity from violating or attempting to violate such agreement or covenant.

5. If any part or provision of this agreement or covenant herein contained shall be declared invalid, by judgment or court order, the same shall in nowise affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full force and effect.

6. The failure at any time to enforce this agreement by the City of Austin, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

7. This agreement may be modified, amended or terminated only by joint action of both (a) the majority 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 (b) by the owners of the above described property at the time of such modification, amendment or termination.

EXECUTED, this the 21st day of August, 1985.

Kim W. Kirkman  
Kim W. Kirkman

THE STATE OF TEXAS

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COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared KIM W. KIRKMAN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 21st day of August, 1985. NOTARY SEAL

Dianne Odegar  
Notary Public in and for Travis  
County, Texas

DIANNE ODEGAR  
Typed or Printed Name of Notary

My commission expires: 2-18-86

SCANNED

10094 0947



ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF THE J. C. TANNEHILL LEAGUE NO. 29, TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF THAT SAME 24.24 ACRE TRACT OF LAND AS CONVEYED TO THE CITY NATIONAL BANK OF AUSTIN BY DEED RECORDED IN VOLUME 5478, PAGE 2232 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point in the Northeast line of the said 24.24 acre tract, being the Northeast corner of Lot 1, Block C of M & G Estates Section II, a subdivision in Travis County, Texas, as recorded in Plat Book 77, Page 31 of the Plat Records of Travis County, Texas, and being a point in the Southwest line of Lot 2, Block 8, LAS CIMAS Section One, a subdivision in Travis County, Texas, as recorded in Plat Book 65, Page 88 of the Plat Records of Travis County, Texas, for the Northwest corner hereof;

THENCE with the Northeast line of the said 24.24 acre tract, being the Southwest line of Las Cimas Section One, S 59° 39' E for a distance of 1312.88 feet to an iron stake found at the Northeast corner of the said 24.24 acre tract, being the Southeast corner of Lot 4, Block 7 of Las Cimas Section One, and being a point in the Northwest line of Lot 2, Block 7, Las Cimas Section One for the Northeast corner hereof;

THENCE with the Southeast line of the said 24.24 acre tract, being a Northwest line of the said Las Cimas Section One, S 30° 06' W at a distance of 162.59 feet pass an iron stake found and continue on for a total distance of 457.71 feet to an iron stake found at the Southeast corner of the said 24.24 acre tract, being a point in the Northwest line of Lot 13, Block 1 of Las Cimas Section One and being a Northeast corner of a tract of land as conveyed to L. D. Turner by Deed recorded in Volume 611, Page 253 of the Deed Records of Travis County, Texas, for the Southeast corner hereof;

THENCE with the Southwest line of the said 24.24 acre tract, being the Northeast line of the said L. D. Turner Tract, N 59° 56' W for a distance of 1,382.30 feet to a concrete monument found in the Southwest line of the said 24.24 acre tract, being the Southeast corner of the said Lot 1, Block C, for the Southwest corner hereof;

THENCE with the Northwest line of the herein described tract, being the Southeast line of the said Lot 1, Block C, the following courses:

N 32° 56' E for a distance of 77.30 feet to an iron stake found  
N 41° 03' E for a distance of 148.67 feet to an iron stake found  
N 42° 58' E for a distance of 123.21 feet to an iron stake found  
N 34° 50' E for a distance of 121.67 feet to the PLACE OF BEGINNING  
and containing 14.265 acres of land, more or less.

SCANNED

EXHIBIT "A"

10094 0948

CITY OF AUSTIN  
DEPT. OF LAW  
P. O. BOX 1088  
AUSTIN, TEXAS 78767-8828

PLEASE RETURN TO:

FILED

1987 FEB -6 PM 2:56

COUNTY CLERK  
TRAVIS COUNTY, TEXAS

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

FEB 6 1987

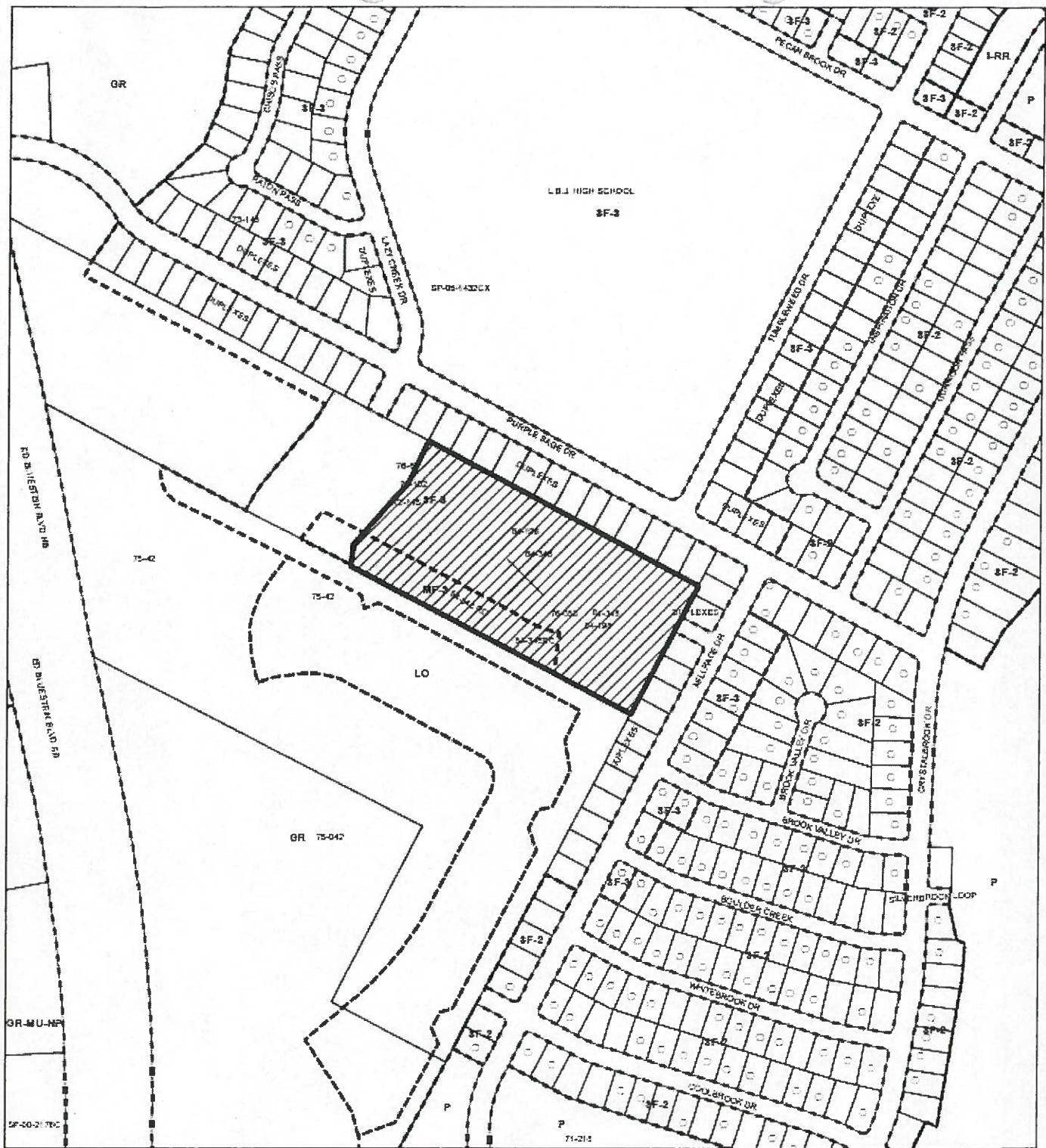





COUNTY CLERK  
TRAVIS COUNTY, TEXAS

SCANNED

10094 0949





-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

## ZONING CASE

### C14-84-346(RCA)2

1" = 400'

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.



# PRELIMINARY OF NORTHEAST TERRITORY SUBDIVISION

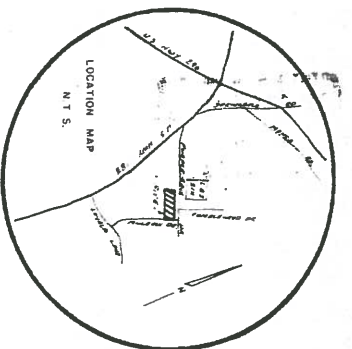
A Subdivision of 14.25 Acres out of the J. C. Tompkins League No. 29, Travis County, Texas of record in Vol. 8531 of Pg. 796 to Northeast Territory Joint Venture.

PROPOSED LAND USE: Duplex

Owner: Northeast Territory Joint Venture

Street Note: Streets will meet urban street standards; fifty (50) foot wide right-of-ways will have thirty (30) feet curb to curb street widths, seventy (70) foot right-of-ways will have forty-four (44) feet curb to curb street widths, cul-de-sacs fifty (50) foot wide right-of-ways will have forty (40) foot curb radius.

SCALE: 1" = 100'



AUSTIN INDEPENDENT SCHOOL DISTRICT  
VOL. 3979 PG. 2338

TUMBLEWEED DR. (70' ROW)

CIMAS SEC. ONE PG. 88

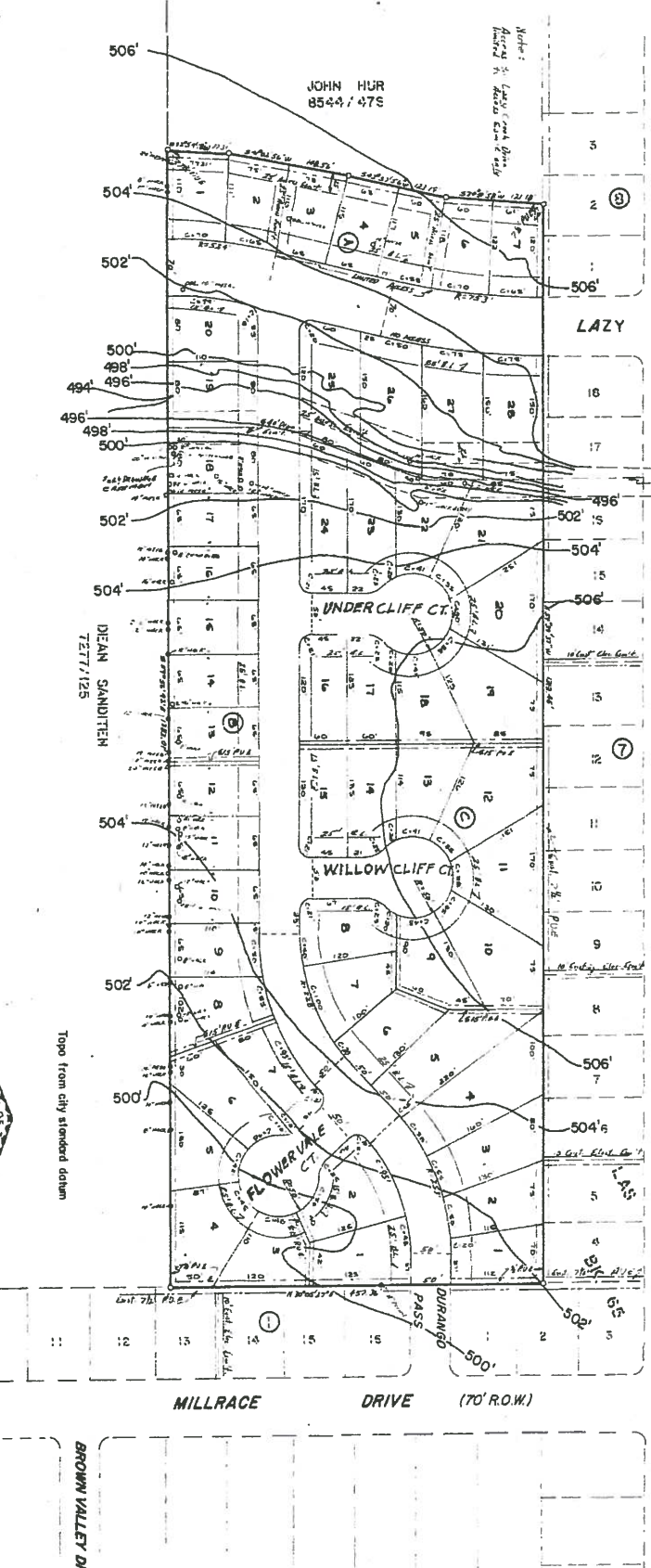
LAZY CREEK DRIVE (70' ROW)

PURPLE SAGE DRIVE (70' ROW)

MILLRACE DRIVE (70' ROW)

BROWN VALLEY DR. (50' ROW)

Topo from city standard datum



PREPARED BY: BARBER AND TRIMBLE LAND SURVEYORS

1030-H, S. Lamar, Austin, Texas 78704

Oct. 8, 1984



APPROVED  
PRELIMINARY



## ALICE GLASCO CONSULTING

August 21, 2014

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

RE: Restrictive Covenant Termination - C14-84-346 (B)

Dear Greg:

I am representing Continental Homes of Texas, LP (D.R.Horton) as it relates to the termination of this 1984 restrictive covenant. My client, Continental Homes of Texas, LP (D.R.Horton) has the subject property under contract with the intent of developing 124 single family homes.

**Background:**

Under zoning case number C14-84-346 (ordinance no. 870101-O), the area that was rezoned from SF-3 to MF-3 comprised 2.29 acres. However, the recorded restrictive covenant covered 24.24 acres. Two restrictive covenants were recorded – Part A covers lots 1-7, of Block A, lots 1-7 of Block B, and lots 1-28 of Block C of the Northeast Territory Subdivision; while part B covers lots 8-20. Both restrictive covenants describe the lots as being found in final plat number C8-84.158.1(85), which was never recorded and therefore expired according to city records. My client intends to purchase **ONLY 10.49 acres out of the 24.24 acres described in the recorded restrictive covenant.**

The conditions listed in the restrictive covenant are as follows:

1. Lots 1-8-20, of Block B of the Northeast Territory Subdivision, shall contain one fourplex on each lot.
2. The street identified as "Durango Pass" on the Northeast Territory Subdivision, plat, C8-14-84-158.1(85) shall be completed prior to construction of the fourplexes mentioned in condition 1 above.
3. Each of the lots 8-20, in Block B of the Northeast Territory Subdivision, shall be sodded in its entirety only with St. Augustine grass; each of these lots shall be landscaped with four (4) trees and eight (8) shrubs.

Greg Guernsey  
Restrictive Covenant Termination - C14-84-346 (B)

**Justification Restrictive Covenant Termination**

- The proposed use is single family not duplexes.
- Since the 1984 preliminary plan and final plat expired, a new preliminary plan and final plat (s) will be required as part of the proposed single family development.
- The proposed development will comply with the city's current landscaping requirements.

Please let me know if you have any questions or need additional information.

Sincerely,



Alice Glasco, President  
AG Consulting

Cc: Richard N. Maier, D.R. Horton  
Tom Anker, D.R. Horton  
Bill Barton, D.R. Horton  
Sherri Sirwaitis, Zoning Planner  
Jerry Rusthoven, Zoning Manager

Attachments



## 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:

<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 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: C14-84-346(RCA2)

Contact: Heather Chaffin, 512-974-2122

Public Hearing: Nov 18, 2014, Zoning and Platting Commission  
Dec 11, 2014, City Council

Billy G. Steen  
Your Name (please print)

7011 Brook Valley Circle  
Your address(es) affected by this application

Billy G. Steen  
Signature

Daytime Telephone: 512-938-4546

11/10/2014  
Date

Comments:

☐ I am in favor  
☒ I object

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

City of Austin

Planning & Development Review Department

Heather Chaffin

P. O. Box 1088

Austin, TX 78767-8810





GR

CHISOS PASS

SF-3

LAZY CREEK DR

SF-3

SP-05-1432CX

L.B.J. HIGH SCHOOL

SF-3

PURPLE SAGE DR

SF-3

C14-84-346(RCA2)

MF-3

C14-76-083(RCA)

LO

C14-75-042(RCT2)

C14-2014-0138

75-42

75-042

C14-75-042(RCT1)  
C14-75-042(RCT3)

GR

SF-3

SF-2

SF-3

SF-3

PECAN BROOK DR

TUMBLEWEED DR

SF-3

INSPIRATION DR

SF-2

GUNNISON PASS

SF-2

C14-84-346(RCT2)  
C14-84-346(RCT1)

SF-3

MILLRACE DR

SF-3

SF-2

BROOK VALLEY DR

SF-2

SF-3

BOULDER CREEK

SF-2

WHITEBROOK DR

SF-2

COOLBROOK DR

SF-2

CRYSTAL BROOK DR

SF-2