

RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

CASE: C14-04-0004.002(RCA) - Midtown Commons

P.C. DATE: July 28, 2015

ADDRESS: 7010-7020, 7200 Easy Wind Drive and 810 W St. Johns Avenue

DISTRICT AREA: 7

OWNER/APPLICANT: Midtown Commons Office Center, LLC (Greg Merage), Midtown Commons I Apartment Community, LLC (Greg Merage), Midtown Commons II Apartment Community (Greg Merage)

AGENT: Kane Russell Coleman & Logan PC (Raymond J. Kane)

REQUEST: To terminate a 2004 Restrictive Covenant as it applies to this property

SUMMARY STAFF RECOMMENDATION:

Staff recommends granting the termination of the 2004 Restrictive Covenant as it applies to this property.

PLANNING COMMISSION RECOMMENDATION:

July 28, 2015; *Approved a termination of the Restrictive Covenant as it applies to this property, as Staff recommended, by consent [J. Schissler / P. Seeger] (11-0).*

DEPARTMENT COMMENTS:

The subject properties (see Exhibit A) total approximately 14.10 acres of land that is located on the northwest corner of Lamar Boulevard and Airport Boulevard/the Capitol Metro Crestview Rail Station and are developed as part of a mixed use development that started construction in 2008 and includes residential, office, retail and restaurant uses in buildings of up to 3-stories with associated parking facilities. The development is accessible from Lamar Boulevard and has an internal street network. The properties of this case are subject to a Restrictive Covenant that accompanied a 2004 zoning change to the LI-PDA-NP combined zoning district (see Exhibit C). As it applies to the properties, the Restrictive Covenant limited the cumulative storage area for hazardous materials to 12.8 million cubic feet. As information, the Restrictive Covenant also applies to approximately 29.27 acres of adjacent property to the north and west.

In April of 2004, the subject properties were rezoned from limited industrial (LI) to limited industrial – planned development agreement – neighborhood plan (LI-PDA-NP) combining district as part of the Crestview/Wooten Combined Neighborhood Plan Area rezoning case (C14-04-0004.002). The PDA established permitted and prohibited uses as well as specific site development standards. Years later in 2008, the properties were re-zoned again to transit oriented development-neighborhood plan (TOD-NP) combining district as part of the Lamar Boulevard/Justin Lane TOD District Station Area Plan. The Station Area Regulating Plan establishes zoning, site development, and design regulations applicable to the properties. As guided by the TOD Regulating Plan, development has occurred on the properties and includes uses that are no longer compatible or appropriate with the uses that the Restrictive Covenant governs. Therefore, the Applicant has requested that the Restrictive Covenant be amended so that it no longer applies to the subject properties in this case. The overall goal of the

restrictive covenant amendment is to remove the potential for the 2004 Restrictive Covenant to be inconsistent with the TOD-NP zoning that applies to the property today. Staff supports the request and recommends that the Restrictive Covenant be amended as such.

ISSUES: None at this time.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	TOD-NP	Mixed Use – Apartments, Retail,
<i>North</i>	TOD-NP	Undeveloped land
<i>South</i>	TOD-NP	Vacant retail space, Car title loan company
<i>East</i>	TOD-NP	Furniture Store, Glass Company, Car Title Loan Company, Restaurant, Auto Repair
<i>West</i>	TOD-NP & SF-3	Undeveloped & Single-Family Residential

NEIGHBORHOOD PLANNING AREA: Crestview of the Crestview/Wooten Combined Neighborhood Plan

TIA: Not Applicable

WATERSHED: Waller Creek - Urban

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

COMMUNITY REGISTRY NAME	ID #
Crestview Neighborhood Assn.	93
Crestview NPCT	1263
Austin Independent School District	742
Lamar Blvd. / Justin Lane TOD Staff Liaison	1208
North Austin Neighborhood Alliance	283
Shoal Creek Conservancy	1497
Austin Neighborhoods Council	511
The Real Estate Council of Austin, Inc.	1236
Austin Heritage Tree Foundation	1340
Highland Neighborhood Association	223
Friends of Austin Neighborhoods	1530
Sierra Club, Austin Regional Group	1228
Friends of Emma Barrientos MACC	1447
SEL Texas	1363
Bike Austin	1528
Brentwood Neighborhood Association	120
Highland/Skyview Neigh. Plan Contact Team	1057
Brentwood Neighborhood Plan Contact Team	787

Sustainable Neighborhoods

1396

SCHOOLS: Brentwood Elementary, Lamar Middle, McCallum High

ORDINANCE READINGS: 1st

2nd

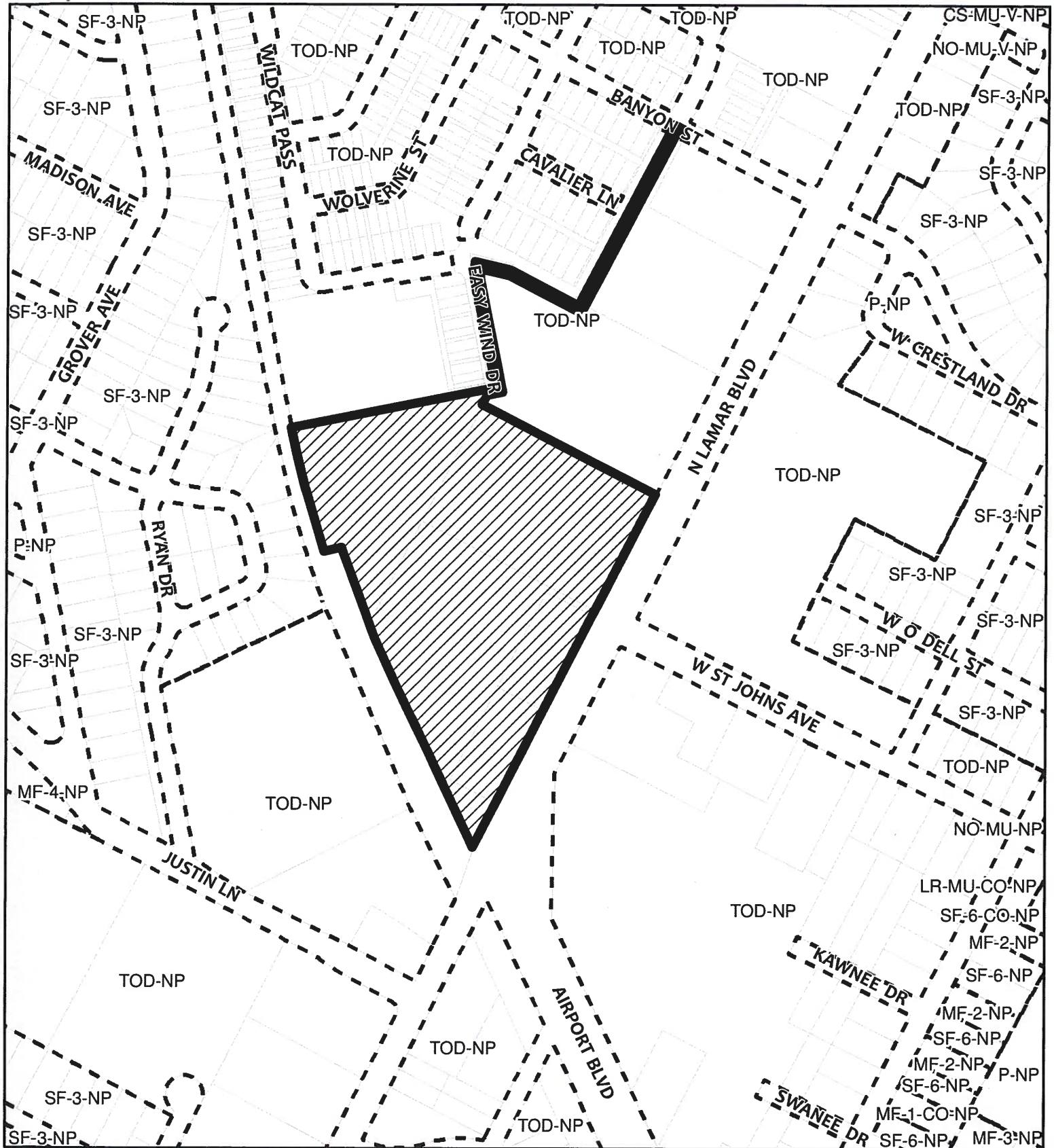
3rd

ORDINANCE NUMBER:

CASE MANAGER: Tori Haase

PHONE: 512-974-7691

EMAIL: tori.haase@austintexas.gov



RESTRICTIVE COVENANT AMENDMENT - *Exhibit A*

CASE#: C14-04-0004.002(RCA)
 LOCATION: 7010-7020 Easy Wind Drive,
 810 W. St. Johns Avenue
 SUBJECT AREA: 14.09 Acres
 MANAGER: TORI HAASE



Subject Property

1" = 400'

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.



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1' = 400'



Subject Property

RESTRICTIVE COVENANT AMENDMENT

Exhibit B

CASE#: C14-04-0004.002(RCA)
LOCATION: 7010-7020 Easy Wind Drive,
810 W. St. Johns Avenue

SUBJECT AREA: 14.09 Acres
MANAGER: TORI HAASE



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Zoning Case No. C14-04-0004

RESTRICTIVE COVENANT

OWNER: Huntsman Petrochemical Corporation, a Delaware corporation

ADDRESS: 7114 North Lamar Blvd., Austin, Texas 78752

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: Two tracts of land consisting of a 11.499 acre tract and a 31.887 acre tract, more or less, out of the George W. Spear League in Travis County, the tracts of land being more particularly described by metes and bounds in an instrument recorded in Volume 10701, Page 256, of the Real Property Records of Travis County, incorporated into this covenant, (7100-7400 North Lamar Blvd. and 7414 North Lamar Blvd.); and

The following described properties in the City of Austin, Travis County, Texas, recorded as shown, in the Plat Records of Travis County, Texas:

Lot 2A, Resubdivision of Lots 1 and 2, Northern Commercial Subdivision, Plat Book 32, Page 13 (7500 North Lamar Blvd.)

Lots 1-4, Block A, Northgate Addition, Plat Book 3, Page, 196 (7520-7524 North Lamar Blvd.)

Tracts 1 and 2, and Tract 3, Kivlin-Smith Subdivision, Plat Book 29, Page 43 (7526-7530 North Lamar Blvd and 907 Morrow St)

Lot 3, Northern Commercial Subdivision, Plat Book 9, Page 66 (810 Banyon St)

Lots 1-4, Northern Industrial Subdivision Section 1, Plat Book 8, Page 16 (904-910 Banyon St)

Lots 7-12, Block A, Resubdivision of Lots 21-23 Northgate Addition, Plat Book 4, Page 292 (1007-1019 Aggie Lane)

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. The cumulative storage area on the Property for a hazardous material defined in Chapter 14-3 of the Code may not exceed 12.8 million cubic feet.

4-15-04 * 50

Exhibit C

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 31st day of March, 2004.

OWNER:

Huntsman Petrochemical Corporation,
a Delaware corporation

By: Mike Meroney
Mike T. Meroney,
Agent

APPROVED AS TO FORM:

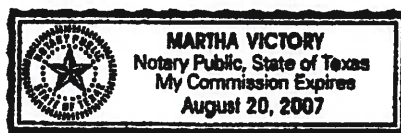
William J. Thomas
Assistant City Attorney
City of Austin

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 31st day of March, 2004,
by Mike T. Meroney of Huntsman Petrochemical Corporation, a Delaware corporation, on behalf
of the corporation.



Martha Victory
Notary Public Signature
MARTHA VICTORY
Printed name of notary
My commission expires 8/20/2007



After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Legal Assistant

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana Debeauvoir

2004 Apr 27 10:24 AM 2004078288

TORREZR \$18.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS

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.austintexas.gov/planning.

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: C14-04-0004.002(RCA)

Contact: Tori Haase, 512-974-7691

Public Hearing: Jul 28, 2015, Planning Commission

Sep 10, 2015, City Council

D. Dreyfus Leon
Your Name (please print)

☒ I am in favor
☐ I object

11000 Shady Hollow dr

Your address(es) affected by this application

Austin TX 78748

James P. Dreyfus

Signature

7-15-15

Date

Daytime Telephone: 512 680 3254

Comments:

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

City of Austin
Planning & Zoning Department
Tori Haase

P. O. Box 1088
Austin, TX 78767-8810

From: Mary Pustejovsky
Sent: Monday, July 27, 2015 9:12 AM
To: Haase, Victoria [Tori]
Subject: Re: case C14-04-0004.002 (RCA)

Hello

Thank you so much! That is very helpful. I am supportive of removing the RC as well.

Have a great day

Mary

On Mon, Jul 27, 2015 at 9:08 AM, Haase, Victoria [Tori] <Tori.Haase@austintexas.gov> wrote:

Ms. Pustejovsky,

Currently, the subject properties (14.10 acres) along with several other properties (29.27 acres) in the area of the Crestview Station, Mid-town commons development are subject to a 2004 restrictive covenant that placed a restriction on the property that limits the cumulative storage area for hazardous materials to 12.8 million cubic feet. This RC was put in place when the subject properties and additional acreage had limited industrial (LI) district zoning which allowed for such a use. However, the properties were rezoned in 2008 to TOD district zoning which no longer allows for the use of hazardous material storage. Therefore, the RC is no longer valid but remains as a legal agreement to the properties. The owners of the subject properties (totaling 14.10 acres) are requesting that their properties be removed from the RC.

Staff is supportive of the amendment to remove the properties from the RC. The citizens that I have spoken with in this area are supportive as well. Please let me know if you have any additional questions as I am happy to speak with you and address any concerns.

Kind regards,

Tori Haase

Planner

City of Austin – Planning & Development Review Department

505 Barton Springs Road, 5th Floor

Austin, Texas 78704

[512-974-7691](tel:512-974-7691)

www.austintexas.gov

From: Mary Pustejovsky [mailto:]
Sent: Friday, July 24, 2015 9:30 PM
To: Haase, Victoria [Tori]
Subject: case C14-04-0004.002 (RCA)

Hello

I received a notification about the case in the subject line of my email. I went to the website to look up the supporting materials and all the documents seem to be lists of the people who were notified but no real information about what change is being requested. Could you please provide me with details on what the change to the restrictive covenant is?

Thank you

Mary Pustejovsky

7325 Wolverine Dr