

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-98-0146(RCT)

(6610 McNeil Drive Termination of Restrictive Covenant)

Z.A.P. DATE: October 3, 2017

October 17, 2017

ADDRESS: 6610 McNeil Drive/12602 Blackfoot Trail

DISTRICT AREA: 6

OWNER/APPLICANT: Abraham Birgani

AGENT: Shaw Hamilton Consultants (Shaw Hamilton)

EXISTING ZONING: SF-2, LR-CO

AREA: 0.57 acres

SUMMARY STAFF RECOMMENDATION:

The staff recommends the applicant's request for a restrictive covenant termination.

ZONING AND PLATTING COMMISSION RECOMMENDATION:

10/03/17: Postponed to October 17, 2017 by the Zoning and Platting Commission on consent (9-0, S. Lavani and S. Trinh-absent); B. Greenberg-1st, A. Aguirre-2nd.

10/17/17: Approved the staff's recommendation for a restrictive covenant termination (6-2, D. Breithaupt, Y. Flores and S. Trinh-absent; D. King, J. Kiobassa-No); B. Evans-1st, S. Lavani-2nd.

DEPARTMENT COMMENTS:

The applicant is requesting to terminate/remove a restrictive covenant associated with zoning case C14-98-0146 as it applies to the property located at front/north 64 feet of Lot 2 of the Indian Oaks 2 Subdivision (identified in zoning Ordinance No. 990722-46 as Tract 2). This public restrictive covenant contains language that requires a six foot high wooden fence, limited hours of operation, prohibition of massage parlors, commercial waste pickup from McNeil Road and the installation of nine replacement trees on the property. The applicant would like to delete these conditions that were put in place in 1998 and tied to the deed as he is seeking a rezoning of the property to redevelop the site.

The staff is recommending the applicant's request to terminate this restrictive covenant. The property in question is currently developed with a vacant commercial structure and adjoining single family residence. The site is surrounded by single family residential uses to the north and east and a day care use to the west. The tracts of land to the south, across McNeil Drive, are undeveloped. In 1999, this property was rezoned from SF-1 to SF-2 (Tract 1) and SF-1 to LR-CO (Tract 2) through zoning case C14-98-0146. The applicant is currently requesting a rezoning of this lot to CS-MU, General Commercial Services-Mixed Use Combining district, through zoning case C14-2017-0042. The staff has recommended LR-MU zoning for the entire property because it will create a transition in the intensity of uses away from McNeil Drive to the north and will permit low intensity commercial, office and civic uses that will provide services for residential development to the north and east of the site. The staff is also recommending the deletion of the conditions in this public restrictive covenant

as they are not consistent with the staff's recommendation for the rezoning and would inhibit the future redevelopment of the property.

The applicant agrees with the staff's recommendation in this case.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	LR-CO, SF-2	Vacant Commercial Building, Single Family Residence
<i>North</i>	SF-2	Single Family Residences
<i>South</i>	LI	Undeveloped
<i>East</i>	SF-1	Single Family Residences
<i>West</i>	RR	Day Care (Stepping Stone School)

AREA STUDY: N/A

TIA: N/A

WATERSHED: Rattan Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: N/A

HILL COUNTRY ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

Austin Heritage Tree Foundation
 Bike Austin
 Friends of Austin Neighborhoods
 Homeless Neighborhood Association
 Indian Oaks Neighborhood Association
 Northwest Austin Coalition
 SELTEXAS
 Sierra Club, Austin Regional Group
 TNR BCP-Travis County Natural Resources

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-2017-0042 (12602 Blackfoot Trail)	LR-CO, SF-2 to CS-1-MU* *On May 16, 2017, the applicant submitted a letter amending the rezoning request to CS- MU.	8/15/17: Approved maintaining SF-2 zoning for the existing Tract 1 and GR-MU-CO zoning for the existing Tract 2, with the following conditions for Tract 2: 1) Prohibit Alternative Financial Services, Automotive Washing (of any type), Bail Bond Services, Drop-Off Recycling Collection Facility, Medical Office-exceeding 5,000 sq. ft. gross floor area, Medical Offices-not exceeding 5,000 sq. ft. gross floor area, Outdoor	8/03/17: Postponed to August 31, 2017 at the staff's request by consent (11-0); D. Garza-1 st , G. Casar-2 nd . 8/31/17: Postponed to October 5, 2017 at the request of the applicant on Council Member Renteria's motion, Council Member Troxclair's second on an 11-0 vote. 10/05/17: Pending

		Entertainment, Pawn Shop Services, Service Station, Congregate Living, Guidance Services, Hospital Services (General), Hospital Services (Limited), Residential Treatment and Drive-In Services and 2) maintain the condition from Ordinance No. 9907722-46 that, "Pedestrian and vehicular traffic associated with a non-residential use on the Property may not access Blackfoot Trail." (7-0, D. Breithaupt, B. Evans, S. Lavani and S. Trinh-absent); J. Duncan-1 st , A. Aguirre-2 nd .	
C14-2016-0123 (6914 McNeil Dr.)	I-RR to GR	1/17/17: Approved staff's recommendation of GR-CO zoning, with CO to prohibit with additional conditions to prohibit Automotive Rentals Automotive Repair Services Automotive Sales, Automotive Washing (of any type), Bail Bond Services, Commercial Off-Street Parking, Drop Off Recycling Facility, Exterminating Services, Funeral Services, Pawn Shop Services Research Services, Service Station, with additional conditions to prohibit Hospital Services, Alternative Financial Services, and Drive-In Services uses and to include a public restrictive covenant to require the installation of sidewalks and sidewalk improvements (8-2, J. Kiolbassa, B. Greenberg-No; D. Breithaupt-absent); S. Harris-1 st , B. Evans-2 nd .	1/26/17 : Approved Zoning and Platting Commission's recommendation of GR-CO zoning, with conditions, on 1 st reading on consent (11-0); D. Garza-1 st , P. Renteria-2 nd .
C14-2015-0136 (6914 McNeil Dr.)	I-RR to GR	11/17/15: Postponed at the applicant's request to December 15, 2015 (10-0); A. Denkler-2 nd , B. Evans-2 nd . 12/15/16: Postponed at the applicant's request to January 5, 2016 (7-0, D. Breithaupt, Y. Flores, S. Harris-absent); B. Evans-1 st , S. Lavani-2 nd .	12/10/15: Postponed to February 11, 2016 at the staff's request (10-0, S. Adler-absent) 02/11/16: Postponed indefinitely at the request of the applicant (11-0); L. Pool-1 st , D. Zimmerman-2 nd .

		<p>01/05/16: Postponed at the applicant's request to January 19, 2016 (8-0, S. Lavani-absent, J. Goodman-arrived late); T. Webber-1st, A. Denkler-2nd.</p> <p>01/19/16: Postponed at the applicant's request to February 2, 2016 (10-0); T. Webber-1st, S. Lavani-2nd.</p> <p>02/02/16: Approved applicant's request for an indefinite postponement (10-0); J. Goodman-1st, J. Kiolbassa-2nd.</p> <p>Case expired on July 31, 2016 in accordance with LDC Section 25-2-246(A)(2).</p>	
C14-2012-0099 (Myers Zoning Change: 6810 McNeil Drive)	I-SF-2 to ES GR	<p>11/06/12: Approved GR-CO zoning (6-0, G. Rojas-absent); P. Seeger-1st, J. Meeker-2nd, with the following conditions 1) Limit the development intensity for the site to less than 2,000 vehicle trips per day, 2) Prohibit the following uses as offered by the applicant: Automotive Repair Services, Automotive Washing (of any kind), Bail Bond Services, Commercial Off-Street Parking, Drop-Off Recycling Collection Facility, Exterminating Services, Food Sales, Funeral Services, Hotel/Motel, Indoor Entertainment, Indoor Sports and Recreation, Off-Site Accessory Parking, Outdoor Entertainment, Outdoor Sports and Recreation, Plant Nursery, Theater, Custom Manufacturing, College and University Facilities, Communication Service Facilities, Community Recreation (Private & Public), Counseling Services, Guidance Services, Hospital Services (General), Hospital Services (Limited), Local Utility Services, Private Primary Educational Facilities. Private</p>	<p>11/08/12: Approved GR-CO zoning on consent on 1st reading (6-0, S. Cole-off dais); L. Morrison-1st, M. Martinez-2nd.</p> <p>12/13/12: Approved GR-CO zoning on consent on 2nd/3rd readings (7-0), L. Morrison-1st, B. Spelman-2nd.</p>

		<p>Secondary Educational Facilities, Public Primary Educational Facilities, Residential Treatment, Safety Services; 3) Add Automotive Sales and Service Station as prohibited uses.</p> <p>4) Prohibit/restrict hours of operation between 12:00 a.m. and 6:00 a.m.</p>	
C14-2008-0098 (12205 Pecan Street)	SF-3 to LI	7/01/08: Approved staff's rec. of LI-CO zoning, with added condition to prohibit Adult Oriented Businesses, by consent (6-0, J. Martinez, K. Jackson-absent) T. Rabago-1 st , J. Shieh-2 nd .	8/07/08: Approved LI-CO district zoning, with the following conditions: 2,000 vtpdl, prohibit Adult Oriented Businesses and 35-feet of right-of-way should be dedicated from the centerline of Pecan Street through a street deed, by consent (7-0); B. McCracken-1 st , S. Cole-2 nd .
C14-2008-0095 (Jekel Rezoning: 12214 Jekel Circle)	SF-3 to LI	7/01/08: Approved staff's recommendation of LI-CO zoning, with added condition to prohibit Adult Oriented Businesses, by consent (6-0, J. Martinez, K. Jackson-absent) T. Rabago-1 st , J. Shieh-2 nd .	8/07/08: Approved LI-CO district zoning, with the following conditions: 2,000 vtpdl, prohibit Adult Oriented Businesses and 35-feet of right-of-way should be dedicated from the centerline of Jekel Circle through a street deed, by consent (7-0); B. McCracken-1 st , S. Cole-2 nd .
C14-2008-0069 (IABA Phase-1: 12460 Los Indios Trail)	I-RR to MF-3	6/17/08: Approved SF-6-CO district zoning with conditions of: Restricting to no duplexes, multi-family, town homes or condominiums; Maximum of 30 units; 25' undisturbed vegetative setback and a 50' building setback from the northern property line; 300 vehicle trips per day; Commissioner Keith Jackson's motion, Commissioner Joseph Martinez second the motion on a vote of 8-0; with 1 vacancy on this commission.	<p>7/24/08: Approved the ZAP Commission's rec. of SF-6-CO zoning, with restrictions as follows: no attached single family dwellings and 35' height limitation with exceptions allowed under the Code up to 40'. The parking will be agreed upon by involved parties. (7-0); Council Member Cole-1st, Council Member Martinez-2nd; 1st reading</p> <p>7/23/09: Approved SF-6-CO zoning on consent on 2nd/3rd readings (7-0); Morrison-1st, Martinez-2nd.</p>
C14-03-0107 (Los Indios Lift Station: 12507 Oro Valley Trail)	SF-4A to P	8/26/03: Approved staff's recommendation of 'P' zoning by consent (8-0, K. Jackson-absent); J. Martinez-1 st , J. Gohil-2 nd .	9/25/03: Granted 'P' (7-0); all 3 readings
C14-03-0074 (Gateway Community	SF-6-CO to GO	6/3/03: Approved GO-CO zoning, with the following conditions:	7/17/03: Granted GO-CO; prohibiting vehicle access to Lobelia Dr. (7-0); all 3 readings

Church: 7014 McNeil Drive)		<p>1) Limit the development intensity on the site to less than 2,000 vehicle trips per day.</p> <p>2) Allow GO, General Office district, zoning height (60 feet) and impervious cover (80%) standards. Limit all other site development regulations to LO, Limited Office district, zoning standards.</p> <p>3) Permit LO district uses (prohibit the following GO district uses): Business or Trade School, Business Support Services, College and University Facilities, Congregate Living, Hospital Services (General), Hospital Services (Limited), Private Secondary Education Facilities, Off-Site Accessory Parking, Personal Services, Restaurant (Limited);</p> <p>4) Provide a 25-foot setback (buffer zone) from the North property line for the area that is zoned SF-1.</p> <p>5) Provide a 25-foot setback from the East property line for the area that is zoned SF-1 and the lot zoned SF-2.</p>	
C14-03-0059 (McNeil Deal: 6917 McNeil Drive)	SF-3 to CS	<p>5/6/03: Approved staff's rec. of CS-CO zoning with condition to prohibit the following uses:</p> <ul style="list-style-type: none"> • Drop-off Recycling Collection Facility • Scrap and Salvage • Convenience Storage • Pawnshop Services <p>(8-0, K. Jackson-absent)</p>	6/5/03: Approved CS-CO (7-0); all 3 readings
C14-00-2218 (6514 McNeil Drive)	I-RR to GO	2/13/01: Approved staff rec. of GO-CO by consent (9-0)	3/22/01: Approved GO-CO zoning, with the following conditions: 660 vehicle trip limit and 40 foot height limit (7-0); all 3 readings
C14-99-0095	SF-3 to CS	6/29/99: Approved staff's alternate rec. of CS-CO (8-0)	7/29/99: Approved PC rec. of CS-CO (6-0); all 3 readings

RELATED CASES: C14-2017-0042 (Current Zoning Case)
 SP-99-2171C (Site Plan Case)
 C14-98-0146 (Previous Zoning Case)

ABUTTING STREETS:

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
McNeil Drive	100 ft	60 ft	MAD 4	No	No	No
Blackfoot Trail	60 ft	40 ft	Neighborhood Collector	Yes – Eastern Side Only	No	No

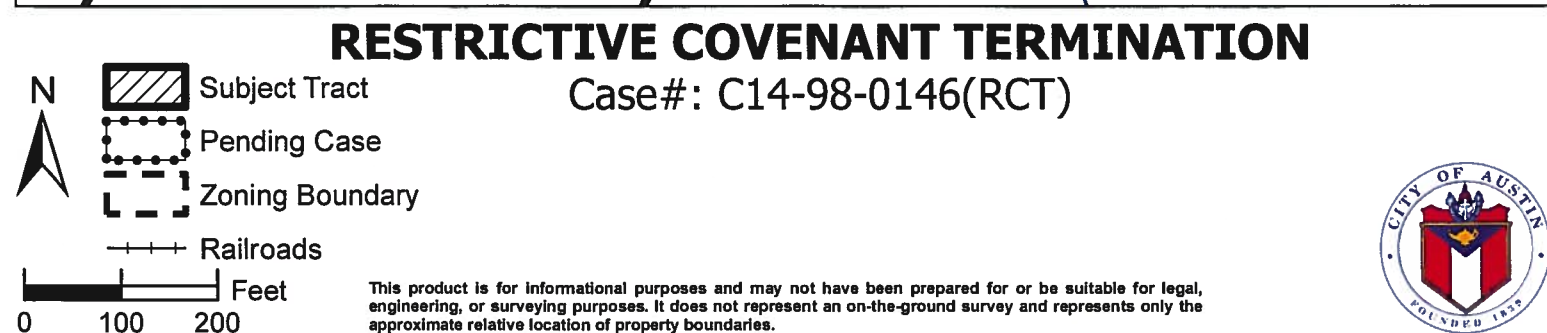
CITY COUNCIL DATE: November 2, 2017

ACTION: This item was postponed to December 7, 2017 at the request of staff on Council Member Pool's motion, Council Member Flannigan's second on a 9-0 vote. Council Members Casar and Garza were off the dais.

December 7, 2017

ACTION:**CASE MANAGER:** Sherri Sirwaitis

PHONE: 512-974-3057,
sherri.sirwaitis@austintexas.gov



Case#: C14-98-0146(RCT)



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Created: 8/23/2017



Zoning Case No. C14-98-0146

RESTRICTIVE COVENANT

OWNER(S) ABRAHAM BIRGANI
ADDRESS. 12602 Blackfoot Trail, Austin, Texas
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: Lot 2, less the north 64 feet of Lot 2, Indian Oaks 2 Subdivision, a subdivision in the City of Austin, Williamson County, Texas, according to the map or plat of record in Cabinet J, Slide 264, of the Official Records of Williamson County, Texas,

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 Owner shall provide a six foot high wooden fence that begins at the corner of the business structure attached to the house, go east towards Blackfoot Trail, then south towards McNeil Road
- 2 The hours of operation for any business located on the Property is restricted as follows.
Monday through Friday from 8:00 a.m. to 8:00 p.m.
Saturday from 8:00 a.m. to 12:00 p.m.
Sunday, closed for business
- 3 Massage parlor establishments are prohibited as a use of the Property
- 4 Commercial waste pick-up services shall be from McNeil Road.
- 5 Owner shall provide and install nine replacement trees on the Property
- 6 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.
- 7 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

8. 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.
9. 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.

9. 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.

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

EXECUTED this the 22 day of July, 1999.

OWNERS: ABRAHAM BIRGANI

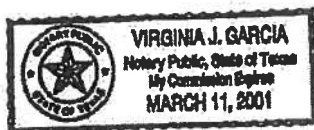
APPROVED AS TO FORM:

Michael Thomas
Assistant City Attorney
City of Austin

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 22nd day of July 1999, by ABRAHAM BIRGANI.



Virginia A. Gonzalez
Notary Public, State of Texas
exp. 3-11-2001

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Nancy E Rister

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