



Zoning
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: Z-11
AGENDA DATE: Thu 09/02/2004
PAGE: 1 of 1

SUBJECT: C14-04-0060 - Walgreens - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 2409 South Lamar Boulevard and 0 Bluebonnet Lane (2.18 acres out of the Isaac Decker League and also being a portion of Lots 4 and 6, Theodore Low Heights, a subdivision of record in Travis County, Texas) (West Bouldin Creek Watershed) from family residence (SF-3) district zoning and general commercial services (CS) district zoning to neighborhood commercial (LR) district zoning for Tract 1 and limited office (LO) district zoning for Tract 2. Zoning and Platting Commission Recommendation: To grant neighborhood commercial-conditional overlay (LR-CO) combining district zoning for Tract 1 and limited office-conditional overlay (LO-CO) combining district zoning for Tract 2, with conditions. Applicant: Gene Charlesworth Payne. Agent: Drenner Stuart Wolff Metcalfe von Kreisler, LLP (Michele Haussmann). City Staff: Wendy Walsh, 974-7719.

REQUESTING Neighborhood Planning
DEPARTMENT: and Zoning

DIRECTOR'S
AUTHORIZATION: Greg Guernsey

ZONING CHANGE REVIEW SHEET

CASE: C14-04-0060

Z.P.C. DATE: June 1, 2004
June 15, 2004

ADDRESS: 2409 South Lamar Boulevard and 0 Bluebonnet Lane

OWNER / APPLICANT: Gene Charlesworth Payne **AGENT:** Drenner Stuart Wolff Metcalfe
von Kreisler, LLP
(Michele Haussmann)

ZONING FROM: CS; SF-3

TO: LR for Tract 1; **AREA:** 2.180 acres
LO for Tract 2

SUMMARY STAFF RECOMMENDATION:

The staff's recommendation is to grant neighborhood commercial – conditional overlay (LR-CO) combining district zoning for Tract 1 and limited office – conditional overlay (LO-CO) combining district zoning for Tract 2. The Conditional Overlay includes all recommendations listed in the Neighborhood Traffic Analysis memorandum, dated June 9, 2004, as provided in Attachment A.

*****SUMMARY STAFF RECOMMENDATION (Amended 6-24-04)***:**

The staff's recommendation is to grant neighborhood commercial (LR) district zoning for Tract 1 and limited office (LO) district zoning for Tract 2.

The Restrictive Covenant includes all recommendations listed in the Neighborhood Traffic Analysis memorandum, dated June 9, 2004, as provided in Attachment A.

ZONING & PLATTING COMMISSION RECOMMENDATION:

June 1, 2004: *POSTPONED TO 06/15/04 (APPLICANT)*
[J.M; J.D 2ND] (8-0) J.P – ABSENT

June 15, 2004: *APPROVED STAFF'S RECOMMENDATION FOR LR-CO (TRACT 1); LO-CO (TRACT 2).*
[J.M; J.D 2ND] (8-0) K.J – LEFT EARLY

**COMMISSION RECOMMENDS ROADWAY IMPROVEMENTS, BUT TO LEAVE THESE IMPROVEMENTS TO THE DISCRETION OF COUNCIL.*

ISSUES:

There is a signed agreement outlining the owner's desire to post fiscal for and pay 100% of road improvements and signal modifications on Bluebonnet Lane and Lamar Boulevard. In addition, the owner will not seek a certificate of occupancy for the proposed project until the construction and signal modifications are completed. Please refer to the letter and agreement provided at the back of the staff report.

Staff has determined that the Neighborhood Traffic Analysis is best handled in the form of a public Restrictive Covenant, rather than a Conditional Overlay. The amended Staff Recommendation reflects this change.

The applicant is in agreement with the staff alternate recommendation. The applicant has met with the South Lamar Neighborhood Association and the President of the Austin Neighborhoods Council to discuss the proposed rezoning and redevelopment of the property.

DEPARTMENT COMMENTS:

The subject property is developed with a portion of a mobile home park and zoned commercial services (CS) and family residence (SF-3) districts. Access is taken from South Lamar Boulevard, an arterial, and Bluebonnet Lane, a collector street. The surrounding area may generally be characterized by retail and commercial service development along Lamar (CS), and single family residences in close proximity to the east (MF-2; SF-3). Please refer to Exhibits A (Zoning Map) and A-1 (Aerial View).

The applicant proposes to create two zoning tracts as the first step in developing a freestanding general retail sales (convenience) use (more commonly known as a drugstore) with a drive-through pharmacy service. Tract 1, located closest to Lamar Boulevard, represents the building footprint and is proposed for neighborhood commercial (LR) district zoning. Tract 2, consists of the surrounding parking and driveways, and is proposed for limited office (LO) district zoning. The applicant's conceptual site plan, as illustrated in Exhibit B, provides for one driveway access to Lamar Boulevard and one to Bluebonnet.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS; SF-3	Mobile home park
<i>North</i>	CS; SF-3; LO	Automobile sales and repair; Restaurant; Auto washing
<i>South</i>	CS; LO-CO	Retail sales; Restaurant; Offices; Undeveloped; Parking area
<i>East</i>	SF-3; MF-2; SF-6	Mobile home park; Undeveloped; Single family residences
<i>West</i>	CS; SF-3; LO; LR-MU-CO; NO	Boot repair; Retail sales; Offices

AREA STUDY: N/A

TIA: A Neighborhood Traffic Analysis is provided as Attachment A

WATERSHED: West Bouldin Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

107 – Zilker Neighborhood Association

428 – Barton Springs / Edwards Aquifer Conservation District

498 – South Central Coalition

926 – South Lamar Neighborhood Association

511 – Austin Neighborhoods Council

943 – Save Our Springs Alliance

SCHOOLS:

Galindo Elementary School

Porter Middle School

Travis High School

CASE HISTORIES:

NUMBER	REQUEST	ZONING AND PLATTING COMMISSION / PLANNING COMMISSION	CITY COUNCIL
C14-03-0078	LO to LR-MU	To Grant LR-MU-CO with additional conditions	Approved LR-MU-CO with CO for list of prohibited and conditional uses; prohibit loading and unloading activities onto Montclair Street. (7-31-03)
C14-02-0189	SF-3 to GR	To Grant GR-CO with list of prohibited uses	Approved GR-CO with CO for automotive sales, repair & washing, pawn shops, service station, kennels, funeral services, drop-off recycling, exterminating services, food sales & residential treatment; drive-in service prohibited as an accessory use; limited to 715 trips. Also r-o-w dedication of 5-6' along Bluebonnet Lane. (7-28-03)
C14-90-0080	SF-3 to commercial parking lot	To Grant LO-CO	Approved LO-CO with CO prohibiting access to Del Curto; maximum FAR of 0.11 to 1; only allow for admin / business offices, parking as accessory to the primary use of a restaurant. (2-28-91)

RELATED CASES:

The rezoning area comprises a portion of a 2003 rezoning case, which was originally submitted for 4.05 acres and also known as Walgreens (C14-03-0068). The rezoning application was from SF-3 to GR. The staff recommended LR-CO zoning with conditions of the Neighborhood Traffic Analysis. The Zoning and Platting Commission approved the staff's alternate recommendation of LR-CO with additional conditions of reducing the zoning area to 1.301 acres, and requiring right-of-way

dedication on Bluebonnet Lane. The City Council denied the applicant's request for GR zoning on July 17, 2003.

There are no current subdivision or site plan applications currently being reviewed by the City of Austin at this time.

ABUTTING STREETS:

STREET	RIGHT-OF-WAY	PAVEMENT WIDTH	CLASSIFICATION	DAILY TRAFFIC
Bluebonnet Lane	Varies	20 feet	Collector	N/A
Lamar Boulevard	Varies	60 feet	Arterial	N/A

- There are no existing sidewalks along Bluebonnet Lane.
- There are existing sidewalks along Lamar Boulevard.
- Bluebonnet Lane is classified in the Bicycle Plan as a Priority 1 bike route.
- Capital Metro bus service is available along Lamar Boulevard. (Route #12)

CITY COUNCIL DATE: July 29, 2004

ACTION: Approved a postponement request by the Applicant – 1st Request – to August 12, 2004 (7-0)

August 12, 2004

Approved a postponement request by the Neighborhood – 1st Request – to September 2, 2004

September 2, 2004

ORDINANCE READINGS: 1st

2nd

3rd

ORDINANCE NUMBER:

CASE MANAGER: Wendy Walsh
e-mail: wendy.walsh@ci.austin.tx.us

PHONE: 974-7719



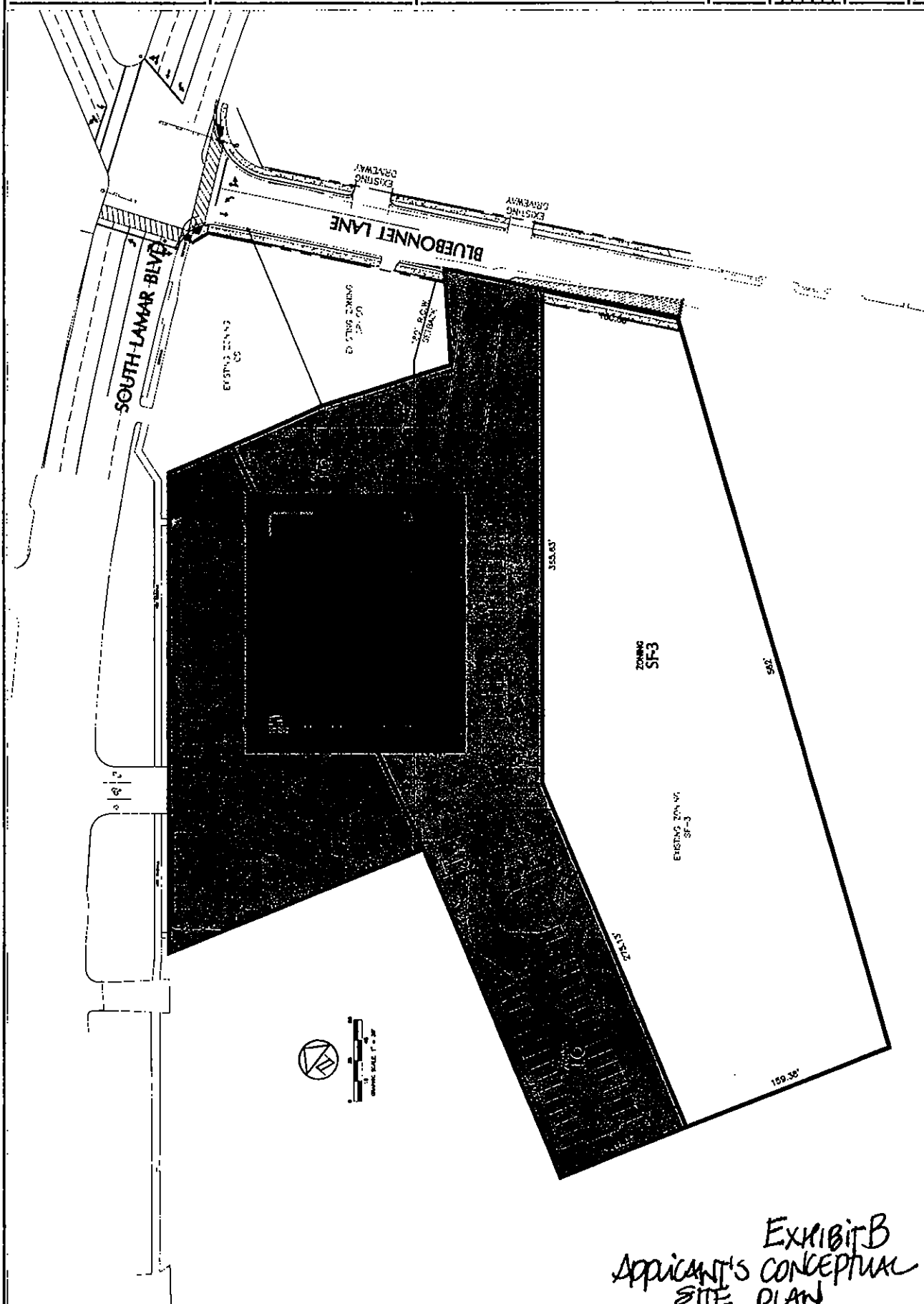


EXHIBIT B
 APPLICANT'S CONCEPTUAL
 SITE PLAN



MEMORANDUM

TO: Wendy Walsh, Case Manager
CC: Members of the City Council
Michele Haussmann, Drenner Stuart Wolff Metcalfe von Kreisler, LLP
FROM: Emily Barron, Transportation Planner
DATE: July 26, 2004
SUBJECT: Neighborhood Traffic Analysis for Bluebonnet Lane
Zoning Case # C14-04-0060 Walgreen's

The transportation section has performed a Neighborhood Traffic Impact Analysis for the above referenced case and offers the following comments.

The 2.18-acre tract is located in south Austin at the intersection of South Lamar Boulevard and Bluebonnet Lane. The site is currently zoned Single Family Residence (SF-3) and the existing use is a mobile home park. The site is surrounded by predominantly commercial uses to the west, single family to the north and multi family and limited office to the south and east. The zoning request is for Neighborhood Commercial (LR) and Limited Office (LO). In order to get a more accurate analysis of the impact of the site on Bluebonnet, the neighborhood traffic analysis incorporates the entire site that will consist of the pharmacy with drive-thru, high turn over restaurant and 20 mobile home dwelling units.

Roadways

The tract proposes access to Lamar Boulevard and Bluebonnet Lane.

Lamar Boulevard is classified as a four lane divided major arterial and would provide the main access to the site. The roadway currently has 120 feet of right-of-way and 60 feet of pavement. Lamar Boulevard is in the bicycle plan as a Priority 2 route from Bluebonnet Lane to Manchaca Road.

Bluebonnet Lane abuts the northeastern portion of the site and is proposed as the main access point for service vehicles. Bluebonnet Lane is classified as a residential collector street with variable right-of-way and 20 feet of pavement. Bluebonnet Lane is classified as a Priority 1 route in the Bicycle Plan. Under Section 25-6-114 of the Land Development Code, the portion of Bluebonnet Lane from Lamar Boulevard to Del Curto Road is classified as a residential collector street because at least 50 percent of its frontage is zoned for SF-5 or more restrictive uses.

Trip Generation and Traffic Analysis

Based on the Institute of Transportation Engineer's publication Trip Generation, the proposed 14,550 square foot pharmacy with drive through development will generate 1,283 vehicle trips per day. A 49% pass-by trip reduction has been assumed for this use. Therefore, the adjusted trip generation is 655 vehicles per day. There will also be an addition of 350sf to the existing high turn over restaurant for a total of 4,000sf. The total trip generation for this use is 521 vehicles per day however only 46 of those trips will be new to the roadway network. The remaining 475 vehicles per day is included in the existing traffic shown in Table 3. A 43% pass-by trip reduction was assumed for the high turn over restaurant in accordance with the ITE Publication. This information is provided in Table 1.

Table 1.				
Land Use	Size	Unadjusted Trip Generation	Pass-by reduction %	Adjusted Trip Generation
Pharmacy with drive-through	14,550sf	1,283	49%	655
High Turnover Restaurant	350sf expansion	46	43%	26
TOTAL		1,330		681

Table 2 represents the expected distribution of the 681 trips:

Table 2.	
Street	Traffic Distribution by Percent
Lamar Boulevard	70%
Bluebonnet Lane	30%
TOTAL	100%

Table 3 represents a breakdown of existing traffic on Lamar Boulevard and Bluebonnet Lane, proposed site traffic, total traffic after development and percentage increase in traffic on Lamar Boulevard and Bluebonnet Lane. It should be noted that in order to account for the new driveway proposed onto Bluebonnet a portion of the existing traffic generated by the High Turn Over Restaurant is assumed to now access Bluebonnet Lane. In addition to the site traffic 20 existing mobile homes, located to the east of this site, will have access to Bluebonnet through this site. A portion of this existing traffic generated by the mobile home park is assumed to also take access to Bluebonnet. In order to provide a more conservative analysis no traffic was assumed to be removed from Lamar.

Table 3.				
Street	Existing Traffic (vpd)	Proposed New Site Traffic to each Roadway	Overall Traffic	Percentage Increase in Traffic
Lamar Boulevard	39,534	474	40,008	1%
Bluebonnet Lane (east)	1,921	397	2,318	17%

Of the site traffic to Bluebonnet it is assumed that approximately 357vpd will turn left to access Lamar and 40vpd will turn right to access Del Curto. This will increase the traffic from the site driveway west to Lamar Boulevard approximately 15% and 2% from the site driveway east to Del Curto.

According to Section 25-6-116 of the Land Development Code, streets which are less than 30 feet in width are considered to be operating at an undesirable traffic level if the average daily traffic volume for such roadways exceeds 1,200 vehicles per day. Currently, Bluebonnet Lane operates at an undesirable level. By widening Bluebonnet Lane as proposed in Recommendation 2 the desirable operating level for Bluebonnet from the site driveway to Lamar Boulevard will increase to 4,000vpd and would operate at acceptable levels for this portion of the roadway.

Recommendations/Conclusions

1. In order to mitigate the site impact on the surrounding roadway the applicant has proposed the following improvements to Bluebonnet Lane. The fiscal for these improvements is required to be posted prior to 3rd Reading of the zoning ordinance at City Council.

Intersection	Improvement	Cost	Pro Rata Share
Bluebonnet Lane and Lamar Boulevard	Signal modifications including design and construction (above and below ground)	\$55,000	4% / \$2,200

2. Traffic on Bluebonnet Lane will increase by 17% with the addition of this proposed site and existing traffic, which will now have access to Bluebonnet. The majority of this traffic will travel west to Lamar Boulevard. In addition to the signal modifications listed above fiscal is required to be posted for the following improvements prior to final approval of the site plan:

Intersection/Street	Improvement
Bluebonnet Lane (east)*	Installation of sidewalks along both sides of Bluebonnet Lane for the length of the upgrade on Bluebonnet Lane
	Increase the pavement width from 20' to 40' from Lamar Boulevard to the site driveway; the street will then be transitioned east from the site driveway to the existing pavement width.
Bluebonnet Lane (west)*	Restriping Bluebonnet west of Lamar to match the eastbound striping with the new westbound striping pattern (an exclusive left-turn lane and a shared through/right-turn lane).
Bluebonnet Lane (east) @ Lamar Boulevard*	Provide for 1 EB lane, 1 WB left turn lane and 1 WB shared through/right turn lane
Lamar Boulevard	Remove on street parking to improve sight distance and overall safety along Lamar Boulevard.

* See attached schematic of proposed improvements

The fiscal requirement for these improvements will not exceed 17% of the total cost. This percentage is the amount of site traffic that is assumed to access Bluebonnet Lane as shown in Table 3.

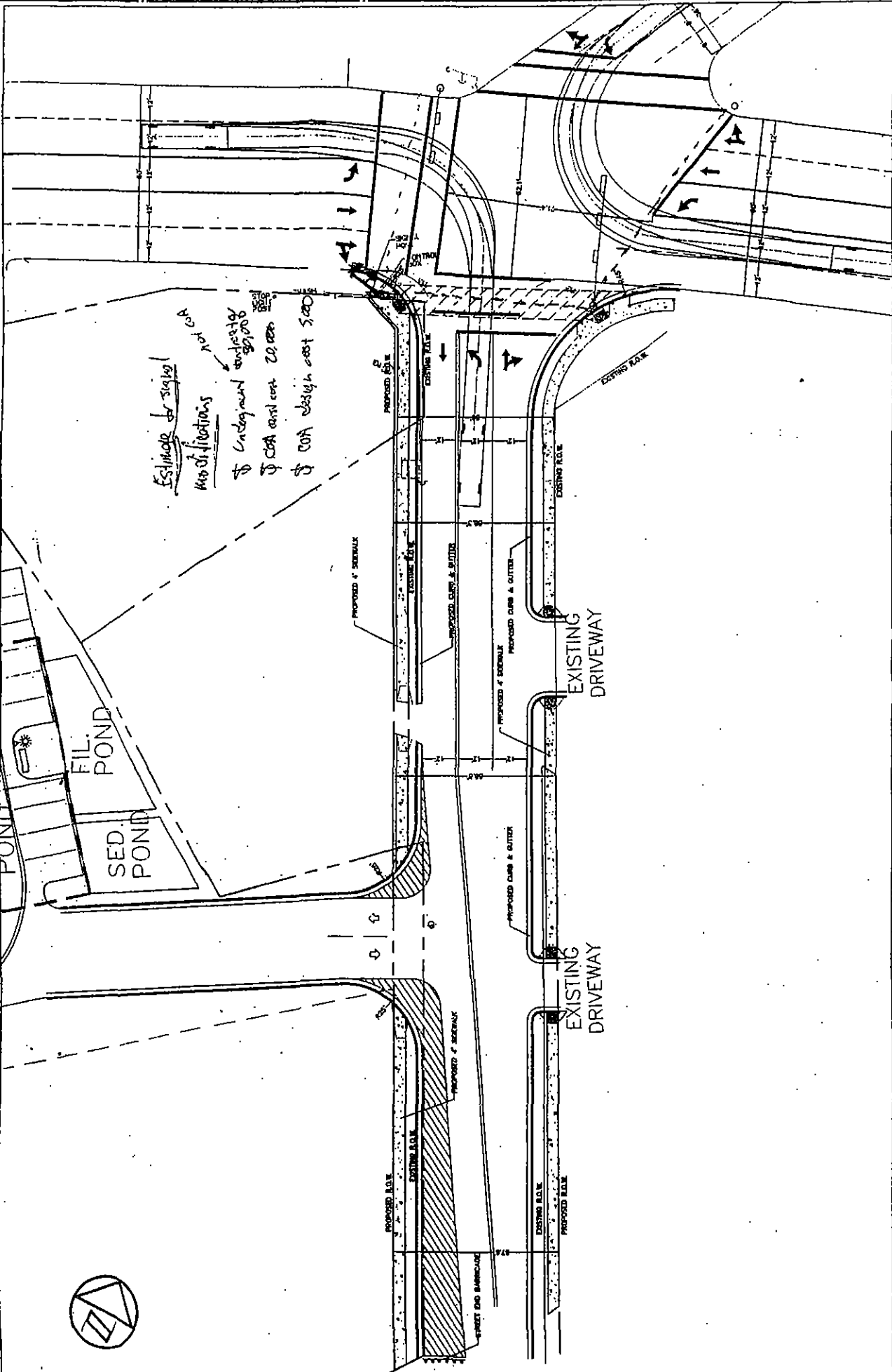
3. No access to Bluebonnet Lane shall be permitted until Bluebonnet Lane has been upgraded to 56' of right-of-way and 36' of pavement from the intersection of Lamar Boulevard to the southern site property line on Bluebonnet Lane.

4. City Council may approve this site if the Council determines that the applicant has satisfactorily mitigated adverse traffic effects, or that the additional traffic from a project has an insignificant effect on the residential street.
5. In order to minimize traffic on surrounding streets, the intensity and uses for this rezoning should be limited to less than 1,283 unadjusted vehicle trips per day. The proposed development plan for the tract requesting rezoning does not exceed 1,283 vehicle trips. Development of this property should also be limited to uses and intensities, which will not exceed or vary from the projected traffic conditions assumed in this neighborhood traffic analysis including traffic distribution, roadway conditions, and other traffic related characteristics.

If you have any questions or require additional information, please contact me 974-2788.



Emily M. Barron
Planner - Transportation Review
Watershed Protection and Development Review Department



SUMMARY STAFF RECOMMENDATION:

The staff's recommendation is to grant neighborhood commercial – conditional overlay (LR-CO) combining district zoning for Tract 1 and limited office – conditional overlay (LO-CO) combining district zoning for Tract 2. The Conditional Overlay includes all recommendations listed in the Neighborhood Traffic Analysis memorandum, dated July 19, 2004, as provided in Attachment A.

BACKGROUND

The subject property is developed with a portion of a mobile home park and zoned commercial services (CS) and family residence (SF-3) districts. Access is taken from South Lamar Boulevard, an arterial, and Bluebonnet Lane, a collector street. The surrounding area may generally be characterized by retail and commercial service development along Lamar (CS), and single family residences in close proximity to the east (MF-2; SF-3).

The applicant proposes to create two zoning tracts as the first step in developing a freestanding general retail sales (convenience) use (more commonly known as a drugstore) with a drive-through pharmacy service. Tract 1, located closest to Lamar Boulevard, represents the building footprint and is proposed for neighborhood commercial (LR) district zoning. Tract 2, consists of the surrounding parking and driveways, and is proposed for limited office (LO) district zoning. The applicant's conceptual site plan, as illustrated in Exhibit B, provides for one driveway access to Lamar Boulevard and one to Bluebonnet.

BASIS FOR LAND USE RECOMMENDATION (ZONING PRINCIPLES)

1. *Zoning changes should promote an orderly and compatible relationship among land uses.*

The staff recommendation provides for a transition of zoning districts starting with intensive CS zoning on South Lamar Boulevard, moving inward to the recommended LR for Tract 1 and LO zoning, and then to MF-2 zoning that has frontage on Del Curto Road. The recommended LR and LO zonings provide a better transition than does the existing SF-3 zoning, and would assist with promoting an orderly relationship among land uses as they develop in the immediate area.

2. *Zoning should promote the policy of locating more intensive zoning districts at the intersection of major roadways.*

The subject tract is approximately 150 feet of the intersection of South Lamar Boulevard and Bluebonnet Lane, and rezoning to a district more intensive than the existing SF-3 is a reasonable request.

3. *The proposed zoning should be consistent with the purpose statement of the district sought.*

The purpose statement per the City of Austin Land Development Code states: "Neighborhood commercial district is the designation for a commercial use that provides business service and office facilities for the residents of a neighborhood. Site development regulations and performance standards applicable to a LR district use are designed to ensure that the use is compatible and complementary in scale and appearance with the residential environment."

The site borders on two established neighborhoods, the Zilker Neighborhood to the north and the South Lamar Neighborhood Association to the south. The site would primarily serve these

neighborhoods while also serving the community by capturing “pass by” traffic from South Lamar as that arterial roadway is heavily used during the AM and PM peak traffic hours.

FOR TRACT 1: The LR, Neighborhood Commercial District is intended for shopping facilities that provide limited business services and offices to the residents of the neighborhood, such as consumer repair services, food sales, service stations, and pet services.

FOR TRACT 2: LO zoning is intended for office use predominantly serving the neighborhood or community needs, such as professional, semi-professional and medical offices, which may be located within or adjacent to residential neighborhoods.

EXISTING CONDITIONS

Site Characteristics

The site is developed with a portion of a mobile home park and slopes to the south.

Impervious Cover

The maximum impervious cover allowed by the LR zoning district would be 80%, and the LO zoning district is 70%.

Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the West Bouldin Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. Impervious cover is not limited in this watershed class. This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm.

According to flood plain maps, there is no flood plain within the project area.

At this time, site-specific information is unavailable regarding existing trees and other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Transportation

A Neighborhood Traffic Analysis is required and will be performed for this project by the Transportation Review staff. Results will be provided in a separate memo. LDC, Sec. 25-6-114. Additional right-of-way, participation in roadway improvements, or limitations on development intensity may be recommended based on results of the NTA.

The trip generation under the requested zoning is estimated to be 3,658 trips per day, assuming that the site develops to the maximum intensity allowed under the zoning classification (without consideration of setbacks, environmental constraints, or other site characteristics).

TPSD Right-of-Way

The scope of this review is limited to the identification of needs for dedication and/or reservation of right-of-way for funded Capital Improvement Program (C.I.P.) Roadway Construction Projects and Transportation Systems Management (T.S.M.) Projects planned for implementation by the City of Austin. No aspect of the proposed project is being considered or approved with this review other than the need for right-of-way for City projects. There are separate right-of-way dedication and reservation requirements enforced by other Departments and other jurisdictions to secure right-of-way for roadway improvements contained in the Austin Metropolitan Area Roadway Plan, roadway projects funded by County and State agencies, and for dedication in accordance with the functional classification of the roadway.

We have reviewed the proposed rezoning case and anticipate no additional requirement for right-of-way dedication or reservation for funded C.I.P. or T.S.M. projects at this location.

Water and Wastewater

The landowner intends to serve the site with City water and wastewater utilities. Water and wastewater utility improvements and system upgrades are required. The landowner will be responsible for all costs and providing.

The water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. The water and wastewater utility system serving this site must be in accordance with the City's utility design criteria and specifications.

Stormwater Detention

At the time a final subdivision plat, subdivision construction plans, or site plan is submitted, the developer must demonstrate that the proposed development will not result in additional identifiable flooding of other property. Any increase in stormwater runoff will be mitigated through on-site stormwater detention ponds, or participation in the City of Austin Regional Stormwater Management Program, if available.

Compatibility Standards

Site plans will be required for any new development other than single-family or duplex residential. Any development which occurs in an SF-6 or less restrictive zoning district which is located 540-feet or less from property in an SF-5 or more restrictive zoning district will be subject to compatibility development regulations.

The site is subject to compatibility standards. Along the south and east property line, the following standards apply:

- No structure may be built within 25 feet of the SF- zoned property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- for a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive.

- No parking or driveways are allowed within 25 feet of the property line.
- In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted.



City of Austin, Neighborhood Planning & Zoning Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

**NOTICE OF ZONING & PLATTING COMMISSION PUBLIC
HEARING FOR A PROPOSED ZONING CHANGE**

Este aviso es para informarles de una junta pública tocante a un cambio en el uso de la propiedad indicada así abajo. Si quiere una copia de este aviso en español, hable al teléfono (512) 974-2680.

Mailing Date of this Notice: May 21, 2004

File Number: C14-04-0060

ADDRESS AND/OR LEGAL DESCRIPTION OF PROPOSED ZONING CHANGE (See Map) 2409 South Lamar & 0 Bluebonnet Lane

PROPOSED ZONING CHANGE:

FROM: CS--General Commercial Services district is intended predominately for commercial and industrial activities of a service nature having operating characteristics or traffic service requirements generally incompatible with residential environments. SF-3--Family Residence district is intended as an area for moderate density single-family residential use, with a minimum lot size of 5,750 square feet. Duplex use is permitted under development standards which maintain single-family neighborhood characteristics. This district is appropriate for existing single-family neighborhoods having typically moderate sized lot patterns, as well as for development of additional family housing areas with minimum land requirements.

TO: FOR TRACT 1: LR--Neighborhood Commercial district is intended for neighborhood shopping facilities which provide limited business service and office facilities predominately for the convenience of residents of the neighborhood. FOR TRACT 2: LO--Limited Office district is intended for offices predominately serving neighborhood or community needs, which may be located within or adjacent to residential neighborhoods.

OWNER: Village Trailer Park, Inc. (Gene Charlesworth Payne)

PHONE: (512) 339-9325

AGENT: Drenner Stuart Wolff Metcalfe von Kreisler (Michele Haussmann)

PHONE: (512) 404-2233

ZONING & PLATTING COMMISSION HEARING DATE: June 1, 2004

TIME: 6:00 PM

LOCATION: 505 Barton Springs Road, One Texas Center 3rd Floor, Training Room #325, Austin

If you have any questions concerning this notice, please contact Wendy Walsh at the City of Austin, Neighborhood Planning & Zoning Department, (512) 974-7719. Office hours are 7:45 a.m. to 4:45 p.m. Please be sure to refer to the File Number at the top of the page when you call. See enclosed sheet for more information on public hearings.

You may send your written comments to the Zoning & Platting Commission Assistant, Neighborhood Planning & Zoning Department, P. O. Box 1088, Austin, TX 78767-8835.

File # C14-04-0060-WW

Zoning & Platting Commission Hearing Date: June 1, 2004

Name (please print) Camille M. Perry

☐ I am in favor
(Estoy de acuerdo)

Address 2211 Ira Lane, Austin Tx 78704

☒ I object
(No estoy de acuerdo)

I object due to the driveway from this area onto Bluebonnet in the Walgreen's plan for the same reasons I stated in the past.

Zilker Neighborhood Association

♦ P.O. Box 33546 ♦ Austin, TX 78764 ♦ 512-447-7681 ♦

May 27, 2004

To: Zoning and Platting Commission

From: Zilker Neighborhood Association Executive Committee

Re: Zoning case C14-04-0060, 2409 South Lamar Blvd. (Village Trailer Park)

The executive committee of the Zilker Neighborhood Association opposes the latest proposal to rezone Village Trailer Park, 2409 S. Lamar, to accommodate a Walgreens drugstore. Our objections are essentially the same as our objections to the previous proposal in 2003.

South Lamar still has too much vacant or underused commercial property, and this change would only make matters worse, by converting a substantial residential parcel with potential for much higher densities to a low-value category of retail and office zoning. The latest proposal is actually worse in this respect than last year's plan. The footprint zoning will restrict any future owners to a cookie-cutter structure tailored to the current requirements of a single suburban chain retailer. Numerous businesses that would be more appropriate to the site would have to secure another zoning change before they could build a structure more in keeping with the improved design standards being considered by council. The latest proposal also creates a long narrow parcel of SF-3 zoning that will be awkward to develop beyond its current use as a mobile home park.

Likewise, the new Walgreens site plan does not address fundamental problems. It is still a standard suburban box surrounded by pavement. It still includes about 150 surface parking spaces, plus a highly undesirable 24-hour drive-through lane. There is only a tenuous connection to sidewalks and the bus stop on Lamar; and there appears to be no pedestrian connection at all to the neighborhood immediately behind the property. Bluebonnet Lane, even if widened to 40 feet, cannot function as the arterial required for this type of use, and widening half a block of Bluebonnet does not solve the problem of the misaligned intersection at South Lamar, yet the plan still includes a major driveway on Bluebonnet. Zilker residents are particularly concerned about increasing left turn traffic at this dangerous intersection, the potential to encourage cut-through traffic on Bluebonnet north of South Lamar, in conflict with our traffic calming measures near Zilker Elementary, and the absence of a safe pedestrian crossing at the South Lamar-Bluebonnet intersection.

The area is under pressure to increase residential densities, and this change would eliminate the parcel's potential for significant residential development. Limiting this property to suburban-style retail or office uses seems unwise at a time when the city is searching for SF-4 or more intense infill and mixed-use options. In the absence of comprehensive planning on South Lamar, we urge you to deny the requested zoning change.



Lorraine Atherton (for the ZNA Zoning Committee)



City of Austin, Neighborhood Planning & Zoning Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

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TO: FOR TRACT 1: LR--Neighborhood Commercial district is intended for neighborhood shopping facilities which provide limited business service and office facilities predominately for the convenience of residents of the neighborhood. FOR TRACT 2: LO--Limited Office district is intended for offices predominately serving neighborhood or community needs, which may be located within or adjacent to residential neighborhoods.

OWNER: Village Trailer Park, Inc. (Gene Charlesworth Payne)

PHONE: (512) 339-9325

AGENT: Drenner Stuart Wolff Metcalfe von Kreisler (Michele Haussmann)

PHONE: (512) 404-2233

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TIME: 6:00 PM

LOCATION: 505 Barton Springs Road, One Texas Center 3rd Floor, Training Room #325, Austin

If you have any questions concerning this notice, please contact Wendy Walsh at the City of Austin, Neighborhood Planning & Zoning Department, (512) 974-7719. Office hours are 7:45 a.m. to 4:45 p.m. Please be sure to refer to the File Number at the top of the page when you call. See enclosed sheet for more information on public hearings.

You may send your written comments to the Zoning & Platting Commission Assistant, Neighborhood Planning & Zoning Department, P. O. Box 1088, Austin, TX 78767-8835.

File # C14-04-0060-WW

Zoning & Platting Commission Hearing Date: June 1, 2004

Name (please print) Lorraine Atherton

Address 2009 Arpdale 78704

☐ I am in favor

(Estoy de acuerdo)

☒ I object

(No estoy de acuerdo)

-----Original Message-----

From: Walsh, Wendy
Sent: Wednesday, August 04, 2004 1:22 PM
To: 'Kevin Lewis'
Subject: RE: postpone C14-04-0060

Dear Mr. Lewis,

Thank you for submitting a timely postponement request. I will ensure this e-mail is forwarded to the City Council, the applicant, and Ms. Alice Glasco and Mr. Greg Guernsey of the Neighborhood Planning and Zoning Department.

Sincerely,
Wendy Walsh
974-7719

-----Original Message-----

From: Kevin Lewis [mailto:klewis@wholeearthprovision.com]
Sent: Wednesday, August 04, 2004 12:46 PM
To: Walsh, Wendy
Cc: Bryan King; Carol Gibbs; Lorraine Atherton
Subject: postpone C14-04-0060

To Wendy Walsh, City of Austin

Regarding Walgreens case # C14-04-0060, 2409 South Lamar Blvd. and 0 Bluebonnet Lane

I am the president of the South Lamar Neighborhood Association, the relevant organization for the above case. Please accept our request for postponement. This would be our first postponement request on this case. We are only requesting one week, but since Council is not meeting Aug. 19, we would expect it to be heard Aug. 26. At the applicant's request this had been postponed to Aug. 12.

Due to the applicant's more in-depth questioning of our support information, we need another week to further research our presentation. Also, we want the chance to discuss this further with the membership at our regularly scheduled general meeting Aug. 19. Also, I have a previously scheduled, required, business obligation out of town Aug. 12.

Please email or call to let me know you have received this request. Also please contact me immediately if you have any questions or there is any problem.

I appreciate your help.

Best regards,

Kevin Lewis
President

South Lamar Neighborhood Association
2213 Iva Lane
512-627-6898 cell

MEMORANDUM

TO: Betty Baker, Chair and Members of the Zoning and Platting Commission

FROM: Dora Anguiano, Zoning and Platting Commission Coordinator
Neighborhood Planning and Zoning Department

DATE: July 19, 2004

SUBJECT: Zoning and Platting Commission Summary

Attached is a Zoning and Platting Commission summary, which will be forwarded to the City Council.

CASE # C14-04-0060

5. C14-04-0060 – WALGREENS, By: Village Trailer Park, Inc. (Gene Charlesworth Payne), Drenner Stuart Wolff Metcalfe von Kreisler, LLP. (Michele Haussmann), 2409 South Lamar Blvd. & 0 Bluebonnet Lane. (West Bouldin Creek). **FROM CS; SF-3 TO LR (FOR TRACT 1) & SF-3 TO LO (FOR TRACT 2). ALTERNATE RECOMMENDATION: LR-CO (TRACT 1); LO-CO (TRACT 2). City Staff: Wendy Walsh, 974-7719. POSTPONED FROM 6-1 (APPLICANT).**

SUMMARY

Wendy Walsh, staff – “The acreage is 2.18 acres, it is presently developed with a portion of a mobile home park and is zoned CS, which is commercial services and SF-3, which is single family residence. Access to the property is presently taken to South Lamar. The surrounding area consists of retail and commercial service uses on Lamar and there is also single-family in close proximity to the east. The applicant is proposing two different zoning tracts for the purpose developing a free-standing general retail sales use known as a drug store with a drive-thru pharmacy service. One access to Lamar is proposed, that would be an upgrading of the existing access; there’s a second access that is proposed to Bluebonnet. In the back-up, Tract 1 represents the building footprint that is proposed for LR. Tract 2 is proposed for limited office, that would be one of the driveways and where the parking is located. Staff is supporting the applicant’s request for zoning on the bases that it provides a transition of zoning districts starting with CS, which is along Lamar and then moving east, LR for this property and LO; then back to the existing SF-3 and MF-2 on Bluebonnet and Del Curto. Another reason is that this tract is approximately 150 feet from the intersection of South Lamar and Bluebonnet and rezoning to more than SF-3 is a reasonable request. This site borders on two established neighborhoods, Zilker to the north and the South Lamar Neighborhood Association to the south. The pharmacy use and drug store would serve these two neighborhoods and also the pass-by traffic on South Lamar Blvd. Our recommendation is LR-CO for Tract 1 and LO-CO for Tract 2; the conditional overlay spells out the recommendations that are contained in the neighborhood traffic analysis. Transportation staff is here to address issues relating to the neighborhood traffic analysis. The applicant has met with the South Lamar neighborhood association, as well as the president of the Austin Neighborhood Council. On the dais, I have placed a letter of opposition from the representative of the Zilker Neighborhood Association”.

Commissioner Baker – “The letter in opposition is that from just one individual?”

Ms. Walsh – “Yes”.

Commissioner Baker – “From the Zilker Zoning Committee?”

Ms. Walsh – “She’s a representative of the zoning committee of Zilker”.

Commissioner Baker – “Thank you; commissioners any questions?”

No questions.

Steve Drenner, applicant – Showed a power point presentation. “This is the site looking across Lamar to the west and from the opposition direction looking back to the east. This reflects the existing Walgreen’s, it’s about ½ a mile away to the south that would be closed in order to build the new Walgreen’s at this location. This is a case that is familiar to you; you’ve seen a version of it almost 1 year ago. In that case the zoning districts were configured differently; instead of being in this location, it was pushed over into this area. One of the impacts of that was the loss of this building from a local retailer’s standpoint, which is no longer the case. We have an underground detention pond and a water quality pond on this side; then as part of the development, Maria’s Taco Express that is presently located in this location, would have a new home on the southern border of the tract. Access would come from both Lamar and Bluebonnet. In addressing the issues with the South Lamar Neighborhood Association, I thought I’d run you through the issues that we’ve attempted to address. One was the intrusion of the commercial zoning into the neighborhood that was raised in the prior case. This reflects zoning as it presently is on the site; we have a CS triangle and beyond it is SF-3. The proposal would be to down zone this triangular portion of the CS to LR where footprint zoning the Walgreen Store and surrounding that with LO zoning. The traffic is an issue that the neighborhood has been concerned about in regard to the Bluebonnet access point. What we’ve tried to do is focus on what we could do to mitigate any traffic impacts to the South Lamar neighborhood located to the east of the site and we focused our efforts on upgrading Bluebonnet”. [Referring to the power point] Mr. Drenner continued with the presentation. “In negotiating with the other surrounding property owners, they have agreed to provide additional dedication of right-of-way; as before, we would be dedicating showing in blue on the power point. This allows us to expand not only the right-of-way, but the pavement width, provide 3 full lanes of traffic at 12-feet each, a through lane coming back to the east, a dedicated left turn lane that improves the ability to depart the neighborhood and a right lane that is a through lane and a right turn lane. With that expanded right-of-way, we are also able to provide sidewalks on both sides of the street. We would be restriping the western side of the intersection, so that you could have left turns that run in unison that would improve the operation of that intersection. We have done a variety of things in dealing with the Bluebonnet access”.

FAVOR

Maria Corbalan – Owner of Taco Express, spoke in favor.

Alison Barnwell – Spoke in favor.

Steve Lucas – Spoke in favor.

Michael Doerr – Spoke in favor.

Judy Kegg – In favor.

Fernando Ezeta – Spoke in favor.

Mark Peaks – Spoke in favor.

Mike Crues – Spoke in favor.

Delfin Salazar – Spoke in favor.

OPPOSITION

Kevin Lewis – Spoke in opposition.

Lorraine Atherton – Spoke in opposition.

Carol Gibbs – Spoke in opposition.

Commissioner Martinez – “What would you accept for Bluebonnet and how should that be developed?”

Ms. Gibbs – “Right now there is even more land for sale; and we recognize that it’s MF-2 and [end of tape]... given that it’s MF-2, we’re prepared to have to live with that; and we’re prepared to recognize...I’m speaking for myself, it’s recognized that SF-3 that’s going to be sandwiched between the MF-2 and this, is probably going to go MF-2 and hard for us to argue to keep SF-3 between commercial and MF-2. We would like to see more integrated plan; like stuff that Council is looking at right now with the mixed use stuff. I understand that Walgreen’s has their parameters in which they want Mr. Doerr to operate. If we can put Walgreen’s on the back corner of a bigger development and have Maria’s at the other corner of it and apartments and office space, I think we would be happy. Because we know all that traffic is going to come in eventually, we would just like to see some kind of method to the madness”.

Bryan King – Spoke in opposition.

REBUTAL

Mr. Drenner – “After listening to all the comments, you would appreciate the difficulty of our task. On one hand some are saying they are worried about traffic; on the other hand others are saying “let’s increase the density” and bring more traffic to the area. It has been a difficult task. With regard to pedestrian access, Bluebonnet is far from a safe pedestrian street to walk; there are no sidewalks on either side of the street. We will not only be creating a safer situation with the alignment at this location, but creating sidewalks on both sides of the street where none presently exist. We would also be enhancing that safety, going from lanes that 9-feet in width presently to 12-feet lanes. I really don’t think that we are in any way harming pedestrian safety; in fact we are enhancing it. I think the same is true in traffic safety; they speak of a funnel, the only funnel would be between this access point and South Lamar. We’ve widened the turning radius; we’ve fixed the alignment of the street. We’ve added to capacity to a street that is badly in need of it, at least to the point where we are dealing with our access point. In

summary, I think that this is an appropriate use for the site. I think it's the logical thing that will happen along Lamar".

Commissioner Hammond – "How will these changes to Bluebonnet...what will your proposal do to make that safer for the kids and also how much will the City be funding for these road improvements on Bluebonnet and sidewalk improvements?"

Mr. Drenner – "Presently, we have 18-feet of pavement and there are no sidewalks. I question the pedestrian safety today; you have a signal on Lamar and crosswalks on both sides; and those will remain. All the improvements that we've talked about to Bluebonnet the sidewalks, all of that will be funded 100% by my client. Instead of paying a percentage of that into a fiscal pot and hoping and waiting for someone to pay into that pot so that improvements can be done, my client will be funding 100% at the front end of the project".

Commissioner Hammond – "Is 100% a usual procedure..."

Mr. Drenner – "No, that's very unusual; the norm is to pay your share of the fiscal and those improvements wait until literally 100% of the dollars have been collected".

Commissioner Whaley – "There was some other additional things that were talked about such as lighting; have you had any thoughts on those requests by the residents?"

Mr. Drenner – "We already offered the lighting request. We looked at the lighting standard that's in place with Walgreen's and we have agreed to that lighting standard; both in intensity and shielding those lights".

Commissioner Baker – "Your improvements on Bluebonnet only cover the west side of Bluebonnet?"

Mr. Drenner – "They cover the east side of Bluebonnet. The only thing that will happen on the west side is the re-stripping of lanes. Most of the improvements are on the east side".

Commissioner Whaley – "Has this been discussed with the legal department?"

Mr. Drenner – "The improvements that we would make on the east side, those do abut our property and the property owner on both sides that's dedicating additional right-of-way, is in agreement with anything that we're doing".

Commissioner Whaley – "I guess I need a legal clarification from City Legal; and I don't see anyone from legal here".

Mr. Drenner – "We did meet with the City's engineer and we went through these improvements in detail; and they felt that it was not an issue".

Commissioner Hammond – “Redevelopment on this site does have an impact on the people who live there; my question is, do you know if the property owner has any plans to...how are they going to deal with the relocation of these folks?”

Mr. Drenner – “I would be happy to let the property owner representative speak for themselves. There will be some people who are presently in that trailer park who would lose the land. There will still be a portion of that trailer park; my understanding is that those folks have been told for over 1-year that something was coming. I believe they are on month to month leases and that those leases have not been increased during that period of time while they have been told that there was a possibility that there would be something that would displace them. I’ll be happy to go back and have our folks be a part of that discussion to make sure that we do as good a job as we can in helping those folks find another place”.

Commissioner Baker – “I would add to that the owners of this property have provided Affordable Housing for over 50-years in this area”.

Commissioner Hammond – “I’m surprised Steve Sadowsky is not here trying to get this zoned historical. [Laughter] I might try initiating a case to zone it historic”. [Laughter]

Commissioner Baker – “I just know that for over 50-years, this trailer park has been there and has done a tremendous donation on the part of those property owners”.

Commissioner Whaley – “Can we really zone a mobile home historic?”

Commissioner Baker – “Okay, we are out of order. I do have a problem and that is the improvements of the intersection with Lamar and Bluebonnet that does not abut this tract”.

Greg Guernsey – “There was a case that was settled by the Texas Supreme Court earlier this year; it was a subdivision case, but it raises the issue of improvements that go beyond the proportional share that was pertaining to the development in question. Our current legal staff and staff from Watershed Protection and Neighborhood Planning & Zoning, there’s caution if there’s an offer, such as it was done in this particular case; where a developer agreed to put in a street, he did everything that the city asked for and then came back and turned in and sued the city to be reimbursed for all the cost above and beyond their proportional share. In the end as it went through different appeals courts, eventually to the Supreme Court level. They let the lower court appeals decision stand and that cost went back to the developer. So even though it was offered and improved, the city had to pay the developer back”. “There may be other ways to address this that may not necessarily be agreements with the city; this has been raised and I will be happy to share this and make copies for the commission”.

Commissioner Baker – “Thank you. Is there a motion to close the public hearing?”

Commissioner Martinez and Gohil moved to close the public hearing.

Commissioner Whaley – “In the list that you stated about the additional landscaping and additional lighting, is that in this proposal?”

Mr. King – “I believe Mr. Drenner’s slide accurately reflects the things that they have agreed to; the things that were proposed by the neighborhood and not on that list, I think there was two notable ones; those would include the height limiting device for the Bluebonnet access and the inclusion of bike lanes within the additional width. We talked about a couple of lane configuration, but the last version that I understood was simply three 12-foot lanes for traffic with sidewalks, but no provisions for bikes; we would like to see that”.

Commissioner Whaley – “Thank you. I know we’re talking about the dirt; but if this were GR-MU-CO zoning and there was a mixed use building there and it was a 3-story building; you really couldn’t get that in LR zoning. If that’s something that you are more to support.”

Mr. King – “One plan would only take residential access to Bluebonnet and the commercial would go onto Lamar; second, there are a lot of different kinds of retail and office use; some have a higher average price point, so you could generate just a much retail value and retail value with much fewer trips per day. A drug store has to do a lot of transactions to up their volume, generating in a lot of traffic”.

Commissioner Martinez – “So you actually want higher density there?”

Mr. King – “Yes, there are diversity in opinions in the neighborhood. Many of us are in favor of higher density, but again you could do that higher density with residential onto Bluebonnet”.

Commissioner Martinez – “You want higher density on the corner?”

Mr. King – “Yes absolutely; not interior to the neighborhood, but on the corner”.

Commissioner Hammond – “Steve, the neighbors have raised this issue about the headache bar on that exit onto Bluebonnet; as well as concerns about the traffic coming in and out of Bluebonnet. What I’m hearing is more commercial truck traffic; is there anything you could do to address those concerns?”

Mr. Drenner – “We talked about that at length; I frankly think that to eliminate truck traffic on Bluebonnet would be to put everyone into an unsafe situation because if you have all the trucks exiting onto Lamar, in an unsignalized location, fairly close to the intersection and you have those that are turning left to go southbound at that unsignalized intersection; trucks being what they are not being quick turners, I think that is the most unsafe thing that we could do for the folks that are traveling that artery. As a part of this process I learned a lot about how Walgreen’s functions; I was surprised to find out that they literally have 1 delivery on average per week; then they have 3 other deliveries by

trucks for things like milk. So we're not talking about a great deal of trucks that would be accessing on Bluebonnet. I think there's no chance that those trucks are going to come out the Bluebonnet access point, take a right and go back into that neighborhood. There would be no reason for them to do that".

Commissioner Whaley – "How about those bike lanes?"

Mr. Drenner – "Honestly, that was the first time we heard about bike lanes, that I can recall. Without compromising the vehicular traffic or the pedestrian traffic, there just isn't any room for it".

Commissioner Baker – "Did you find something different about the road improvements?"

Mr. Guernsey – "We were discussing a similar predicament that came up in a case about 1-year ago where we had a road that was accessible to a project that was proposed for multi-family; and the applicant agreed to upgrade the road beyond the street adjacent to his property, improve a bridge, but there was no mechanism for the city to receive that proposal because it went far beyond their project. In this case, they can either do the improvements up front, but then the right-of-way would not be dedicated by the adjacent property owners without assurance that the project would go forward. The other part is that if you were to continue go through and recommend the case, it sounds like although the city could only require its proportional share, then access could be denied to Bluebonnet because the roadway isn't improved unless they came back and made the improvements. So there's a dilemma because I don't have a quick and easy answer for you without discussing this more with legal staff. The commission I think could render a favorable recommendation, allow the access to Bluebonnet and let us work on this between now and the City Council date and see if we could find a way to remedy that. That's about the only suggestion I have at this point".

Commissioner Baker – "Thank you; commissioners what is your pleasure?"

Commissioner Martinez – "I make a motion that we go with staff recommendation".

Commissioner Donisi – "And the staff recommendation would encompass the proposal that we saw tonight, with the footprint and all that."

Commissioner Martinez – "Yes".

Commissioner Donisi – "Okay, I'll second that".

Commissioner Baker – "Does everyone understand the motion? Would you like to speak to your motion?"

Commissioner Martinez – "This is one heck of a situation".

Commissioner Baker – “I’m sorry, before you speak, may I suggest that as to the agreement or commitment by the applicant for a roadway improvements, that they be recommended but that it be left to the discretion of the Council; and not part of our action?”

Commissioner Martinez – “Absolutely”.

Commissioner Donisi – “Certainly”.

Commissioner Martinez – “I’m going to assume that this neighborhood has not been engaged in a Comprehensive Neighborhood Planning Process?”

[Inaudible – “In November or December, we are suppose to be scheduled for one.”]

Commissioner Martinez – “This is one major corridor in Austin that definitely needs to have comprehensive planning, all up and down that corridor. We zone pieces of dirt and this one heck of strange piece of dirt; this is one of the most unusual. I don’t know if I’m doing the right thing, quite frankly; but I’ll see if there are enough votes up here”.

Commissioner Donisi – “I concur with those comments. It’s not perfect. I think the applicant has gone through and really made a tremendous effort to work with the neighborhood folks. What I’m hearing from the neighborhood is somewhat mixed messages, I guess. They do have some valid points. Thankfully there’s a Council and that Council’s going to get this one. So we’re not the final arbiters on this and this will continue at Council and work towards getting better”.

Commissioner Hammond – “I commend both sides or all three sides for handling this in a civil manner; there’s been a lot of give and take”.

Commissioner Whaley – “I’m torn about this; I think that this would be an ideal site for GR-MU-CO. The density does need to go on that strip, we can zone it, but we can’t make them build it. I would like to say that there has been a lot of compromise, there are a lot of things that are good here on the table”.

Commissioner Rabago – “I too am concerned about the school children traffic coming out of the trailer park area, for example. If they use Bluebonnet to walk or ride their bike to school; that’s the same exit that would be used by trucks leaving Walgreen’s. That’s a big concern, but I have confidence that in time the whole demographic area is going to change”.

Motion carried.

**COMMISSION ACTION:
MOTION:**

**MARTINEZ, DONISI
APPROVED STAFF'S
RECOMMENDATION FOR LR-CO
(TRACT 1); LO-CO (TRACT 2).**

***COMMISSION RECOMMENDS
ROADWAY IMPROVEMENTS, BUT
TO LEAVE THESE IMPROVEMENTS
TO THE DISCRETION OF COUNCIL.**

AYES:

**PINNELLI, GOHIL, MARTINEZ,
BAKER, DONISI, HAMMOND,
WHALEY, RABAGO.**

LEFT EARLY:

JACKSON

MOTION CARRIED WITH VOTE: 8-0.

ORDINANCE NO. _____

1 AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE
2 PROPERTY LOCATED AT 2409 SOUTH LAMAR BOULEVARD AND 0
3 BLUEBONNET LANE FROM GENERAL COMMERCIAL SERVICES (CS)
4 DISTRICT AND FAMILY RESIDENCE (SF-3) DISTRICT TO NEIGHBORHOOD
5 COMMERCIAL (LR) DISTRICT FOR TRACT ONE AND LIMITED OFFICE
6 (LO) DISTRICT FOR TRACT TWO.
7

8 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:
9

10 PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to
11 change the base districts on the property described in Zoning Case No.C14-04-0060, on
12 file at the Neighborhood Planning and Zoning Department, as follows:
13

14 Tract One: From general commercial services (CS) district and family residence
15 (SF-3) district to neighborhood commercial (LR) district.
16

17 A 0.69 acre tract of land, more or less, out of the Isaac Decker League, Travis County,
18 the tract of land being more particularly described by metes and bounds in Exhibit
19 "A" incorporated into this ordinance, and
20

21 Tract Two: From family residence (SF-3) district to limited office (LO) district.
22

23 A 1.49 acre tract of land, more or less, out of the Isaac Decker League, Travis County,
24 the tract of land being more particularly described by metes and bounds in Exhibit
25 "B" incorporated into this ordinance,
26

27 locally known as 2409 South Lamar Boulevard and 0 Bluebonnet Lane, in the City of
28 Austin, Travis County, Texas, and generally identified in the map attached as Exhibit "C".
29
30
31
32
33
34
35
36
37

1 **PART 2.** This ordinance takes effect on _____, 2004.
2
3

4 **PASSED AND APPROVED**
5

6 _____, 2004
7

§
§
§

Will Wynn
Mayor

10 **APPROVED:** _____
11

12 David Allan Smith
13 City Attorney
14
15

ATTEST: _____

Shirley A. Brown
City Clerk

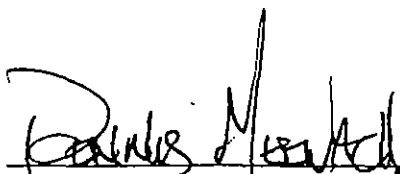
0.69 Acres
Zoning Description (LR)
Bluebonnet & S. Lamar

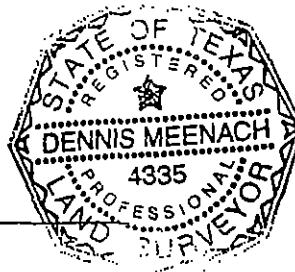
DESCRIPTION OF A TRACT OF LAND CONTAINING 0.69 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT ALSO BEING A PORTION OF THAT CERTAIN TRACT CALLED TO CONTAIN 4.38 ACRES DESCRIBED IN A DEED TO LLOYD W. PAYNE OF RECORD IN VOLUME 1208, PAGE 347 AND ALSO DESCRIBED IN VOLUME 1301, PAGE 305 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178 PAGE 206 DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 0.69 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point for the northeast corner of the herein described tract and from said point a $\frac{1}{2}$ " iron rod found for the northeast corner of said Gene Charlesworth Payne Tract bears, South $38^{\circ}01'06''$ East 6.01 feet, North $26^{\circ}46'09''$ East 41.32 feet and North $61^{\circ}44'22''$ West 50.00 feet;

THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following four (4) courses;

- 1) South $38^{\circ}01'06''$ East 159.14 feet to an angle point of the herein described tract;
- 2) South $51^{\circ}58'54''$ West 189.82 feet to an angle point of the herein described tract;
- 3) North $38^{\circ}01'06''$ West 159.14 feet to an angle point of the herein described tract;
- 4) North $51^{\circ}58'54''$ East 189.82 feet to the point of beginning and containing 0.69 acres of land as shown on the attached plat and made a part of this description.


Dennis Meenach, R.P.L.S. No. 4335



4-13-04
Date

EXHIBIT A

Page 1 of 1

P:\402006-SURVEY-LEGAL\SZONING-LR.doc

Tract 2
1.49

1.49 Acres
Zoning Description (LO)
Bluebonnet & S. Lamar

DESCRIPTION OF A TRACT OF LAND CONTAINING 1.49 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT ALSO BEING A PORTION OF THAT CERTAIN TRACT CALLED TO CONTAIN 4.38 ACRES DESCRIBED IN A DEED TO LLOYD W. PAYNE OF RECORD IN VOLUME 1208, PAGE 347 AND ALSO DESCRIBED IN VOLUME 1301, PAGE 305 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178 PAGE 206 DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 1.49 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point for the most easterly corner of the herein described tract, said point being in the easterly line of said Gene Charlesworth Payne Tract and the westerly line of Bluebonnet Lane and from said point the southeast corner of said Gene Charlesworth Payne Tract bears, South 26°15'30" East 100.81 feet;

THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following two (2) courses;

- 1) South 51°59'25" West 365.65 feet to an angle point of the herein described tract;
- 2) South 29°26'12" West 275.16 feet to a point on the westerly line of said Lloyd W. Payne Tract same being the westerly line of said Lot 6;

THENCE, with the westerly and northerly lines of said Lloyd W. Payne Tract, same being the westerly and northerly lines of said Lot 6, North 59°43'39" West 99.20 feet to the northwest corner of said Lloyd W. Payne Tract;

THENCE, North 29°17'24" East 262.07 feet to a point;

THENCE, North 26°46'09" East 80.25 feet to a point;

THENCE crossing said Lloyd W. Payne Tract the following three (3) courses;

- 1) South 38°01'06" East 63.75 feet,
- 2) North 51°58'54" East 189.82 feet,

EXHIBIT B

3) North 38°01'06" West 153.13 feet to a point;

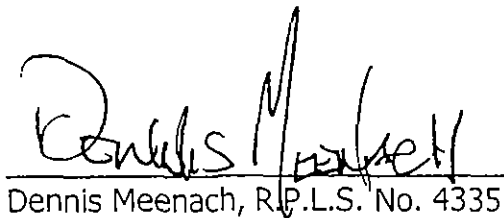
THENCE, North 26°46'09" East 41.32 feet to a point in the west line of a tract of land described in a deed to W.O. Harper of record in Volume 1452, Page 308, Deed Records of Travis County, Texas;

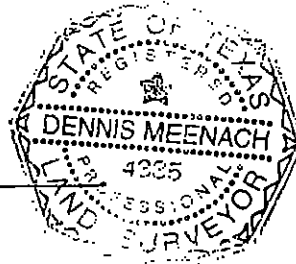
THENCE, South 61°44'22" East 72.35 feet to a point;

THENCE, South 55°32'15" East ^{99.83}~~98.83~~ feet to a 1" pipe found;

THENCE, North 48°21'28" East 70.87 feet to a ½ inch iron rod found for the northeast corner of the herein described tract, same being the southeast corner of said W. O. Harper Tract, same being a point in the westerly line of Bluebonnet Lane;

THENCE, with the easterly line of the herein described tract, same being the westerly line of said Bluebonnet Lane, South 26°15'30" East 73.56 feet to the point of beginning and containing 1.49 acres of land as shown on the attached plat and made a part of this description.


Dennis Meenach, R.P.L.S. No. 4335



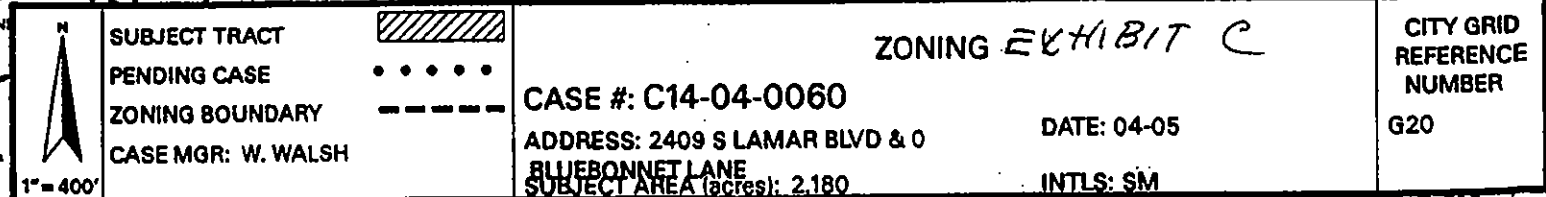
4-13-04
Date

D&A

www.doucetandassociates.com

Sheet: 1 of 1

**BLUEBONNET
AT S. LAMAR**



RESTRICTIVE COVENANT

OWNER: Gene Charlesworth Payne

ADDRESS: 809 Newport Avenue, Austin, TX 78753

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: Tract One: A 0.69 acre tract of land, more or less, out of the Isaac Decker League, in Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant, and

Tract Two: A 1.49 acre tract of land, more or less, out of the Isaac Decker League, in Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "B" incorporated into this covenant, and

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

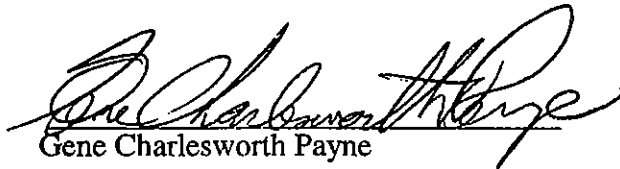
NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall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

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Neighborhood Traffic Analysis ("NTA") prepared by John F. Hickman and Associates, dated June 2004, or as amended and approved by the Director of the Watershed Protection and Development Review Department. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated July 26, 2004. The NTA shall be kept on file at the Watershed Protection and Development Review Department.
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 28th day of July, 2004.

OWNER:


Gene Charlesworth Payne

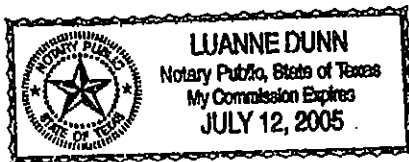
APPROVED AS TO FORM:

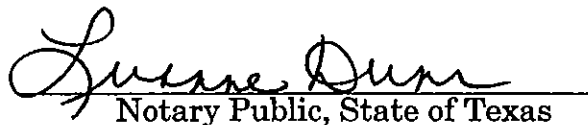
Assistant City Attorney
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 28th day of July, 2004
by Gene Charlesworth Payne.




Notary Public, State of Texas

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

TRACT 1
"LR"

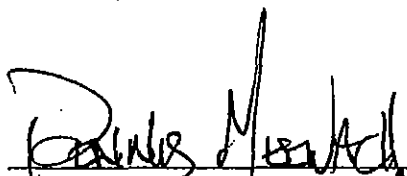
0.69 Acres
Zoning Description (LR)
Bluebonnet & S. Lamar

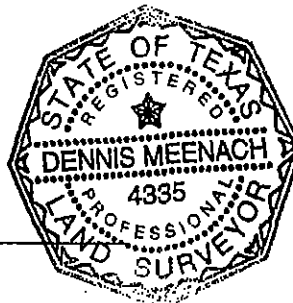
DESCRIPTION OF A TRACT OF LAND CONTAINING 0.69 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT ALSO BEING A PORTION OF THAT CERTAIN TRACT CALLED TO CONTAIN 4.38 ACRES DESCRIBED IN A DEED TO LLOYD W. PAYNE OF RECORD IN VOLUME 1208, PAGE 347 AND ALSO DESCRIBED IN VOLUME 1301, PAGE 305 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178 PAGE 206 DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 0.69 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point for the northeast corner of the herein described tract and from said point a 1/2" iron rod found for the northeast corner of said Gene Charlesworth Payne Tract bears, South 38°01'06" East 6.01 feet, North 26°46'09" East 41.32 feet and North 61°44'22" West 50.00 feet;

THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following four (4) courses;

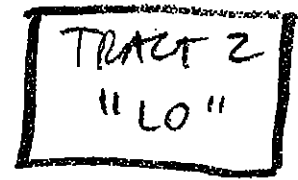
- 1) South 38°01'06" East 159.14 feet to an angle point of the herein described tract;
- 2) South 51°58'54" West 189.82 feet to an angle point of the herein described tract;
- 3) North 38°01'06" West 159.14 feet to an angle point of the herein described tract;
- 4) North 51°58'54" East 189.82 feet to the point of beginning and containing 0.69 acres of land as shown on the attached plat and made a part of this description.


Dennis Meenach, R.P.L.S. No. 4335



4-13-04
Date

EXHIBIT A
Page 1 of 1



1.49 Acres
Zoning Description (LO)
Bluebonnet & S. Lamar

DESCRIPTION OF A TRACT OF LAND CONTAINING 1.49 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT ALSO BEING A PORTION OF THAT CERTAIN TRACT CALLED TO CONTAIN 4.38 ACRES DESCRIBED IN A DEED TO LLOYD W. PAYNE OF RECORD IN VOLUME 1208, PAGE 347 AND ALSO DESCRIBED IN VOLUME 1301, PAGE 305 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178 PAGE 206 DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 1.49 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point for the most easterly corner of the herein described tract, said point being in the easterly line of said Gene Charlesworth Payne Tract and the westerly line of Bluebonnet Lane and from said point the southeast corner of said Gene Charlesworth Payne Tract bears, South 26°15'30" East 100.81 feet;

THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following two (2) courses;

- 1) South 51°59'25" West 365.65 feet to an angle point of the herein described tract;
- 2) South 29°26'12" West 275.16 feet to a point on the westerly line of said Lloyd W. Payne Tract same being the westerly line of said Lot 6;

THENCE, with the westerly and northerly lines of said Lloyd W. Payne Tract, same being the westerly and northerly lines of said Lot 6, North 59°43'39" West 99.20 feet to the northwest corner of said Lloyd W. Payne Tract;

THENCE, North 29°17'24" East 262.07 feet to a point;

THENCE, North 26°46'09" East 80.25 feet to a point;

THENCE crossing said Lloyd W. Payne Tract the following three (3) courses;

- 1) South 38°01'06" East 63.75 feet,
- 2) North 51°58'54" East 189.82 feet,

EXHIBIT B

3) North 38°01'06" West 153.13 feet to a point;

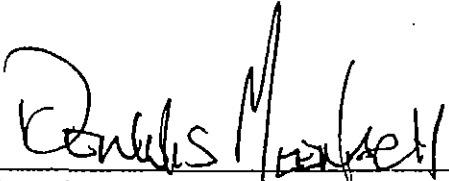
THENCE, North 26°46'09" East 41.32 feet to a point in the west line of a tract of land described in a deed to W.O. Harper of record in Volume 1452, Page 308, Deed Records of Travis County, Texas;

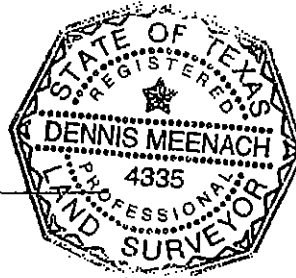
THENCE, South 61°44'22" East 72.35 feet to a point;

THENCE, South 55°32'15" East ^{99.83}~~95.83~~ feet to a 1" pipe found;

THENCE, North 48°21'28" East 70.87 feet to a ½ inch iron rod found for the northeast corner of the herein described tract, same being the southeast corner of said W. O. Harper Tract, same being a point in the westerly line of Bluebonnet Lane;

THENCE, with the easterly line of the herein described tract, same being the westerly line of said Bluebonnet Lane, South 26°15'30" East 73.56 feet to the point of beginning and containing 1.49 acres of land as shown on the attached plat and made a part of this description.


Dennis Meenach, R.P.L.S. No. 4335



4-13-04
Date



STEPHEN O. DRENNER

(512) 404-2201
sod@lawdsww.com

July 29, 2004

Ms. Alice Glasco
Neighborhood Planning and Zoning Department
City of Austin
505 Barton Springs Road
Austin, TX 78704

VIA HAND DELIVERY

RE: Walgreen's Zoning Application; 2.18 acres located at 2409 South Lamar Boulevard and Bluebonnet Lane ("Property"); Proposed Zoning from SF-3, Single-Family Residence District and CS, General Commercial Services zoning to LR, Neighborhood Commercial District zoning and LO, Limited Office District zoning.

Dear Alice:

As representatives of the prospective owner of the above stated Property, we respectfully submit the enclosed Declaration and Agreement Regarding Road Construction. This Declaration is offered in support of the owner's desire to post fiscal for, and pay 100% of, and construct the road improvements and signal modifications described in the Declaration, as well as in the memorandum dated July 19, 2004, prepared by Emily Barron, Transportation Reviewer. The owner desires to pay 100% of this amount, notwithstanding that the City has allocated only seventeen percent (17%) and four percent (4%), respectively, of such costs as owner's pro rata share of the construction and signal modifications.

Neither the owner nor his successors or assigns will not seek a certificate of occupancy for the intended project unless and until the construction and signal modifications are completed. For his own reasons, constituting good and valuable consideration, including, without limitation, in order to keep a promise made to the South Lamar Neighborhood Association, the owner or his successors and assigns will post fiscal for and pay one hundred percent (100%) of the cost of the modifications.

In this regard, the owner recognizes that the City has not required the owner to post or pay for more than 17% of such construction costs or 4% of such signal modification costs, that the City has not required the owner to pay 100% of such costs, that such additional payment by the owner or his successors and assigns is voluntary, and that the City has not required the owner or his successors and assigns to construct the improvements or signal modifications. Further, the owner covenants and agrees that the owner shall not bring suit against the City under any theory of law regarding the amount or extent of fiscal posted for the construction or the signal modifications. The terms of this letter shall be binding upon the owner and his successors and assigns.

Ms. Alice Glasco
July __, 2004
Page 2



The current owner, Gene C. Payne, and my client, the applicant/prospective owner, have indicated their agreement with this letter, and the enclosed Declaration, by signing this letter.

Please let me know if you or your team members require additional information or have any questions. Thank you for your time and attention to this project.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Stephen D. Drenner'.
Stephen D. Drenner

Enclosure

cc: Wendy Walsh, Neighborhood Planning and Zoning Department (*via electronic mail*)
Deborah Thomas, Law Department (*via electronic mail*)
David Darr, The Place (*via electronic mail*)
Jason Linahan, The Place (*via electronic mail*)
Jon Aune, (*via electronic mail*)
Michele Haussmann

"The Place "

David K. Darr Family Limited
Partnership III

By: Limestone Commercial, LLC,
its general partner

A handwritten signature in cursive script, appearing to read 'Gene C. Payne'.
Gene C. PayneA handwritten signature in cursive script, appearing to read 'David K. Darr'.
David K. Darr, managing member

DECLARATION AND AGREEMENT REGARDING ROAD CONSTRUCTION

This Declaration and Agreement Regarding Road Construction (this "Declaration") is entered into as of the 28th day of July, 2004, by and between Gene C. Payne ("Declarant") and the City of Austin (the "City").

RECITALS

WHEREAS, Declarant is the owner of two tracts of land totaling approximately 2.18-acres located at 2409 South Lamar Boulevard at or near the southeast corner of South Lamar Boulevard ("Lamar") and Bluebonnet Lane ("Bluebonnet"), Austin, Texas, and more particularly described on Exhibit "A" attached hereto (the "Property");

WHEREAS, Declarant or Declarant's successor currently intends to develop a project (the "Project") on the Property, and is seeking or has obtained LR and LO zoning from the City of Austin for such development pursuant to City of Austin Zoning Case No. C14-04-0060 (the "Zoning Case");

WHEREAS, to address the concerns of the South Lamar Neighborhood Association ("SLNA"), Declarant has agreed to design, construct, and pay for (i) certain construction, restriping, and other improvements on Lamar and Bluebonnet, as described on Exhibit "B" hereto (collectively, the "Construction"), and (ii) certain signal modifications, also as described on Exhibit "B" hereto (the "Modifications");

WHEREAS, contemporaneously herewith, Declarant is executing and recording a Declaration of Covenants, Conditions, and Restrictions that also pertains to certain described "Roadway Improvements" at the corner of South Lamar Boulevard and Bluebonnet Lane, some of which Roadway Improvements are the same as the Construction and Modifications that Declarant covenants to design, construct, and pay for pursuant to this Declaration; and

WHEREAS, pursuant to all of the terms and conditions of this Declaration, Declarant shall not seek a certificate of occupancy for the Project unless and until the Construction and Modifications are completed,

NOW, THEREFORE, to address the concerns of the SLNA, in order to promote the health, safety and welfare of the public, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees to hold, sell and convey the Property subject to the following covenants, conditions, and restrictions, which are impressed upon the Property by this Declaration.

DECLARATION

I. Covenants, Conditions, and Restrictions

1.1 **Construction and Modifications.** Declarant acknowledges and agrees that the City of Austin (the "City") has determined that Declarant's pro rata share of the estimated cost of designing and constructing (i) the Construction is seventeen percent (17%), and (ii) the Modifications is four percent (4%) (collectively, "Declarant's Proportionate Share"). The City requires that Declarant's Proportionate Share of the cost of the Construction and Modifications be posted as fiscal surety as a condition precedent to issuance by the City of a certificate of occupancy for the Project. For his own reasons, constituting good and valuable consideration, including, without limitation, in order to keep a promise made to SLNA, Declarant or his successors and assigns will post fiscal for and pay one hundred percent (100%) of the cost of the Construction and Modifications, and complete the Construction and Modifications, prior to requesting a certificate of occupancy for the Project. In this regard, Declarant recognizes that it is not required by the City to post or pay for more than Declarant's Proportionate Share of such costs, that the City has not required Declarant or his successors and assigns to pay 100% of such costs or to complete the Construction or Modifications, and that such additional payment by Declarant or his successors and assigns is voluntary. Further, neither Declarant nor his successors and assigns shall bring suit against the City under any theory of law regarding the amount or extent of fiscal posted for the Construction and Modifications.

II. Conditions on Effect; Amendment of Existing Declarations

2.1 **Zoning Case.** Notwithstanding any other provision of this Declaration to the contrary, the agreements of Declarant reflected herein are conditioned upon final approval (i.e., third reading) of the Zoning Case by the City of Austin City Council (and no subsequent appeal) in a form acceptable to Declarant, such acceptance to be deemed if the Zoning Case is finally approved without changes from the last application by Declarant presented to the City Council.

III. Default and Remedies

3.1 **Remedies.** In the event of a breach or threatened breach of this Declaration by Declarant, SLNA shall be entitled to institute proceedings at law or in equity in a court of competent jurisdiction for full and adequate relief from the consequences of said breach or threatened breach.

IV. General Provisions

4.1 **No Third-Party Beneficiary.** The provisions of this Declaration are for the exclusive benefit of Declarant and SNLA and their successors and assigns, and not for

the benefit of any third person, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person or the public.

4.2 Notice. All notices given in regard to this Declaration shall be in writing and the same shall be given and be deemed to have been served, given and received (a) one (1) business day after being placed in a prepaid package with a national, reputable overnight courier addressed to the other party at the address hereinafter specified; or (b) if mailed, three (3) business days following the date placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified. Declarant may change its address for notices by giving five (5) days' advance written notice to SNLA in the manner provided for herein. Until changed in the manner provided herein, the Declarant's address for notice is as follows:

Declarant:
Gene C. Payne
809 Newport Avenue
Austin, Texas 78753

with a copy to:

The Place
Attn.: David Darr
12050 Vance Jackson, Suite 102
San Antonio, Texas 78230
Telecopy: (210) 525-0131
Telephone: (210) 366-0571

and

Drenner Stuart Wolff Metcalfe von Kreisler, LLP
301 Congress Avenue, Suite 1200
Austin, Texas 78701
Attn: Stephen O. Drenner
Telecopy: (512) 404-2244
Telephone: (512) 404-2200

4.3 Attorneys' Fees. The unsuccessful party in any action brought to enforce this Declaration shall pay to the prevailing party a reasonable sum for costs incurred by the prevailing party in enforcing this Declaration, including attorneys' fees and court costs.

4.4 Severability. If any provision of this Declaration shall be declared invalid, illegal or unenforceable in any respect under any applicable law by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. It is the further intention of the parties that in lieu of each covenant, provision, or agreement of this instrument that is held invalid, illegal or

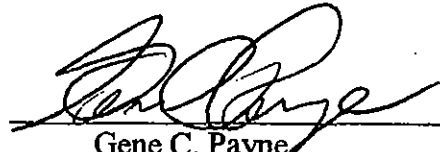
unenforceable, that be added as a part hereof a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may possible and be legal, valid, and enforceable.

4.5 Rights of Successors. The restrictions, benefits and obligations hereunder shall create benefits and servitudes running with the land. Subject to the other provisions hereto, this Declaration shall bind and inure to the benefit of the parties and their respective heirs, representatives, lessees, successors and assigns. Reference to "Declarant" includes the future owners of their respective portions of the Property, including any portions of the Property that may in the future be created as separate tracts pursuant to a resubdivision of any portion of the Property. The singular number includes the plural and the masculine gender includes the feminine and neuter.

4.6 Counterparts; Multiple Originals. This Declaration may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

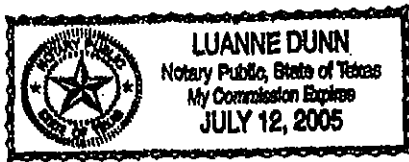
4.7 Modification and Cancellation. Any changes to the standards and requirements of this Declaration must be approved in writing by both (i) SLNA and (ii) the Director of the City of Austin Watershed Protection and Development Review Department (or successor department).

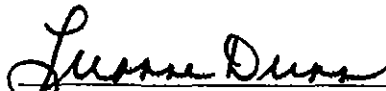
DECLARANT


Gene C. Payne

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 28th day of July, 2004, by Gene C. Payne.




Notary Public, State of Texas

ACCEPTED: CITY OF AUSTIN

By: Tammi H. Williamson
Name: TAMMIE H. WILLIAMSON
Title: ASSISTANT DIRECTOR WATERSHED PROTECTION

APPROVED AS TO FORM:

By: Deborah Thomas

EXHIBIT "A"

Description of Property

0.69 Acres
Zoning Description (LR)
Bluebonnet & S. Lamar


EXHIBIT A

DESCRIPTION OF A TRACT OF LAND CONTAINING 0.69 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT ALSO BEING A PORTION OF THAT CERTAIN TRACT CALLED TO CONTAIN 4.38 ACRES DESCRIBED IN A DEED TO LLOYD W. PAYNE OF RECORD IN VOLUME 1208, PAGE 347 AND ALSO DESCRIBED IN VOLUME 1301, PAGE 305 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178 PAGE 206 DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 0.69 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point for the northeast corner of the herein described tract and from said point a 1/2" iron rod found for the northeast corner of said Gene Charlesworth Payne Tract bears, South 38°01'06" East 6.01 feet, North 26°46'09" East 41.32 feet and North 61°44'22" West 50.00 feet;

THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following four (4) courses;

- 1) South 38°01'06" East 159.14 feet to an angle point of the herein described tract;
- 2) South 51°58'54" West 189.82 feet to an angle point of the herein described tract;
- 3) North 38°01'06" West 159.14 feet to an angle point of the herein described tract;
- 4) North 51°58'54" East 189.82 feet to the point of beginning and containing 0.69 acres of land as shown on the attached plat and made a part of this description.


Dennis Meenach, R.P.L.S. No. 4335



4-13-04
Date

1.49 Acres
Zoning Description (LO)
Bluebonnet & S. Lamar

DESCRIPTION OF A TRACT OF LAND CONTAINING 1.49 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS; A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT ALSO BEING A PORTION OF THAT CERTAIN TRACT CALLED TO CONTAIN 4.38 ACRES DESCRIBED IN A DEED TO LLOYD W. PAYNE OF RECORD IN VOLUME 1208, PAGE 347 AND ALSO DESCRIBED IN VOLUME 1301, PAGE 305 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178 PAGE 206 DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 1.49 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point for the most easterly corner of the herein described tract, said point being in the easterly line of said Gene Charlesworth Payne Tract and the westerly line of Bluebonnet Lane and from said point the southeast corner of said Gene Charlesworth Payne Tract bears, South 26°15'30" East 100.81 feet;

THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following two (2) courses;

- 1) South 51°59'25" West 365.65 feet to an angle point of the herein described tract;
- 2) South 29°26'12" West 275.16 feet to a point on the westerly line of said Lloyd W. Payne Tract same being the westerly line of said Lot 6;

THENCE, with the westerly and northerly lines of said Lloyd W. Payne Tract, same being the westerly and northerly lines of said Lot 6, North 59°43'39" West 99.20 feet to the northwest corner of said Lloyd W. Payne Tract;

THENCE, North 29°17'24" East 262.07 feet to a point;

THENCE, North 26°46'09" East 80.25 feet to a point;

THENCE crossing said Lloyd W. Payne Tract the following three (3) courses;

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- 2) North 51°58'54" East 189.82 feet,

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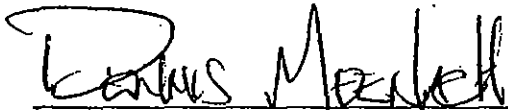
THENCE, North 26°46'09" East 41.32 feet to a point in the west line of a tract of land described in a deed to W.O. Harper of record in Volume 1452, Page 308, Deed Records of Travis County, Texas;

THENCE, South 61°44'22" East 72.35 feet to a point;

THENCE, South 55°32'15" East 99.83 feet to a 1" pipe found;

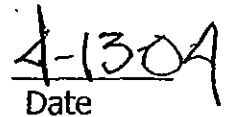
THENCE, North 48°21'28" East 70.87 feet to a ½ inch iron rod found for the northeast corner of the herein described tract, same being the southeast corner of said W. O. Harper Tract, same being a point in the westerly line of Bluebonnet Lane;

THENCE, with the easterly line of the herein described tract, same being the westerly line of said Bluebonnet Lane, South 26°15'30" East 73.56 feet to the point of beginning and containing 1.49 acres of land as shown on the attached plat and made a part of this description.

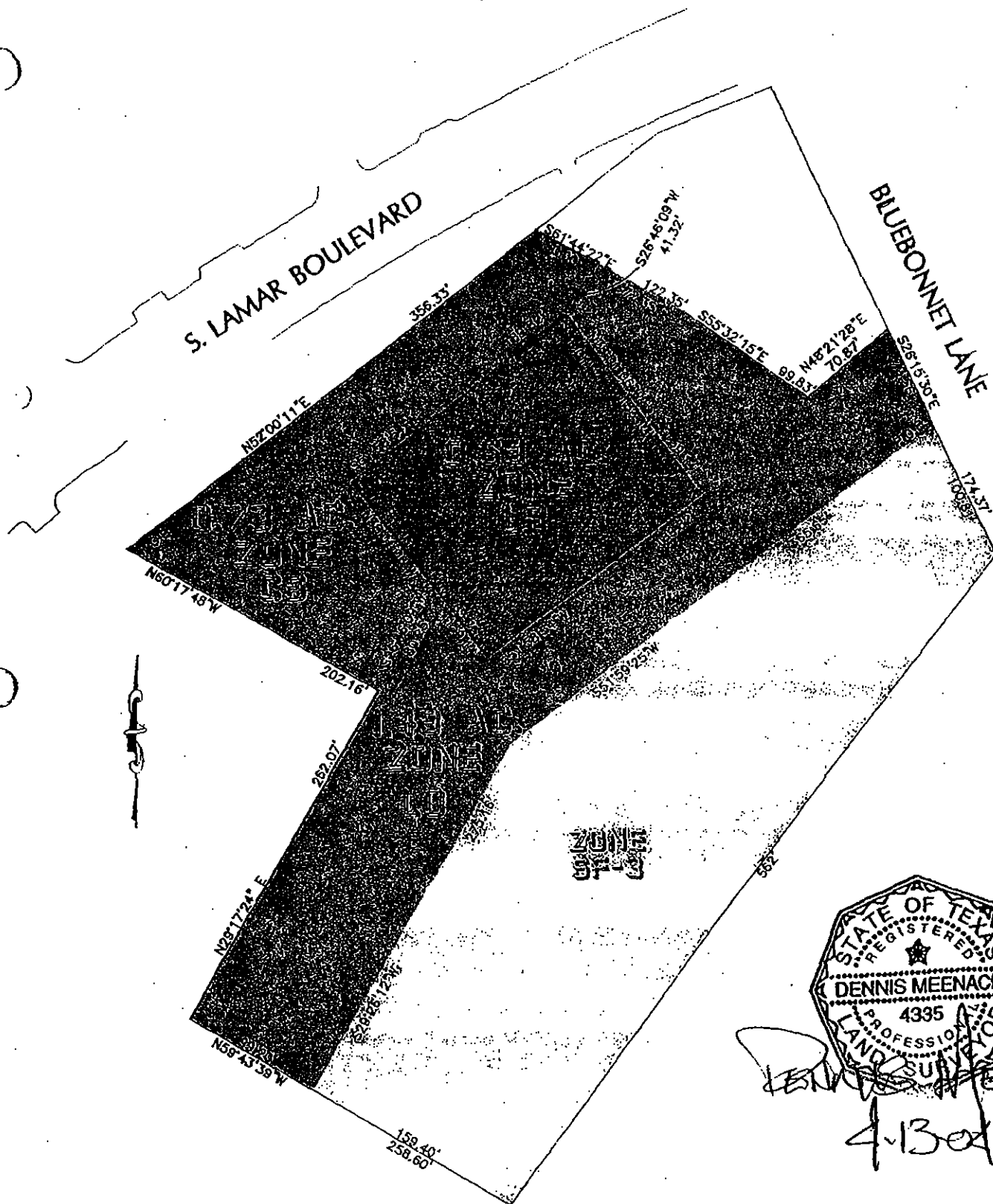


Dennis Meenach, R.P.L.S. No. 4335




Date

ZONING EXHIBIT



WALGREENS

**BLUEBONNET
AT S. LAMAR**



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Date: 04/13/04

Scale: 1" = 100'

Drawn by: NH

Reviewed by: DM

Project No.: 402-006

Sheet: 1 of 1

EXHIBIT "B"

Road Construction and Signal Modifications

MODIFICATIONS

<u>Intersection</u>	<u>Improvement</u>
Bluebonnet Lane and Lamar Boulevard	Signal Modifications including design and construction (above and below ground)

CONSTRUCTION

<u>Intersection/Street</u>	<u>Improvement</u>
Bluebonnet Lane (East)	Installation of sidewalks along both sides of Bluebonnet Lane for the length of the upgrade on Bluebonnet Lane. Increase of pavement width from 20' to 40' from Lamar Boulevard to the site driveway; the street will then be transitioned east from the site driveway to the existing pavement width.
Bluebonnet Lane (West)	Re-striping Bluebonnet west of Lamar to match the eastbound striping with the new westbound striping pattern (an exclusive left-turn lane and a shared through/right-turn lane).
Bluebonnet Lane (East) @ Lamar Boulevard	Provide for 1 Eastbound lane, 1 Westbound left turn lane, and 1 Westbound shared through/right turn lane.
Lamar Boulevard	Remove on street parking to improve site distance and overall safety along Lamar Boulevard.