



Zoning
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: Z-11
AGENDA DATE: Thu 02/26/2004
PAGE: 1 of 1

SUBJECT: C14-03-0178 - Western Oaks Physical Fitness Studio - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 4625 West William Cannon Drive (Williamson Creek Watershed - Barton Springs Zone) from neighborhood commercial (LR) district zoning to community commercial (GR) district zoning. Zoning and Platting Commission Recommendation: To grant community commercial-conditional overlay (GR-CO) combining district zoning. Applicant: AVG-Austin GP(Arnold Schlesinger). Agent: Land Strategies, Inc. (Paul W. Linehan). City Staff: Wendy Walsh, 974-7719.

REQUESTING Neighborhood Planning
DEPARTMENT: and Zoning

DIRECTOR'S
AUTHORIZATION: Greg Guernsey

ZONING CHANGE REVIEW SHEET

CASE: C14-03-0178

Z.P.C. DATE: January 6, 2004
January 20, 2004

ADDRESS: 4625 West William Cannon Drive

OWNER AND APPLICANT: AVG-Austin GP, Inc. **AGENT:** Land Strategies, Inc.
(Arnold Schlesinger) (Paul W. Linehan)

ZONING FROM: LR **TO:** GR **AREA:** 1.248 acres

SUMMARY STAFF RECOMMENDATION:

The staff's recommendation is to grant community commercial – conditional overlay (GR-CO) combining district zoning. The Conditional Overlay prohibits the following uses: automotive rental, automotive repair, automotive sales, automotive washing, and service station.

ZONING & PLATTING COMMISSION RECOMMENDATION:

January 6, 2004: *POSTPONED TO 01/20/04 (STAFF/APPLICANT)*
[J.M; J.G 2ND] (9-0)

January 20, 2004: *APPROVED STAFF'S RECOMMENDATION OF GR-CO ZONING, WITH ONLY PERMITTED USES OF PERSONAL IMPROVEMENT SERVICES, GENERAL RETAIL SALES (GENERAL); RESTAURANT (GENERAL); AND ALL PERMITTED LR USES; BY CONSENT.*
[J.M; J.G 2ND] (6-0) J.C; J.D; K.J – ABSENT

ISSUES:

The applicant has entered into a Restrictive Covenant with the City that provides that at the time a site plan is submitted, it will include an Integrated Pest Management (IPM) Plan and a landscape plan for the use of native and adapted plant materials.

The applicant is in agreement with the staff recommendation and has met with the Western Oaks neighborhood regarding the development of this property.

DEPARTMENT COMMENTS:

The subject property consists of undeveloped acreage within a platted lot and is zoned neighborhood commercial (LR) district. Access to the site is available by way of established driveway locations on West William Cannon Drive, a major arterial roadway and Brush Country Road, a minor arterial. Please refer to Exhibits A and A-1.

The applicant proposes to rezone the building footprint to allow for the construction of a 2-story 42,000 square foot physical fitness studio, which is classified as a Personal Improvement Service and first permitted in the community commercial (GR) district. The rezoning area is approved for a 26,000 square foot, 1-story retail (convenience) use that is located within the Western Oaks Retail Center Site Plan. The retail center also includes a bank, fast-food restaurant, destination restaurant,

and offices. Please refer to Exhibits B (recorded subdivision plat) and C (approved consolidated site plan).

The larger property which contains the requested rezoning area is zoned LR and other nearby zoning cases at the intersection of William Cannon and Brush Country have established GR zoning with restrictions that include size (Floor-to-Area Ratio and building footprint), prohibited uses and building height. The planned and existing developments at this intersection include commercial, retail and office land uses. Given its location over the Edwards Aquifer Recharge Zone, Staff recommends prohibiting automotive-related uses: automotive rental; automotive repair; automotive sales; automotive washing; and service station. In the context of the surrounding land uses and roadways, the applicant's request for GR zoning is appropriate given its access to two arterial roadways, and the use is compatible with the surrounding commercial zoning and the existing and planned shopping centers.

EXISTING ZONING AND LAND USES:

| | ZONING | LAND USES |
|--------------|------------------|---|
| <i>Site</i> | LR | Undeveloped |
| <i>North</i> | LR; LO; SF-3 | Undeveloped – within Western Oaks Retail Center site |
| <i>South</i> | LR; CS; LO; SF-3 | Undeveloped – within Western Oaks Retail Center site; Single family residences |
| <i>East</i> | SF-3; LO; PUD | Undeveloped – within Western Oaks Retail Center site; Undeveloped and approved for commercial and office uses |
| <i>West</i> | LR; LO; SF-3 | Undeveloped – within Western Oaks Retail Center site; Single family residences |

AREA STUDY: N/A

TIA: Is not required

WATERSHED: Williamson Creek–Barton Springs Zone **DESIRED DEVELOPMENT ZONE:** No

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

384 – Save Barton Creek Association

385 – Barton Springs Coalition

428 – Barton Springs / Edwards Aquifer Conservation District

943 – Save Our Springs Alliance

967 – Circle C Neighborhood Assn.

SCHOOLS:

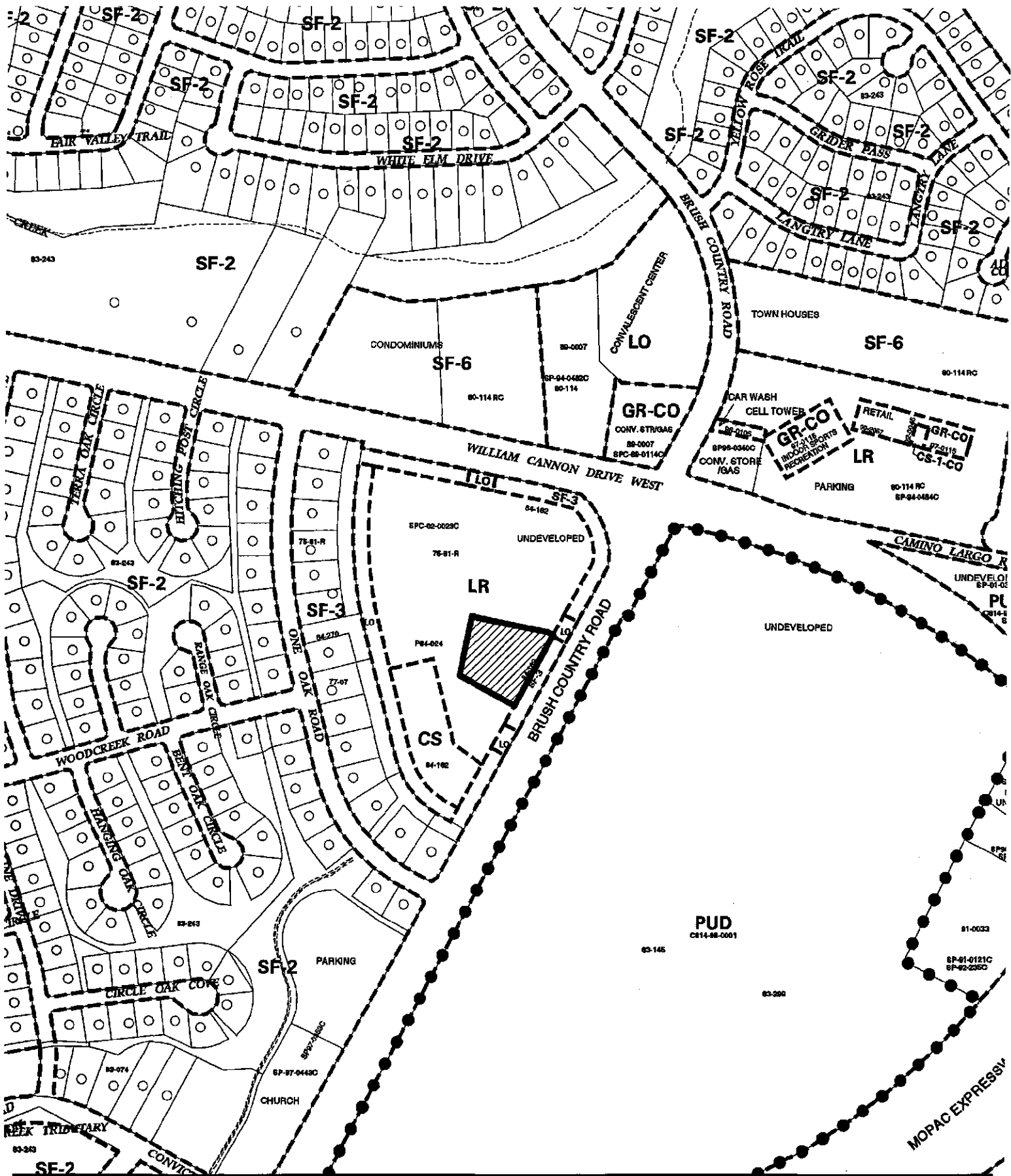
Mills Elementary School


Covington Middle School

Crockett High School

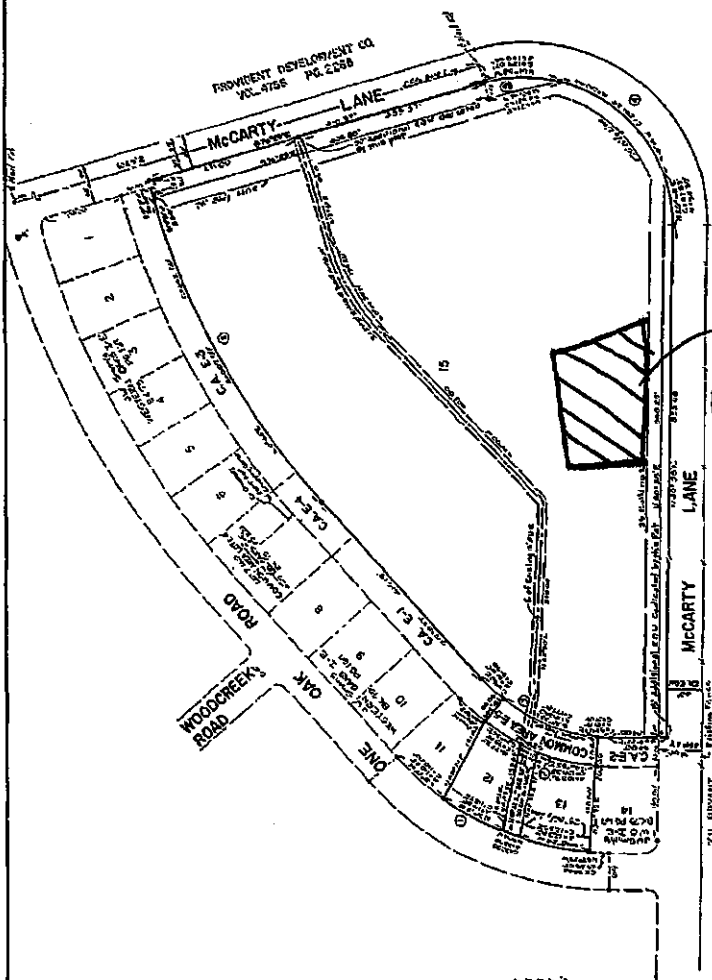
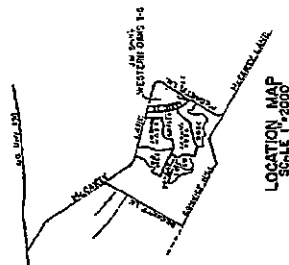
CASE HISTORIES:

| NUMBER | REQUEST | ZONING AND PLATTING COMMISSION / PLANNING COMMISSION | CITY COUNCIL |
|-----------------|---|---|---|
| C814-98-0001.01 | PUD to PUD for proposed amendments to land uses, development standards, access points and drainage facility options | Pending consideration by ZAP | N/A |
| C14-02-0045 | GR-CO; CS-1-CO to GR-CO; CS-1-CO for the relocation of a liquor sales use | Recommended CS-1-CO for Tract 1; GR-CO for Tracts 2 and 3. Conditional Overlay is for IPM Plan, height limitations, prohibited uses and water quality volume requirements | Approved ZAP recommendation with additional requirements for use of native plants and prohibiting cocktail lounge as a Conditional Use. (8-29-02) |
| C14-96-0115 | LR to GR-CO | To Grant GR-CO | Approved GR-CO with Conditional Overlay for IPM Plan; list of prohibited uses; 40' height limit for offices; 30' for retail or commercial; water quality volume requirements (1-8-98) |
| C14-96-0105 | LR to GR | To Grant GR-CO | Approved GR-CO with Conditional Overlay for 2,000 trips; increased capture volume; list of prohibited uses (12-12-96) |
| C14-89-0007 | LO to GR-CO | To Grant GR-CO with Conditional Overlay | Approved GR-CO with Conditional Overlay limiting F.A.R.; impervious cover to 70%; LR uses and freestanding or low-profile signs allowed in the LR district (11-9-89) |



| | | |
|--|--|---|
|  <p>1" = 400'</p> <p>SUBJECT TRACT PENDING CASE ZONING BOUNDARY CASE MGR: W.WALSH</p> | <p>ZONING Exhibit A</p> <p>CASE #: C14-03-0178 ADDRESS: 4625 W.WILLIAM CANNON SUBJECT AREA (acres): 1.248</p> <p>DATE: 03-12 INTLS: TRC</p> | <p>CITY GRID REFERENCE NUMBER D18</p> |
|--|--|---|





| | | | | | |
|-------|-------|-------|-------|-------|-------|
| | ⑤ | ④ | ③ | ② | ① |
| 75109 | 68171 | 58114 | 48463 | 37942 | 27976 |
| 80979 | 68021 | 58189 | 48463 | 37942 | 27976 |
| B1708 | 58172 | 48105 | 37951 | 27991 | 17913 |
| B1961 | 68185 | 58108 | 48405 | 37916 | 27923 |
| A413 | 58068 | 47958 | 37916 | 27911 | 17910 |

PLATE 1

LEGEND
 * On Road
 * On Site
 * On Board

EASEMENTS for public utilities and drainage ways serving property other than J W Smiths GREEN OAK are designated and located on the plat.

SIDEWALK REQUIREMENTS

[illegible]

COMMON AREA DÉTA

Article 10 Common Area Lot E-B will be used in a property owner association composed of the owners of all lots within this section, claiming unincorporated, and subsequent assignments of J.W. GARDNER & SONS, INC. as designated on their respective plat.

The authority and responsibility of said property owner association is defined by Instrument recorded in Volume 5283, Page 471 of the Deed Records of Davis County, Idaho.

The Common Aven Lane has been dedicated for use as a drainage and utility easement for the benefit of the residents of the J. W. Smith Western Oaks, for use to mutual benefit of the residents of the J. W. Smith Western Oaks, and for use of recreational activities by residents of J. W. Smith Western Oaks. The residents of J. W. Smith Western Oaks agree to accept easements rights and interests dedicated to the following public and private, municipal services, Police, Fire, Garbage, Sewer, Water, and other services, and to accept easements for and in support of governmental activities, their agencies or employees (past and present) and for any easements occurring to the easement of any said easement and its successors in interest, and to accept easements for and in support of the easement of any said easement and its successors in interest.

MINIMUM FLOOR ELEVATION

This minimum flood elevations per living space or storage spaces shall not be less than 0 foot above the highest ground point within 5 feet of the structure. Parts of the structure above the highest ground point may be as much as one foot lower than the minimum flood elevation for storage spaces. Less than 100-year flood plain Prior to construction of the structure, the applicant shall provide the City of Austin, Drainage Department with a letter indicating how the proposed structure will be constructed to meet the minimum flood rate existing at the time of posting of the permit. The letter shall include a statement of whether the structure meets the minimum flood rate existing at the time of posting of the permit. If the structure does not meet the minimum flood rate existing at the time of posting of the permit, the applicant shall provide a plan showing the structure's location relative to the flood plain and a statement of the steps being taken to ensure the structure meets the minimum flood rate existing at the time of posting of the permit.

REPORT
ZONING
AREA FOR RECONSTRUCTION

ACCEPTED AND AUTHORIZED FOR RECORD BY the Planning Commission of the City of Austin, this the 23rd day of Jan / 1978 A.D.

Norman E. Leitch

APPROVED FOR ACCEPTANCE: MAY 23RD 1978

STATE OF TEXAS
COUNTY OF TRAVIS

Doris Shorabach, clerk of the County Court within and for the county and state of Missouri, do hereby certify, that the foregoing instrument of writing, if substantiated, was filed for record in my office of the County Clerk, 1980-01-24, and was duly recorded on this 24th day of January, 1980, at 1:10 o'clock P.M., in the plat records of said county and state in that book 2-1-10, page 143.

WITNESS MY HAND AND SEAL OF THE COUNTY COURT OF SAID COUNTY, the last day within above.

FILED FOR RECORD

FILED FOR RECORD at 3:05 PM on the 24th day of May, 1928 Davis Shropshire,
Travis County, Texas.

Marine, Shropshire Co.
By Agents Smith-
LONDON SOUTH SEAS.

EXHIBIT
B
RECORDED
PLAT

STATE OF TEXAS
COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS: That Woodside Development Co., Inc., a Texas Corporation, with home office in Austin, Texas, acting herein and through its duly authorized agent, J. W. Smith, acting as an individual, being owners of the Tracts of Land described below in the Texas Caddis Survey ... in Travis County, Texas, and the same hereby subdivision ... as follows:

Deed Records of Travis County, Texas, are as follows:

Woodside Development Co., Inc., terms on Volume 5022, Page 111-112.

Woodside Development Co., Inc., terms on Volume 5023, Page 102.

J. W. SMITH, REGISTER, our duly authorized agent, is hereby acknowledged.

TO BE KNOWN BY J. W. SMITH, WESTERN OIL & GAS, and to hereby, desiring to the public, this

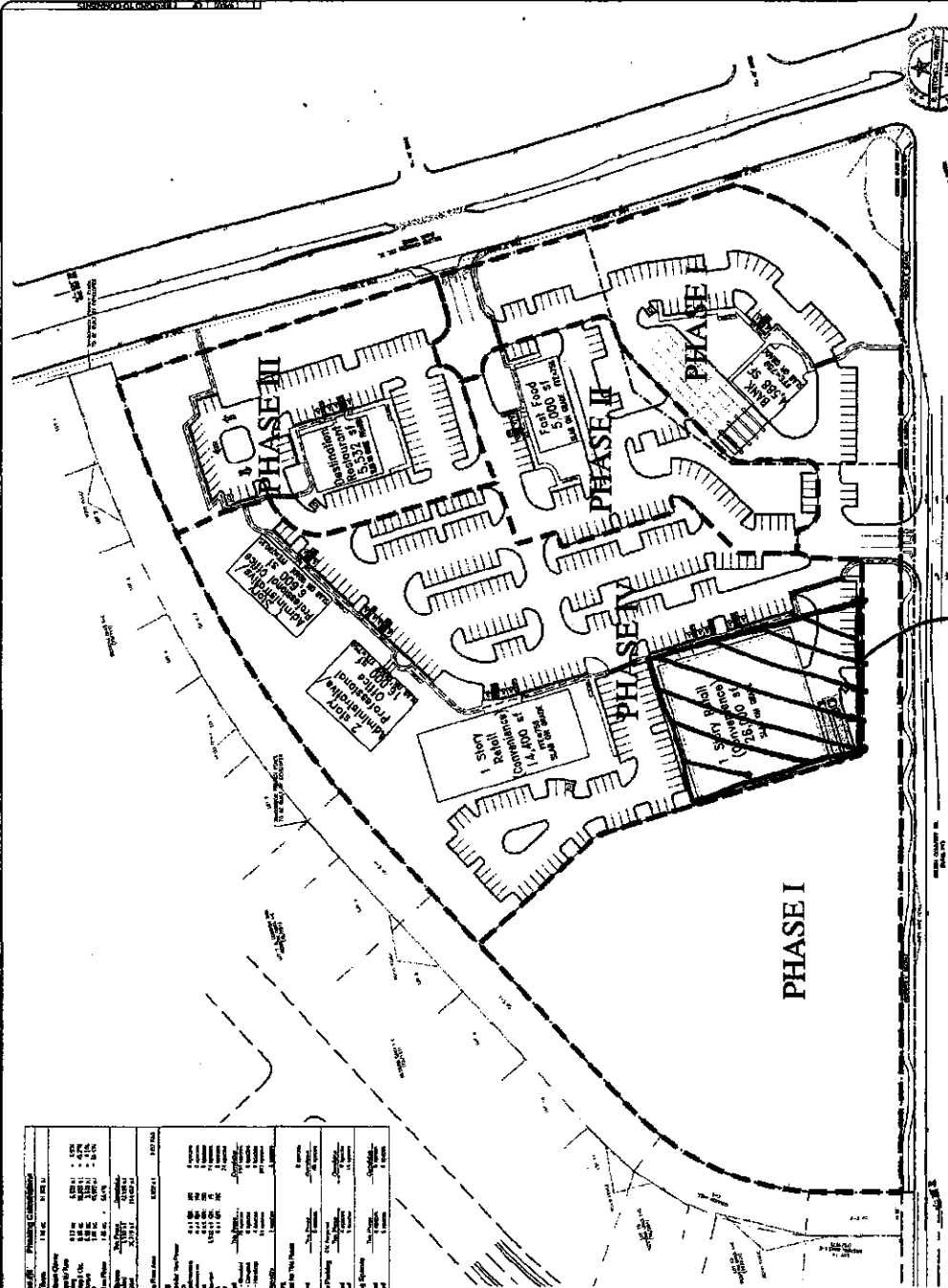
WILLIAM SMITH, President of
Widdowson Development Co. Inc.

BEFORE ME, the undersigned authority, on the day personally appeared J.W. Smith, acting both as President of Woodette Development Co., Inc. and as an individual, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

**SURVEYING AND ENGINEERING BY
JERYL HART & ASSOCIATES**

I, Jeryl D Hart am authorized under the laws of the State of Texas to practice the profession of Engineering and hereby certify that this plat complies with Chapter 41, 41-27 of the Austin City Code, it is true and correct, and was prepared from an actual survey of the property made under my supervision on the around.

2740
1, R.P.E
12-16-77
D&D
68-27-303



PROPOSED
REZONING
AREA
FOR
PHYSICAL
FITNESS
STUDIO

SAINT-ARNAUD & ASSOCIATES, INC. IS THE RESPONSIBLE ENGINEER FOR THE HEREINPROPOSED CONNECTION NO. 1. LAND STRATEGIES INC. AND DUMBERTON, WILL BE THE PROJECT ARCHITECTS. THE ASSOCIATES' NEED FOR THIS PROJECT IS TO OBTAIN A CONNECTION NO. 1 AND FOR THE RESPONSIBLE ENGINEER FOR CONNECTION NO. 1 AND FOR THE DESIGN IMPACT FOR SUCH CHANGES.

EXHIBIT C
APPROVED
SITE PLAN

[illegible]

SUMMARY STAFF RECOMMENDATION:

The staff's recommendation is to grant community commercial – conditional overlay (GR-CO) combining district zoning. The Conditional Overlay prohibits the following uses: automotive rental, automotive repair, automotive sales, automotive washing, and service station.

BACKGROUND

The subject property consists of undeveloped acreage within a platted lot and is zoned neighborhood commercial (LR) district. Access to the site is available by way of established driveway locations on West William Cannon Drive, a major arterial roadway and Brush Country Road, a minor arterial.

The applicant proposes to rezone the building footprint to allow for the construction of a 2-story 42,000 square foot physical fitness studio, which is classified as a Personal Improvement Service and first permitted in the community commercial (GR) district. The rezoning area is approved for a 26,000 square foot, 1-story retail (convenience) use that is located within the Western Oaks Retail Center Site Plan. The retail center also includes a bank, fast-food restaurant, destination restaurant, and offices.

The larger property which contains the requested rezoning area is zoned LR and other nearby zoning cases at the intersection of William Cannon and Brush Country have established GR zoning with restrictions that include size (Floor-to-Area Ratio and building footprint), prohibited uses and building height. The planned and existing developments at this intersection include commercial, retail and office land uses. Given its location over the Edwards Aquifer Recharge Zone, Staff recommends prohibiting automotive-related uses: automotive rental; automotive repair; automotive sales; automotive washing; and service station. In the context of the surrounding land uses and roadways, the applicant's request for GR zoning is appropriate given its access to two arterial roadways, and the use is compatible with the surrounding commercial zoning and the existing and planned shopping centers.

BASIS FOR LAND USE RECOMMENDATION (ZONING PRINCIPLES)

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

The proposed GR, Community Commercial District is intended for office and commercial uses serving neighborhood and community needs, including both unified shopping centers and individually developed commercial sites, and typically requiring locations accessible from major trafficways.

2. *Zoning changes should promote compatibility with adjacent and nearby uses.*

The larger property which contains the requested rezoning area is zoned LR and other nearby zoning cases at the intersection of William Cannon and Brush Country have established GR zoning with restrictions that include size (Floor-to-Area Ratio and building footprint), prohibited uses and building height. The planned and existing developments at this intersection include commercial, retail and office land uses. Given its location over the Edwards Aquifer Recharge Zone, Staff recommends prohibiting automotive-related uses: automotive rental; automotive repair; automotive sales; automotive washing; and service station. In the context of the surrounding land uses and roadways, the applicant's request for GR zoning is appropriate given its access to two arterial roadways and the use is compatible with the surrounding commercial zoning and the existing and planned shopping centers.

EXISTING CONDITIONS

Site Characteristics

The site consists of undeveloped acreage. There is a critical environmental feature (CEF) known as Serendipity Cave on the larger Western Oaks Retail Center property that will be protected under current code regulations.

Impervious Cover

The maximum impervious cover allowed and shown by the approved site plan is 44.4%, by way of certain rules and regulations in effect in 1977, the filing date of Western Oaks I-G Subdivision (C8s-77-303).

Environmental

This site is located over the Edward's Aquifer Recharge Zone. The site is in the Williamson Creek Watershed of the Colorado River Basin, which is classified as a Barton Springs Zone (BSZ) watershed. The subject tract has been determined to be grandfathered back to 1977 by way of the Rivers, Lakes and Water Courses Ordinance, #740307. The waterway development permit (WWDP 85-03-1860) is still an active site development permit, and additional measures have been taken to protect the CEF on site.

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

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

Transportation

No additional right-of-way is needed at this time.

The trip generation under the requested zoning is estimated to be 4,607 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). The proposed Health Club will generate approximately 1,908 trips per day.

The traffic impact analysis for this site was waived because this site is subject to the conditions and recommendations established with the TIA approved on this site (SPC-02-0023C). The change in uses from what was originally permitted in the TIA does not increase the peak hour trips and therefore remains valid with the rezoning request.

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. If water or wastewater utility improvements, or offsite main extension, or system upgrades, or utility adjustment, or relocation are required, the landowner will be responsible for all costs and providing.

Also, the utility plan must be reviewed and approved by the Austin Water Utility. The plan must be in accordance with the City's utility design criteria.

Compatibility Standards

There is an existing approved site plan for this tract, SPC-02-0023C. Any new development will need to comply with compatibility to the SF-3 to the west.

ORDINANCE NO. _____

1 **AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE**
2 **PROPERTY LOCATED AT 4625 WEST WILLIAM CANNON DRIVE FROM**
3 **NEIGHBORHOOD COMMERCIAL (LR) DISTRICT TO COMMUNITY**
4 **COMMERCIAL-CONDITIONAL OVERLAY (GR-CO) COMBINING DISTRICT.**

5
6 **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

7
8 **PART 1.** The zoning map established by Section 25-2-191 of the City Code is amended to
9 change the base district from neighborhood commercial (LR) district to community
10 commercial-conditional overlay (GR-CO) combining district on the property described in
11 Zoning Case No.C14-03-0178, on file at the Neighborhood Planning and Zoning
12 Department, as follows:

13
14 A 1.248 acre tract of land, more or less, out of the Thomas Anderson League No.
15 17, Travis County, the tract of land being more particularly described by metes and
16 bounds in Exhibit "A" incorporated into this ordinance, (the "Property")

17
18 locally known as 4625 West William Cannon Drive, in the City of Austin, Travis County,
19 Texas, and generally identified in the map attached as Exhibit "B".

20
21 **PART 2.** The Property within the boundaries of the conditional overlay combining district
22 established by this ordinance is subject to the following conditions:

23
24 The following uses are prohibited uses of the Property:

| | |
|---|----------------------------------|
| 25 Automotive sales | Automotive rentals |
| 26 Automotive repair services | Automotive washing (of any type) |
| 27 Business or trade school | Business support services |
| 28 Commercial off-street parking | Communications services |
| 29 Drop-off recycling collection facilities | Exterminating services |
| 30 Funeral services | Hotel-motel |
| 31 Indoor entertainment | Indoor sports and recreation |
| 32 Outdoor entertainment | Outdoor sports and recreation |
| 33 Pawn shop services | Research services |
| 34 Theater | Hospital services (general) |
| 35 Medical offices (exceeding 5000 sq. ft.) | Community recreation (public) |
| 36 Community recreation (private) | Congregate living |
| 37 Group home Class II | Hospital services (limited) |
| 38 Residential treatment | |
| 39 | |

1 Except as specifically restricted under this ordinance, the Property may be developed and
2 used in accordance with the regulations established for the community commercial (GR)
3 base district and other applicable requirements of the City Code.

4
5 **PART 3.** This ordinance takes effect on _____, 2004.
6

7
8 **PASSED AND APPROVED**

9
10 _____, 2004

§
§
§

11
12
13 Will Wynn
14 Mayor

15
16
17 **APPROVED:**

18 David Allan Smith
19 City Attorney

ATTEST:

Shirley A. Brown
City Clerk



Professional Land Surveying, Inc.
Surveying and Mapping

CH-03-0178

Office: 512-443-1724
Fax: 512-441-6987

2807 Manchaca Road
Building One
Austin, Texas 78704

EXHIBIT "A"

**AVG-Austin, LP
Zoning Description**

**1.248 ACRES
LOTS 15, WESTERN OAKS I-G**

A DESCRIPTION OF 1.248 ACRES (54355 S.F.) IN THE THOMAS ANDERSON LEAGUE NO. 17, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 15, J.W. SMITH'S WESTERN OAKS I-G, A SUBDIVISION OF RECORD IN BOOK 76, PAGE 324 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, CONVEYED TO AVG-AUSTIN LP, BY SPECIAL WARRANTY DEED DATED OCTOBER 24, 2003, OF RECORD IN DOCUMENT NO. 2003252393 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 1.248 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

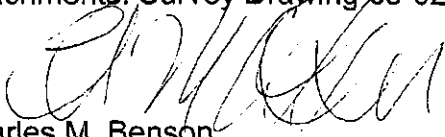
COMMENCING at a calculated point on the north right-of-way line of Brush Country Road (right-of-way width varies) for the south line of said Lot 15 from which a ½" rebar found for the southwest corner of the said Lot 15, same being the southeast corner of Common Area E-2, of the Western Oaks I-E, a subdivision in Travis County, Texas, appearing of record in Volume 76, Page 167 of the Plat Records of Travis County, Texas, bears South 28°22'40" West, a distance of 695.84 feet;

THENCE North 61°37'20" West, over and across Lot 15, a distance of 46.53 feet to a calculated point for the **POINT OF BEGINNING**;

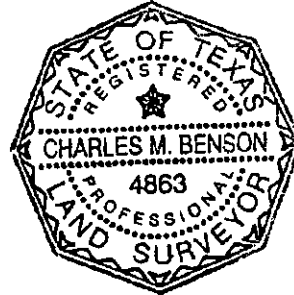
THENCE continuing over and across Lot 15, the following five (5) courses and distances:

1. South 28°22'30" West, a distance of 262.09 feet to a calculated point;
2. North 61°37'30" West, a distance of 192.74 feet to a calculated point;
3. North 11°32'40" East, a distance of 197.00 feet to a calculated point;
4. South 78°31'56" East, a distance of 252.83 feet to a calculated point;
5. South 61°37'30" East, a distance of 19.94 feet to the **POINT OF BEGINNING**, containing 1.248 acres of land, more or less

Surveyed on the ground September, 2001. Bearing Basis: Grid Azimuth for Texas Central Zone, 1983/93 HARN Values from LCRA Control Network.
Attachments: Survey Drawing 69-022STUDIO


Charles M. Benson
Registered Professional Land Surveyor
State of Texas No. 4863

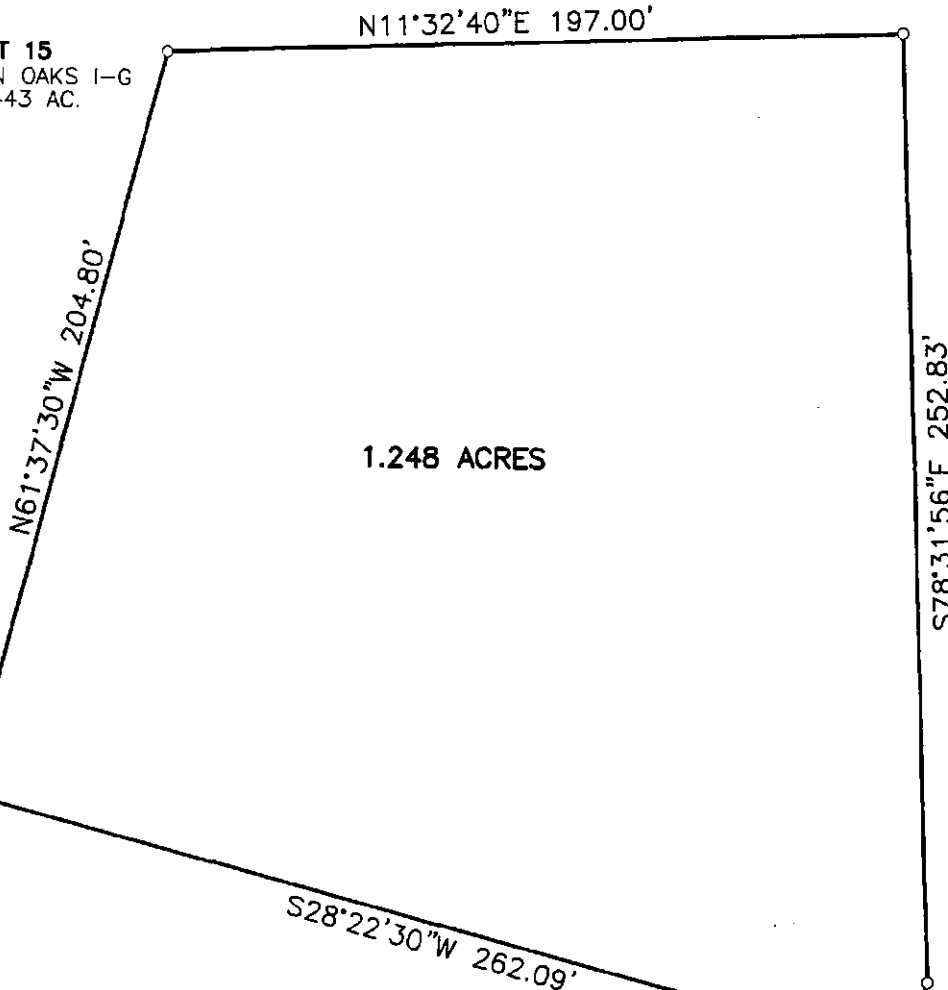
December 3, 2023



REFERENCES
TCAD Parcel #04-1228-0616
Austin Grid map D-18

SKETCH TO ACCOMPANY A DESCRIPTION OF 1.248 ACRES (54355 S.F.) IN THE THOMAS ANDERSON LEAGUE NO. 17, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 15, J.W. SMITH'S WESTERN OAKS I-G, A SUBDIVISION OF RECORD IN BOOK 76, PAGE 324 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, CONVEYED TO AVG-AUSTIN LP, BY SPECIAL WARRANTY DEED DATED OCTOBER 24, 2003, OF RECORD IN DOCUMENT NO. 2003252393 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

LOT 15
WESTERN OAKS I-G
15.443 AC.

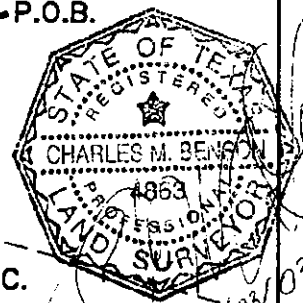


1"=50'

BRUSH COUNTRY RD.
(R.O.W. VARIES)

LEGEND

- 1/2" REBAR FOUND
- 1/2" REBAR WITH CAP SET
- ◊ CALCULATED POINT

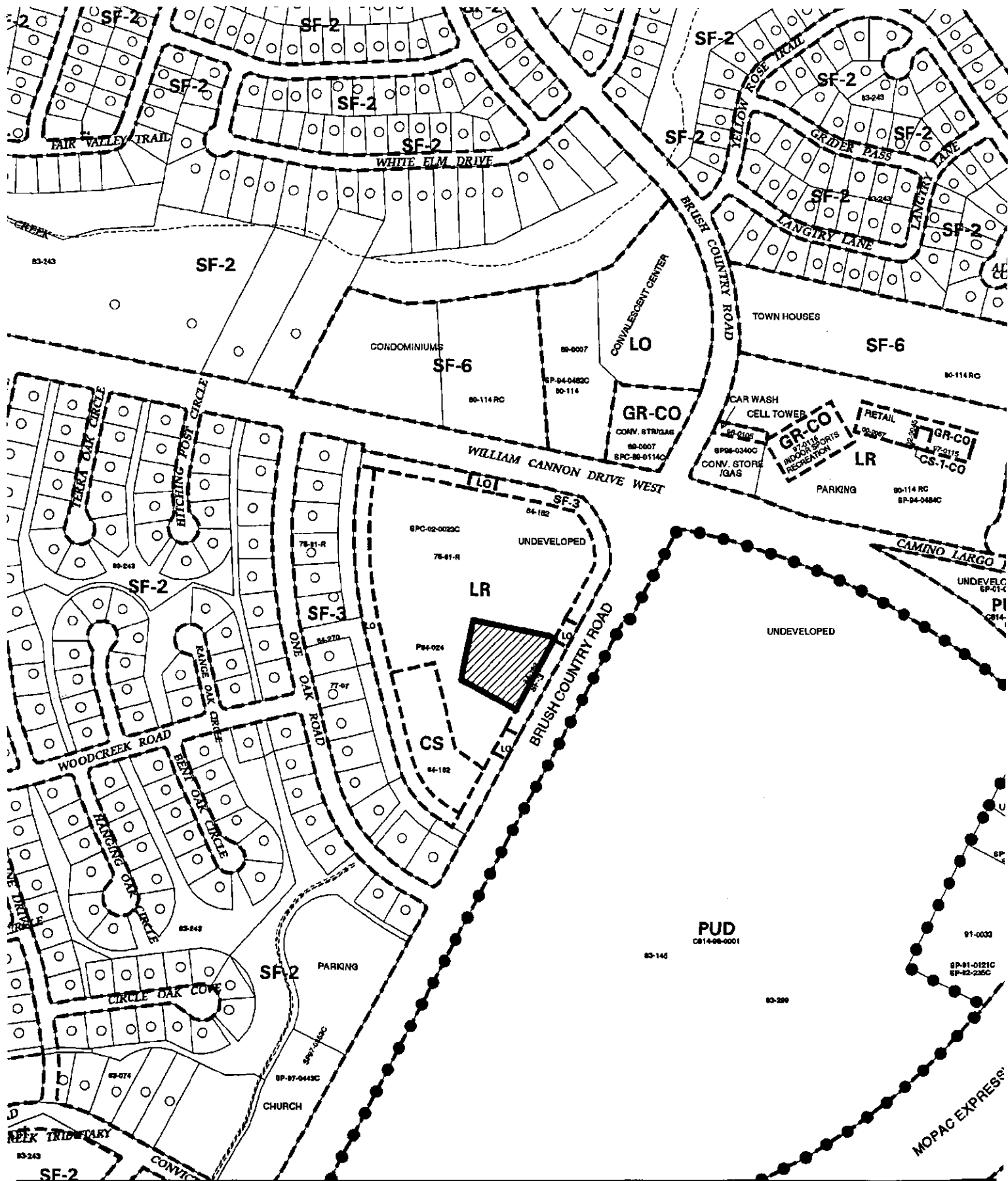


BEARING BASIS: GRID AZIMUTH FOR TEXAS CENTRAL ZONE,
1983/93 HARN VALUES FROM LCRA CONTROL NETWORK.

ATTACHMENTS: METES AND BOUNDS DESCRIPTION

DATE OF SURVEY: SEPT 2001
PLOT DATE: 12/03/03
DRAWING NO.: 69-022 STUDIO
PROJECT NO.: 069-022

Chaparral



| | | | | | |
|---------------|-------------------|--|--|---|---|
| 1" = 400' | SUBJECT TRACT | | ZONING EXHIBIT B CASE #: C14-03-0178 ADDRESS: 4625 W.WILLIAM CANNON DR. SUBJECT AREA (acres): 1.248 | DATE: 03-12 INTLS: TRC | CITY GRID REFERENCE NUMBER D18 |
| | PENDING CASE | | | | |
| | ZONING BOUNDARY | | | | |
| | CASE MGR: W.WALSH | | | | |

RESTRICTIVE COVENANT

OWNER: AVG-AUSTIN LP, a Texas limited partnership

ADDRESS: 9595 Wilshire Blvd., Suite 710, Beverly Hills, CA 90212

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

PROPERTY: A 1.248 acre tract of land, more or less, out of the Thomas Anderson League No. 17, in Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant.

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

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

1. At the time an application for approval of a site plan is submitted for development of the Property, or any portion of the Property, an Integrated Pest Management (IPM) plan shall be submitted to the Watershed Protection and Development Review Department for review and approval.
2. The IPM plan shall comply with the guidelines in Section 1.6.9.2 (D) and (F) of the Environmental Criteria Manual that are in effect on the date of this covenant.
3. At the time an application for approval of a site plan is submitted for development of the Property, or any portion of the Property, a landscape plan shall be submitted to the Watershed Protection and Development Review Department for review and approval. Ninety percent of the total plant material used, exclusive of turf, shall be native to Central Texas or on the Grow Green Native and Adapted Landscape Plants list, attached as Exhibit "B". Plants on the Invasive Species/Problem Plants list, attached as Exhibit "C", may not be included.
4. 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.
5. 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.

6. 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.
7. 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 _____ day of _____, 2004.

OWNER:

AVG-AUSTIN LP,
a Texas limited partnership

By: AVG-AUSTIN GP, Inc.,
a Texas corporation
General Partner

By: _____
Arnold Schlesinger, Secretary

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF CALIFORNIA §

COUNTY OF LOS ANGELES §

This instrument was acknowledged before me on this the ____ day of _____, 2004, by Arnold Schlesinger, Secretary, of AVG-AUSTIN GP, Inc., a Texas corporation, on behalf of the corporation, and the corporation acknowledged this instrument as General Partner on behalf of AVG-AUSTIN LP, a Texas limited partnership.

Notary Public,
State of California

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



**Professional Land Surveying, Inc.
Surveying and Mapping**

C14-03-0178

Office: 512-443-1724
Fax: 512-441-6987

2807 Manchaca Road
Building One
Austin, Texas 78704

EXHIBIT "A"

**AVG-Austin, LP
Zoning Description**

**1.248 ACRES
LOTS 15, WESTERN OAKS I-G**

A DESCRIPTION OF 1.248 ACRES (54355 S.F.) IN THE THOMAS ANDERSON LEAGUE NO. 17, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 15, J.W. SMITH'S WESTERN OAKS I-G, A SUBDIVISION OF RECORD IN BOOK 76, PAGE 324 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, CONVEYED TO AVG-AUSTIN LP, BY SPECIAL WARRANTY DEED DATED OCTOBER 24, 2003, OF RECORD IN DOCUMENT NO. 2003252393 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 1.248 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

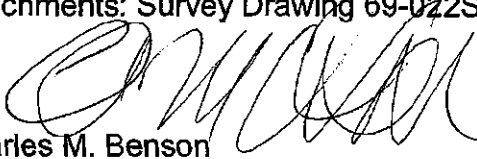
COMMENCING at a calculated point on the north right-of-way line of Brush Country Road (right-of-way width varies) for the south line of said Lot 15 from which a ½" rebar found for the southwest corner of the said Lot 15, same being the southeast corner of Common Area E-2, of the Western Oaks I-E, a subdivision in Travis County, Texas, appearing of record in Volume 76, Page 167 of the Plat Records of Travis County, Texas, bears South 28°22'40" West, a distance of 695.84 feet;

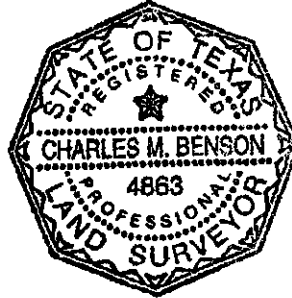
THENCE North 61°37'20" West, over and across Lot 15, a distance of 46.53 feet to a calculated point for the **POINT OF BEGINNING**;

THENCE continuing over and across Lot 15, the following five (5) courses and distances:

1. South 28°22'30" West, a distance of 262.09 feet to a calculated point;
2. North 61°37'30" West, a distance of 192.74 feet to a calculated point;
3. North 11°32'40" East, a distance of 197.00 feet to a calculated point;
4. South 78°31'56" East, a distance of 252.83 feet to a calculated point;
5. South 61°37'30" East, a distance of 19.94 feet to the **POINT OF BEGINNING**, containing 1.248 acres of land, more or less

Surveyed on the ground September, 2001. Bearing Basis: Grid Azimuth for Texas Central Zone, 1983/93 HARN Values from LCRA Control Network.
Attachments: Survey Drawing 69-022STUDIO


Charles M. Benson
Registered Professional Land Surveyor
State of Texas No. 4863



December 03, 2003

REFERENCES
TCAD Parcel #04-1228-0616
Austin Grid map D-18

SKETCH TO ACCOMPANY A DESCRIPTION OF 1.248 ACRES (54355 S.F.) IN THE THOMAS ANDERSON LEAGUE NO. 17, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 15, J.W. SMITH'S WESTERN OAKS I-G, A SUBDIVISION OF RECORD IN BOOK 76, PAGE 324 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, CONVEYED TO AVG-AUSTIN LP, BY SPECIAL WARRANTY DEED DATED OCTOBER 24, 2003, OF RECORD IN DOCUMENT NO. 2003252393 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

LOT 15
WESTERN OAKS I-G
15.443 AC.

N11°32'40"E 197.00'

N61°37'30"W 204.80'

1.248 ACRES

S78°31'56"E 252.83'

1"=50'

S28°22'30"W 262.09'

19.94'

S61°37'30"E

P.O.B.

S28°22'40"W 695.84'

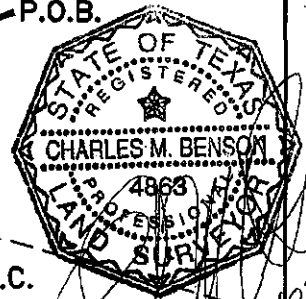
S28°22'40"W 980.34'
(S30°38'W 980.27')

BRUSH COUNTRY RD.
(R.O.W. VARIES)

49.53'

N61°37'20"W

P.O.C.



LEGEND

- 1/2" REBAR FOUND
- 1/2" REBAR WITH CAP SET
- CALCULATED POINT

DATE OF SURVEY: SEPT 2001
PLOT DATE: 12/03/03
DRAWING NO.: 69-022 STUDIO
PROJECT NO.: 069-022

BEARING BASIS: GRID AZIMUTH FOR TEXAS-CENTRAL ZONE,
1983/93 HARN VALUES FROM LCRA CONTROL NETWORK.

ATTACHMENTS: METES AND BOUNDS DESCRIPTION

Chaparral

EXHIBIT B

Grow Green Native and Adapted Landscape Plants

Trees

Ash, Texas *Fraxinus texensis*
Arizona Cypress *Cupressus arizonica*
Big Tooth Maple *Acer grandidentatum*
Cypress, Bald *Taxodium distichum*
Cypress, Montezuma *Taxodium mucronatum*
Elm, Cedar *Ulmus crassifolia*
Elm, Lacebark *Ulmus parvifolia*
Honey Mesquite *Prosopis glandulosa*
Oak, Bur *Quercus macrocarpa*
Oak, Chinquapin *Quercus muhlenbergii*
Oak, Southern Live *Quercus virginiana*

Oak, Escarpment Live *Quercus fusiformis*
Oak, Lacey *Quercus glaucoides*
Oak, Monterey (Mexican White) *Quercus polymorpha*
Oak, Shumard *Quercus shumardii*
Oak, Texas Red *Quercus texana* (*Quercus buckleyi*)
Pecan *Carya illinoensis*
Soapberry *Sapindus drummondii*

Small Trees/Large Shrubs

Anacacho Orchit Tree *Bauhinia congesta*
Buckeye, Mexican *Ungnadia speciosa*
Buckeye, Rec *Aesculus pavia*
Carolina Buckthorn *Rhamnus caroliniana*
Cherry Laurel *Prunus caroliniana*
Crape Myrtle *Lagerstroemia indica*
Desert Willow *Chilopsis linearis*
Dogwood, Roughleaf *Cornus drummondii*
Escarpment Black Cherry *Prunus serotina* var. *eximia*
Eve's Necklace *Sophora affinis*
Goldenball Leadtree *Leucaena retusa*
Holly, Possumhaw *Ilex decidua*
Holly, Yaupon *Ilex vomitoria*
Mountain Laurel, Texas *Sophora secundiflora*

Persimmon, Texas *Diospyros texana*
Pistachio, Texas *Pistacia texana*
Plum, Mexican *Prunus mexicana*
Pomegranate *Punica granatum*
Redbud, Mexican *Cercis canadensis 'mexicana'*
Redbud, Texas *Cercis canadensis* var. *'texensis'*
Retama Jerusalem Thorn *Parkinsonia aculeata*
Senna, Flowering *Cassia corymbosa*
Smoke Tree, American *Cotinus obovatus*
Sumac, Flameleaf *Rhus lanceolata*
Viburnum, Rusty Blackhaw *Viburnum rufidulum*
Viburnum, Sandankwa *Viburnum suspensum*

Shrubs

- Abelia, Glossy *Abelia grandiflora*
 Agarita *Berberis trifoliata*
 Agave (Century Plant) *Agave sp.*
 American Beautyberry *Callicarpa americana*
 Artemisia *Artemisia 'Powis Castle'*
 Barbados Cherry *Malpighia glabra*
 Barberry, Japanese *Berberis thunbergii*
'Atropurpurea'
 Basket Grass (Sacahuista) *Nolina texana*
 Black Dalea *Dalea frutescens*
 Bush Germander *Teucrium fruticans*
 Butterfly Bush *Buddleja davidii*
 Butterfly Bush, Woolly *Buddleja marrubifolia*
 Coralberry *Symphoricarpos orbiculatus*
 Cotoneaster *Cotoneaster sp.*
 Eleagnus *Eleagnus pungens*
 Esperanza/Yellow Bells *Tecoma stans*
 Flame Acanthus *Anisacanthus quadrifidus var. wrightii*
 Fragrant Mimosa *Mimosa borealis*
 Holly, Burford *Ilex cornuta 'Burfordii'*
 Holly, Dwarf Chinese *Ilex cornuta 'Rotunda nana'*
 Holly, Dwarf Yaupon *Ilex vomitoria 'Nana'*
 Jasmine, Primrose *Jasminum mesnyi*
 Kidneywood *Eysenhardtia texana*
 Lantana, Native *Lantana horrida*
 Mistflower, Blue (Blue Boneset) *Eupatorium coelestinum*
 Mistflower, White (Shrubby White Boneset) *Ageratina havanense*
 Mock Orange *Philadelphus coronarius*
 Nandina *Nandina domestica 'Compacta nana' 'Gulf Stream'*
 Oleander *Nerium oleander*
 Palmetto *Sabal minor*
 Prickly Pear *Opuntia engelmannii var. lindheimeri*
 Rose, Belinda's Dream *Rosa 'Belinda's Dream'*
 Rose, Lamarne *Rosa 'Lamarne'*
 Rose, Livin' Easy *Rosa 'Livin' Easy'*
 Rose, Marie Pavie *Rosa 'Marie Pavie'*
 Rose, Martha Gonzales *Rosa 'Martha Gonzales'*
 Rose, Mutabilis *Rosa 'Mutabilis'*
 Rose, Nearly Wild *Rosa 'Nearly Wild'*
 Rose, Old Blush *Rosa 'Old Blush'*
 Rose, Perle d'or *Rosa 'Perle d'or'*
 Rock Rose *Pavonia lasiopetala*
 Rosemary *Rosmarinus officinalis*
 Sage, Mountain *Salvia regia*
 Sage, Texas (Cenizo) *Leucophyllum frutescens*
 Senna, Lindheimer *Cassia lindheimeriana*
 Southern Wax Myrtle *Myrica cerifera*
 Sumac, Evergreen *Rhus virens*
 Sumac, Fragrant (Aromatic) *Rhus aromatica*
 Texas Sotol *Dasylirion texanum*
 Turk's Cap *Malvaviscus arboreus*
 Yucca, Paleleaf *Yucca pallida*
 Yucca, Red *Hesperaloe parviflora*
 Yucca, softleaf *Yucca recurvifolia*
 Yucca, Twistleaf *Yucca rupicola*

Perennials

- Black-eyed Susan *Rudbeckia hirta*
 Bulbine *B. frutescens* or *caulescens*
 Bush Morning Glory *Ipomoea fistulosa*
 Butterfly Weed *Asclepias tuberosa*
 Butterfly Weed 'Mexican' *Asclepias curassivica*
 Cast Iron Plant *Aspidistra elatior*
 Chile Pequin *Capsicum annuum*
 Cigar Plant *Cuphea micropetala*
 Columbine, Red *Aquilegia canadensis*
 Columbine, Yellow *Aquilegia chrysantha* 'Texas Gold'
 Coreopsis *Coreopsis lanceolata*
 Daisy, Blackfoot *Melampodium leucanthum*
 Daisy, Copper Canyon *Tagetes lemmonii*
 Damiantia *Crysactina mexicana*
 Fall Aster *Aster oblongifolius*
 Fern, River *Thelypteris kunthii*
 Firebush *Hamelia patens*
 Gaura *Gaura lindeheimeri*
 Gayfeather *Liatris mucronata*
 Gregg Dalea *Dalea greggii*
 Hibiscus, Perennial *Hibiscus moscheutos*, *Hibiscus coccineus*
 Honeysuckle, Mexican *Justicia spicigera*
 Hymenoxys (Four Nerve Daisy) *Tetranneuris scaposa*
 Indigo Spires *Salvia 'Indigo Spires'*
 Iris, Bearded *Iris albicans*
 Iris, Butterfly/Bicolor (African) *Dietes sp.*
 Lamb's Ear *Stachys byzantina*
 Lantana *Lantana x hybrida* (many varieties)
 Lantana, Trailing *Lantana montevidensis*
 Marigold, Mexican Mint *Tagetes lucida*
 Obedient Plant, Fall *Physostegia virginiana*
 Oregano, Mexican *Poliomintha longiflora*
 Penstemon *Penstemon sp.*
 Phlox, Fragrant *Phlox pilosa*
 Pink Skullcap *Scutellaria suffrutescens*
 Plumbago *Plumbago auriculata*
 Poinciana, Red Bird of Paradise, Pride of Barbados
Caesalpinia pulcherrima
 Primrose, Missouri *Oenothera macrocarpa*
 Purple Coneflower *Echinacea purpurea*
 Ruellia *Ruellia brittoniana*
 Sage, Cedar *Salvia roemeriana*
 Sage, Jerusalem *Phlomis fruticosa*
 Sage, Majestic *Salvia guaranitica*
 Sage, Mealy Blue *Salvia farinacea*
 Sage, Mexican Bush *Salvia leucantha*
 Sage, Penstemon, Big Red Sage *Salvia penstemonoides*
 Sage, Russian *Perovskia atricplifolia*
 Sage, Scarlet or 'Tropical' *Salvia coccinea*
 Salvia, Gregg (Cherry Sage) *Salvia greggii*
 Shrimp Plant *Justicia brandegeana*
 Texas Betony *Stachys coccinea*
 Verbena, Prairie *Verbena bipinnatifida*
 Yarrow *Achillea millefolium*
 Zexmenia *Wedelia texana*

Ornamental Grasses

Bluestem, Big *Andropogon gerardii*
 Bluestem, Bushy *Andropogon glomeratus*
 Bluestem, Little *Schizachyrium scoparium*
 Fountain Grass, Dwarf *Pennisetum alopecuroides*
 Indian Grass *Sorghastrum nutans*
 Inland Sea Oats *Chasmanthium latifolium*

Mexican Feathergrass (Wiregrass) *Stipa tenuissima*
 Muhly, Bamboo *Muhlenbergia dumosa*
 Muhly, Big *Muhlenbergia lindheimeri*
 Muhly, Deer *Muhlenbergia rigens*
 Muhly, Gulf *Muhlenbergia capillaris*
 Muhly, Seep *Muhlenbergia reverchonii*
 Sideoats Grama *Bouteloua curtipendula*
 Wild Rye *Elymus canadensis*

Vines

Asian Jasmine *Trachelospermum asiaticum*
 Carolina Jessamine *Gelsemium sempervirens*
 Coral Vine *Antigonon leptopus*
 Crossvine *Bignonia capreolata*
 Fig Vine *Ficus pumila*

Honeysuckle, Coral *Lonicera sempervirens*
 Lady Banksia Rose *Rosa banksiae*
 Passion Vine *Passiflora incarnata*
 Trumpet Vine *Campsis radicans*
 Virginia Creeper *Parthenocissus quinquefolia*

Groundcover

Aztec Grass *Ophiopogon japonicus*
 Frogfruit *Phyla incisa*
 Horseherb *Calypocarpus vialis*
 Leadwort *Plumbago Ceratostigma plumbaginoides*
 Liriope *Liriope muscari*
 Monkey Grass (Mondo Grass) *Ophiopogon japonicus*
 Oregano *Origanum vulgare*
 Periwinkle, Littleleaf *Vinca minor*
 Pigeonberry *Rivina humilis*

Purple Heart *Secreasea pallida*
 Santolina (Lavender Cotton) *Santolina chamaecyparissus*
 Sedge, Berkeley *Carex tumulicola*
 Sedge, Meadow *Carex perdentata*
 Sedge, Texas *Carex texensis*
 Sedum (Stonedrop) *Sedum nuttallianum*
 Silver Ponyfoot *Dichondra argentea*
 Woolly Stemodia *Stemodia lanata*
 (*Stemodia tomentosa*)

Turf Grasses

Bermuda 'Tif 419', 'Sahara', 'Baby', 'Common'
 Buffalo '609', 'Stampede', 'Prairie'
 St. Augustine 'Baby', 'Common', 'Raleigh', 'Delmar'

Zoysia, Fine Leaf 'Matrella', 'Emerald', 'Zorro'
 Zoysia, Coarse Leaf 'Japonica', 'Jamur', 'El Toro', 'Palisade'

EXHIBIT C

Invasive Species/Problem Plants

PLANTS TO AVOID

INVASIVES

(Plants that are non-native to the Central Texas ecosystem and tend to out-compete native species)

Do Not Plant

(Travel by seeds, berries, and spores so can be transported long distances. They have already invaded preserves and greenbelts):

- Arizona Ash
- Chinaberry
- Chinese Pistache
- Chinese Tallow
- Chinese Privet
- Elephant Ear
- Holly Fern
- Japanese Honeysuckle
- Ligustrum, Wax Leaf
- Mimosa
- Mulberry, Paper
- Nandina (large, berrying varieties)
- Photinia, Chinese
- Pyracantha
- Tamarisk
- Tree of Heaven

Do Not Plant Near

Parks/Preserves/Greenbelts

(travel by runners, rhizomes, and stems so only invade neighboring areas):

- Bamboo
- English Ivy
- Vinca (Periwinkle)

PROBLEM TREES AND SHRUBS

(Typically fast-growing, highly adaptable, but often have weak wood and are short-lived. Most are susceptible to insect and disease problems.)

- Arizona Ash
- Azalea (not adapted to Austin soils)
- Boxelder
- Camellia
- Chinaberry
- Chinese Privet
- Chinese Tallow
- Cottonwood
- Ligustrum
- Lombardy Poplar
- Mimosa
- Mulberry, Paper
- Photinia, Chinese
- Siberian Elm
- Silver Maple
- Sweetgum
- Sycamore
- Tree of Heaven