

**Zoning Public Hearing  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**



**AGENDA ITEM NO.: Z-4  
AGENDA DATE: Thu 02/17/2005  
PAGE: 1 of 1**

**SUBJECT:** C14-81-239 (RCT) - Earthgrains Baking Companies, Inc. - Conduct a public hearing and approve a restrictive covenant termination for the property locally known as 6534 South Congress Avenue (Williamson Creek Watershed). Planning Commission Recommendation: To grant the restrictive covenant termination, with conditions. Applicant: Earthgrains Baking Companies, Inc. (Kevin J. Dollhopf). Agent: CB Richard Ellis (Cinco Cocke). City Staff: Wendy Walsh, 974-7719.

**REQUESTING**     Neighborhood Planning  
**DEPARTMENT:**   and Zoning

**DIRECTOR'S**  
**AUTHORIZATION:** Greg Guernsey

## **RESTRICTIVE COVENANT TERMINATION REVIEW SHEET**

**CASE:** C14-81-239 (RCT)

**P.C. DATE:** November 23, 2004

**ADDRESS:** 6534 South Congress Avenue

**OWNER AND APPLICANT:** Earthgrains Baking  
Companies, Inc.  
(Kevin J. Dollhopf)

**AGENT:** CB Richard Ellis, Inc.  
(Cinco Cocke)

**EXISTING ZONING:** CS

**AREA:** 0.247 acres (10,755 square feet)

### **SUMMARY STAFF RECOMMENDATION:**

Staff recommends a Termination of the Restrictive Covenant, with the condition that prior to City Council action, the property owner submit and pursue a rezoning application from CS to a more restrictive commercial zoning classification.

### **PLANNING COMMISSION RECOMMENDATION:**

November 23, 2004: *APPROVED STAFF RECOMMENDATION TO TERMINATE THE RESTRICTIVE COVENANT, CONDITIONED UPON THE APPLICANT'S PURSUIT OF MORE RESTRICTIVE COMMERCIAL ZONING THROUGH CITY COUNCIL.*

*[J.R - 1<sup>ST</sup>, J.M.C - 2<sup>ND</sup>] (7-0) C.G - ABSENT*

### **ISSUES:**

The applicant is in agreement with the recommendation of the Planning Commission and has filed a rezoning case for the lot containing the vacant building, as well as an adjacent occupied commercial building, and surrounding driveway and parking areas (C14-04-0205). On January 25, 2005, the Planning Commission voted to recommend GR-CO district zoning with the Conditional Overlay prohibiting three uses: automotive sales, automotive washing (of any type) and pawn shop services.

The applicant's representative participated in the October 2004 land use meeting for the South Congress Combined Neighborhood Planning area and outlined the proposed Termination request.

### **DEPARTMENT COMMENTS:**

The subject property encompasses the "footprint" of a vacant commercial building that takes its access to South Congress Avenue and received "C" Commercial, First Height and Area zoning by way of a 1981 - 82 rezoning case. ("C" Commercial, First Height and Area converted to CS, General Commercial Services by way of the 1984 Conversion Ordinance). The accompanying Restrictive Covenant of the "footprint" was prepared for the Rainbo Baking Co. and limited the development of the property to a single use, being a Thrift Store and Distribution Center use. The Restrictive Covenant specified that if the Thrift Store and Distribution Center use was used for a different purpose or abandoned by the Rainbo Baking Co., then the property owner would not object to the rezoning of the property to the LR, Local Retail (converted to Neighborhood Commercial in 1984). Please refer to Exhibits A (Zoning Map), A-1 (Aerial View) and B (1982 Rezoning Ordinance and accompanying Restrictive Covenant).

The Thrift Store and Distribution Center use has been discontinued by Rainbo Baking Co. and the applicant proposes to terminate the Restrictive Covenant and convert the building to an automotive repair facility. A termination of the Restrictive Covenant is necessary as an automotive repair use is not allowed in the LR district and is first allowed in the GR, Community Commercial district. The termination application on its own would retain the present CS zoning.

Staff supports the Termination request with the condition that prior to City Council action, the property owner submit and pursue a rezoning application through City Council from CS to a more restrictive commercial zoning classification. The Restrictive Covenant limits the use of the property to a single use, and more commercial zoning which allows for automotive-related uses (GR) exists to the north (karate studio, video / book store, Salvation Army) and south (laundromat, retail shopping center) of the property. While commercial uses are appropriate along an arterial roadway, there is an absence of uses first allowed in the CS district (including construction, equipment, storage and warehouse-related uses) along this segment of South Congress Avenue. A rezoning to a more restrictive commercial district achieves the applicant's objective of locating an automotive repair use within the vacant building while also removing a number of intensive commercial uses that are allowed to occur in the CS district.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	CS	Vacant commercial building
<i>North</i>	GR; LI-CO	Video / bookstore; Karate studio; Salvation Army center; Child care facility; Undeveloped; Convenience store
<i>South</i>	GR; CS-1	Laundromat; Financial services; Retail center
<i>East</i>	GR; LR; LR-CO	2 fast food restaurants; Undeveloped
<i>West</i>	SF-3	Single family residences

**NEIGHBORHOOD PLANNING AREA:** South  
Congress Combined NPA  
(Sweetbriar)

**TIA:** Is not required

**WATERSHED:** Williamson Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** No

**SCENIC ROADWAY:** No

**NEIGHBORHOOD ORGANIZATIONS:**

26 – Far South Austin Community Association      300 – Terrell Lane Interceptor Association  
428 – Barton Springs / Edwards Aquifer Conservation District  
511 – Austin Neighborhoods Council      627 – Onion Creek Homeowners Assn.  
949 – Sweetbriar I

**SCHOOLS:**

Pleasant Hill Elementary School

Bedichek Middle School

Crockett High School

**CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
C14-93-120	LR to LI-CO	To Grant LI-CO, subject to conditions	Approved LI-CO with CO for light manufacturing plus LR uses, Planned Development Area standards, a 6' privacy fence along the north property line (1-30-82).

**RELATED CASES:**

The Restrictive Covenant accompanied a 1981-82 rezoning case that Council approved for "C" Commercial, First Height and Area (C14-81-239). The Restrictive Covenant limits the property to a single use for a Thrift Store and Distribution Center and states that the owner will not object to the rezoning the property to the LR district. Please refer to the Department Comments section on Page 1 for additional information.

The Restrictive Covenant Termination area represents a portion of Lot 1 of D. Edward Moore Subdivision, recorded in October 1982 (C8s-82-071). Please refer to Exhibit C. There are no related site plan cases on the subject property.

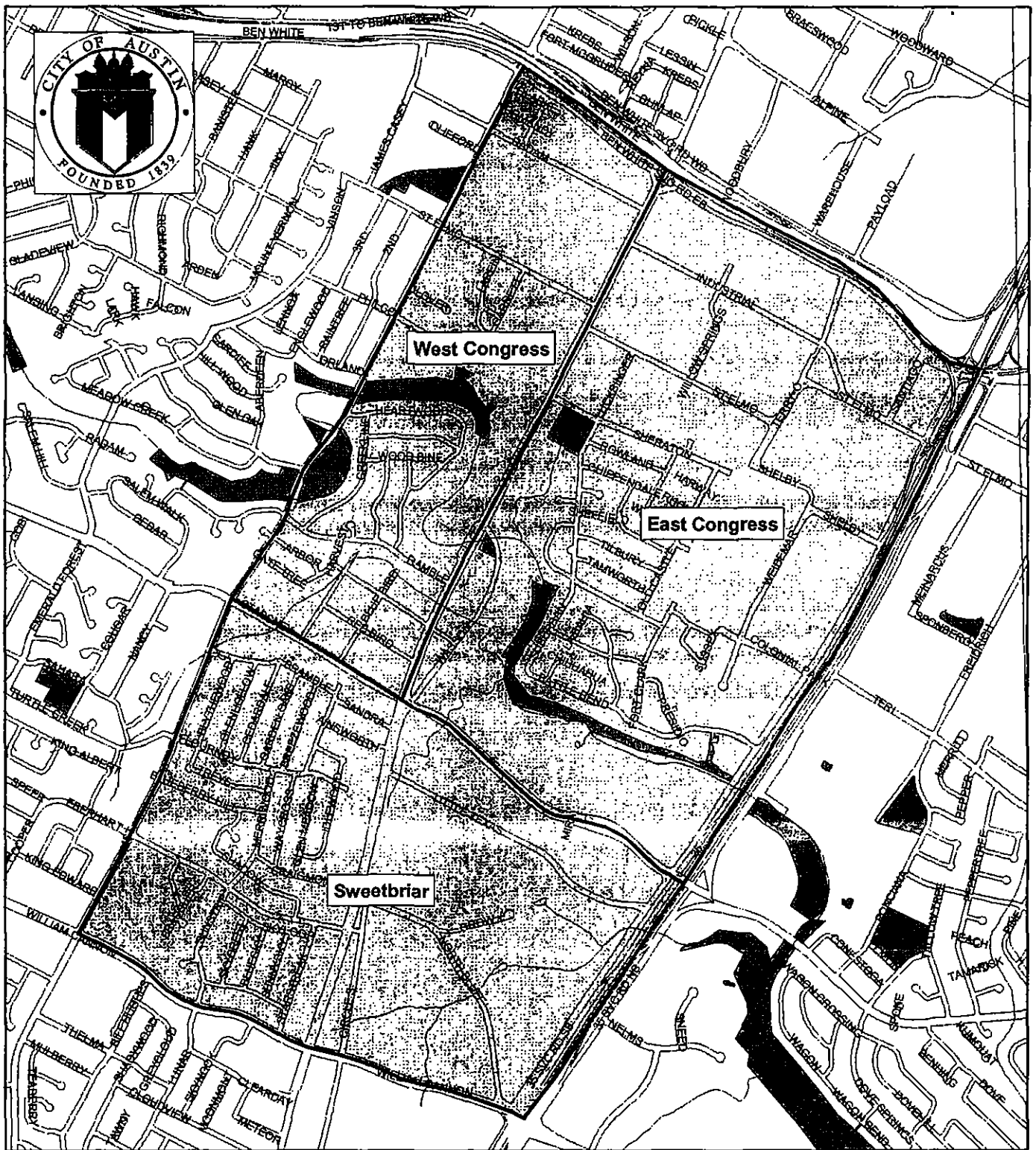
**CITY COUNCIL DATE:** February 17, 2005      **ACTION:**

**ORDINANCE NUMBER:**

**CASE MANAGER:** Wendy Walsh    **PHONE:** 974-7719    e-mail: wendy.walsh@ci.austin.tx.us






**G16**





## South Congress Combined Neighborhood Planning Area

### Legend

- |   |              |   |               |
|---|--------------|---|---------------|
|  | Park         |  | Planning Area |
|  | Creek        |  | Street        |
|  | Lake or Pond |   |               |

0 2,500 5,000 Feet



## ORDINANCE NO. 82 0415-M

AN ORDINANCE ORDERING A CHANGE IN USE AND HEIGHT AND AREA AND CHANGING THE USE AND HEIGHT AND AREA MAPS ACCOMPANYING CHAPTER 13-2 OF THE AUSTIN CITY CODE OF 1981 AS FOLLOWS: 10,755 SQUARE FEET OF LAND OR 0.2469 OF ONE ACRE OF LAND, BEING A PORTION OF LOT 23 AND LOT 24, BUCKINGHAM RIDGE SECTION SIX, A SUBDIVISION OF A PORTION OF THE WILLIAM CANNON LEAGUE, LOCALLY KNOWN AS 6532-6536 SOUTH CONGRESS AVENUE, FROM "LR" LOCAL RETAIL, FIRST HEIGHT AND AREA DISTRICT TO "C" COMMERCIAL, FIRST HEIGHT AND AREA DISTRICT; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND DECLARING AN EMERGENCY.

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

PART 1. Chapter 13-2 of the Austin City Code of 1981 is hereby amended to change the USE and HEIGHT and AREA designations from "LR" Local Retail, First Height and Area District to "C" Commercial, First Height and Area District on the property described in File C14-81-239, to-wit:

10,755 square feet of land or 0.2469 of one acre of land, being a portion of Lot 23 and Lot 24, Buckingham Ridge Section Six, a subdivision of a portion of the William Cannon League, in the City of Austin, Travis County, Texas, as shown on a map or plat of record in Plat Book 78, Page 371, Travis County Plat Records, being more particularly described by metes and bounds as follows:

COMMENCING for reference at a point in the west line of South Congress Avenue at the southeast corner of Lot 23, Buckingham Ridge Section Six, of record in Plat Book 78, Page 371, Travis County Plat Records, said point being the northwest corner of Lot 22-B, Resubdivision of Buckingham Ridge Section Three, a subdivision of record in Plat Book 75, Page 334, Travis County Plat Records, and from which commencing point, the BEGINNING and southeast corner of the herein described tract, bears N 68° 52' W 64.59 feet and N 20° 08' E 5.00 feet;

THENCE 5.00 feet north of and parallel with the south line of said Lot 23, N 68° 52' W 120.25 feet to a point for the southwest corner of the herein described tract;

THENCE 15.00 feet east of and parallel with the west line of said Lot 23 and the west line of said Lot 24, N

EXHIBIT B  
1982 REZONING ORDINANCE  
AND RESPECTIVE COVENANT



20° 08' E 105.25 feet to a point for the northwest corner of the herein described tract;

THENCE S 68° 52' E 40.25 feet to a point for a northeast corner of the herein described tract;

THENCE S 20° 08' W 15.00 feet to a point for an interior corner of the herein described tract;

THENCE S 68° 52' E 10.00 feet to a point for a northeast corner of the herein described tract;

THENCE S 20° 08' W 10.00 feet to a point for an interior corner of the herein described tract;

THENCE S 68° 52' E 70.00 feet to a point for the most easterly northeast corner of the herein described tract;

THENCE S 20° 08' W 80.25 feet to the beginning corner of the herein described tract, containing 10,755 square feet of land or 0.2469 of one acre of land,

locally known as 6532-6536 South Congress Avenue in the City of Austin, Travis County, Texas.

PART 2. It is hereby ordered that the USE and HEIGHT and AREA maps accompanying Chapter 13-2 of the Austin City Code of 1981 and made a part thereof shall be changed so as to record the change ordered in this ordinance.

PART 3. WHEREAS, an emergency is apparent for the immediate preservation of order, health, safety and general welfare of the public, which emergency requires the suspension of the rule providing for the reading of an ordinance on three separate days, and requires that this ordinance become effective immediately upon its passage; therefore, the rule requiring the reading on three separate days is hereby suspended and this ordinance shall become effective immediately upon its passage as provided by the Charter of the City of Austin.

PASSED AND APPROVED

April 15, 1982

Y  
Y  
Y  
Y  
Y

*Charles Keeton McClure*  
Mayor

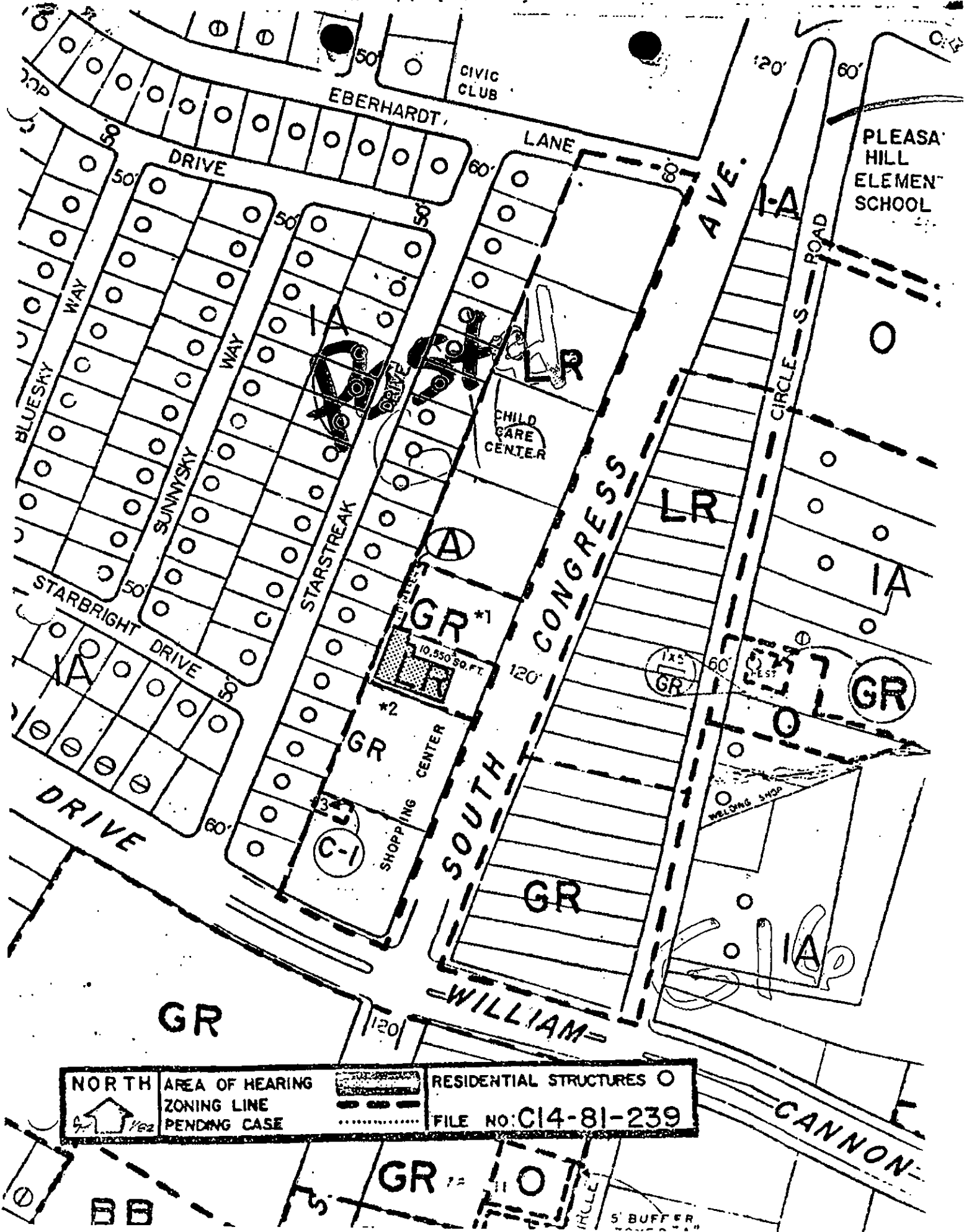
APPROVED:

*Albert De La Rosa*  
City Attorney

ATTEST:

*Grace Monica*  
City Clerk

:saf



PLEASANT HILL ELEMENTARY SCHOOL

CIVIC CLUB

CHILD CARE CENTER

SHOPPING CENTER

WELDING SHOP

NORTH  
AREA OF HEARING ZONING LINE PENDING CASE  
RESIDENTIAL STRUCTURES  
FILE NO. C14-81-239

BB

GR

LOT

5' BUFFER

CANNON

RECEIVED

C14-81-234

JUN 3 '82

PLAT BOOK 78

13.00  
4.00  
sig.

RESTRICTIVE COVENANT

STATE OF TEXAS

COUNTY OF TRAVIS

MAY 17 1982 8188 \* 17.00

2-86-0826

WHEREAS, D. EDWARD MOORE is the owner of Lots 23 and 24 of Buckingham Ridge Subdivision, Section 6, a subdivision of a portion of the William Cannon League, in the City of Austin, Travis County, Texas, as shown on a map or plat of record in Plat Book 78, Page 371, Travis County Plat Records, Travis County, Texas; which said property has heretofore or will be zoned by the City of Austin as LR (Local Retail); and

WHEREAS, the City of Austin and D. EDWARD MOORE, hereafter called Owner, have agreed that a portion of said property, as herein-after described, shall be zoned as C (Commercial) and shall be impressed with certain covenants and restrictions running with said land, and the City of Austin and said Owner desire to set forth such agreement in writing;

NOW, THEREFORE, said Owner, for and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration in hand to the undersigned paid by the City of Austin, the receipt of which is hereby acknowledged, does hereby agree with respect to the following described property, to-wit:

A tract of land containing 10,755 square feet of land or 0.2469 of one acre of land, being a portion of Lot 23 and Lot 24, Buckingham Ridge, Section Six, a subdivision of a portion of the William Cannon League, in the City of Austin, Travis County, Texas, as shown on a map or plat of record in Plat Book 78, Page 371, Travis County Plat Records, and being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof for all purposes;

such agreement to be deemed and considered as a covenant running with the land described on Exhibit "A" attached hereto, and which shall be binding on him and his heirs and assigns, as follows,  
to-wit:

1. The 10,755 square feet tract shall be zoned by the City of Austin as C (Commercial), as defined in Chapter 45 of the Austin City Municipal Code, but such zoning shall remain in effect only so long as the said tract is used by Rainbo Baking Co. as a Thrift Store and Distribution Center. At any time the said tract is used for a different purpose, or at any time such use as a Thrift Store and Distribution Center is abandoned by Rainbo Baking Co., then the owner of the property will not object to the rezoning of the property to LR (Local Retail), as defined by Chapter 13-2 of the Austin City Code of 1981, or other zoning classification most nearly approximating LR under any subsequent revision of said Chapter. 2-86-0827

2. The subject tract is fully described in the Site Plan as prepared by Hudler Associates, Sheet #5, Job #8168, dated December 8, 1981, which is made a part of this Restrictive Covenant and is herewith placed of record in the Office of the County Clerk of Travis County, Texas. Development of the tract shall be in accordance therewith.

3. A portion of the subject tract is subject to an existing restrictive covenant recorded in Volume 6857, Page 1462, Deed Records, Travis County, Texas. To the extent of any conflict between the provisions of this agreement and said restrictive covenant, the provisions of this agreement shall supersede said restrictive covenant and control. The City of Austin has executed this agreement solely to evidence its agreement to the modification of the amendment to the above described restrictive covenant as provided herein, and said restrictive covenant shall be deemed to be modified, amended and terminated to the extent it is inconsistent with the provisions of this agreement.

4. If any person, persons, corporation or entity of any other character shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against said person or entity violating

or attempting to violate such agreement or covenant and to prevent said person or entity from violating or attempting to violate such agreement or covenant.

2-86-0828

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

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

7. This agreement may be modified, amended or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (b) by the owner of the property described in Exhibit "A" at the time of such modification, amendment or termination.

EXECUTED this the 6th day of April, 1982.

[Signature]  
D. EDWARD MOORE

ATTEST: (CORPORATE SEAL)

BY: [Signature]

Its: City Clerk

THE CITY OF AUSTIN

By: [Signature]

Its: City Manager

STATE OF TEXAS

COUNTY OF TRAVIS

2-86-0829

BEFORE ME, the undersigned authority, on this day personally appeared D. EDWARD MOORE, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 6th day of

April, 1982.

Shirley Ford  
NOTARY PUBLIC IN AND FOR  
TRAVIS COUNTY, TEXAS

NOTARY SEAL

Type/Print Name of Notary: SHIRLEY FORD

My commission expires: 4-2-85

EXHIBIT "A"

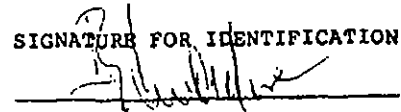
2-86-0830

10,755 SQUARE FEET OF LAND OR 0.2469 OF ONE ACRE OF LAND, BEING A PORTION OF LOT 23 AND LOT 24, BUCKINGHAM RIDGE SECTION SIX, A SUBDIVISION OF A PORTION OF THE WILLIAM CANNON LEAGUE, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, AS SHOWN ON A MAP OR PLAT OF RECORD IN PLAT BOOK 78, PAGE 371, TRAVIS COUNTY PLAT RECORDS, AS PREPARED FOR ED MOORE BY METCALFE ENGINEERING COMPANY, INC., 4800 SOUTH CONGRESS, AUSTIN, TEXAS.

Commencing for reference at a point in the west line of South Congress Avenue at the southeast corner of Lot 23, Buckingham Ridge Section Six, of record in Plat Book 78, Page 371, Travis County Plat Records, said point being the northwest corner of Lot 22-B, Resub-division of Buckingham Ridge Section Three, a subdivision of record in Plat Book 75, Page 334, Travis County Plat Records, and from which commencing point, the BEGINNING and southeast corner of the herein described tract, bears N 68° 52' W 64.59 feet and N 20° 08' E 5.00 feet:

- (1) THENCE 5.00 feet north of and parallel with the south line of said Lot 23, N 68° 52' W 120.25 feet to a point for the southwest corner of the herein described tract;
- (2) THENCE 15.00 feet east of and parallel with the west line of said Lot 23 and the west line of said Lot 24, N 20° 08' E 105.25 feet to a point for the northwest corner of the herein described tract;
- (3) THENCE S 68° 52' E 40.25 feet to a point for a northeast corner of the herein described tract;
- (4) THENCE S 20° 08' W 15.00 feet to a point for an interior corner of the herein described tract;
- (5) THENCE S 68° 52' E 10.00 feet to a point for a northeast corner of the herein described tract;
- (6) THENCE S 20° 08' W 10.00 feet to a point for an interior corner of the herein described tract;
- (7) THENCE S 68° 52' E 70.00 feet to a point for the most easterly northeast corner of the herein described tract;
- (8) THENCE S 20° 08' W 80.25 feet to the beginning corner of the herein described tract, containing 10,755 square feet of land or 0.2469 of one acre of land.

SIGNATURE FOR IDENTIFICATION:



RECORDERS MEMORANDUM  
ALL OR PARTS OF THE TEXT ON THIS PAGE  
WAS NOT CLEARLY LEGIBLE FOR SATISFACTORY RECORDED

EXHIBIT "A"

7753 42





**CBRE**  
CB RICHARD ELLIS

CB Richard Ellis, Inc.

1221 S. MoPac Expy.  
Suite 100  
Austin, TX 78746-7569  
512 499 4920  
512 499 4999 Fax  
james.cocke@cbre.com  
www.cbre.com

James "Cinco" Cocke  
Tenant Representation

September 27, 2004

Mr. Joe Pantalion  
Director Of Watershed Protection & Development Review  
City of Austin  
206 East 9<sup>th</sup> Street  
Austin, Texas 78704

Dear Mr. Pantalion:

I represent the Rainbow Baking Company in their request for a revocation of the Restrictive Covenant on a building they own at 6534 South Congress. Rainbow has hired me to sell the building for them, and we have executed a contract with a local automotive repair facility ("Nickaletti") to sell the building to them.

Rainbow has used the facility as a warehouse, shop, vehicle parking and distribution facility for over 20 years. Due to some corporate changes, they have moved this function to a different site. The current zoning on the site is CS/LR, with the land zoned LR and the office/warehouse building zoned CS. The current Restrictive Covenant states "such zoning shall remain in effect only so long as said tract is used by Rainbow Baking Co. as a Thrift Store and Distribution Center". If the use changes, then "the owner of the property will not object to the rezoning of the property to LR".

Nickaletti operates a franchise automotive shop just two blocks away, at the SW corner of South Congress and William Cannon, where they currently rent space in a shopping center. Their operation is very clean and well kept, which we have verified by a site tour. Their operation is in compliance with the current zoning of the Rainbow building, but it would not be if the zoning goes back to LR. Thus, we are requesting this revocation so that Nickaletti can operate in compliance with the building's zoning regulations. The area has a lot of commercial trades, including karate instruction and washateria; Nickaletti's use will compliment the other local uses, and as I mentioned, they are simply moving from a location very close by.

I appreciate your consideration of our request and am available to answer any questions you might have or provide additional information.

Sincerely,



James "Cinco" Cocke

MEETING SUMMARY  
Pending PC Approval

**CITY PLANNING COMMISSION**

**November 23, 2004**

**One Texas Center**

**505 Barton Springs Road**

**Conference Room 325**

CALL TO ORDER – 6:00 P.M.

\_\_\_\_\_ John-Michael Cortez

**ABSENT** Cid Galindo

\_\_\_\_\_ Matt Hollon, Asst. Secretary

\_\_\_\_\_ Cynthia Medlin, Vice-Chair

\_\_\_\_\_ Matthew Moore, Secretary

\_\_\_\_\_ Jay Reddy

\_\_\_\_\_ Chris Riley, Chair

\_\_\_\_\_ Dave Sullivan, Parliamentarian

**A. REGULAR AGENDA**

**EXECUTIVE SESSION (No public discussion)**

The Planning Commission will announce it will go into Executive Session, if necessary, pursuant to Chapter 551 of the Texas Government Code, to receive advice from Legal Counsel on matters specifically listed on this agenda. The Planning Commission may also announce it will go into Executive Session, if necessary, to receive advice from Legal Counsel regarding any other item on this agenda.

Private Consultation with Attorney – Section 551.071

**CITIZEN COMMUNICATION:**

1. The first four (4) speakers signed up to speak will each be allowed a three-minute allotment to address their concerns regarding items *not* posted on the agenda.

**Scott Johnson** expressed concerns about the lack of staff in the bicycle program. There is only one staff person. In addition, there is a need for short range bicycle planning.

Commissioner Riley asked if the lack of staff is slowing down implementation of the bike plan and Mr. Johnson responded yes, and is slowing update of bicycle plan. He said that there is no staff to write grant proposals. He mentioned that the UTC passed a resolution in August requesting three positions, and adding position that was lost in 2000.

Commissioner Hollon said that the bicycle program needs to look at conditions of bicycle trails along the Johnson Creek trail- there needs to be stream stabilization. Commissioner Riley said the CIP Committee could consider that project. Commissioner Sullivan added that sidewalks should be installed along highways.

**APPROVAL OF MINUTES**

2. Approval of minutes from November 9, 2004.

***MOTION: APPROVE BY CONSENT***

***VOTE: 6-0 (DS-1<sup>st</sup>, MH-2<sup>nd</sup>; JMC- ARRIVED LATER, CG-ABSENT)***

Facilitator: Katie Larsen, 974-6413

katie.larsen@ci.austin.tx.us

## DRAFT MEETING SUMMARY

Pending PC Approval

Commissioner Cortez said that what is proposed is more limited. With the restrictions, holding back negative consequences of development.

Commissioner Reddy added that the five foot setback does not increase allowable impervious cover.

Commissioner Cortez said that the setback allows the building to be built closer to the street.

Commissioner said he would support the motion. He did not like that a speaker stated that the request makes the property more commercially viable because then that is saying lets just leave it to make it so it cannot be developed.

Commissioner Hollon said he'll support the motion but he does not like this Frankenstein zoning. He said that the site is constrained, so setback flexibility is desired. This project will be a nice buffer.

Commissioner Riley said that with the setback reduction the designers will be able to shape buildings to recognize landscaping. It offers more flexibility. He is disappointed in exchange between the neighborhood and the developer.

- 5. Rezoning:** **C14-04-0176 - Comfort Suites Austin Airport**  
**Location:** 7501 East Ben White Boulevard, Carson Creek Watershed, Southeast Combined Neighborhood Planning Area (Southeast) NPA  
**Owner/Applicant:** Spirit Development IV, Ltd. (Gary R. Stillwell)  
**Agent:** CTG Enterprises (Carole Terry-Gonyner)  
**Request:** LI-NP to CS-1-NP  
**Staff Rec.:** **Recommended**  
**Staff:** Wendy Walsh, 974-7719, wendy.walsh@ci.austin.tx.us  
Neighborhood Planning and Zoning Department

***MOTION: APPROVE BY CONSENT******VOTE: 6-0 (DS-1<sup>st</sup>, MH-2<sup>nd</sup>; JMC- ARRIVED LATER, CG-ABSENT)***

- 6. Rezoning:** **C14-81-239 (RCT) - Earthgrains Baking Companies, Inc.**  
**Location:** 6534 South Congress Avenue, Williamson Creek Watershed, South Congress Combined Neighborhood Planning Area (Sweetbriar) NPA  
**Owner/Applicant:** Earthgrains Baking Companies, Inc. (Kevin J. Dollhopf)  
**Agent:** CB Richard Ellis, Inc. (Cinco Cocke)  
**Request:** To Terminate the Restrictive Covenant that addresses the discontinuance of a thrift store and distribution center use.  
**Staff Rec.:** **Recommended, with conditions**  
**Staff:** Wendy Walsh, 974-7719, wendy.walsh@ci.austin.tx.us  
Neighborhood Planning and Zoning Department

DRAFT MEETING SUMMARY  
Pending PC Approval

Wendy Walsh presented the staff recommendation.

**PUBLIC HEARING**

Cinco Cocke, broker for the applicant, said that auto repair is proposed for the site. GR zoning works for buyers representative and the zoning should remain. Termination of the covenant will accomplish the goal of allowing auto repair use on the site.

Commissioner Sullivan said there are three approaches that could be taken:

1. Staff recommendation
2. Termination conditional until zoning changed
3. Commission initiates rezoning case (owner would not have to pay for it).

Betty Edgemond said she is not opposed to GR zoning, but it needs restrictions.

***MOTION: CLOSE THE PUBLIC HEARING******VOTE: 7-0 (MH-1<sup>st</sup>, DS-2<sup>nd</sup>; CG- ABSENT)******MOTION: APPROVE STAFF RECOMMENDATION******VOTE: 7-0 (JR-1<sup>st</sup>, JMC-2<sup>nd</sup>; CG-ABSENT)***

Commissioner Medlin said she will support motion but does not take lightly termination of restrictive covenant especially if adjacent to single-family. She thinks the Commission is being generous.

Commissioner Riley said this motion honors the intention of the covenant.

**DISCUSSION AND ACTION ON SUBDIVISION CASES****SUBDIVISION: DISAPPROVAL CASES**

7. **Resubdivision:** C8-04-0152.0A - Broadacres, Lot 3, Block 6; Resubdivision  
Location: Jeff Davis Ave., Shoal Creek Watershed, Brentwood NPA  
Owner/Applicant: Gail Hurt  
Agent: Jim Bennett  
Request: Approval of the Broadacres, Lot 3, Block 6; Resubdivision composed of 2 lots on 0.439 acres  
Staff Rec.: **DISAPPROVAL**  
Staff: David Wahlgren, 974-6455, david.wahlgren@ci.austin.tx.us  
Watershed Protection and Development Review

***MOTION: DISAPPROVE BY CONSENT******VOTE: 6-0 (DS-1<sup>st</sup>, MH-2<sup>nd</sup>; JMC- ARRIVED LATER, CG-ABSENT)***

**TERMINATION OF RESTRICTIVE COVENANT**  
**FOR**  
**ZONING CASE: C14-81-239**

Owner: Earthgrains Baking Companies, Inc., a Delaware corporation  
Address: 8400 Maryland Avenue, St. Louis, Missouri 63105  
City: The City of Austin, a home-rule city, municipal corporation and political subdivision of the State of Texas, in Travis County, Texas.  
City Council: The City Council of the City of Austin.  
Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Owner to the City of Austin, the receipt and sufficiency of which is acknowledged.

WHEREAS, D. Edward Moore, as owner of all that certain property described in Zoning File No. C14-81-239, consisting of approximately 0.2469 acres of land out of Lots 23 and 24 of Buckingham Ridge Subdivision, Section 6, in Travis County (the "Original Property"), as more particularly described in the restrictive covenant recorded in the Real Property Records of Travis County, Texas, in Volume 7753, Page 38, (the "Restrictive Covenant"), imposed certain restrictions and covenants on the Original Property by the Restrictive Covenant of record; and,

WHEREAS, the Original Property was subsequently resubdivided into Lot 1, D. Edward Moore Subdivision, of record in Volume 82, Page 348, Plat Records of Travis County, Texas. (the "Property")

WHEREAS, the Restrictive Covenant provided that the covenant could be modified, amended, or terminated by joint action of both (a) a majority of the members of the City Council and (b) the Owner of the Property at the time of such modification, amendment or termination; and,

WHEREAS, Earthgrains Baking Companies, Inc., a Delaware corporation, is the sole and current owner (the "Owner") of the Property on the date of this termination and desires to terminate the Restrictive Covenant; and,

WHEREAS, the City Council and the Owner, as the sole and current owner of the Property, agree the Restrictive Covenant should be terminated;

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants, and agreements hereinafter set forth, the City of Austin and the Owner, agree as follows:

1. The Restrictive Covenant is terminated by this termination. Each and every one of the terms, conditions, and provisions of the Restrictive Covenant, as set forth in the Restrictive Covenant, shall have no force or effect on and after the effective date of this termination.
2. The City Manager, or his designee, shall execute, on behalf of the City, this Termination of Restrictive Covenant for Zoning File No. C14-81-239 (the "Termination of Restrictive Covenant") as authorized by the City Council of the City of Austin. This Termination of Restrictive Covenant shall be filed in the Official Public Records of Travis County, Texas, which will terminate the document of record in Volume 7753, Page 38.

**EXECUTED** to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**OWNER:**

**Earthgrains Baking Companies, Inc.,**  
a Delaware corporation

BY: Kevin J. Dollhopf  
Assistant Secretary and Director of  
Corporate Real Estate

**CITY OF AUSTIN:**

BY: LAURA J. HUFFMAN,  
ASSISTANT CITY MANAGER  
CITY OF AUSTIN

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

**www**

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by Kevin J. Dollhopf, as Assistant Secretary and Director of Corporate Real Estate of Earthgrains Baking Companies, Inc., a Delaware corporation, on behalf of the corporation.

Notary Public, State of Texas

THE STATE OF TEXAS

COUNTY OF TRAVIS

§  
§  
§  
§  
§

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_ 2005, by **LAURA J. HUFFMAN**, as **ASSISTANT CITY MANAGER OF THE CITY OF AUSTIN**, a municipal corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
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**