



Zoning
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: Z-12
AGENDA DATE: Thu 05/12/2005
PAGE: 1 of 1

SUBJECT: C814-99-0001(RCA) - Avery Ranch PUD Restrictive Covenant Amendment - Conduct a public hearing and approve a restrictive covenant amendment for the property locally known as Avery Ranch at Parmer Lane (Brushy Creek Watershed) . Zoning and Platting Commission Recommendation: To grant the restrictive covenant amendment. Applicant: Pebble Creek Joint Venture (Edward R. Rathgeber, President), Continental Homes of Texas, L.P. (Richard Maier), Rathgeber Investment Company, Ltd. (Edward R. Rathgeber, Jr.), Developers of Avery Ranch (Robert D. Wunsch, President). Agent: Waterstone Development (Theresa Canchola). City Staff: Sherri Gager, 974-3057.

REQUESTING Neighborhood Planning **DIRECTOR'S**
DEPARTMENT: and Zoning **AUTHORIZATION:** Alice Glasco



May 2, 2005

Ms. Sherri Sirwaitis, Case Manager
City of Austin
Development Review & Assistance Center
505 Barton Springs Road, 5th Floor
Austin, TX 78701

RE: *Avery Ranch PUD Amendment No .3 (C814-99-0001.03)*
Avery Ranch Restrictive Covenant Amendment (C814-99-0001RCA)

Dear Sherri:

Pursuant to the Section 25-1-152, of the Land Development Code, we hereby request an indefinite postponement of the above referenced cases. We are working with the Parks Department to finalize the ordinance language and with Real Estate to finalize the two parkland dedication transactions. We are aware that we will need to pay a re-notification fee once we are ready to proceed with the case.

We appreciate your consideration of our postponement request. Please call if you need additional information or have any questions.

Sincerely,



Theresa Canchola

cc: Robert D. Wunsch, via email
 Sarah Campbell, via email

ZONING CHANGE REVIEW SHEET

CASE: C814-99-0001(RCA)

Z.A.P. DATE: August 3, 2004
September 21, 2004

ADDRESS: Avery Ranch Boulevard at Parmer Lane

OWNER/APPLICANT: Pebble Creek Joint Venture (Edward R. Rathgeber, President)
Continental Homes of Texas, L.P. (Richard Maier)
Rathgeber Investment Company, Ltd. (Edward R. Rathgeber, Jr.)
Developers of Avery Ranch (Robert D. Wunsch, President)

AGENT: Waterstone Development (Theresa Canchola)

EXISTING ZONING: PUD

AREA: 1629.78 acres

The applicant is requesting to amend the public restrictive covenant associated with the Avery Ranch PUD to clarify or delete the following provisions:

- 1) Change Section 3 to the delete a portion of the following provision. "The Owner agrees to provide financial assistance of up to \$100,000 ~~plus five percent of the proceeds of any bonds issues by Williamson County Development District No.2 (Avery Ranch) up to a maximum amount of \$500,000 (the "Trails Funds"), subject to approval by appropriate bond counsel and any applicable governmental authorities.~~"
- 2) Change Section 4 to add the following:
 - a. "The date of the dedication of the 37.5 acres of land has been amended to no later than January 1, 2006."
 - b. "The Owners are permitted to convey the city parkland to a third-party trustee."
 - c. "The land to be dedicated to the city for parkland includes the strip between the 37.5 acre tract and Brushy Creek."

SUMMARY STAFF RECOMMENDATION:

The staff's recommendation is to approve the proposed Restrictive Covenant Amendment for the Avery Ranch PUD.

ZONING AND PLATTING COMMISSION RECOMMENDATION:

8/3/04: Postponed to September 21, 2004 by Applicant (8-0, J. Pinnelli-absent); J. Martinez-1st, J. Gohil-2nd.

9/21/04: Approved staff's recommendation by consent (7-0, K. Jackson-off dias, J. Gohil-absent); J. Martinez-1st, M. Whaley-2nd.

ISSUES:

On May 3, 2005, the staff received a letter from the applicant requesting an indefinite postponement of this restrictive covenant amendment case and the associated PUD amendment rezoning case (C814-99-0001.03). The applicant needs additional time to work with the City of Austin Parks and Recreation Department and the Real Estate Division to finalize details concerning these proposed changes (Postponement Request Letter-Attachment C).

DEPARTMENT COMMENTS:

The applicant is requesting changes to the public restrictive covenant for the Avery Ranch PUD to clarify or delete some of the original conditions of the covenant (Request Letter-Attachment A). Through this request, the applicant has asked to remove a portion of Section 3 of the covenant because the Williamson County Development District No.2 was never formed and therefore there have been no proceeds generated from this entity. The applicant is also requesting changes to Section 4 of the covenant to allow for the dedication of the 37.5 acres of future parkland land to be dedicated to the City of Austin no later than January 1, 2006. This dedication date has been changed because there is a need to conduct remediation for a cattle dipping vat on the site. In addition, the applicant is requesting to convey this land to a third party so that this third party can hold title to the land in order for it to be used as a "match" for obtaining grants. Finally, the applicant is adding a wording to Section 4 to state that the land to be dedicated to the City of Austin will include the strip of property between the 37.5 acre tract and Brushy Creek.

The staff is recommending these requests because they are consistent with changes that are proposed by the applicant for an amendment to Part 10 of the Avery Ranch PUD ordinance (Case C814-99-0001.03). The applicant has been working with the City of Austin Parks and Recreation Department concerning the proposed amendments for months. PARD is supportive of these clarifications to parkland issues (Attachment B).

The applicant agrees with the staff's recommendation.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	PUD	Residential Uses, Amenity Center, Golf Course
<i>North</i>	County	South Brushy Creek, Undeveloped Area
<i>South</i>	I-RR, PUD, IP-PDA, SF-4A, SF-2-CO, County	Undeveloped Land, Stadium, Single-Family Residential Neighborhood, Warehouses
<i>East</i>	County	Residential, Undeveloped
<i>West</i>	County	Undeveloped, Industrial/Warehouse Uses

AREA STUDY: N/A

TIA: Not required

WATERSHED: Brushy Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: Yes

NEIGHBORHOOD ORGANIZATIONS:

485 – Riviera Springs Community Development Association

604 – Davis Spring HOA

985 – Davis Springs HOA

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C814-99-0001.02	PUD to PUD	1/28/03: Approved staff's recommendation of PUD zoning (6-0, J. Martinez, K. Jackson-off dias)	2/27/03: Granted PUD zoning as recommended by the ZAP Commission on 1 st reading (6-0, Goodman-off dias) 4/24/03: Approved PUD (6-0, Garcia-off dias); 2 nd /3 rd readings
C814-99-0001.01	PUD to PUD	6/18/02: Posponed to 7/16/02 by the applicant (8-0, A. Adams-absent) 7/16/02: Postponed to 7/30/02 by the staff for re-notification purposes (6-0, M. Casias/ D. Castaneda/ K. Jackson-absent) 7/30/02: Postponed to 9/10/02 by the applicant/neighborhood (6-0, V. Aldridge- absent) 9/10/02: Approved staff's recommendation for PUD zoning; by consent (6-0, D. Castaneda-absent)	10/10/02: Granted PUD on 1st reading (7-0) 1/30/03: Approved PUD amendment (7-0); 2 nd /3 rd readings
C14-96-0085	SF-2 to SF-4A	Approved staff rec. of SF-4A (7-0)	Approved SF-4A (7-0); all 3 readings on 9/5/96
C14-95-0093	SF-2 to IP	Approved LO (1 st 100') & IP-PDA (Remainder) (6-0)	Approved LO & IP-PDA (6-0); 1 st reading only Approved LO (1 st 100') & IP-PDA subject to conditions (5-0); 2 nd /3 rd readings

RELATED CASES: C814-99-0001 (Avery Ranch PUD)

ABUTTING STREETS:

NAME	ROW	PAVEMENT	CLASSIFICATION	DAILY TRAFFIC
Avery Ranch Boulevard	120'	Varies	Arterial	N/A
Parmer Lane	200'	Varies	Arterial	N/A

CITY COUNCIL DATE: October 21, 2004**ACTION:** Postponed to 11/18/04 by staff
(7-0)

November 18, 2004

ACTION: Postponed to 1/27/05 by staff
(7-0)

January 27, 2005

ACTION: Postponed to 3/03/05 at staff's
request (6-0, Dunkerley-absent)

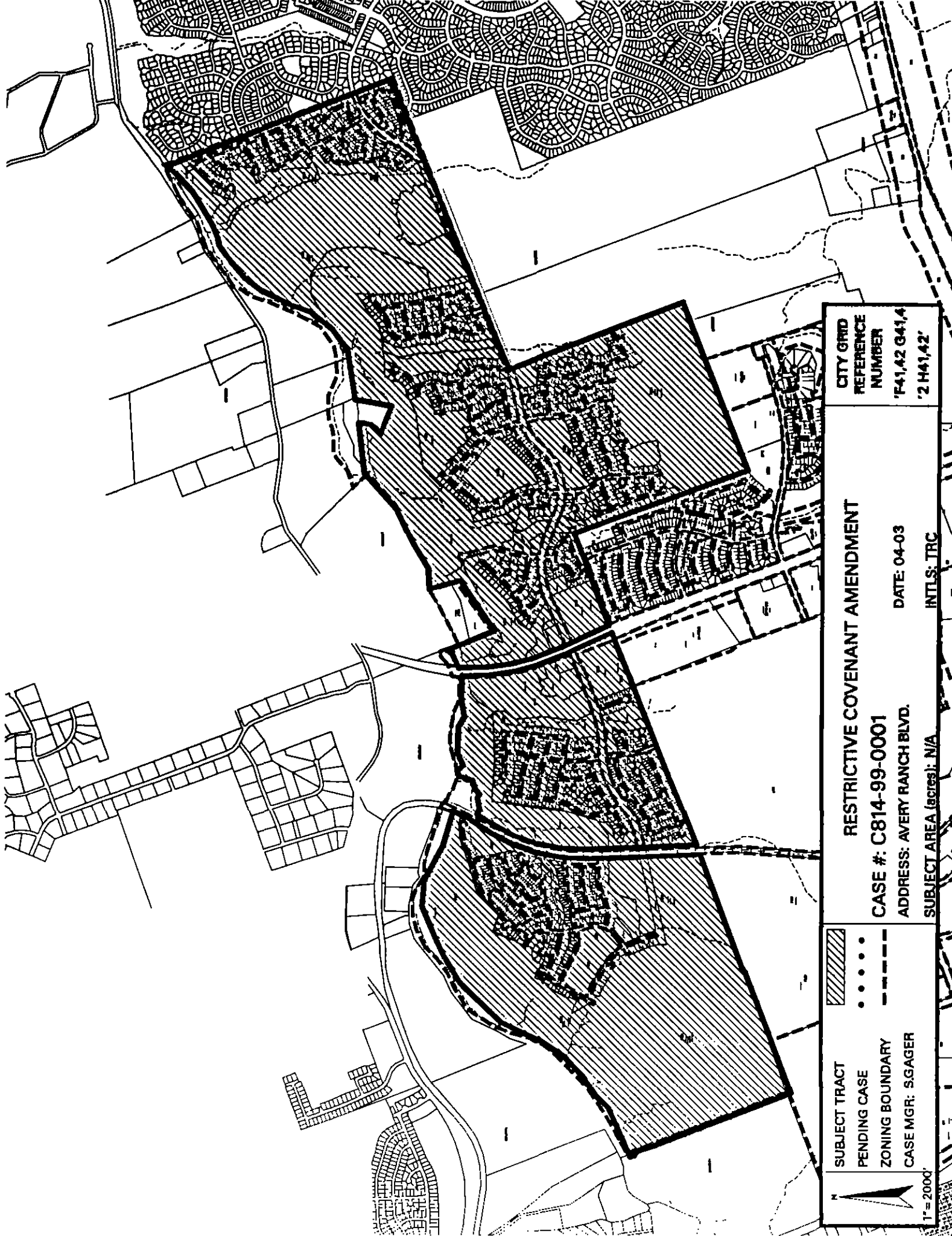
March 3, 2005




ACTION: Postponed to 5/12/05 by staff
(7-0)

May 12, 2005

ACTION:**ORDINANCE READINGS:** 1st2nd3rd**ORDINANCE NUMBER:****CASE MANAGER:** Sherri Sirwaitis**PHONE:** 974-3057

sherri.sirwaitis@ci.austin.tx.us



 SUBJECT TRACT	RESTRICTIVE COVENANT AMENDMENT		CITY GRID REFERENCE NUMBER 'F41,42 G41,4 '2 H41,42'
	 PENDING CASE	CASE #: C814-99-0001	
 ZONING BOUNDARY	ADDRESS: AVERY RANCH BLVD.	DATE: 04-03	
CASE MGR: S.GAGER	SUBJECT AREA (acres): N/A		INTLS: TRC

1" = 2000'

ATTORNEYS & COUNSELORS
 100 Congress Avenue, Suite 1100
 Austin, Texas 78701
 (512) 236-2000 • fax (512) 236-2002
 www.jw.com



JACKSON WALKER L.L.P.

Timothy C. Taylor
 512.236.2390
 ttaylor@jw.com

March 25, 2004

Mr. Joe Pantalion, P.E.
 Acting Director
 Development Review & Inspection Dept.
 City of Austin
 505 Barton Springs Road
 Austin, Texas 78701

Via Hand Delivery

Re: AVERY RANCH: Restrictive Covenant Amendment and Avery
 Ranch PUD Amendment Zoning Case C814-99-0001

Dear Joe:

We are requesting to amend the restrictive covenant and PUD Ordinance associated with the Avery Ranch PUD (C814-99-0001). The purpose of the amendment is to clarify and or delete some provisions that were originally agreed to.

1. Restrictive Covenant.

(a) Changes to Section 3 of the Restrictive Covenant are summarized as follows:

The provision for 5% of bond proceeds issued by Williamson County Development District No. 2, up to a maximum of \$500,000, to be used for trail and related purposes has been deleted.

Reason: That CDD was never formed, and therefore, there are no proceeds.

(b) Changes to Section 4 of the Restrictive Covenant are summarized as follows:

The date of dedication of the 37.5 acres of land has been amended to no later than January 1, 2005.

Reason: Dedication has been delayed (i) to allow for remediation of a cattle dipping vat, and (ii) to obtain these amendments so that the land can be conveyed to a third party as set forth below.

The Owners are permitted to convey the land to a third-party trustee.

Reason (Short answer): The restrictive covenant did not permit conveyance to a third-party. It is necessary for a third party to hold title to the land in order for it to be used as "match" for obtaining grants.

Austin
 Dallas
 Fort Worth
 Houston
 Richardson
 San Angelo
 San Antonio

The land to be dedicated includes the strip between the 37.5 acre tract and Brushy Creek.

Reason: Request of PARD.

2. **PUD Ordinance**. The proposed change is to Part 10 of the PUD Ordinance to clarify that the land can be conveyed to a third party trustee and that the deadline for conveyance is no later than January 1, 2005 (this will conform the PUD Ordinance to the amendments to the restrictive covenant).

Representatives of the Avery Ranch owners have had numerous meetings with Sarah Campbell with the City of Austin Parks Department. Ms. Campbell has reviewed the proposed restrictive covenant and PUD ordinance amendment, and it is my understanding that she is satisfied with it, although she may be waiting on a final "blessing" from Raul Calderon in Legal.

Please call me if you have any questions or comments.

Very truly yours,



Timothy C. Taylor

TCT/3589054.1
219644.00036
Enclosures

C: Avery Ranch Owners Committee



MEMORANDUM

TO: Sherri Gager, Case Manager
NPZD

FROM: Sarah Campbell
Parks and Recreation Department

DATE: July 29, 2004

SUBJECT: Avery Ranch Restrictive Covenant Amendment

The Parks and Recreation Department (PARC) has been working with representatives of Avery Ranch development for a long time toward the proposed Avery Ranch Restrictive Covenant amendments. Staff wants to clarify our understanding of the proposals.

- ☐ Proposed amendments clarify that the 37.5 acres required to be dedicated to the City as parkland may first be conveyed to a non-profit, third party trustee (approved by PARC), for purposes of facilitating grant applications, as long as the conveyance requires re-conveyance to the City or to another City-approved governmental entity for public park use no later than January 1, 2006.
- ☐ Proposed amendments also include the conveyance as parkland, concurrently and in the same manner as the 37.5 acres except that re-conveyance shall be to Williamson County, of approximately 16 acres along the north boundary of the Avery Ranch East subdivisions.

Please see my related memorandum on the subject of the Avery Ranch PUD Amendment.

Sarah Campbell, Senior Planner
Parks and Recreation Department