

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



**AGENDA ITEM NO.: Z-6  
AGENDA DATE: Thu 07/29/2004  
PAGE: 1 of 1**

**SUBJECT:** C14r-86-144 (RCT) - Oak Bluff - Conduct a public hearing and approve a Restrictive Covenant Termination for the property locally known as 807 North Bluff Drive (Williamson Creek Watershed). Planning Commission Recommendation: To grant the Restrictive Covenant Termination. Applicant: Keith Smith. Agent: LOC Consultants (Sergio Lozano-Sanchez). City Staff: Wendy Walsh, 974-7719.

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

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

## **RESTRICTIVE COVENANT TERMINATION REVIEW SHEET**

**CASE:** C14r-86-144 (RCT)

**P.C. DATE:** June 8, 2004

**ADDRESS:** 807 North Bluff Drive

**OWNER AND APPLICANT:** Keith Smith

**AGENT:** LOC Consultants  
(Sergio Lozano-Sanchez)

**EXISTING ZONING:** RR; NO; GR

**AREA:** 5.021 acres

### **SUMMARY STAFF RECOMMENDATION:**

Staff recommends a Termination of the Restrictive Covenant.

### **PLANNING COMMISSION RECOMMENDATION:**

June 8, 2004: *APPROVE STAFF RECOMMENDATION TO TERMINATE THE RESTRICTIVE COVENANT.*

*VOTE: 5-0 (JMC-1<sup>st</sup>, CM-2<sup>nd</sup>)*

### **ISSUES:**

None at this time.

### **DEPARTMENT COMMENTS:**

The subject property is undeveloped and has carried rural residence (RR), neighborhood office (NO) and community commercial (GR) district zonings since July 1987. Access to the property is taken to North Bluff Drive, a residential collector street. Williamson Creek defines the north property line. Please refer to Exhibits A (Zoning Map) and A-1 (Aerial View).

The applicant requests single family residence small lot district zoning (SF-4A) for 5.021 acres (C14-04-0041.SH). The subject rezoning area was part of a 1987 rezoning request known as "William Cannon Joint Venture" that included retail, restaurant and cinema uses, and extended along North Bluff Drive between Williamson Creek and William Cannon Drive (C14r-86-144). The Site Plan attached to the 1987 Zoning Ordinance shows that the area of the subject rezoning request contains two buildings (zoned GR), parking areas (zoned NO) and a detention pond, filtration pond and a natural buffer area (zoned RR). Furthermore, a Restrictive Covenant attached to the 1987 case covers the NO and RR portions of the property, and limits the use of these two areas to surface parking and detention and filtration of run-off water, respectively. Please refer to Exhibit B (1987 Zoning Ordinance; Restrictive Covenant with field notes, exhibits and site plan).

Accordingly, along with the applicant's request for SF-4A zoning, a Restrictive Covenant Termination request has been filed to delete these limitations on the property (C14r-86-144 (RCT)). Staff is supportive of the Termination request, as detention and filtration facilities have been built to support the existing commercial development near the intersection of North Bluff Drive and William Cannon Drive and the rezoning request removes further commercial development from occurring in this location.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	RR; NO; GR	Undeveloped
<i>North</i>	SF-3; LO	Single family residences; Elementary school; Towing company
<i>South</i>	GR	Retail sales; Fast food restaurants; Service station
<i>East</i>	MF-2-CO; RR; GR-CO; SF-3-H; SF-3; GR-CO; GR; CS	Undeveloped; Automobile dealership; Lodge; Single family residence; Fast food restaurants; Automotive repair
<i>West</i>	LO; MF-2; GR	Apartments

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

**TIA:** Is not required

**WATERSHED:** Williamson Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** N/A

**HILL COUNTRY ROADWAY:** N/A

**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.

**SCHOOLS:**

Pleasant Hill Elementary School

Bedichek Middle School

Crockett High School

**CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>ZONING AND PLATTING COMMISSION / PLANNING COMMISSION</b>	<b>CITY COUNCIL</b>
C14-03-0063	RR; NO-CO; GR-CO to GR	To Grant RR in its existing configuration, and GR-CO with 45' max. height and prohibited uses. Restrictive Covenant for the TIA.	Approved RR; GR-CO, as recommended by the ZAP (11-20-03)
C14-03-0064	SF-3 to GR-CO	Withdrawn by the Applicant	Not applicable
C14-01-0069	SF-3 to MF-2	To Grant MF-2-CO with CO for a 25' vegetative buffer along North Bluff Drive (6-5-01)	Approved MF-2-CO as recommended by the Planning Commission (8-9-01)
C14-99-0055 (RCA)	Restrictive	To Grant an amendment	Approved the Restrictive

	Covenant Amendment to remove access restrictions to North Bluff Drive	of the Restrictive Covenant to delete conditions #1 and #2, pertaining to driveway access on North Bluff Drive (9-23-03).	Covenant Amendment, as recommended by the ZAP (10-23-03)
C14-99-0055	SF-3 to GR & NO	To Grant GR-CO for Tract 1 and NO-CO for Tract 2 with a 10' vegetative buffer adjacent to North Bluff Drive; RR for Tract 3. Additional conditions agreed to between the Applicant and the Neighborhood Association: 60 db at the property line, 10' buffer along N. Bluff to be a landscaped buffer, and that vehicle storage, auto washing, repair, rentals are permitted only as accessory uses to the principal use of automotive sales. (4-27-99)	Approved GR-CO for Tract 1; NO-CO for Tract 2; RR for Tract 3. 10' landscaped buffer along North Bluff and same along adjacent SF-3-H property; 60% impervious cover; shielded lighting; prohibit Congregate Living and Residential Treatment on NO-CO; 40' height on Tract 1. <u>Restrictive Covenant</u> limits property to 1 driveway along North Bluff Drive, with mechanized gate for security purposes and for employees only; prohibits access for delivery trucks for loading or unloading purposes; prohibits portable buildings or mobile homes except for those used for auto sales; noise level at property not to exceed 60 decibels (5-13-99)

**RELATED CASES:**

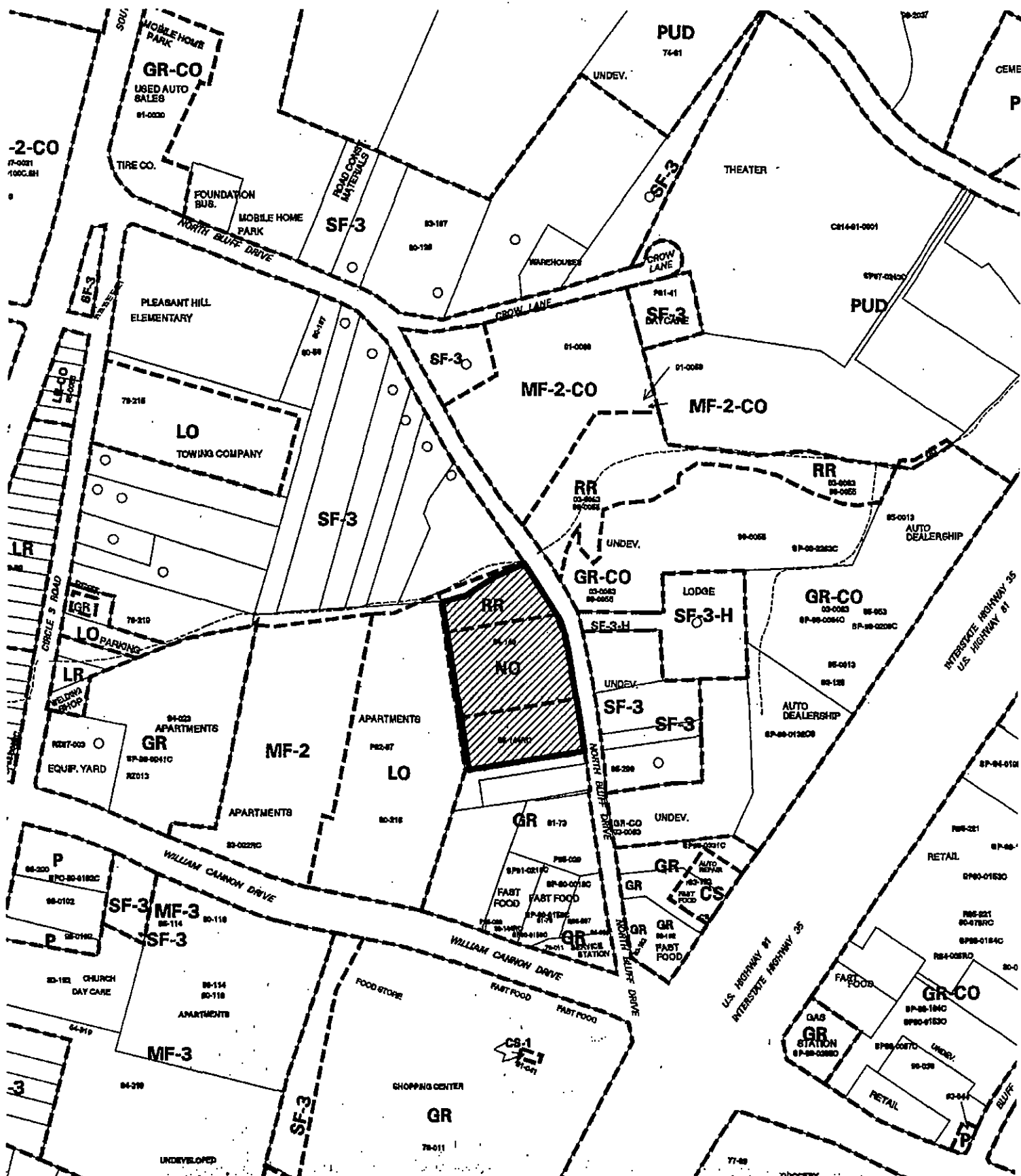
The applicant proposes to rezone the property to the single family residence – small lot (SF-4A) district (C14-04-0041.SH). Staff recommends SF-4A zoning based on its compatibility with the surrounding zoning (SF-3; SF-3-H; MF-2-CO) and development (undeveloped, single family residences, lodge, apartments).


**CITY COUNCIL DATE:** July 29, 2004

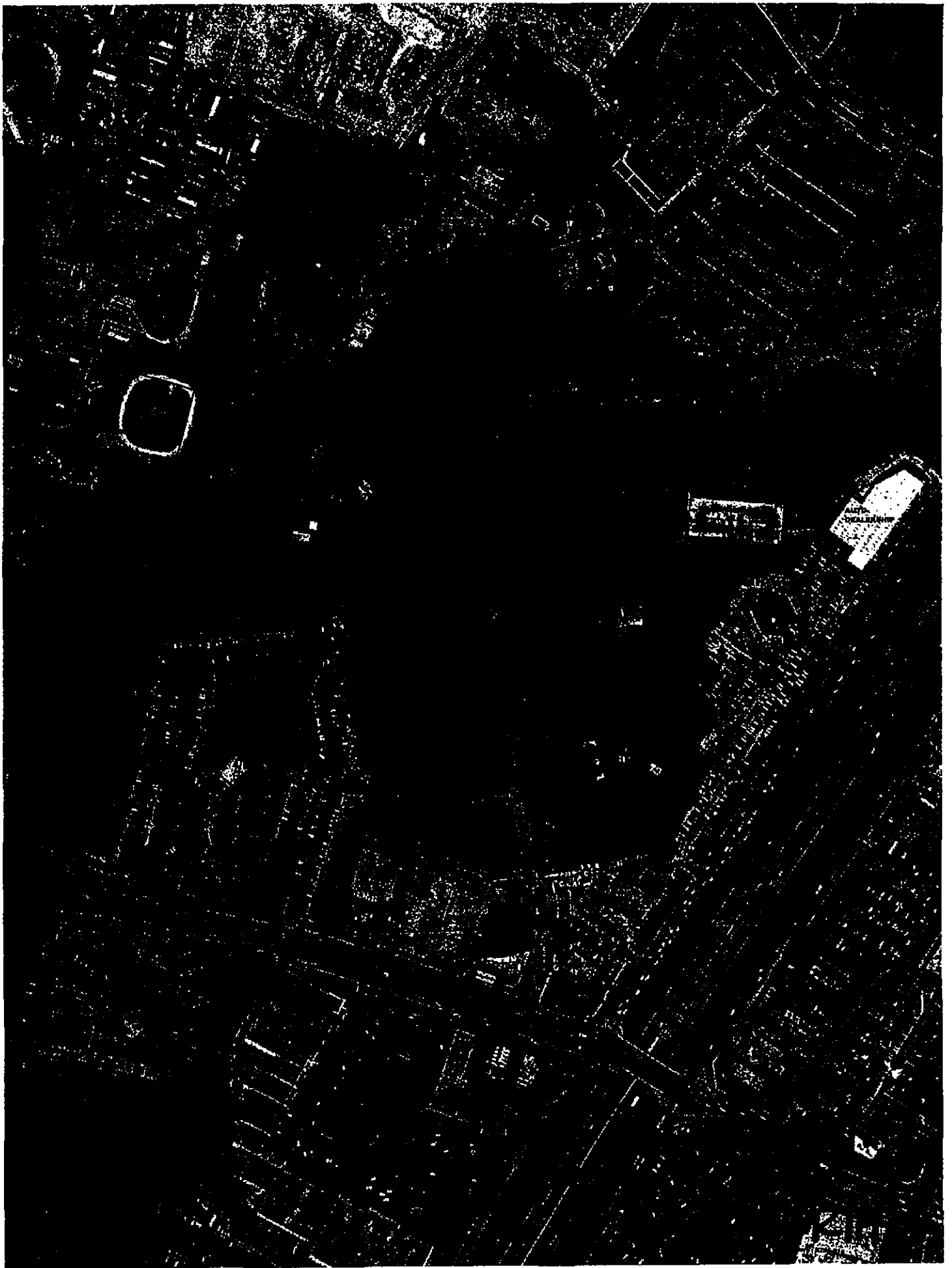
**ACTION:**

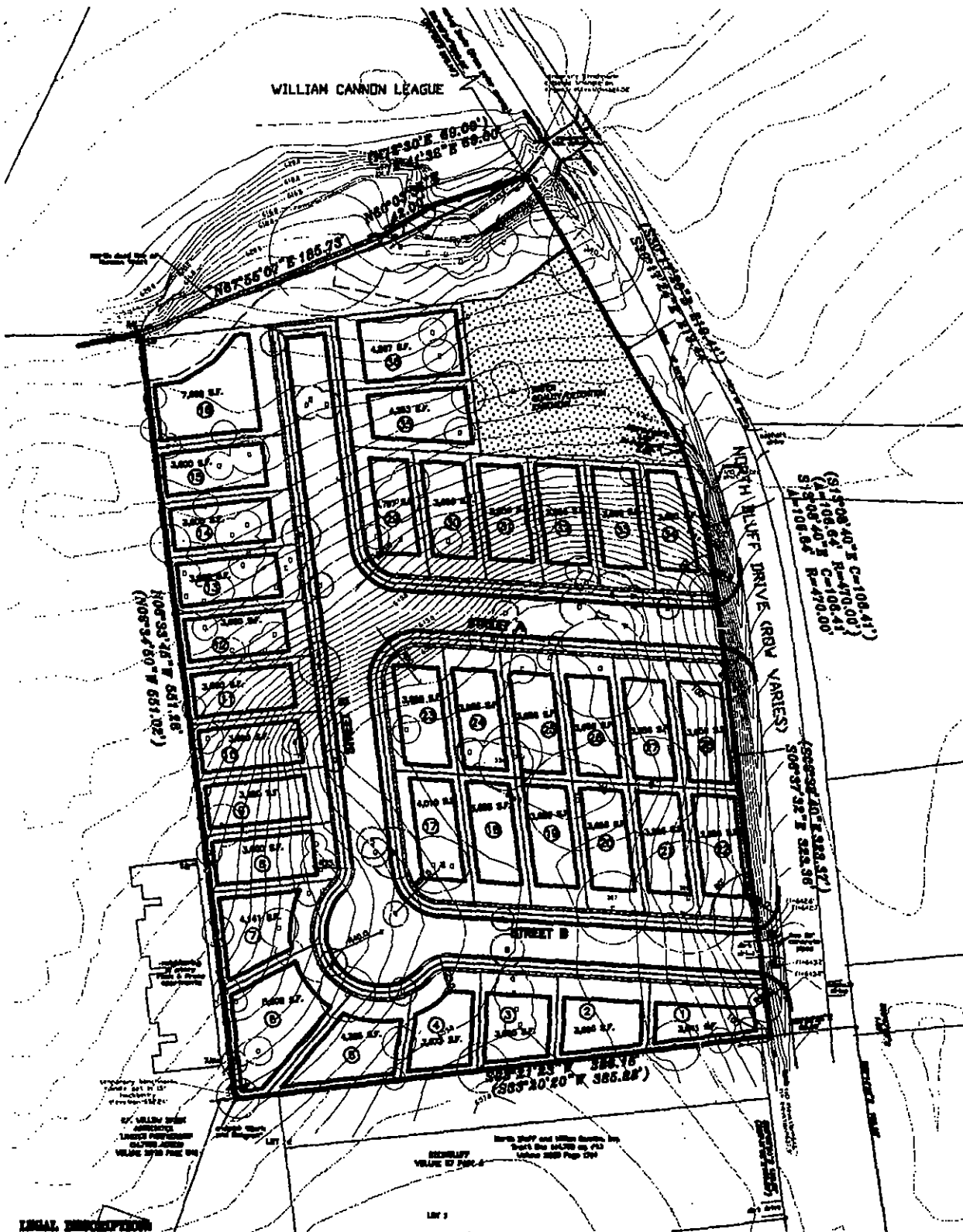
**ORDINANCE NUMBER:**

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



 1" = 400'	SUBJECT TRACT	<b>RESTRICTIVE COVENANT TERMINATION</b> <b>Exhibit A</b> CASE #: C14R-86-144(RCT) ADDRESS: 807 NORTH BLUFF DR SUBJECT AREA (acres): 5.021	DATE: 04-05 INTLS: SM	CITY GRID REFERENCE NUMBER G16
	PENDING CASE			
	ZONING BOUNDARY			
	CASE MGR: W. WALSH			





#### LEGAL DESCRIPTION

5.021 ACRES OF LAND OUT OF THE WILLIAM CANNON LEAGUE IN TRAVIS COUNTY, TEXAS, WHICH WAS CONVEYED TO KEITH SMITH BY DEED RECORDED IN VOLUME 13245 PAGE 257 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS LOCATED ON NORTH BLUFF DRIVE.

SCALE 1:50'

06-08-04

**LOC Consultants**

Civil Structural Environmental Engineers

1000 East Cesar Chavez, Suite 100  
Austin, Texas 78702-4206  
E-mail: loc@loc.net

Ph: (512) 499-0808  
Fax: (512) 499-0807

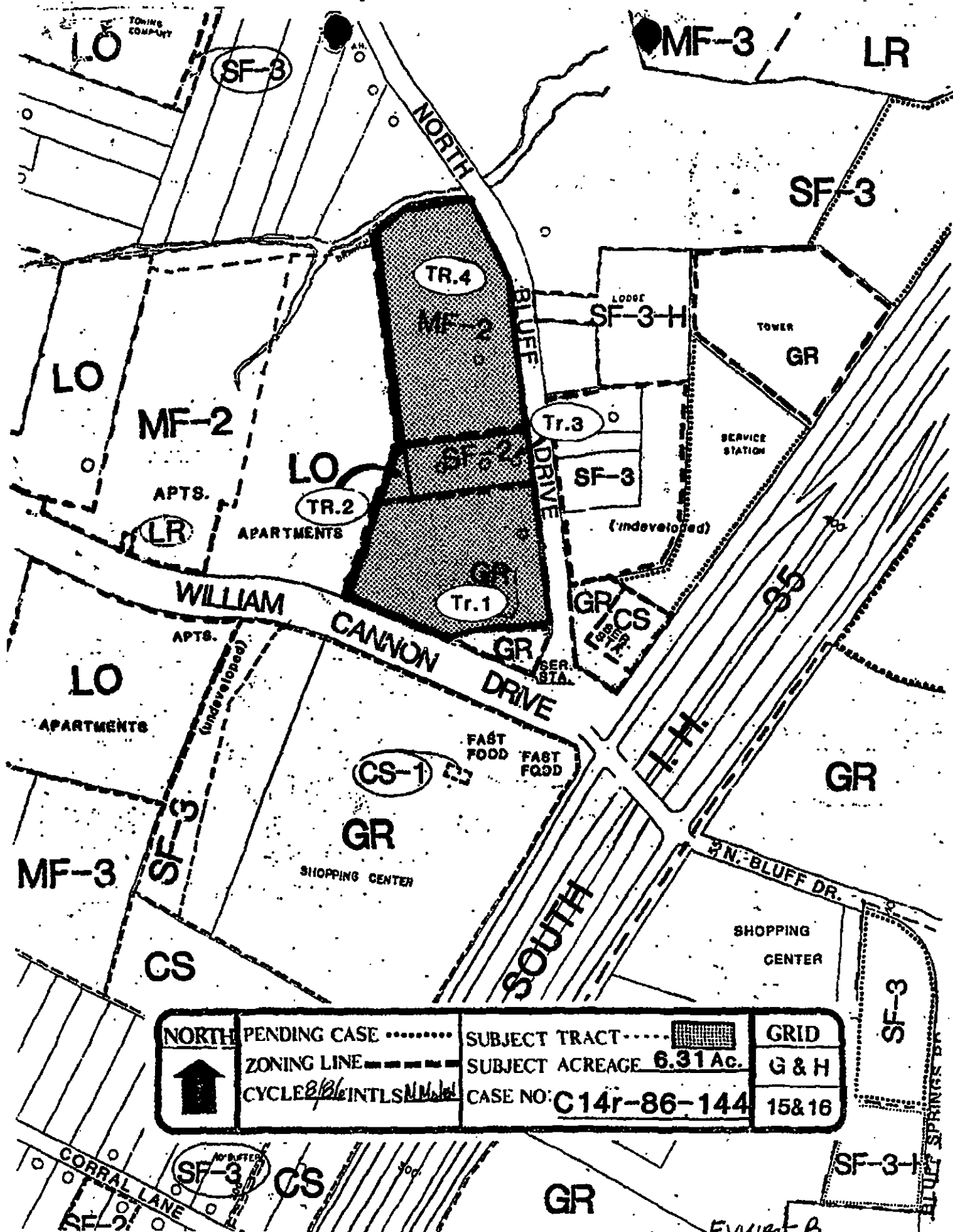
**OAK BLUFF**

AUSTIN, TEXAS

PRELIMINARY LAYOUT

EXHIBIT A-2

Applicant's  
CONCEPTUAL  
SITE PLAN



	NORTH	PENDING CASE .....	SUBJECT TRACT .....	GRID
		ZONING LINE - - - - -	SUBJECT ACREAGE <b>6.31 Ac.</b>	G & H
		CYCLE <b>2/26/86</b> INTLS <b>11/1/86</b>	CASE NO: <b>C14r-86-144</b>	15&16

EXHIBIT B  
1987 ZONING ORDINANCE



ORDINANCE NO. 87 0702-D

AUG 12 1987

LAND DEV. SERV.

AN ORDINANCE ORDERING A REZONING AND CHANGING THE ZONING MAP ACCOMPANYING CHAPTER 13-2A OF THE AUSTIN CITY CODE OF 1981 AS FOLLOWS:

- TRACT NO. 1: A 0.959 OF ONE ACRE TRACT OF LAND OUT OF THAT CERTAIN 5.05 ACRE TRACT OF LAND OUT OF THE WILLIAM CANNON LEAGUE, FROM ~~"MF-2"~~ MULTI-FAMILY RESIDENCE TO ~~"RR"~~ RURAL RESIDENCE DISTRICT; AND
- TRACT NO. 2: 8.211 ACRES OF LAND OUT OF THE WILLIAM CANNON LEAGUE, FROM "SF-2" SINGLE FAMILY RESIDENCE (STANDARD LOT) AND ~~"MF-2"~~ MULTI-FAMILY RESIDENCE TO ~~"GR"~~ COMMUNITY COMMERCIAL; AND
- TRACT NO. 3: 2.466 ACRES OF LAND OUT THAT CERTAIN 5.05 ACRE TRACT OF LAND OUT OF THE WILLIAM CANNON LEAGUE, FROM ~~"MF-2"~~ MULTI-FAMILY RESIDENCE TO "NO" NEIGHBORHOOD OFFICE.

LOCALLY KNOWN AS 607-817 NORTH BLUFF DRIVE, SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; WAIVING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1. Chapter 13-2A of the Austin City Code of 1981 is hereby amended to change the base zoning district on the property described in File C14r-86-144, to-wit:

- Tract No. 1: A 0.959 Of one acre tract of land out of that certain 5.05 acre tract of land out of the William Cannon League which was conveyed to the Dunlap-Sheldon Partnership by deed recorded in Volume 9691, Page 877 of the real property records of Travis County, being more particularly described by metes and bounds in Exhibit "A," attached to this ordinance and incorporated by reference for all purposes; and
- RR

R.C. & S.D. 1

+ 86-144

GR Tract No. 2: 8.211 Acres of land out of the William Cannon League being comprised of a 5.3546 acre tract and a 5.05 acre tract conveyed to the Dunlap-Sheldon partnership by deeds recorded in Volume 9551, Page 120, and Volume 9691, Page 877 respectively of the real property records of Travis County Texas and Lots 1 and 2, Steinbluff, a subdivision of record in Book 57, Page of the Plat Records of Travis County, Texas which lots were conveyed to Carlos E. Piñeda, Jr. by Deed Recorded in Volume 9667, Page 933, being more particularly described by metes and bounds in Exhibit "B," attached to this ordinance and incorporated by reference for all purposes; and

NO Tract No. 3: 2.466 Acres of land out that certain 5.05 acre tract of land out of the William Cannon League which was conveyed to the Dunlap-Sheldon Partnership by deed recorded in Volume 9691, Page 877 of the real property records of Travis County, Texas, being more particularly described by metes and bounds in Exhibit "C," attached to this ordinance and incorporated by reference for all purposes;

locally known as 607-817 North Bluff Drive, in the City of Austin, Travis County, Texas.

PART 2. It is hereby ordered that the Zoning Map accompanying Chapter 13-2A 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. That the development of the property herein described shall be accomplished in accordance with the site plan attached hereto as Exhibit "D", or as such site plan is subsequently adjusted or modified as provided by subsection 13-2A-6100 et seq., of the Austin City Code of 1981. Except to the extent that such site plan is inconsistent therewith, the development and use of the property described herein shall be in accordance with applicable ordinances of the City of Austin.

PART 4. The requirement imposed by Section 2-2-3 of the Austin City Code of 1981 that this ordinance be read on three (3) separate days shall be waived by the affirmative vote of five (5) members of the City Council to pass this ordinance through more than one reading on a single vote.

PART 5. This ordinance shall be effective ten (10) days following the date of its final passage.

PASSED AND APPROVED

July 2

, 1987

§  
§  
§  
§

  
Frank C. Cooksey  
Mayor

APPROVED: 

Barney L. Knight  
City Attorney

ATTEST: 

James E. Aldridge  
City Clerk

02JUL87  
(D-1.f.4)  
SJH:la  
14r86144.ord

RESTRICTIVE COVENANT

THE STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Dunlap-Sheldon Partnership, of Travis County, Texas, is Owner of the following described property ("Property"):

All that certain tract, piece or parcel of land, lying and being situated in the County of Travis, State of Texas, described in Exhibit "A" attached hereto and made a part hereof for all purposes, to which reference is here made for a more particular description of said property;

and,

WHEREAS, the City of Austin, Texas, and the Owner of the Property have agreed that the Property should be impressed with certain covenants and restrictions running with the land, and desire to set forth such agreement in writing;

NOW, THEREFORE, in consideration of One and No/100 Dollars (\$1.00) and other good and valuable consideration paid by the City of Austin in hand to the Owner, the receipt and sufficiency of which is acknowledged, the Owner does hereby impress upon the Property the following covenants and conditions which shall be considered to be covenants running with the land that shall be binding on the Owner, its successors and assigns, as follows:

1. The use of the Property is limited to surface parking, except for that part of the Property that is described in Exhibit "B", the use of which is limited to detention and filtration of run-off water. Exhibit "B" is attached hereto and is made a part hereof for all purposes to which reference is here made for a more particular description of that part of the Property therein described.

2. If any person or entity 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 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 shall be 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, its successors or assigns, 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, or such other governing body as may succeed the City Council of the City of Austin, and (b) by the owner(s) of the Property at the time of such modification, amendment or termination.

EXHIBIT B

1987 RESTRICTIVE  
COVENANT

EXECUTED this the 23rd day of February, 1987.

DUNLAP-SHELDON PARTNERSHIP,  
a Texas general partnership

By: *Rick Sheldon*  
Rick Sheldon  
Managing General Partner

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 23rd day of February, 1987, by Rick Sheldon, managing general partner of Dunlap-Sheldon Partnership, a Texas general partnership, on behalf of said partnership.

*Miliss Ann Rauch*  
Notary Public, State of Texas  
MILISS ANN RAUCH  
(Notary's Name - Typed or Printed)  
7-3-89  
(Date Commission Expires)

05871

FIELD NOTES

FIELD NOTES FOR 2.466 ACRES OF LAND,  
SAME BEING OUT OF AND A PORTION OF  
THAT CERTAIN 5.05 ACRE TRACT OF LAND  
OUT OF THE WILLIAM CANNON LEAGUE IN  
THE CITY OF AUSTIN, TRAVIS COUNTY,  
TEXAS WHICH WAS CONVEYED TO THE  
DUNLAP-SHELDON PARTNERSHIP BY DEED  
RECORDED IN VOLUME 9681, PAGE 877 OF  
THE REAL PROPERTY RECORDS OF TRAVIS  
COUNTY TEXAS, SAID 0.959 OF ONE ACRE  
BEING MORE PARTICULARLY DESCRIBED BY  
METES AND BOUNDS AS FOLLOWS;

COMMENCING from an iron rod found for the  
southwest corner of said 5.05 acre tract N 09 deg.  
14'54"W, 187.00 feet along the west line of said tract to  
a point for the POINT OF BEGINNING of the herein described  
tract,

THENCE N 09 deg. 14'54"W, 284.04 feet continuing  
along the west line of said 5.05 acre tract to a point for  
corner,

THENCE N 80 deg. 45'06"E, 384.86 feet across  
said 5.05 acre tract to a point for corner of the curving  
proposed west right of way (70.00') line of North Bluff  
Drive,

THENCE a distance of 122.60 feet along the arc  
of said curve to the right having a central angle of 15  
deg. 06'22", a radius of 465.00 feet, and a chord bearing  
S 16 deg. 37'44"E, 122.24 feet to an iron rod set for  
point of tangency,

THENCE S 09 deg. 04'33"E, 162.81 feet continuing  
along said right of way line to a point for corner,

THENCE S 80 deg. 45'06"W, 380.07 feet across  
said 5.05 acre tract to the POINT OF BEGINNING.

I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION  
WAS PREPARED FROM A SURVEY PERFORMED ON THE GROUND UNDER  
MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY  
KNOWLEDGE.

  
JAMES E. GARON  
REGISTERED PUBLIC SURVEYOR

01-08-1987  
DATE

REFERENCES  
BEARING BASIS  
Mon. H-16-1201 to H-17-340  
Austin Grid G 16 & H 16

EXHIBIT B  
RESTRICTIVE COVENANT-  
FIELD NOTES

C14K-86-1  
Cannon Creek Village  
NO Zoning (Detention &  
Filtration Facilities)

FIELD NOTES

FIELD NOTES FOR 0.842 ACRES OF LAND,  
SAME BEING OUT OF AND A PORTION OF  
THAT CERTAIN 5.05 ACRE TRACT OF LAND  
OUT OF THE WILLIAM CANNON LEAGUE IN  
THE CITY OF AUSTIN, TRAVIS COUNTY,  
TEXAS WHICH WAS CONVEYED TO THE  
DUNLAP-SHELDON PARTNERSHIP BY DEED  
RECORDED IN VOLUME 9691, PAGE 877 OF  
THE REAL PROPERTY RECORDS OF TRAVIS  
COUNTY TEXAS, SAID 0.842 ACRES BEING  
MORE PARTICULARLY DESCRIBED BY METES  
AND BOUNDS AS FOLLOWS;

COMMENCING from an iron rod found for the  
southwest corner of said 5.05 acre tract N 09 deg.  
14'54"W, 373.04 feet along the west line of said tract to  
a point for the POINT OF BEGINNING of the herein described  
tract.

THENCE N 09 deg. 14'54"W, 98.00 feet continuing  
along the west line of said 5.05 acre tract to a point for  
corner,

THENCE N 80 deg. 45'06"E, 364.86 feet across  
said 5.05 acre tract to a point for corner of the curving  
proposed west right of way (70.00') line of North Bluff  
Drive,

THENCE a distance of 99.36 feet along the arc  
of said curve to the right having a central angle of 12  
deg. 14'34", a radius of 465.00 feet, and a chord bearing  
S 18 deg. 03'38"E, 99.17 feet to an iron rod set for  
point of tangency,

THENCE S 80 deg. 45'06"W, 380.05 feet across  
said 5.05 acre tract to the POINT OF BEGINNING.

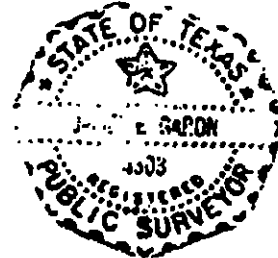
I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION  
WAS PREPARED FROM A SURVEY PERFORMED ON THE GROUND UNDER  
MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY  
KNOWLEDGE.

  
JAMES E. GARON  
REGISTERED PUBLIC SURVEYOR

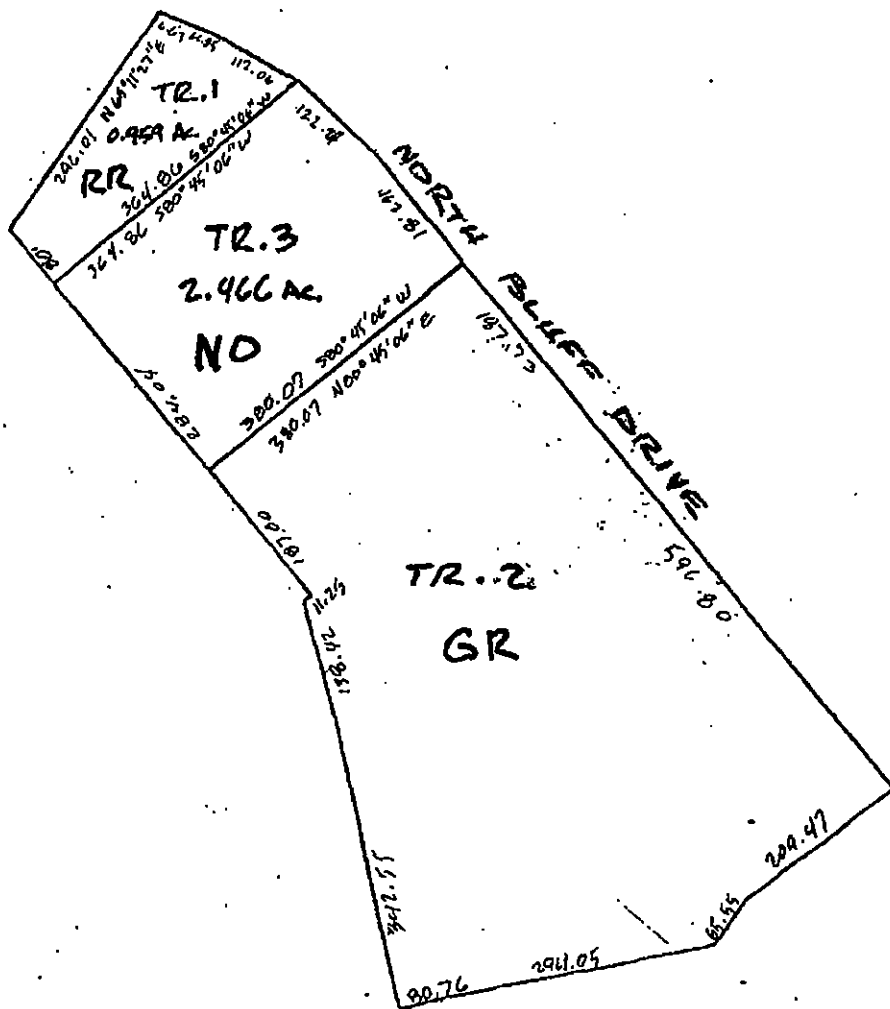
2-10-1987  
DATE

REFERENCES  
BEARING BASIS

Mon. H-16-1201 to H-17-340  
Austin Grid G 16 & H 16



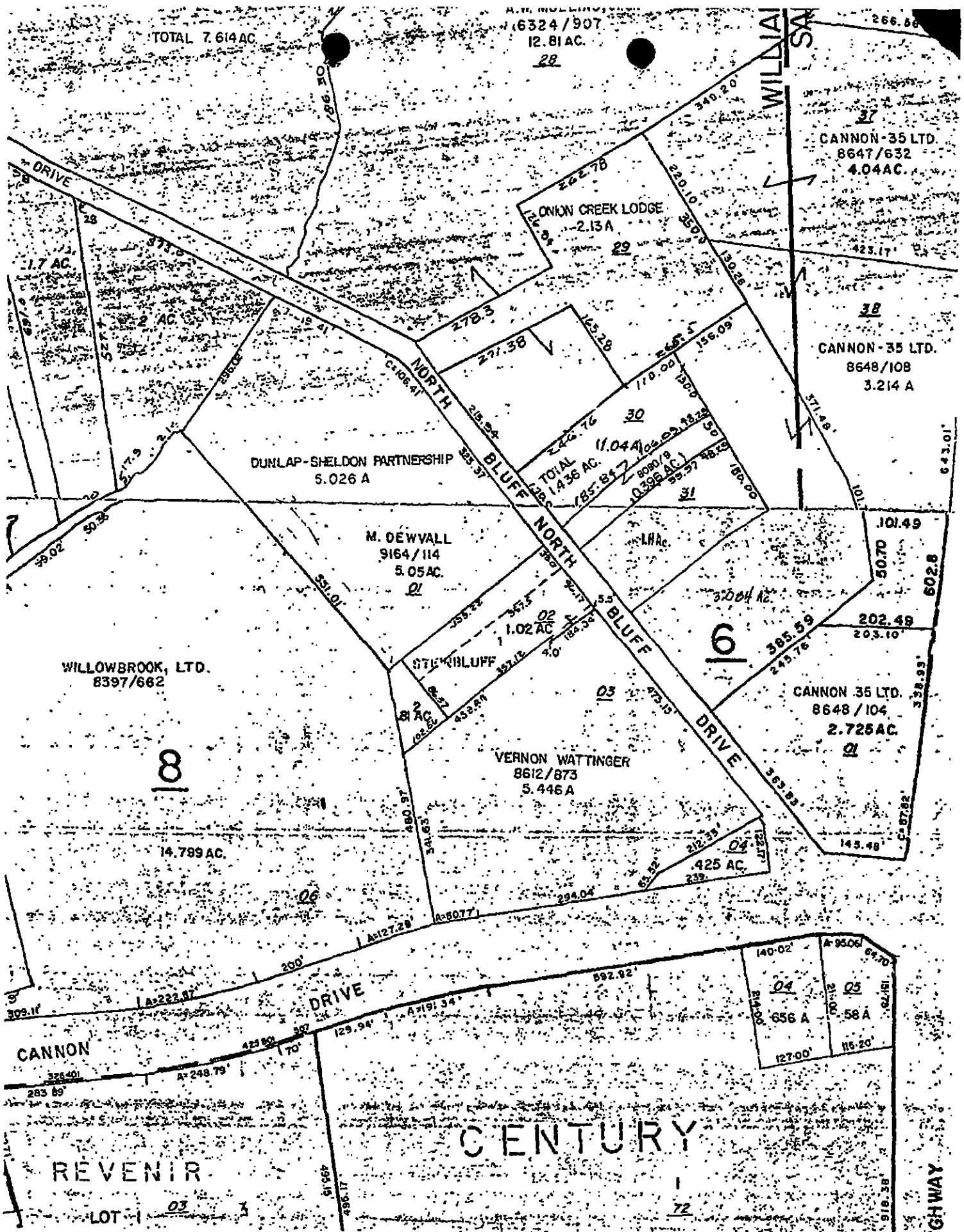
zone2/10.3



SCALE: 1" = 200'

EXHIBIT B  
1987 RESTRICTIVE COVENANT  
EXHIBIT A







## MEETING SUMMARY

Mr. Sadowsky replied no incentives for commercial use are provided by historic zoning and that commercial use would require a zoning change and would have to meet all current requirements.

Commissioner Cortez stated that commercial use of this property would require a zoning change and a Neighborhood Plan Amendment and that he would not be inclined to support this. However, he does support historic zoning for the property.

**MOTION: APPROVE STAFF RECOMMENDATION.**

**VOTE: 5-0 (JMC-1<sup>st</sup>, JN-2<sup>nd</sup>)**

- 6. Rezoning: C14-86-144 (RCT) - Oak Bluff**  
Location: 807 North Bluff Drive, Williamson Creek Watershed Watershed, South Congress Combined NPA (Sweetbriar) NPA  
Owner/Applicant: Keith Smith  
Agent: LOC Consultants (Sergio Lozano-Sanchez)  
Request: To Terminate the Restrictive Covenant that limits the use of the property to parking, drainage and water quality facilities.  
Staff Rec.: **Recommended**  
Staff: Wendy Walsh, 974-7719, wendy.walsh@ci.austin.tx.us  
Neighborhood Planning and Zoning

See Item 7 for summary.

- 7. Rezoning: C14-04-0041.SH - Oak Bluff**  
Location: 807 North Bluff Drive, Williamson Creek Watershed Watershed, South Congress Combined NPA (Sweetbriar) NPA  
Owner/Applicant: Keith Smith  
Agent: LOC Consultants (Sergio Lozano-Sanchez)  
Request: RR; NO; GR to SF-4A  
Staff Rec.: **Recommended**  
Staff: Wendy Walsh, 974-7719, wendy.walsh@ci.austin.tx.us  
Neighborhood Planning and Zoning

Wendy Walsh, NPZ, presented the request for termination of the restrictive covenant and rezoning.

## PUBLIC HEARING

### *In Favor*

Sergio Lozano, representing the property owner, stated that the proposed project blends with single-family residential uses found on three sides of the property and that the small lot subdivision allows for the preservation of significant trees on the site. He stated that this Project

## MEETING SUMMARY

is one of the few SMART Housing projects west of I-35 and that it would be an important source of affordable housing.

Keith Smith, property owner, stated that the number of units on the site permitted more affordable housing.

Commissioner Riley asked Mr. Smith if he had a sense of the larger vision for the area that might come out of the Neighborhood Planning process?

Mr. Smith stated that he felt this could be the beginning of a process to redevelop the street in a positive way.

### *Neutral*

Betty Edgemond, stated that she had no problem with termination of the restrictive covenant. The larger problem is that this area is a commercial area and is inappropriate for single-family residential development. She stated there is no bus service, no services or schools within walking distance, no sidewalks along North Bluff Drive. Ms. Edgemond suggested that the Commission not vote on this tonight to permit Commissioner Sullivan to have input on this since he had spent significant time studying this area.

### **MOTION: CLOSE PUBLIC HEARING**

**VOTE: 5-0 (MM-1<sup>st</sup>, CM-2<sup>nd</sup>)**

After additional discussion Commissioner Riley suggested that Item 6 be voted on separately from Item 7.

Commissioner Cortez made a motion to approve staff recommendation for item 6.

### **MOTION: APPROVE STAFF RECOMMENDATION ON ITEM 6.**

**VOTE: 5-0 (JMC-1<sup>st</sup>, CM-2<sup>nd</sup>)**

Commissioner Moore pointed out that Ms. Edgemond had requested a postponement and that the Commission typically honors the first request from either side.

After additional discussion Commissioner Riley made a motion to reopen the Public Hearing on Item 7 and postpone to the July 13, 2004 Planning Commission Meeting. This will allow time to provide information on the location of transit service and land uses requested by the Commission without interfering with the schedule for consideration by the City Council.

### **MOTION: REOPEN THE PUBLIC HEARING FOR ITEM 7 AND CONTINUE THE PUBLIC HEARING TO JULY 13, 2004.**

**VOTE: 5-0 (CR-1<sup>st</sup>, MM-2<sup>nd</sup>)**

**TERMINATION OF RESTRICTIVE COVENANT**  
**FOR**  
**ZONING CASE: C14r-86-144**

Owner: KEITH SMITH

Address: 1419 Red Bud Trail, Austin, Texas 78746

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, Dunlap-Sheldon Partnership, a Texas general partnership, as owner of all that certain property described in Zoning File No. C14r-86-144, consisting of approximately 3.3 acres of land out of the William Cannon League (the "Original Property"), as more particularly described in the restrictive covenant recorded in the Real Property Records of Travis County, Texas, in Volume 10416, Page 694, (the "Restrictive Covenant"), imposed certain restrictions and covenants on the Original Property by the Restrictive Covenant of record; and,

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, Keith Smith, is the sole and current owner (the "Owner") of the Original 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 Original 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 her designee, shall execute, on behalf of the City, this Termination of Restrictive Covenant for Zoning File No. C14r-86-144 (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 10416, Page 694.

EXECUTED to be effective the 15<sup>th</sup> day of July, 2004.

OWNER:

Keith Smith  
KEITH SMITH

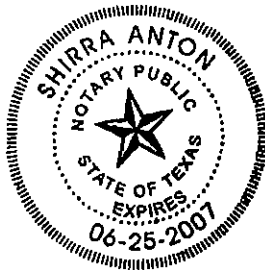
CITY OF AUSTIN:

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

THE STATE OF TEXAS  
COUNTY OF TRAVIS

§

July This instrument was acknowledged before me on this the 15<sup>th</sup> day of  
2004, by Keith Smith



Shirra Anton  
Notary Public, State of Texas

**conclusion**

**conclusion**

**conclusion**

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