

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



**AGENDA ITEM NO.: Z-4
AGENDA DATE: Thu 09/01/2005
PAGE: 1 of 1**

SUBJECT: NPA-05-0018.01 - Brentwood/Highland Combined Neighborhood Plan - Conduct a public hearing and approve an ordinance amending the Brentwood/Highland Combined Neighborhood Plan, an element of the Austin Tomorrow Comprehensive Plan, to change the Future Land Use Map from utilities land use designation to mixed use land designation. Planning Commission Recommendation: To grant mixed use land designation. Applicant: City of Austin. Agent: Neighborhood Planning and Zoning Department. City Staff: Scott Whiteman, 974-2865.

REQUESTING Neighborhood Planning
DEPARTMENT: and Zoning

DIRECTOR'S
AUTHORIZATION: Greg Guernsey

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 040513-30, WHICH ADOPTED THE BRENTWOOD/HIGHLAND COMBINED NEIGHBORHOOD PLAN AS AN ELEMENT OF THE AUSTIN TOMORROW COMPREHENSIVE PLAN, TO CHANGE A LAND USE DESIGNATION ON THE FUTURE LAND USE MAP FOR PROPERTY LOCATED AT 5700 NORTH LAMAR BOULEVARD.

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

PART 1. Ordinance No. 040513-30 adopted the Brentwood/Highland Combined Neighborhood Plan as an element of the Austin Tomorrow Comprehensive Plan.

PART 2. Ordinance No. 040513-30 is amended to change a utilities land use designation to mixed use on the future land use map attached as Exhibit "A" and incorporated in this ordinance, and described in File NPA-05-0018.01 at the Neighborhood Planning and Zoning Department, for property located at 5700 North Lamar Boulevard.

PART 3. This ordinance takes effect on _____, 2005.

PASSED AND APPROVED

_____, 2005 §
 §
 § _____
 Will Wynn
 Mayor

APPROVED: _____
 David Allan Smith
 City Attorney

ATTEST: _____
 Shirley A. Brown
 City Clerk

NEIGHBORHOOD PLAN AMENDMENT REVIEW SHEET

NEIGHORHOOD PLAN: Brentwood/Highland Combined Neighborhood Plan

CASE#: NPA-05-0018.01

PC PUBLIC HEARING DATE: Tuesday, August 9, 2005

ADDRESS: 5700 N. Lamar Boulevard

AREA: .48 acres

APPLICANT: City of Austin (NPZD)

OWNER: City of Austin

AGENT: City of Austin (NPZD)

TYPE OF AMENDMENT:

Change in Future Land Use Designation

From: Utilities

To: Mixed Use

Related Zoning Case: C14-05-0090

Base District Zoning Change

From: P-NP, Public - Neighborhood Plan Combining District

To: LR-CO-NP, Neighborhood Commercial – Conditional Overlay - Neighborhood Plan Combining District

PLAN ADOPTION DATE: May 13, 2004

NPCD ADOPTION DATE: May 13, 2004

STAFF RECOMMENDATION: The staff recommendation is to **APPROVE** the requested change to commercial on the Future Land Use Map (FLUM) to mixed-use land use designation.

BASIS FOR RECOMMENDATION: The requested amendment is consistent with the Land Use recommendations in the Brentwood/Highland Combined Neighborhood Plan. See *Analysis* for more details.

PLANNING COMMISSION RECOMMENDATION: APPROVE STAFF RECOMMENDATION WITH ADDITION OF MU, AND DIRECTING STAFF TO MOVE

**FORWARD ON FORMING A NEIGHBORHOOD PLAN CONTACT TEAM. VOTE: 8-0
(JR-1st, MM-2nd)**

BACKGROUND: The Brentwood/Highland Combined Neighborhood Plan was completed under the City of Austin's Neighborhood Planning Program and was adopted as part of the Austin Tomorrow Comprehensive Plan on May 13, 2004. The requested plan amendment is in the Brentwood Neighborhood Planning Area. The boundaries of the planning area are: Justin Lane to the north, Lamar Boulevard to the east, 45th Street to the south and Burnet Road to the west.

The subject tract is a .48 acre portion of a City-Owned property that also contains an EMS station, an Austin Energy substation, and the Ulrich water treatment plant. As part of the Brentwood/Highland neighborhood planning process, the subject tract was rezoned from CS-1 (Commercial Liquor Sales) to P-NP. The existing one-story building on the subject tract has been leased by the Southland Corporation (7-11) for many years, but the tenant chose not to renew the lease which expired on July 31, 2005. On June 9, 2005, the City Council agreed to lease terms with Wireless Toyz, a local cellular phone retailer. General Retail (Convenience) use is not permitted in the P district.

This plan amendment is being considered outside of the normal cycle because the neighborhood plan contains an error in regards to the subject tract. The determination of an error was made because:

There is no logical planning rationale for the future land use designation. The subject tract, which contained a commercial use at the time the neighborhood plan was adopted, has a future land use designation of "Utilities". Both city-owned utilities have indicated they have no need for this property. In addition, the adjacent EMS station (a civic use) is also designated as Utilities on the future land use map. The only reasonable explanation for the future land use designation is that the subject tract and the adjacent utility uses are part of the same legal lot.

The neighborhood plan provides more documentation for the land use recommendation.

The text of the neighborhood plan does not provide any rationale for the future land use designation for this tract.

ANALYSIS: The Brentwood/Highland Combined neighborhood plan land use goals state:

Encourage a mixture of compatible and appropriately scaled business and residential land uses in the neighborhood and mixed-use development on major corridors to enhance this diversity.

Preserve locally-owned small businesses in the neighborhood and encourage new ones that are walkable and serve the needs of the neighborhood.

The proposed plan amendment is consistent with these Goals.

The proposed plan amendment is also consistent with the following Objectives and Recommendations in the neighborhood plan:

Land Use Objective B3: Ensure that there is a mix of residential and commercial zoning to accommodate both housing and the services residents need in the neighborhood, and that commercial zoning in each area is appropriate for its location.

Land Use Recommendation B3.2: Maintain commercial zoning on the corridors and in transitional areas between the corridors and residential areas.

Land Use Recommendation B3.3: Allow mixed use on commercial corridors.

PUBLIC MEETINGS: NPZD staff held two public stakeholder meetings on July 12 and August 2, 2005. Invitations were sent to the Brentwood interest list and property owners within 300 feet of the proposed plan amendment.

At this time, Brentwood does not have an officially-recognized planning team with adopted bylaws. However, two votes were held on the August 2nd meeting to determine community support for the proposed plan amendment. No decisions were made at the July 12th meeting.

By a vote of 5 to 0, the participants disagreed with staff's determination that the proposed plan amendment constituted an error.

By a vote of 4 to 1, the participants voted to support the proposed plan amendment and zoning change provided:

1. Custom Manufacturing, Off-site Accessory Parking, and Telecommunication Tower uses are prohibited;
2. Landscaping is provided as shown in the proposed landscaping plan; and
3. The property owner allows a Brentwood Neighborhood market to be placed at the corner of the property.

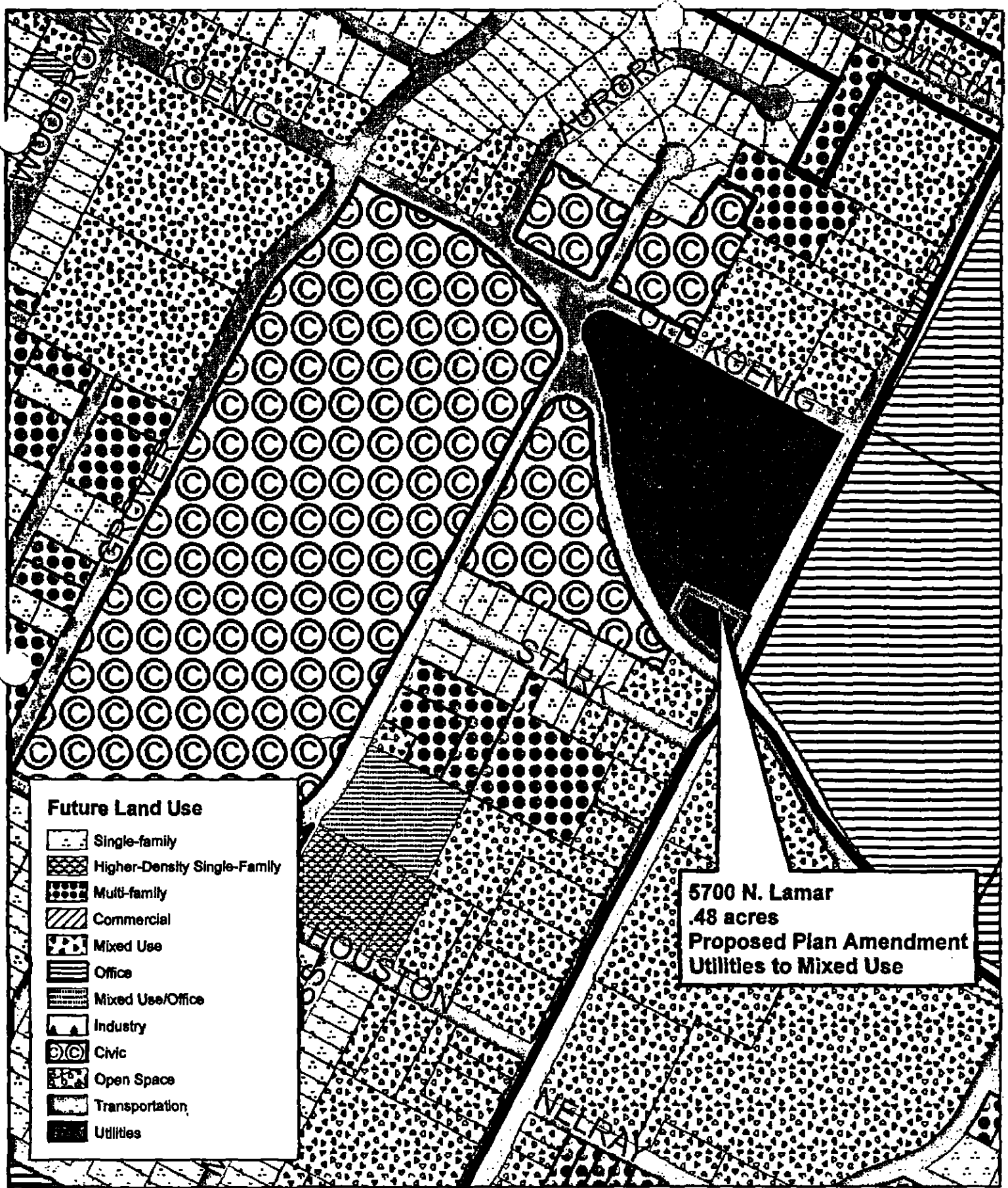
CITY COUNCIL DATE: September 1, 2005

ACTION:

CASE MANAGERS: Scott Whiteman (Plan Amendment)
Jorge Rousselin (Zoning Case)

PHONE: 974-2865
974-2975

EMAIL: scott.whiteman@ci.austin.tx.us
jorge.rousselin@ci.austin.tx.us



Future Land Use

- Single-family
- Higher-Density Single-Family
- Multi-family
- Commercial
- Mixed Use
- Office
- Mixed Use/Office
- Industry
- Civic
- Open Space
- Transportation
- Utilities

5700 N. Lamar
 .48 acres
 Proposed Plan Amendment
 Utilities to Mixed Use



Future Land Use Map NPA-05-0018.01 Brentwood/Highland Combined Neighborhood Plan

Created by NPZD
 8/3/2005



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PLANNING COMMISSION RECOMMENDATION: Pending

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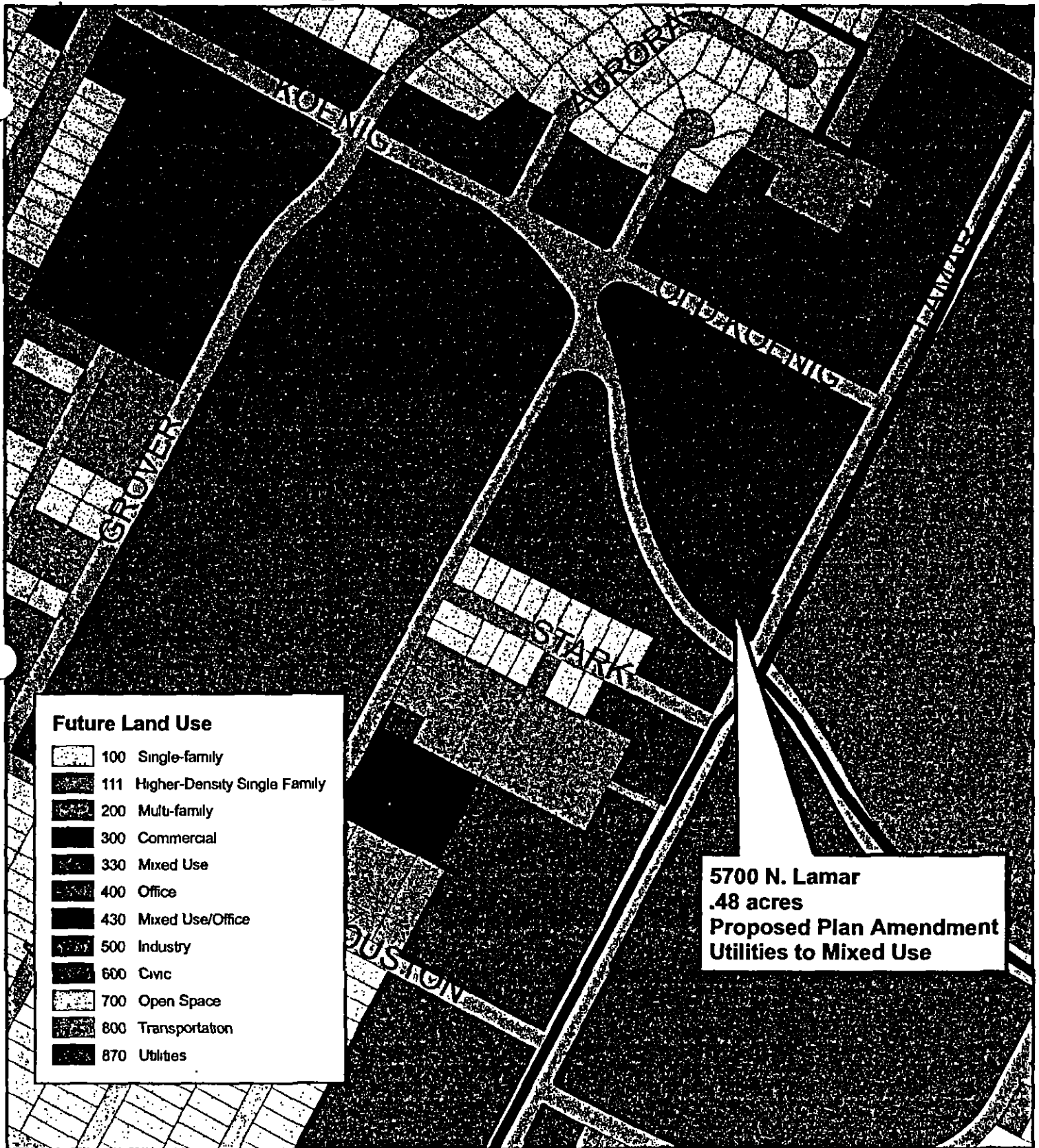
CITY COUNCIL DATE: September 1, 2005

ACTION:

CASE MANAGERS: Scott Whiteman (Plan Amendment)
Tom Bolt (Zoning Case)

PHONE: 974-2865
974-2755

EMAIL: scott.whiteman@ci.austin.tx.us
thomas.bolt@ci.austin.tx.us



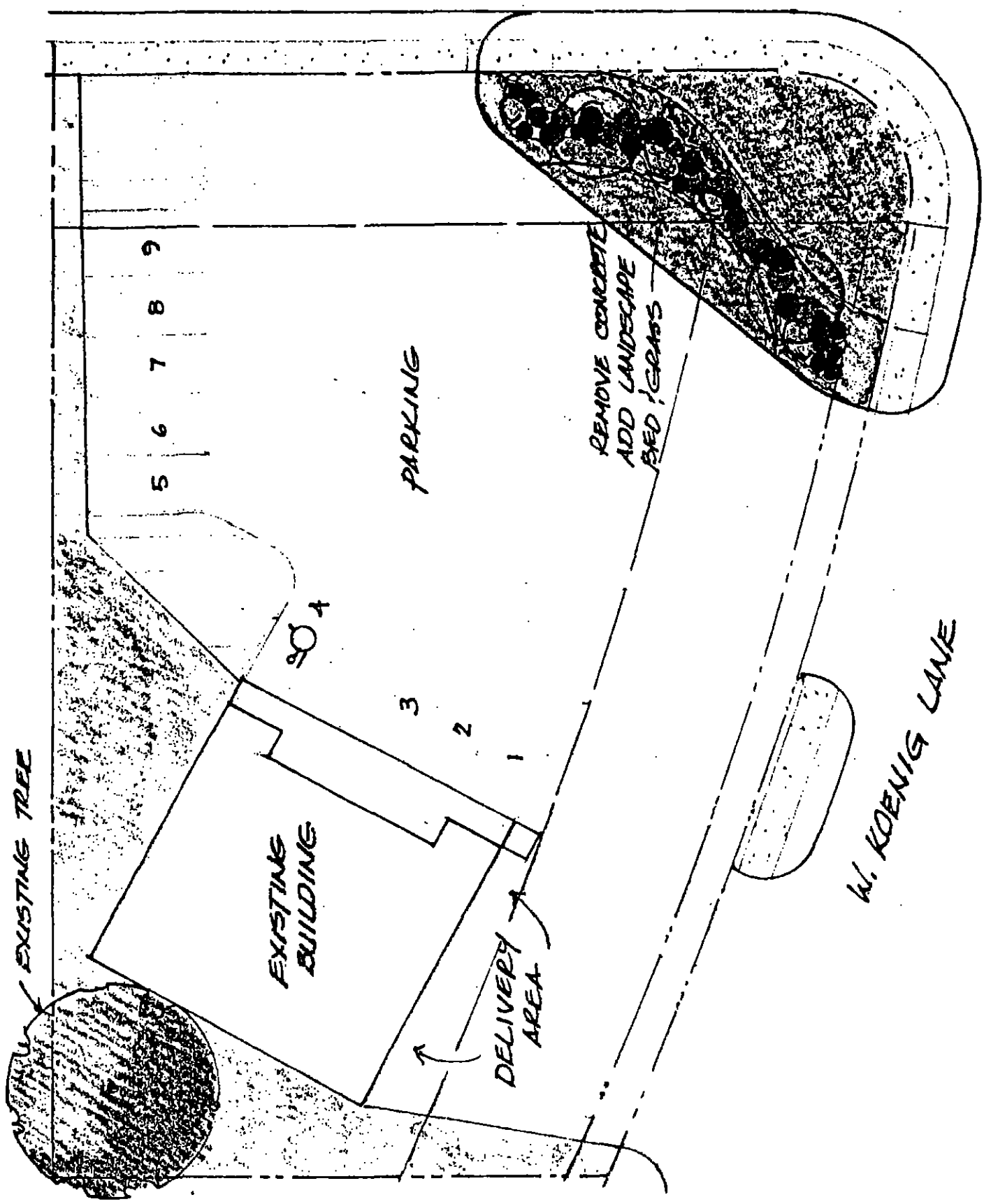
Future Land Use Map
NPA-05-0018.01
Brentwood/Highland
Combined Neighborhood Plan

Created by NPZD
 8/3/2005





N. LAMAR BLVD.



EXISTING TREE

EXISTING BUILDING

PARKING

REMOVE CONCRETE
ADD LANDSCAPE
BED, GRASS

DELIVERY AREA

W. KOENIG LANE



**Lease Agreement/Renewal
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 17
AGENDA DATE: Thu 06/09/2005
PAGE: 1 of 2**

SUBJECT: Authorize negotiation and execution of a five year lease with three options to extend for an additional five years each, with WIRELESS TOYZ, for the use of a City-owned 0.48 acre of land and a 2,400 square foot free-standing retail building located at 5700 North Lamar Boulevard, to operate a retail business.

AMOUNT & SOURCE OF FUNDING:

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Public Works
DEPARTMENT:

DIRECTOR'S
AUTHORIZATION: Sondra Creighton

FOR MORE INFORMATION CONTACT: Dean Harris, 974-7061; Laura Bohl, 974-7064

PRIOR COUNCIL ACTION: March 30, 1978, and December 16, 1999, which were lease approvals.

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

This City-owned property located at the northwest corner of Koenig Lane and North Lamar Boulevard is anticipated to be vacated July 31, 2005. It is improved with a 7-11 convenience store. Surrounding City uses include a water storage facility and pump station, an electric utility substation, and an EMS station.

In March 1978, an agreement was entered into for the Southland Corporation to build a new 7-11 convenience store, which has operated on the parcel since that time. The current lease is \$3,750 per month for the five-year term, which will expire July 31, 2005. It is not anticipated that the Southland Corporation will exercise its remaining five (5) year extension option by May 1 because they ceased retail operations at the site approximately two years ago. In addition, they have been using the facility intermittently as a training store.

In order to minimize the City's vacancy loss, the space was made available on a first right of refusal basis. This allowed the actions necessary to find a possible new tenant to proceed, subject to the Southland Corporation not exercising their extension option.

The general terms under which responders submitted proposals to the City included the following:

1. The lease term is five (5) years from Rent Commencement at a minimum of \$5,000 per month "triple net" (plus all operating expenses such as taxes and insurance) and up to three (3) five (5) year options to extend the Lease. (This equates to \$25 per square foot annually for the 2,400 square foot building.) Options would have rate increases or reflect current market at that time.
2. After lease commencement, Tenant will pay for all expenses except the roof, foundation, and exterior walls, which are the City's responsibility. Those costs will also be paid for by the tenant and rent abatements will be allowed to recover tenant's costs.



**Lease Agreement/Renewal
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 17
AGENDA DATE: Thu 06/09/2005
PAGE: 2 of 2**

3. Improvements to be made by the City prior to lease commencement include the repair of the existing roof or to install a new roof on the property, and ensure the building systems are functioning as designed, in good working order with a one-year repair agreement, including any needed glass replacement as of lease commencement.

4. The property may require approximately \$50,000 in repairs and improvements to be made by the City or through rent abatement, primarily for the roof and building systems, which will be determined after the Southland Corporation vacates the property. The finishout allowance provided to the tenant will not exceed \$20,000 in rent abatement to modernize the building façade.

5. A security deposit equal to one month's rent will be required.

6. Any changes to the building and/or site must be pre-approved by City, but will not be unreasonably withheld.

7. Any contractors working on the site must meet the City's insurance requirements.

8. There is a restriction against adding any underground utilities.

9. No fuel sales will be allowed on the property.

10. Assuming a July 31, 2005 termination and the Southland Corporation immediately vacating the facility, it is anticipated the new Lease would commence not later than October 1, 2005.

11. Financial statements of company and principals are to be provided to City.

12. Proposals are subject to a due diligence review of the structure after the Southland Corporation vacates the premises.

A 4% real estate commission will be paid to the Lessee's broker for the primary term. Commission for extension option renewals are under negotiation, but will not exceed 3%. These funds will come in lieu of, or partially in lieu of the initial rental income. The tenant will also request a zoning change from P (Public) to LR (Neighborhood Commercial) for the site.

Staff's review indicated that the proposals received met the criteria stated above, and were substantially similar except with respect to: a) the company and principal's financial strength, and b) the principal's willingness to personally guarantee the full lease. In these categories Wireless Toyz is materially stronger, with the two owners willing to fully personally guarantee the full lease term. The company also presents a track record of doing business in Austin, as well as the development of attractive locations. Therefore, Wireless Toyz is staff's recommendation.

Neighborhood Planning and Zoning Department
RE: 5700 N. Lamar Boulevard

Dear Scott and NP&Z Dept.,

I probably won't be at the August 2 meeting, but I do want to be on the Brentwood Neighborhood Plan Contact Team. I also suggest that Clay Fuller, a business owner, and Ron Redder, a realtor, be added to the contact team.

Of course, I also have some thoughts about the proposed rezoning and neighborhood plan amendment. I think the city is setting a very bad precedent by taking this out of turn, before the Feb. date.

1. The whole point of the neighborhood planning process was to try to insert some predictability, reliability, and standards into the whole zoning process and to eliminate the piecemeal, nibbling approach we'd all been subjecting ourselves to for several decades now. One of the big selling points to entice individual devotion of large chunks of time and energy to the neighborhood plan development was that we wouldn't have to be on year-round "alert", things would come up for consideration only once a year. Staff, stakeholders, even the City Council would have some predictability. For COA, on its own initiative and for its own property, to now subvert that process makes that process useless under the "what is good for the goose is good for the gander" standard.

2. This in no way comes under the "error" exception. Simply because "P" zoning is not what the property owner wants, almost a year after adoption of the Brentwood plan, does not make it an error. An error is a mistake of fact, such as a typist reading an R as a P. That is not what happened here.

3. Nor is this a "hardship". It is like me saying it is a hardship for my property to be SF-3 when I can make money turning it into a daycare center if I can just get a zoning change. Maybe in Paris Hilton's world having to live with what you agreed to would be a hardship, but if the COA asks for and receives a zoning change out of turn it opens the door to absolutely everyone at

5508
CLAY AVE.
78756

1701 W.
Koenig
78756

any time. It would make a sham of the whole neighborhood planning process.

4. Likewise there is really no good reason for the Brentwood Neighborhood Plan Contact Team to initiate this zoning request, except pty. If the team does initiate this rezoning, it will be unable to fairly and without playing favorites refuse any other request. 5.

5. I know that most COA departments have long-range planning divisions and I would suggest that this piece of property be submitted to a process like that. If COA argues that this is a benefit to the Brentwood neighborhood because it is a down zoning, in the future when COA utilities or other department wants the property for a "P" use it will be legitimate for the Brentwood neighborhood to cry foul.

All in all, I suggest COA take some time to seriously consider the message this request to rezone out of turn sends about the neighborhood planning process. In my opinion and for the reasons I've given, this can be turned into the same joke that all previous attempts (i.e. Austin Plan) have become and once again all stakeholders have simply wasted their time in participating in yet another academic exercise because no one, not even the COA Neighborhood Planning and Zoning Department, intends to take it seriously and abide by its terms.

Sincerely,

Gail McDonald

Gail McDonald

5612 Clay Ave.

Austin, Texas 78756

CC. ALICE GLASCOU