

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



**AGENDA ITEM NO.: Z-7
AGENDA DATE: Thu 08/25/2005
PAGE: 1 of 1**

SUBJECT: C14-82-020 - Colonial Trails (RCT) - Conduct a public hearing and approve a restrictive covenant termination for the properties located at 400-810 Colonial Park Boulevard; 1 and 701-817 Sheraton Avenue; and 0 Shelby Lane (Williamson Creek Watershed). Planning Commission Recommendation: To grant the request to terminate the restrictive covenant. Applicant: Colonial Trails Management, L.L.C. (Candice Wiggins Sullivan); Main Street Homes, Inc. (Steve Bartholemew, Ken Blaker). City Staff: Wendy Walsh, 974-7719.

REQUESTING Neighborhood Planning
DEPARTMENT: and Zoning

DIRECTOR'S
AUTHORIZATION: Greg Guernsey

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-82-020 (RCT)

P.C. DATE: June 14, 2005
June 28, 2005
July 12, 2005
July 26, 2005

ADDRESS: 400 – 810 Colonial Park Boulevard; 1 and 701 – 817 Sheraton Avenue;
0 Shelby Lane

OWNERS / APPLICANTS: Colonial Trails Management, LLC (Candice Wiggins Sullivan);
Main Street Homes, Inc. (Steve Bartholemew; Ken Blaker)

AGENT: Armbrust & Brown, L.L.P. (Kristofer Kasper)

EXISTING ZONING: CS; LO; MF-3; SF-3; SF-2 **AREA:** 43.966 acres

SUMMARY STAFF RECOMMENDATION:

Staff recommends a Termination of the Restrictive Covenant.

PLANNING COMMISSION RECOMMENDATION:

June 14, 2005: *POSTPONED TO JUNE 28, 2005 (LOCATION: AUSTIN ENERGY BUILDING ON BARTON SPRINGS ROAD, FIRST FLOOR). STAFF REQUEST.*
VOTE: 7-0 (D. SULLIVAN - 1st, J.M. CORTEZ - 2nd; C. GALINDO - ABSENT)

June 28, 2005: *POSTPONED TO JULY 12, 2005 LOCATION: ONE TEXAS CENTER, THIRD FLOOR) AT THE REQUEST OF STAFF; BY CONSENT.*
VOTE: 6-0 (J. REDDY - 1ST, J. MICHAEL-CORTEZ - 2ND; C. MEDLIN - ARRIVED LATE; D. SULLIVAN - ABSENT)

July 12, 2005: *POSTPONED TO 07/26/05 (MEETING LOCATION: TOWN LAKE CENTER, 721 BARTON SPRINGS RD, ASSEMBLY ROOM) AT THE REQUEST OF STAFF.*
VOTE: 7-0 (D. SULLIVAN; J. REDDY – 2ND) C. GALINDO – ARRIVED LATE

July 26, 2005: *APPROVE STAFF RECOMMENDATION.*
VOTE: 6-1 (J.M. CORTEZ - 1st, J. REDDY - 2nd; K. JACKSON - OPPOSED, C.M. - ABSENT)

ISSUES:

Shortly before the June 14, 2005 Planning Commission meeting, Staff discovered that the street layout prescribed by the Covenant is different than that shown on the subsequent subdivision approvals for the residential (west side) of the property. Specifically, the Covenant does not show Windledge Drive connecting Sheraton Avenue and Colonial Park Road, whereas the approved subdivisions show this street connection. This connection

conflicts with the street layout prescribed by the 1984 Restrictive Covenant and allows for traffic along that segment of Colonial Park Boulevard under construction to access Greenwood Hills. Staff also learned that S.M.A.R.T. Housing staff previously met with members of Greenwood Hills Neighborhood Association to hear and discuss their traffic and circulation concerns resulting from this development. Staff requested postponements in order to research subdivision approvals and learn more about previous communications with the Neighborhood.

Subdivision Approvals

In November 1998, a Preliminary Plan of Colonial Trails Subdivision was filed for 113 lots. Review of this file indicates that Staff was unaware of the street layout provisions of the Restrictive Covenant and requested that the Applicant extend Windledge Drive between Sheraton Avenue and Colonial Park Boulevard. The extension was requested in order to meet block length requirements within the subdivision, as outlined in the City Code. The Preliminary Plan expired without being forwarded to the Planning Commission.

In May 2000, a Preliminary Plan of Colonial Trails Subdivision was filed for 106 lots and included the same Windledge Drive street extension between Sheraton Avenue and Colonial Park Boulevard. The Plan was approved by the Planning Commission on October 3, 2000. Staff contacted others previously involved in the subdivision review process, and also reviewed the 2000 Preliminary Plan file, and concluded that they were also unaware of the Covenant. The file indicates that several neighbors telephoned about traffic-related concerns.

A Final Plat that was consistent with the Preliminary Plan was approved by the Planning Commission on November 9, 2004. The Final Plat continues to show the Windledge connection. Mail-out notification was not required because the Final Plat was consistent with the approved Preliminary Plan. The Plat was recorded in March 2005.

Meetings with the Neighborhood

In late December 2004, S.M.A.R.T. Housing staff met with members of Greenwood Hills Neighborhood Association. At the meeting, the Neighborhood expressed their concerns about increased traffic generated by this development, inquired about reducing connectivity to their neighborhood, installing stop signs and traffic calming devices within their neighborhood, the existing amount of cut-through traffic and traffic speed, and the vehicle testing by nearby automotive-related businesses through the neighborhood.

On June 21, 2005, the Applicant's Agent and Colonial Trails, L.P. met with Battle Bend Springs to discuss the light industrial and multi-family components of the Restrictive Covenant, and with Greenwood Hills to hear their traffic and circulation concerns about the residential portion under construction by Main Street Homes. Main Street Homes declined to participate in the meeting.

Development Process Issues

Staff conferred with the Law Department regarding the previous zoning and subdivision approvals, and the ongoing subdivision construction. The Covenant is between the City and

a previous property owner and remains valid until it is modified or terminated. The approved Preliminary Plan and recorded Final Plat also remain valid.

The South Congress Combined Neighborhood Plan and accompanying zoning recommendations will be forwarded to the Commission on July 26, 2005 and then proceed to City Council on August 18, 2005. A representative of Colonial Trails, L.P. has participated in the neighborhood plan process.

This rezoning case has been approved to participate in the City's S.M.A.R.T. (Safe, Mixed-Income, Accessible, Reasonably-priced, Transit-Oriented) Housing expedited review program. Please refer to Exhibit E.

DEPARTMENT COMMENTS:

The subject property consists of undeveloped land along the east side and a single family residential development known as Colonial Trails Section One under construction on the west side. Zoning of the property occurred in January 1984, with the west side zoned for single family residences and duplexes (SF-2; SF-3) and the east side zoned for commercial services, limited office and multi-family residence – medium density (CS; LO; MF-3). Access to the property is taken to Shelby Lane, Weidemar Lane, Colonial Park Boulevard, Fort Clark Drive, Windledge Drive and Sheraton Avenue. Please refer to Exhibits A (Zoning Map), A-1 (Aerial View), B (Future Land Use Map), B-1 (Neighborhood Planning Area Map), C (Approved Preliminary Plan) and C-1 (Recorded Plat).

The Restrictive Covenant attached to the 1984 zoning ordinance carries three provisions, summarized as follows: 1) No light industrial uses are permitted on the CS tract; 2) If apartments are built on the CS tract, then the density shall not exceed that allowed under MF-3 zoning (36 units per acre); and 3) Street layout shall conform with an attached exhibit, with the exception that the City may require the extension of Sheraton Lane to Terry-O Lane. A copy of the recorded Restrictive Covenant is provided as Exhibit D.

A Restrictive Covenant Termination request has been filed to delete these limitations on the property. Staff supports the Termination request, as follows: 1) zoning is no longer cumulative and therefore, the CS district no longer permits light industrial or residential uses, 2) the proposed Future Land Use Map designates the CS tract as commercial, and 3) the recorded plat and development under construction connects Windledge Drive between Sheraton Avenue and Colonial Park Boulevard, and thus removes the inconsistency with the Covenant.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS; LO; MF-3; SF-3; SF-2	Undeveloped; Under construction for single family residences
<i>North</i>	LI	Warehouses; Undeveloped; Truck repair; Industrial park
<i>South</i>	SF-2; MF-3; SF-3; PUD; GR; CS-CO	Single family residences; Condominiums; Four-plexes; Auto sales
<i>East</i>	LI; SF-3; GR-CO; GR	Auto repair; Auto sales; Single family residence; Parking area for auto repair use; Printing company; Professional office; Undeveloped
<i>West</i>	SF-2	Single family residences

NEIGHBORHOOD PLANNING AREA: South **TIA:** Is not required
Congress Combined NPA
(East Congress)

WATERSHED: Williamson Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: N/A

SCENIC ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

9 – Battle Bend Springs Association 26 – Far South Austin Community Association
96 – Southeast Corner Alliance of Neighborhoods (SCAN)
300 – Terrell Lane Interceptor Association
352 – Greenwood Hills – Colonial Park Neighborhood Association
428 – Barton Springs / Edwards Aquifer Conservation District
511 – Austin Neighborhoods Council 627 – Onion Creek Homeowners Association
742 – Austin Independent School District

SCHOOLS:

Galindo Elementary School – 107% of permanent capacity in 2005
Porter Middle School – 60% of permanent capacity in 2005
Travis High School – 89% of permanent capacity in 2005

* Please also refer to e-mail correspondence from Mr. Dan Robertson, Director of Planning Services at Austin Independent School District, provided as Exhibit F.

The optimal capacity is between 100% and 110% of permanent capacity. Those schools over 125% are considered to be in excess of the desired capacity and in need of relief. Source: Mr. Dan Robertson, Director of Planning Services at Austin Independent School District.

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-00-2123	SF-3 to GR-CO, as amended	To Grant GR-CO with CO for 2,000 trips and a 6' high fence and vegetation providing screening along the north and south property lines abutting adjacent residential development. Private restrictions concerning outdoor speakers.	Approved GR-CO as Commission recommended (11-30- 00).

RELATED CASES:

On August 8, 2005, Main Street Homes, Inc. filed three Board of Adjustment variances to the minimum lot size of 5,750 square feet, affecting 11 single family lots (C15-05-132, C15-05-133 and C15-05-134). The need for the variance was discovered at the building permit stage. The variances are scheduled for a special-called Board of Adjustment meeting on August 29, 2005.

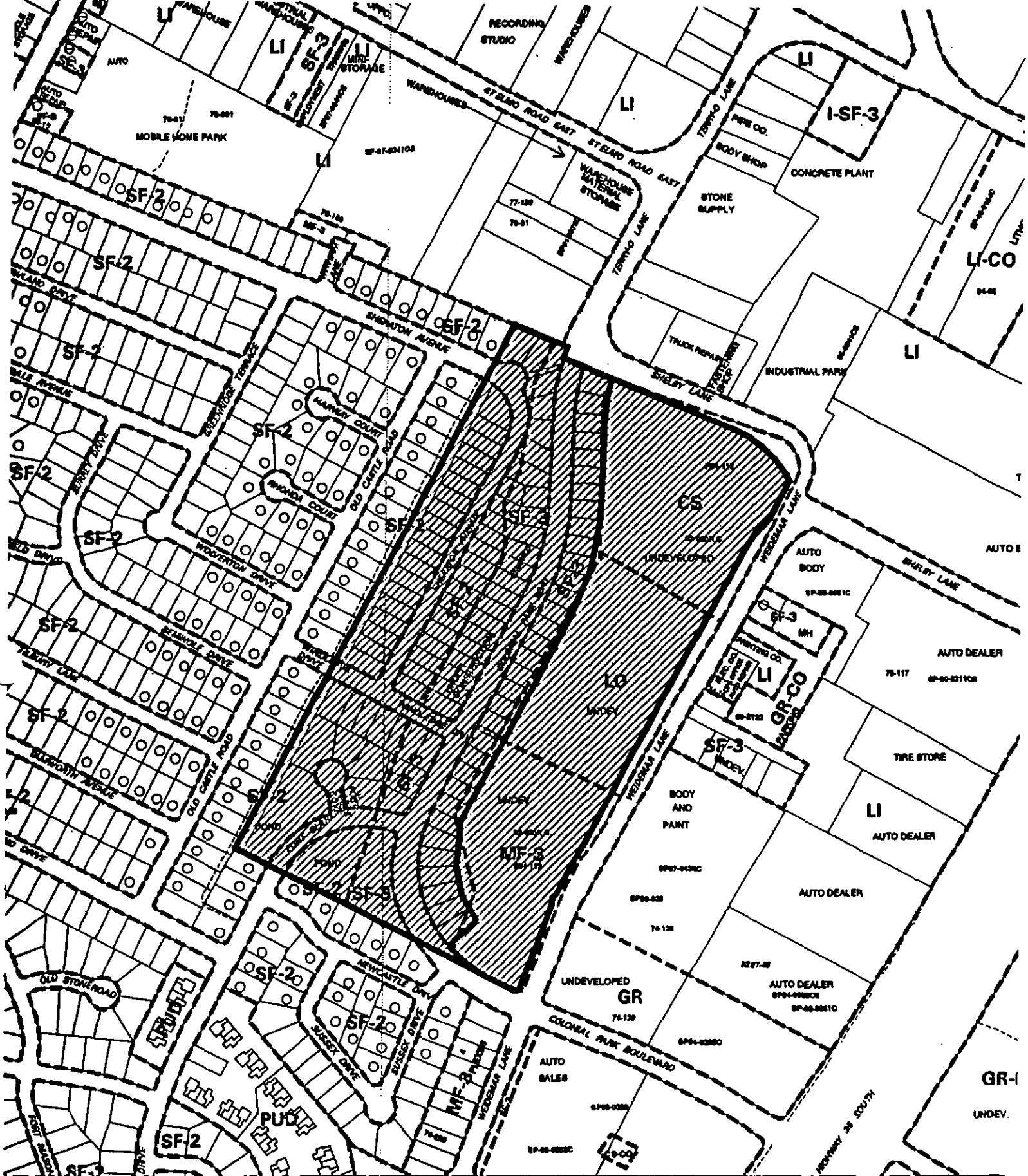
The west side of the property is platted as Colonial Trails Section One, recorded in March 2005 (C8-00-2114.1A.SH). The plat consists of 103 single family lots, four greenbelt / drainage lots and two access / public utility easement / drainage easement lots.

CITY COUNCIL DATE: August 25, 2005 **ACTION:**

ORDINANCE NUMBER:

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

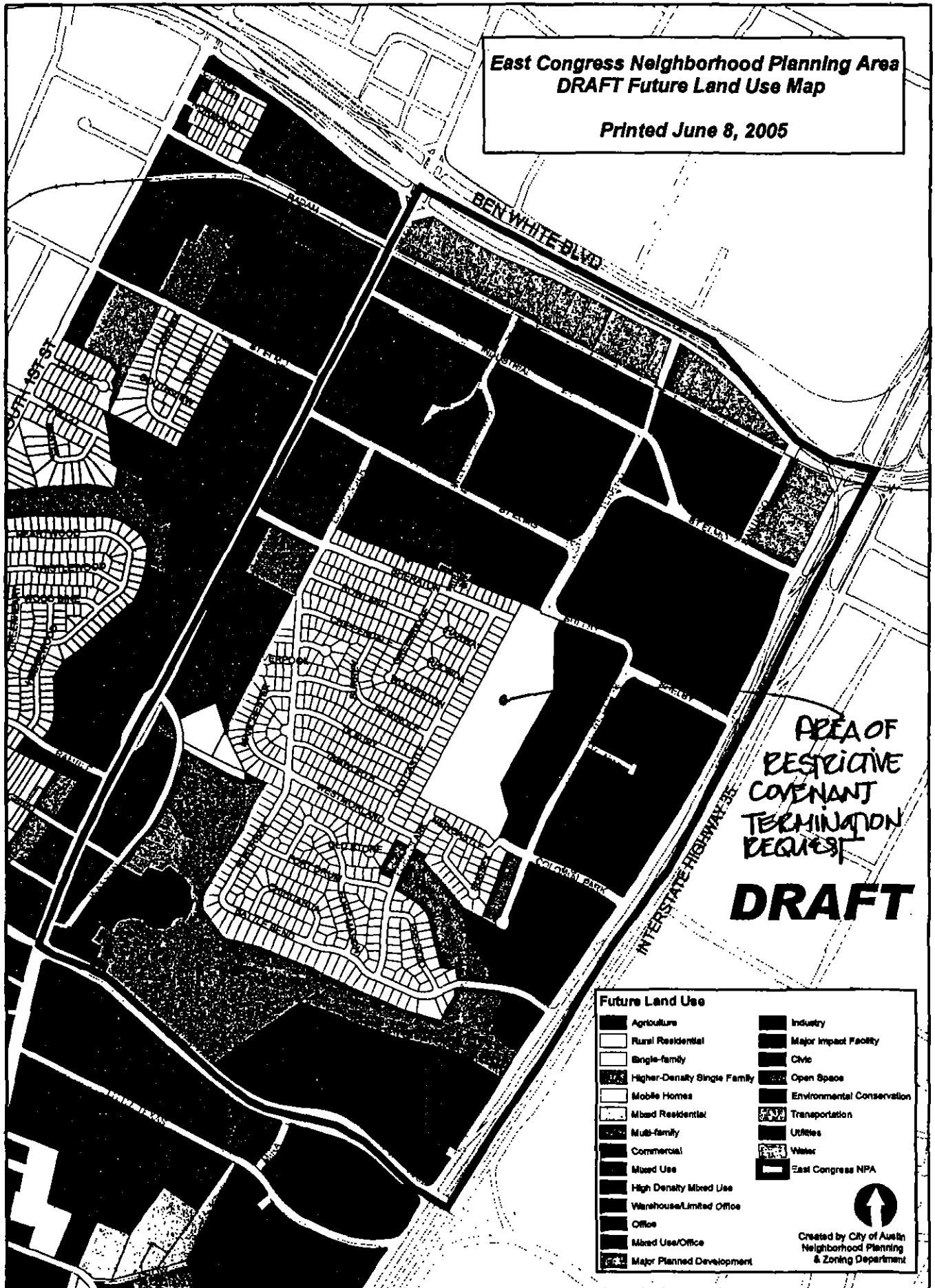
PHONE: 974-7719



 1" = 400'	SUBJECT TRACT	RESTRICTIVE COVENANT TERMINATION		CITY GRID REFERENCE NUMBER H17
	PENDING CASE	EXHIBIT A		
	ZONING BOUNDARY	CASE #: C14-82-020(RCT)	DATE: 05-05	
	CASE MGR: W. WALSH	ADDRESS: 400-810 COLONIAL PARK BLVD; I & 701-817 SHERATON AVE; 0 SHELBY LANE		
		SUBJECT AREA (acres): 43.966 INTLS: SM		

**East Congress Neighborhood Planning Area
DRAFT Future Land Use Map**

Printed June 8, 2005



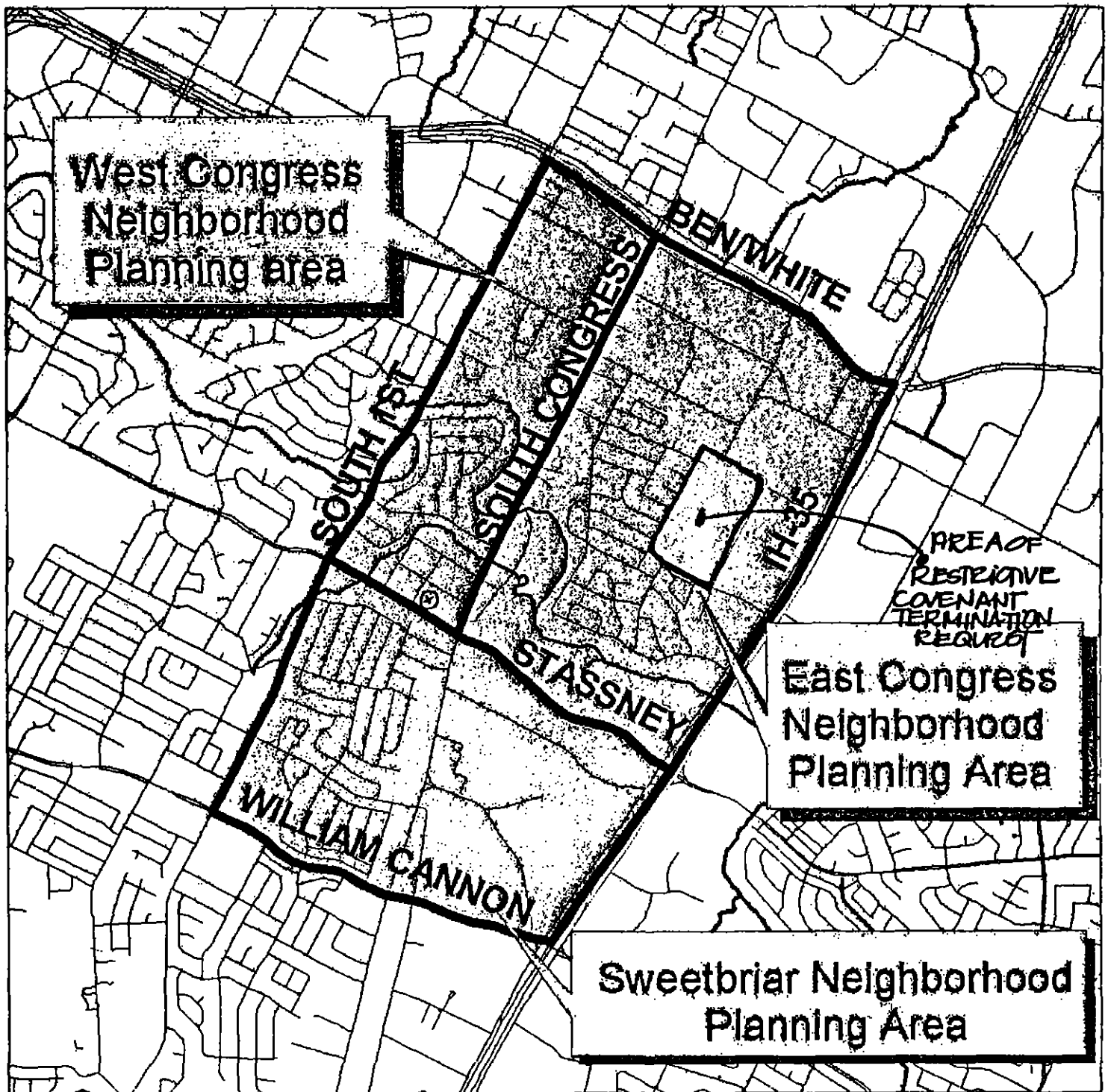
AREA OF
RESTRICTIVE
COVENANT
TERMINATION
REQUEST
DRAFT

Future Land Use

	Agriculture		Industry
	Rural Residential		Major Impact Facility
	Single-family		Civic
	Higher-Density Single Family		Open Space
	Mobile Homes		Environmental Conservation
	Mixed Residential		Transportation
	Multi-family		Utilities
	Commercial		Water
	Mixed Use		East Congress NPA
	High Density Mixed Use		
	Warehouse/Limited Office		
	Office		
	Mixed Use/Office		
	Major Planned Development		

Created by City of Austin
Neighborhood Planning
& Zoning Department

EXHIBIT B



**South Congress Combined
Neighborhood Planning Area**

Exhibit B-1

10.0000	0.0000	0.0000	0.0000
1.1	0.1114	0.1114	0.1114
1.2	0.2228	0.2228	0.2228
1.3	0.3342	0.3342	0.3342

[illegible][illegible]

OTHER NOTATION

NAME: JIMMY S. BORDZ

STREET ADDRESS: 704 STATE ST.
SUITE 421

CITY/STATE/ZIP SAN DIEGO, CA

22901
 22902
 22903

Table 1

TOTAL ACFTWGT = 43.96 LB.

DATE: NOVEMBER 5, 1968

PRELIMINARY PLAN FOR

COLONIAL

TRAILS

SUBDIVISION

NOTES

11

☐ **Block with a lock-down**

THE

7 of 11



C8-00-2114 943-701-12

EXHIBIT C
APPROVED
PRELIMINARY
PLAN

RESTRICTIVE COVENANT

3-56-4984 *Boc*

THE STATE OF TEXAS §
COUNTY OF TRAVIS § C14-82-020

Whereas, DAVE E. NOVY and MORRIS SHAPIRO of Travis County, Texas (owners), are the owners of the following described property, to-wit:

ALL that property described in Exhibits 1-5 and illustrated in Exhibit 6, all of which are attached hereto and made a part hereof.

Whereas, the City of Austin and owners have agreed that the above described property should be impressed with certain covenants and restrictions running with the land and desire to set forth such agreement in writing;

Now, Therefore, owners for and in consideration of One and No/100 Dollars (\$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 said property described above, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on them, their successors and assigns, as follows, to-wit:

1. There shall be no light industrial uses permitted on Tract 5 described in Exhibit 5 attached hereto.
2. If apartments are built on Tract 5 described in Exhibit 5 which is attached hereto, the density of said apartments shall not exceed the density allowed under the "B" Residence zoning classification of the Zoning Ordinance of the City of Austin as same existed on December 12, 1983.
3. Streets within the property described in Exhibits 1-5 attached hereto shall be as shown on Exhibit 6 attached hereto with the exception that the City of Austin may require the extension of Sheraton Lane to Terry-O Lane.
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

JOSZ * 1529 - 1529-6-83

DEED:
Travis County, Texas

8450 510

EXHIBIT D:
RECORDED RESTRICTIVE COVENANT

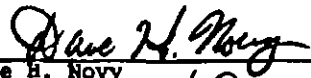
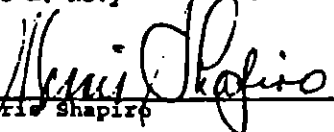
prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate such agreement or covenant and to prevent said person or entity from violating or attempting to violate such agreement or covenant.

5. If any part of 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 owners of the above described property at the time of such modification, amendment or termination.

EXECUTED, this the 15th day of April, 1983.


Dave H. Novy

Morris Shapira

3-56-4985

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Dave H. Novy, 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 the 14th day of December, 1983.

E. Richard Criss Jr.
Notary Public in and for the
State of Texas
E. RICHARD CRISS JR.
Name - Printed or Typed

My commission expires:

6/8/83

NOTARY SEAL

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Morris Shapiro, 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 the 15th day of December, 1983.

LaDell Freudenberg
Notary Public in and for the
State of Texas
LaDell Freudenberg
Name - Printed or Typed

My commission expires:

9/30/84

NOTARY SEAL

JLH3/76

8450 512

Dave H. Novy
Morris Shapiro

EXHIBIT I

FIELD NOTES
TRACT I

3-56-4987

FIELD NOTES FOR A 12.94 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND BEING OUT OF AND A PART OF THAT CERTAIN 45.31 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND THE SANTIAGO DEL VALLE LEAGUE IN TRAVIS COUNTY, TEXAS, SAID 45.31 ACRE TRACT OF LAND BEING CONVEYED TO DAVE H. NOVY AND MORRIS SHAPIRO BY WARRANTY DEED DATED JUNE 30, 1980, AS RECORDED IN VOLUME 7033, PAGE 607 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 12.94 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron pin found at the most Northeast corner of the Greenwood Hills Section Six Subdivision, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 46, Page 58 of the Plat Records of Travis County, Texas, said iron pin being the Northwest corner of the tract of land herein described;

THENCE S 30°10' W, 1912.29 feet along the east line of said Greenwood Hills Section Six subdivision to an iron pin found for the Southwest corner of the tract of land herein described; said pin also being the Northwest corner of the Colonial Park Amended Subdivision, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 52, Page 16 of the Plat Records of Travis County, Texas;

THENCE S 60°37' E, 401.17 feet along the South line of the tract of land herein described and along the north line of said Colonial Park Amended Subdivision to an iron pin set for the Southeast corner hereof;

THENCE along the East line of the tract of land herein described the following courses:

- (1) N 20°53' E, 325.46 feet to an iron pin set;
- (2) N22°53' E, 168.51 feet to an iron pin set;
- (3) N 30°10' E, 561.37 feet to an iron pin set;
- (4) N 25°40' E, 130.95 feet to an iron pin set;
- (5) N 8°40' E, 182.00 feet to an iron pin set;
- (6) N 32°40' E, 107.84 feet to an iron pin set;
- (7) N 10°34' E, 307.44 feet to an iron pin set;

(8) N 30°10' E, 176.21 feet to an iron pin set for the Northeast corner hereof;

THENCE N 65°59' W, 152.74 feet along the North line of the tract of land herein described to the POINT OF BEGINNING and containing 12.94 acres of land.



DATE: December 12, 1983

Andrew L. Wells, Jr. P.E.
Registered Public Surveyor
No. 3633

Dave H. Novy
Morris Shapiro
A

EXHIBIT 2

FIELD NOTES
TRACT 2

3-56-4988

FIELD NOTES FOR A 13.08 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND BEING OUT OF AND A PART OF THAT CERTAIN 45.31 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND THE SANTIAGO DEL VALLE LEAGUE IN TRAVIS COUNTY, TEXAS, SAID 45.31 ACRE TRACT OF LAND BEING CONVEYED TO DAVE H. NOVY AND MORRIS SHAPIRO BY WARRANTY DEED DATED JUNE 30, 1980, AS RECORDED IN VOLUME 7033, PAGE 607, OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 13.08 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING for reference at an iron pin found at the most Northeast corner of the Greenwood Hills Section Six Subdivision, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 46, Page 58 of the Plat Records of Travis County, Texas;

THENCE S 65°59' E, 152.74 feet to an iron pin set for the POINT OF BEGINNING and the Northwest corner of the tract of land herein described;

THENCE along the West line of the tract of land herein described the following courses:

- (1) S 30°10' W, 176.21 feet to an iron pin set;
- (2) S 10°34' W, 307.44 feet to an iron pin set;
- (3) S 32°40' W, 107.84 feet to an iron pin set;
- (4) S 8°40' W, 182.00 feet to an iron pin set;
- (5) S 25°40' W, 130.93 feet to an iron pin set;
- (6) S 30°10' W, 561.37 feet to an iron pin set;
- (7) S 22°53' W, 168.51 feet to an iron pin set;

(8) S 20°53' W, 325.46 feet to an iron pin set in the North line of the Colonial Park Amended Subdivision, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 52, Page 16 of the Plat Records of Travis County, Texas, said iron pin also being set for the Southwest corner of the tract of land herein described;

THENCE S 60°37' E, 393.62 feet along the South line of said 13.08 acre tract of land and along the North line of said Colonial Park Amended Subdivision to an iron pin set for the Southeast Corner of said 13.08 acre tract of land;

THENCE along the East line of the tract of land herein described the following courses:

- (1) N 30°10' E, 141.55 feet to an iron pin set;
- (2) N 11° 35' W, 286.00 feet to an iron pin set;
- (3) N 30°10' E, 997.56 feet to an iron pin set;
- (4) N 4°10' E, 520.00 feet to an iron pin set;

(5) N 31°59' E, 102.92 feet to an iron pin set for the Northeast Corner of the tract of land herein described;

EXHIBIT 2
PAGE TWO

THENCE N 65°49' W, 166.80 feet to an iron pin set;

THENCE N 13°18' E, 19.33 feet to an iron pin set;

THENCE N 63°39' W, 36.33 feet to the POINT OF BEGINNING and containing
13.08 acres of land.



DATE: December 12, 1983

Andrew L. Wells, Jr. P.E.
Registered Public Surveyor
No. 3633

3-56-4989

Dave H. Novy
Morris Shapiro

EXHIBIT 3

FIELD NOTES
TRACT 3

3-56-4890

FIELD NOTES FOR A 5.37 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND THE SANTIAGO DEL VALLE LEAGUE AND BEING OUT OF AND A PART OF THAT CERTAIN 45.31 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND THE SANTIAGO DEL VALLE LEAGUE IN TRAVIS COUNTY, TEXAS, SAID 45.31 ACRE TRACT OF LAND BEING CONVEYED TO DAVE H. NOVY AND MORRIS SHAPIRO BY WARRANTY DEED DATED JUNE 30, 1980, AS RECORDED IN VOLUME 7033, PAGE 607 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 5.37 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING for reference at an iron pin found at the Northeast corner of the Greenwood Hills Section Six Subdivision, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 46, Page 58 of the Plat Records of Travis County, Texas;

THENCE along the following courses to the POINT OF BEGINNING of said 5.37 acre tract of land:

- (1) S 65°59' E, 209.29 feet to an iron pin;
- (2) S 13°18' W, 19.35 feet to an iron pin;
- (3) S 65° 49' E, 166.80 feet to an iron pin;
- (4) S 31°59' W, 102.92 feet to an iron pin;
- (5) S 4°10' W, 520.00 feet to an iron pin;

(6) S 30°10' W, 673.92 feet to an iron pin set for the POINT OF BEGINNING and the Northwest corner of the tract of land herein described;

THENCE continuing S 30°10' W, 323.64 feet to an iron pin set in the West line of said 5.37 acre tract of land;

THENCE S 11°35' E, 286.00 feet to an iron pin set in the West line of the tract of land herein described;

THENCE S 30°10' W, 141.55 feet to an iron pin set in the North line of Colonial Park Amended Subdivision, A subdivision in the City of Austin, Travis County, Texas as recorded in Volume 52, Page 16 of the Plat Records of Travis County, Texas said point being the Southwest corner of the tract of land herein described;

THENCE S 60°37' E, 252.55 feet along the North line of said Colonial Park Amended Subdivision to an iron pin set in the West line of Weidemar Lane for the Southeast corner hereof;

THENCE N 23°19' E, 290.57 feet along the West line of Weidemar Lane to an iron pin set;

EXHIBIT 3
PAGE TWO

THENCE N 30°01' E, 384.53 feet along the West line of said Weidemar Lane to an iron pin set for the Northeast Corner of the tract of land herein described;

THENCE N 59°32' W, 407.20 feet along the North line of said 5.37 acre tract of land to the POINT OF BEGINNING.



DATE: December 12, 1983

Andrew L. Wells, Jr. P.E.
Registered Public Surveyor
No. 3633

3-56-4991

Dave H. Novy
Morris Shapiro

EXHIBIT 4

FIELD NOTES
TRACT 4

FIELD NOTES FOR A 6.81 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND BEING OUT OF AND A PART OF THAT CERTAIN 45.31 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND THE SANTIAGO DEL VALLE LEAGUE IN TRAVIS COUNTY, TEXAS, SAID 45.31 ACRE TRACT OF LAND BEING CONVEYED TO DAVE H. NOVY AND MORRIS SHAPIRO BY WARRANTY DEED DATED JUNE 30, 1980, AS RECORDED IN VOLUME 7033, PAGE 607 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 6.81 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING for reference at an iron pin found at the most Northeast Corner of the Greenwood Hills Section Six Subdivision, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 46, Page 58 of the Plat Records of Travis County, Texas;

THENCE along the following courses to the POINT OF BEGINNING of said 6.81 acre tract of land:

- (1) S 65°59' E, 209.29 feet to an iron pin;
- (2) S 13°18' W, 19.35 feet to an iron pin;
- (3) S 65°49' E, 166.80 feet to an iron pin;
- (4) S 31°59' W, 102.92 feet to an iron pin;

(5) S 4°10' W, 464.26 feet to an iron pin set for the POINT OF BEGINNING of the tract of land herein described;

THENCE continuing S 4°10' W, 55.74 feet to an iron pin set;

THENCE S 30°10' W, 673.92 feet to an iron pin set for the Southwest corner of said 6.81 acre tract of land;

THENCE S 59°32' E, 407.20 feet to an iron pin set in the West line of Weidemar Lane, said pin being the Southeast corner of the 6.81 acre tract of land herein described;

THENCE N 30°01' E, 12.19 feet along the West line of Weidemar Lane to an iron pin set;

THENCE N 30°28' E, 711.69 feet continuing along the West line of Weidemar Lane and the East line of the tract of land herein described to an iron pin set for the Northeast Corner hereof;

THENCE N 59°32' W, 435.33 feet to the POINT OF BEGINNING and containing 6.81 acres of land.



DATE: December 12, 1983

Andrew L. Wells, Jr. P.E.
Registered Public Surveyor
No. 3633

3-56-4992

Dave H. Novy
Morris Shapiro

EXHIBIT 5

FIELD NOTES
TRACT 5

FIELD NOTES FOR A 7.11 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND BEING OUT OF AND A PART OF THAT CERTAIN 45.31 ACRE TRACT OF LAND LOCATED IN THE ISAAC DECKER LEAGUE AND THE SANTIAGO DEL VALLE LEAGUE IN TRAVIS COUNTY, TEXAS, SAID 45.31 ACRE TRACT OF LAND BEING CONVEYED TO DAVE H. NOVY AND MORRIS SHAPIRO BY WARRANTY DEED DATED JUNE 30, 1980, AS RECORDED IN VOLUME 7033, PAGE 607 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 7.11 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING for reference at an iron pin found at the most Northeast Corner of the Greenwood Hills Section Six subdivision, a subdivision in the City of Austin, Travis County, Texas as recorded in Volume 46, Page 58 of the Plat Records of Travis County, Texas;

THENCE along the North line of said 45.31 acre tract of land and the South line of Shelby Lane, S 65°59' E, 209.29 feet; S 13°18' W, 19.33 feet; S 65°49' E, 166.80 feet to an iron pin set for POINT OF BEGINNING and the Northwest corner of the tract of land herein described;

THENCE S 31°59' W, 102.92 feet to an iron pin set;

THENCE S 4°10' W, 464.26 feet to an iron pin set for the Southwest corner of the tract of land herein described;

THENCE S 59°32' E, 435.33 feet to an iron pin set in the west line of Weidemar Lane for the Southeast corner of said 7.11 acre tract of land;

THENCE N 30°28' E, 507.30 feet along the West line of Weidemar Lane to an iron pin set;

THENCE N 1°26' E, 55.43 feet to an iron pin set for the most Northeast corner of said 7.11 acre tract of land;

THENCE N 40°50' W, 67.05 feet to an iron pin set in the South line of Shelby Lane;

THENCE N64°21' W, 83.57 feet along the South line of Shelby Lane to an iron pin set;

THENCE N 65°49' W, 467.43 feet along the South line of Shelby Lane to the POINT OF BEGINNING and containing 7.11 acres of land.

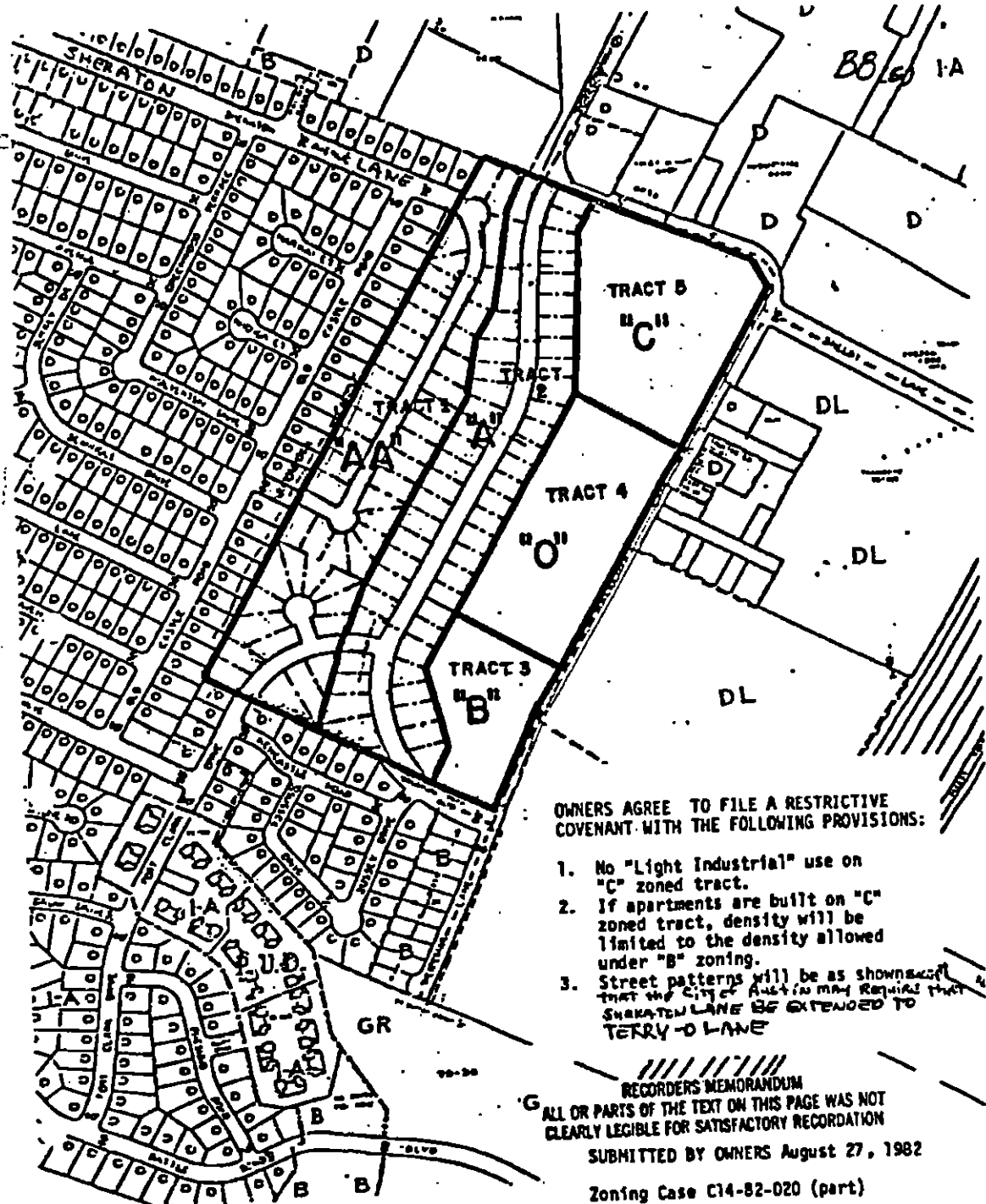


DATE: December 12, 1983

Andrew L. Wells, Jr. P.E.
Registered Public Surveyor
No. 3633

3-56-4993

3-56-4994





City of Austin

P.O. Box 1088, Austin, TX 78767
www.cityofaustin.org/housing

Neighborhood Housing and Community Development Office

Gina Copic, S.M.A.R.T. Housing Manager
(512) 974-3180, Fax: (512) 974-3112, regina.copic@ci.austin.tx.us

April 20, 2005 (revised from August 11, 2004)

S.M.A.R.T. Housing Certification Main Street Homes: Colonial Trails Subdivision

TO WHOM IT MAY CONCERN:

Main Street Homes Inc. (Ken Blaker, kblaker@mainstreethomes.com, 327-8620) plans to build 104 single-family units between Old Castle Rd and Weidemar Ln (West of IH-35 and South of Ben White/Hwy 71), located in the East Congress neighborhood planning area.

The Neighborhood Housing and Community Development Office (NHCD) certifies that this proposed development meets the S.M.A.R.T. Housing standards at the pre-submittal stage. Because 40% of the units will serve families at 80% or below median family income, the development will be eligible for 100% of the fees listed in Exhibit A of the S.M.A.R.T. Housing Resolution adopted by the City Council.

The expected fee waivers include, but are not limited to, the following:

Subdivision Fees
Traffic Impact Analysis Fees
Construction Inspection Fee
Capital Recovery Fees

Building Permit
Concrete Permit
Electrical Permit
Mechanical Permit

Plumbing Permit
Zoning Fees (including Restrictive
Covenant Termination)

Prior to commencement of construction, the developer must:

- ◆ Obtain a signed Conditional Approval from the Austin Energy Green Building Program stating that the plans and specifications for the proposed development meet the criteria for a Green Building Rating. (Dick Peterson, 482-5372).

Before a Certificate of Occupancy will be granted, the development must:

- ◆ Pass a final inspection and obtain a signed Final Approval from the Green Building Program. (Note: this inspection is separate from any other inspections required by the City of Austin or Austin Energy).
- ◆ Pass a final inspection by NHCD to certify that Visitability standards have been met.

Please call me at 974-3126 if you need additional information.

Steve Barney, S.M.A.R.T. Housing Project Coordinator
Neighborhood Housing and Community Development Department

Cc: Gina Copic, NHCD
Robby McArthur, WWW Taps
Dick Peterson, Austin Energy
Andrei Lubomudrov, NHCD

Adam Smith, NPZD
Stuart Hersh, NHCD
Marzia Volpe, WPDOR
Yolanda Parada, WPDOR

Lisa Nickle, WPDOR
Ricardo Soliz, NPZD
Dan Garcia, WPDOR

*The City of Austin is committed to compliance with the American with Disabilities Act.
Reasonable modifications and equal access to communications will be provided upon request.*

EXHIBIT 2

Walsh, Wendy

From: dlobtsn@austinisd.org
Sent: Monday, June 20, 2005 9:01 AM
To: Walsh, Wendy
Subject: Re: FW: AISD School Capacities

Wendy- Galindo is currently 107% of permanent capacity; Porter, 60% and Travis 89%. Even at 107%, Galindo has room because it has a core facility (gym, cafeteria and library) of over 10, 800 square feet, which is larger than the current educational specification calls for. Whatever the other objections are to the termination of the restrictive covenant, school capacity should not be a major concern. Let me know if you need additional information. Dan Robertson 414-3632

Wendy.Walsh@ci.austin.tx.us
06/17/05 01:31 PM

To: dlobtsn@austinisd.org
cc:
Subject: FW: AISD School Capacities

-----Original Message-----

From: Walsh, Wendy
Sent: Friday, June 17, 2005 1:30 PM
To: 'dlrobertson@austinisd.org'
Subject: FW: AISD School Capacities

Hi Dan,

Would you have capacity information for the schools serving the Main Street Homes residential development under construction at this address: 400 - 810 Colonial Park Boulevard and 701-817 Sheraton Avenue. The Main Street development consists of 103 single family residential lots. This is a request for Termination of a Restrictive Covenant that has lately generated a lot of controversy and the neighbors have cited overcrowded schools as an issue.

Thank you for your help,
Wendy Walsh
974-7719

-----Original Message-----

ARMBRUST & BROWN, L.L.P.

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300
AUSTIN, TEXAS 78701-2744
512-435-2300

FACSIMILE 512-435-2360

GREGG C. KRUMME
(512) 435-2398
gkrumme@abacustin.com

April 19, 2005

VIA HAND DELIVERY

Ms. Alice Glasco
Director of Neighborhood Planning
& Zoning
City of Austin
505 Barton Springs Rd., 5th Floor
Austin, Texas 78704

Re: Termination of Restrictive Covenant for Colonial Trails Property;
City File No. C14-82-020 (the "Restrictive Covenant")

Dear Alice:

This firm represents, and this letter is written on behalf of Colonial Trails, L.P. and Main Street, Ltd. ("Owners"), the owners of the property referenced in the attached Application for Ordinance Amendment ("Property"). Currently, the Owners intend to develop a portion of the Property as a SMART housing development with the remainder being a commercial tract. The Owners seek the termination of the Restrictive Covenant, due to numerous changes which have occurred since the passage of the covenant, necessitating its termination.

From a practical standpoint, the neighborhood plan and base zoning districts will govern the use and development of the Property. The Restrictive Covenant is no longer necessary in light of these new governing instruments. Additionally, the wording of Restrictive Covenant has proven problematic for the Owners of the Commercial Tract. First, prospective lenders and purchasers of the Commercial Tract are concerned about the prohibition of all "light industrial" uses in Section 1 since it is an undefined term and makes no reference to the City of Austin Code for guidance. Though it is common practice to reference the Land Development Code for the City of Austin when interpreting these terms, no mention is made of the Land Development Code in the restrictive covenant. Based on a reading of the document, lenders are concerned that a broad definition of "light industrial" could be enforced thereby creating a violative use on the Property that is otherwise in compliance with the proposed Neighborhood Plan. Secondly, even a reference to the Code at that time reflects that Section 13-2-70 of the 1981 Code addressing "light industrial" uses; contained a list of permitted uses were that cumulative. Essentially all uses were light industrial uses. As a result, the covenant's prohibition of light industrial uses may be interpreted as prohibiting all lesser uses, as well.

ARMBRUST & BROWN, L.L.P.

Page 2

Due to the changed circumstances and the ambiguity of the Restrictive Covenant, the Owners respectfully request that the Restrictive Covenant be terminated. Please do hesitate to call should you have any questions or concerns.

Sincerely,



Gregg C. Krumme

GCK:jlb

Enclosure

CITY PLANNING COMMISSION

July 26, 2005

**TOWN LAKE CENTER
721 Barton Springs Road
1st floor, Assembly Room**

CALL TO ORDER – 6:00 P.M. COMMENCE 6:05PM; ADJOURN 10:05PM

____ John-Michael Cortez

____ Cid Galindo

____ Keith L. Jackson

ABSENT Cynthia Medlin – Vice Chair

____ Matthew Moore

____ Jay Reddy

____ Chris Riley - Chair

____ Dave Sullivan - Parliamentarian

6:00 P.M.

PUBLIC HEARING

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.

NO SPEAKERS

APPROVAL OF MINUTES

2. Approval of minutes from July 12, 2005.

MOTION: APPROVE BY CONSENT.

VOTE: 7-0 (DS-1st, JR-2nd; CM-ABSENT)

DISCUSSION AND ACTION CASES

DISCUSSION AND ACTION ON ZONING CASES

- 3. Rezoning: C14-82-020 (RCT) - Colonial Trails - Restrictive Covenant Termination - S.M.A.R.T. Housing**
- Location:** 400-810 Colonial Park Boulevard; 1 and 701-817 Sheraton Avenue; 0 Shelby Lane, Williamson Creek Watershed, South Congress Combined NPA (East Congress)
- Owner/Applicant:** Colonial Trails, L.P. (Candice Wiggins Sullivan); Main Street Homes, Ltd. (Ken Blaker)
- Agent:** Armbrust & Brown, L.L.P. (Kristofer Kasper)
- Request:** To Terminate the Restrictive Covenant that addresses uses, density and street layout.
- Staff Rec.:** **RECOMMENDED.**
- Staff:** Wendy Walsh, 974-7719, wendy.walsh@ci.austin.tx.us
Neighborhood Planning and Zoning

Wendy Walsh presented the staff recommendation.

PUBLIC HEARING

Kris Kasper, representing the one of the owners, Colonial Trails, said there are actually two owners of the property. Main Street Homes owns the subdivided portion. Colonial Trails owns the unsubdivided portion. They are requesting termination since the neighborhood plan rezoning of the property takes care of the issues related to apartment density and industrial uses, since not permitted with the requested CS zoning.

Commissioner Cortez asked if there is any connectivity envisioned between the commercial and the residential areas. Javier Delgado said there is an access easement from Colonial Park to the subject property.

AGAINST

Dawn Andrede said she lives on Old Castle Road and has lived there since 1970. They oppose the termination of the restrictive covenant. One of the factors that makes development a challenge is the natural gas line on the northeast part of the property. Residential buildings would have been built over the natural gas line. The residents made the developer aware of the line, which made the developer reconsider the plans. At the time of the agreement in 1983, the extension had not occurred, but traffic concerns were still present. The neighborhood is in close proximity to the Motor Mile. Customers of the auto dealerships use the neighborhood as an area to test drive vehicles. City staff goofed and did not enforce the restrictive covenant. There is a significant impact of terminating the restrictive covenant to the neighborhood for it would allow free access to Greenwood Hills. She asked for reasons, not excuses, as to why city staff did not enforce restrictive covenant, when the staff is acutely aware of the violation.

In response to Commissioner Reddy's question about the traffic on Old Castle, Ms. Andrede said that she gets I-35 cut-through traffic as well as traffic from Hills Café events.

Commissioner Riley asked about her concern with the restrictive covenant and Ms. Andrede said that her only concern is with the section on Windledge Drive.

Facilitator: Katie Larsen 974-6413; katie.larsen@ci.austin.tx.us

City Attorney: Alison Gallaway, 974-2671; Contact Alison for any legal questions; or Marty Terry, 974-2974.

Commissioner Sullivan asked the attorney to speak about what the remedies all. Marci Morrison said that the neighborhood is not a party to the agreement and not a legal beneficiary.

Mike Kelly, representing the neighborhood association, asked for denial of the restrictive covenant termination because of the concerns with item 3, the Windledge segment. He said that staff's logic to recommend the termination cannot be understood since the restrictive covenant was in place prior to the subdivision plat. He would also like the Commission to recommend to Council that they direct staff to enforce the restrictive covenant.

Commissioner Reddy asked Mr. Kelly for clarification of pedestrian access and Mr. Kelly said that his concerns with pedestrian access have to do with residents being able to walk around their neighborhood. They do not have sidewalks.

Commissioner Galindo asked Mr. Kelly why he thought someone would want to drive into the central part of the neighborhood. Mr. Kelly said that people avoiding I-35 traffic snarls enter the neighborhood. The more openings provided from I-35 frontage that allow access into the neighborhood will increase the traffic trying to find an alternate route.

Commissioner Riley asked about the planned use and Mr. Kelly said he heard it might be an auto-oriented use. Commissioner Riley asked him about the possibility of negotiating the types of land uses permitted on the site in relation to permitting the termination of the restrictive covenant.

REBUTTAL

Kris Kasper said that the covenant did provide for allowing the cul-de-sac to connect to Colonial Park, but the choice was made to make it a cul-de-sac, thus avoiding a major connection into the neighborhood. In regards to land use and zoning, the property owner has participated in the neighborhood planning process to work out those issues.

MOTION: CLOSE PUBLIC HEARING

VOTE: 7-0 (JR-1st, JMC-2nd; CM- ABSENT)

Commissioner Moore brought up the issue of connectivity and asked, philosophically, what the neighborhood's position was on connectivity. Mr. Kelly said that he would prefer to have traffic that is not neighborhood be on a road designed for that type of traffic. He added that he would like a grid system, but since the neighborhood has cul-de-sacs, does not want it in this area.

MOTION: APPROVE STAFF RECOMMENDATION

VOTE: 6-1 (JMC-1st, JR-2nd; KJ-OPPOSED, CM- ABSENT)

Commissioner Cortez said that block length and connectivity are important issues, and if there are positive uses, this road will allow for the connections. Commissioner Galindo said he will support the motion. The streets that actually access I-35 will not change. There are three access points and that will not change, therefore amount of traffic may not change. The central part of neighborhood may benefit from enhanced connectivity.