

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



**AGENDA ITEM NO.: Z-5
AGENDA DATE: Thu 01/26/2006
PAGE: 1 of 1**

SUBJECT: C14-00-2062(RCA)(2) - Martens Zoning - Conduct a public hearing and approve a restrictive covenant amendment for the property located at 807 East 11th Street (Waller Creek Watershed). Planning Commission Recommendation: To be considered on December 13, 2005. Applicant: Steven Martens. Agent: David Armbrust. City Staff: Robert Heil, 974-2330.

REQUESTING Neighborhood Planning
DEPARTMENT: and Zoning

DIRECTOR'S
AUTHORIZATION: Greg Guernsey



MEMORANDUM

TO: Mayor Will Wynn and Council Members

FROM: Greg Guernsey, Director
Neighborhood Planning and Zoning Department

DATE: January 20, 2006

SUBJECT: Robertson Hill Restrictive Covenant Amendments 2 & 3

City Staff has been working with the owners of these tracts to amend the restrictive covenant to clarify the requirements regarding the provision of affordable housing. These two amendments will be combined with a third amendment and presented to City Council at a later date a single, unified amendment. The final amendment will standardized the affordable housing requirements across the properties, regardless of ownership.

Staff requests a postponement of both of these items until February 16th to allow the final restrictive covenant to be completed and signed.

If you have questions or need additional information on the referenced zoning cases please contact Robert Heil at 974-2330.

RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

CASE: C14-00-2062 (RCA 2)

P.C. DATE: December 13, 2005
January 10, 2006
January 24, 2006

ADDRESS: 807 East 11th Street.

OWNER/APPLICANT: Steven Martens.

AGENT: David Armbrust

EXISTING ZONING: CS-MU-NCCD-NP

AREA: -

SUMMARY STAFF RECOMMENDATION:

Staff recommends the amendment of the Restrictive Covenant to modify paragraph five to clarify the obligations of the owner of the property with respect to affordable housing. Specifically, allowing the expansion of the off-site affordable housing provision to include zip codes 78702, 78722, 78721, 78723 and 78724.

PLANNING COMMISSION RECOMMENDATION:

December 13, 2005 – Postponement until January 10, 2006 at the request of the applicant.

January 10, 2006 – Postponed until January 24, 2006 at the request of the applicant to allow this case to be heard with two related cases

DEPARTMENT COMMENTS:

The existing restrictive covenant was signed in June 2001. The existing restrictive covenant addressed, among other aspects the provisions of affordable housing, as part of this project, both on and off-site. The amendment seeks to clarify the requirements of the owner regarding affordable housing.

On September 13, 2005, the Planning Commission approved an amendment to this restrictive covenant for the major portion of this tract. That amendment was approved by City Council on December 12, 2005. This amendment addresses one of the two remaining tracts covered by the RCA. (See attached). This amendment will be combined with RCA (3) and RCA (4) into one RCA with consistent standards across all the tracts of the property regardless of ownership.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS-MU-NCCD-NP	Undeveloped
<i>North</i>	CS & CS-1(NCCD-NP)	State offices, restaurant, salon
<i>South</i>	CS -MU-NCCD-NP, GR-MU-CO-NCCD-NP, SF-3-H-NP	French Legation, Undeveloped,
<i>East</i>	SF-3-NP, MF-3-CO-NP	Church, Single Family Homes
<i>West</i>	CS	Downtown offices and hotel

C14-00-2062 (RCA)

NEIGHBORHOOD PLANNING AREA: Central East Austin Neighborhood Plan Area

TIA: Is not required

WATERSHED: Waller Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: N/A

HILL COUNTRY ROADWAY: N/A

NEIGHBORHOOD ORGANIZATIONS:

- Guadalupe Neighborhood Development Corp.
- Guadalupe Assn. for an Improved Neighborhood
- El Concilio, Coalition of Mexican American Neigh. Assn.
- Austin Neighborhoods Council
- Austin Independent School District
- Sentral Plus East Austin Koalition (SPEAK)
- Organization of Central East Austin Neighborhoods (OCEAN)
- PODER People Organized in Defense of Earth & Her R SCHOOLS:

SCHOOLS (AISD)

Mathews Elementary School

O. Henry Middle School

Austin High School

CITY COUNCIL DATE: October 20, 2005

ACTION:

ORDINANCE NUMBER:

CASE MANAGER: Robert Heil **PHONE:** 974-2330 **E-mail:** robert.heil@ci.austin.tx.us



SUBJECT TRACT
PENDING CASE
ZONING BOUNDARY
CASE MGR: R. HEIL

RESTRICTIVE COVENANT AMENDMENT

CASE #: C14-00-2062(RCA)2

ADDRESS: 807 E 11TH ST

SUBJECT AREA (acres): N/A

DATE: 06-10

INTLS: SM

**CITY GRID
REFERENCE
NUMBER**

J22

1" = 400'

TRV 2001057086
3 pgs

Zoning Case No. C14-00-2062

RESTRICTIVE COVENANT

OWNER ASN Company, LLC, a California limited liability company

ADDRESS 395 West Portal Avenue, San Francisco, CA 94127

CONSIDERATION Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged

PROPERTY Seven Tracts of land out of Subdistrict 3 of the East 11th Street Neighborhood Conservation District, in the City of Austin, more particularly described in Exhibit "A" attached and incorporated into this covenant (the "Property")

WITNESSES, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions,

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns

- 1 Owner agrees to limit a transportation terminal use on Tracts 1 and 4 to a facility that is operated to provide public transportation to destinations within the Austin metropolitan area and that is managed for the public benefit.
 - 2 Within Tract 5, Owner shall provide a plaza or other open space area available for use by the public. The open space shall be at least 3000 square feet.
 - 3 The Owner agrees to provide benches, landscaping and other amenities associated with public plaza/open space referenced in Paragraph 2 above.
 - 4 Owner agrees to provide kiosks or directional signs for area designations in the plaza/open space area of Tract 5 and within the Property at or near pedestrian areas.
 - 5 At least ten percent of the residential units constructed by the Owner on the Property and within the 78722 and 78702 zip code areas ("off-site") shall be reasonably priced. One-half of the reasonably priced housing units shall be constructed on the Property and one-half shall be constructed off-site.
- "Reasonably priced" is defined as housing available to a family whose earnings do not exceed 80 percent of median family income and who would normally spend no more than 30 percent of its income on housing.
- 6 Owner agrees that the improvements similar to those set forth in the "Downtown Great Streets Master Plan" shall apply to the public streets within the Property and along both sides of San Marcos Street from East 9th Street to East 11th Street and along both sides of East 9th Street from San Marcos Street to IH-35.
 - 7 If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin 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.

- 8 If any part of this agreement or covenant is 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
- 9 If at any time the City of Austin 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
- 10 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, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination

EXECUTED this the 7th day of June, 2001

OWNER:

ASN Company, LLC,
a California limited liability company

By Michael K. Phillips
Michael K. Phillips, Trustee

APPROVED AS TO FORM

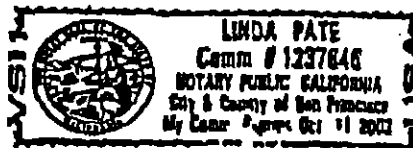
Donald Thomas
Assistant City Attorney
City of Austin

THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

This instrument was acknowledged before me on this the 7th day of JUNE 2001, by Michael K. Phillips, Trustee, on behalf of ASN Company, LLC, a California limited liability company

Linda Pate
Notary Public, State of Texas - CALIFORNIA

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1546
Austin, Texas 78767-1546
Attention: Diana Milner, Legal Assistant



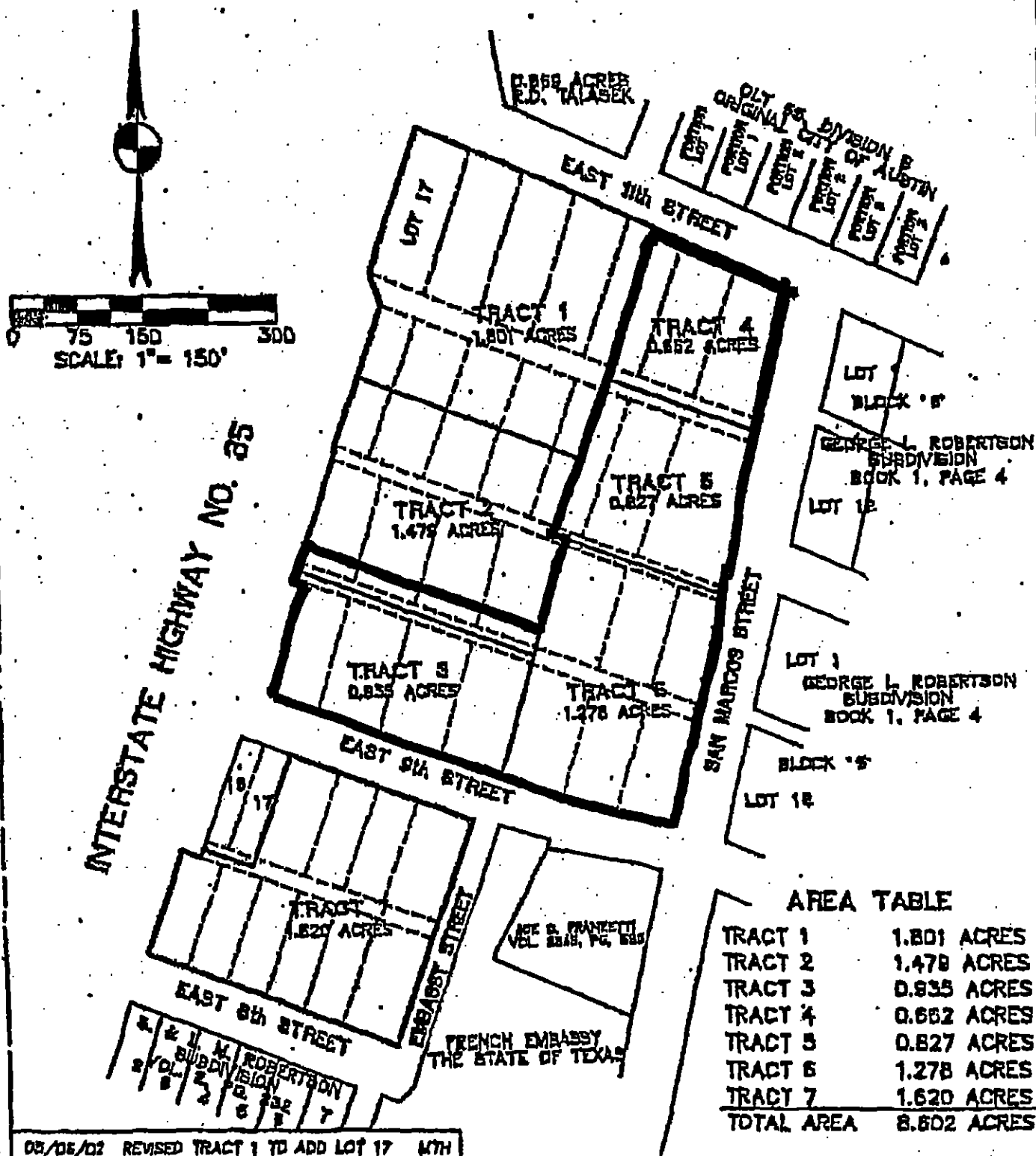
Tract	Legal Description Exhibit A	
1	North 100 ft & east 41 ft of Lot 4, north 100 ft of Lots 5-7, north 100 ft & west 32 ft of Lot 8, west 32 ft of Lot 13, Lots 14-17 Outlot 1, Division B Fred Carleton Subdivision Plus Partial Street Vacation of East 10 1/2 St	
2	South 100 ft & east 41 ft of Lot 4, south 100 ft of Lots 5-7, south 100 ft & west 32 ft of Lot 8 Outlot 1, Division B Fred Carleton Subdivision Plus Partial Street Vacation of East 10 th St	Lots 10-13 Outlot 1, Division B Burchard's Subdivision Plus Partial Alley between Lots 10-13 of the Burchard's Subdivision and Lots 4-5 of the Fred Carleton Subdivision (between E 9 th and E 10 th Sts) & Street Vacation of East 10 th St
3	Lots 4-7 Burchard's Subdivision Plus Partial Alley Vacation between Lots 4-7 and Lots 10-13 of the Burchard's Subdivision	
4	Lots 11, 12, & east 32 ft of Lot 13 Fred Carleton Subdivision Plus Partial Street Vacation of East 10 1/2 St	
5	East 32 ft of Lot 8, Lots 9 & 10 Outlot 1, Division B Fred Carleton Subdivision Plus Partial Street Vacations of East 10 th and 10 1/2 Sts	
6	Lots 1 less south 8 ft, Lot 2 less south 3 ft, Lot 3 Outlot 1, Division B Burchard's Subdivision Plus Partial Alley Vacation between Lots 1 less south 8 ft, Lot 2 less south 3 ft, Lot 3 of the Burchard's Subdivision and Lots 14-16 of the Burchard's Subdivision (between E 9 th and E 10 th Sts)	Lots 14-16 Outlot 1, Division B Burchard's Subdivision Plus Partial Alley between Lots 1 less south 8 ft, Lot 2 less south 3 ft, Lot 3 of the Burchard's Subdivision and Lots 14-16 of the Burchard's Subdivision (between E 9 th and E 10 th Sts) & Street Vacation of East 10 th St
7	Lots 8-13, East 23 feet of Lot 16 & Lots 17-21 Outlot 1, Division B Robertson S & LM South Part Plus Partial Alley Vacation between Lots 8-13 and East 23 feet of Lot 16 & Lots 17-21 of the Robertson S & LM South Part (between E 8 th and E 9 th Sts)	

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Don Williams

05-12-2003 10 23 AM 2001097028
SENAYDESU 613 08
DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECORDERS MEMORANDUM-AJ the time of recording this instrument was found to be inadequate for the best photographic reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.



Bury+Partners

Consulting Engineers and Surveyors
Professional Seal No. 001-0011 Jan 04/01-0000
Certification No. 0010101010

**EXHIBIT
OF TRACT AREAS FOR
ROBERTSON HILL/RIATA
DEVELOPMENT**

**JPI TEXAS
DEVELOPMENT, INC.**

**ROBERTSON HILL/
RIATA TRACT**

DATE: 04/30/02

FILE: H:\512\88\512882-2.dwg

PN No.: N/A

DRAWN BY: MTH

PROJ. No: 512-82.03

Proposed Modification to Robertson Hill Restrictive Covenant

Replace paragraph 5 with the following:

New Paragraph 5:

"Portions of the Property may be owned by different owners (each an "Owner") from time to time. At least ten percent (10%) of the residential units constructed by an Owner for each distinct project developed on a portion of the Property shall be Reasonably priced for the period of time that the Owner of such project giving rise to such requirement receives economic development grants from the City plus an additional five year period of time. At the option of the Owner of each such project, such Reasonably priced housing may be built totally on the Property ("onsite parcel") or five percent (5%) built onsite and five percent (5%) built or acquired and ~~rehabilitated~~ renovated on one or more offsite parcel(s) located within the 78722 and 78702 zip code areas (collectively, "offsite parcel"). Ownership of the onsite parcel and offsite parcel may become separate, but prior to any such conveyance separating the two, such Owner shall obtain written approval from the City of the entity to whom Owner is proposing to convey the offsite parcel and impose a restrictive covenant on the offsite tract that incorporates the terms of this restrictive covenant. Upon the recording of such restrictive covenant, each parcel (the onsite parcel and offsite parcel) shall thereafter stand on its own for all purposes and the default or breach of the restrictions on one parcel shall have no effect upon and be no breach of this restrictive covenant on the other parcel. A breach of the restrictive covenants required for additional parcels as to each distinct project shall have no effect upon and shall not be a breach with regard to any other distinct project on another portion of the Property. Prior to the date a certificate of occupancy is issued with respect to an onsite parcel or offsite parcel (in the case of the acquisition of an offsite parcel which is an existing unit, at the time of such acquisition), a Land Use Restriction Agreement (substantially in the form attached to this restrictive covenant as Attachment 1 for an onsite parcel or an offsite parcel which is newly constructed; substantially in the form attached to this restrictive covenant as Attachment 2 for an offsite parcel which is not newly constructed) shall be entered into between the Owner (in the case of an offsite parcel conveyed to an affiliate of the Owner or such other entity, the affiliate or other entity the offsite parcel is conveyed to) and the City and filed for record in the real property records of Travis County, Texas. In the event any conflict should arise between the terms of this restrictive covenant and the Land Use Restriction Agreement, the Land Use Restriction Agreement shall prevail, then this restrictive covenant.

" 'Reasonably priced' is defined as onsite or newly constructed offsite housing available to a family whose earnings do not exceed eighty percent (80%) (for offsite housing which is not newly constructed, sixty-five percent [65%]) of the median family income for the Austin-San Marcos Metropolitan Statistical Area and who would normally spend no more than thirty percent

| (30%) (for offsite housing which is not newly constructed, twenty-eight percent [28%]) of its income on housing expenses."