

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



**AGENDA ITEM NO.: Z-5  
AGENDA DATE: Thu 02/16/2006  
PAGE: 1 of 1**

**SUBJECT:** C14-00-2062(RCA)(3) - AMJRH Zoning - Conduct a public hearing and approve a restrictive covenant amendment for the property located at 811 East 9<sup>th</sup> Street and 808-818 East 8<sup>th</sup> Street (Waller Creek Watershed). Planning Commission Recommendation: To approve the restrictive covenant amendment. Applicant: AMJRH Investments Ltd. Agent: David Armbrust. City Staff: Robert Heil, 974-2330.

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

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

## **RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET**

**CASE:** C14-00-2062 (RCA 3)

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

**ADDRESS:** 808-818 E 8<sup>th</sup> St and 811 and 817 E 9<sup>th</sup> St.

**OWNER/APPLICANT:** AMJRH Investments, Ltd.

**AGENT:** David Armbrust

**EXISTING ZONING:** CS-MU-NCCD-NP

**AREA:** 1.620

### **SUMMARY STAFF RECOMMENDATION:**

Staff is requesting a postponement until March 2, to allow the restrictive covenant amendment to be drafted.

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.

### **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

January 24, 2006 – *APPROVED AMENDMENT TO THE RESTRICTIVE COVENANT; EXCEPT FOR THE 78724 ZIP CODE AREA. (Summary; see # 11)  
[J.REDDY; D.SULLIVAN 2<sup>ND</sup>] (9-0)*

### **DEPARTMENT COMMENTS:**

Staff is requesting a postponement until March 2, to allow the restrictive covenant amendment to be drafted.

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 (2) and RCA (4) into one RCA with consistent standards across all the tracts of the property regardless of ownership.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<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

**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:**

**ACTION:**

December 15, 2005

Postponed to January 26, 2006

January 26, 2006

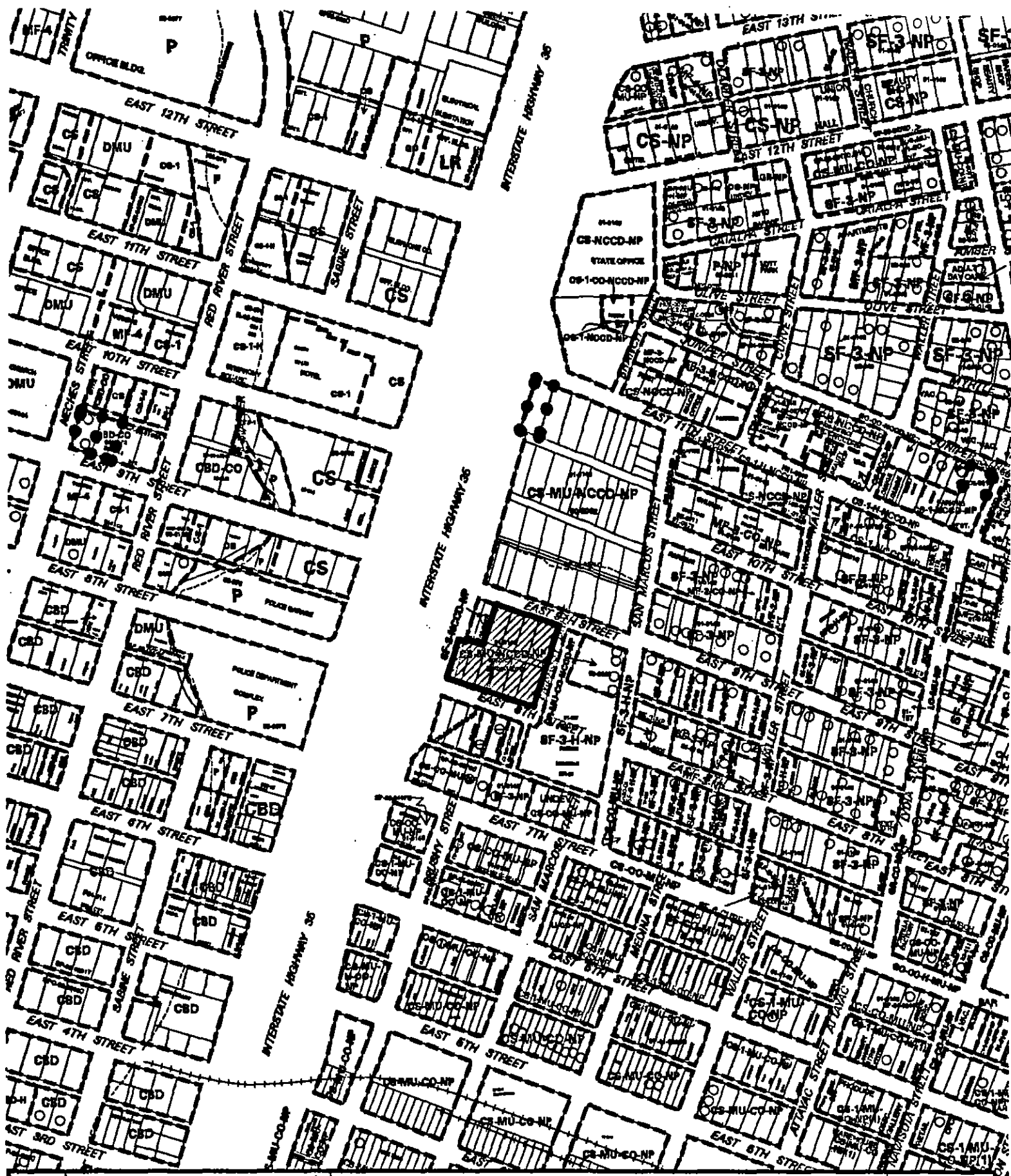
Postponed to February 16, 2006





February 16, 2006

**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)3**  
**ADDRESS: 9TH ST AND 8TH ST**  
**SUBJECT AREA (acres): 1.620**

**DATE: 05-10**  
**INTLS: SM**

**CITY GRID**  
**REFERENCE**  
**NUMBER**  
**J22**

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."

TRV 2001897088  
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 11<sup>th</sup> Street Neighborhood Conservation District, in the City of Austin, more particularly described in Exhibit "A" attached and incorporated into this covenant (the "Property")

~~WHEREAS~~ ~~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 9<sup>th</sup> Street to East 11<sup>th</sup> Street and along both sides of East 9<sup>th</sup> 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

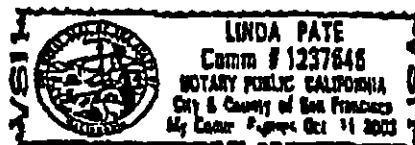
THE STATE OF CALIFORNIA

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

[Signature]  
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 Minter, Legal Assistant





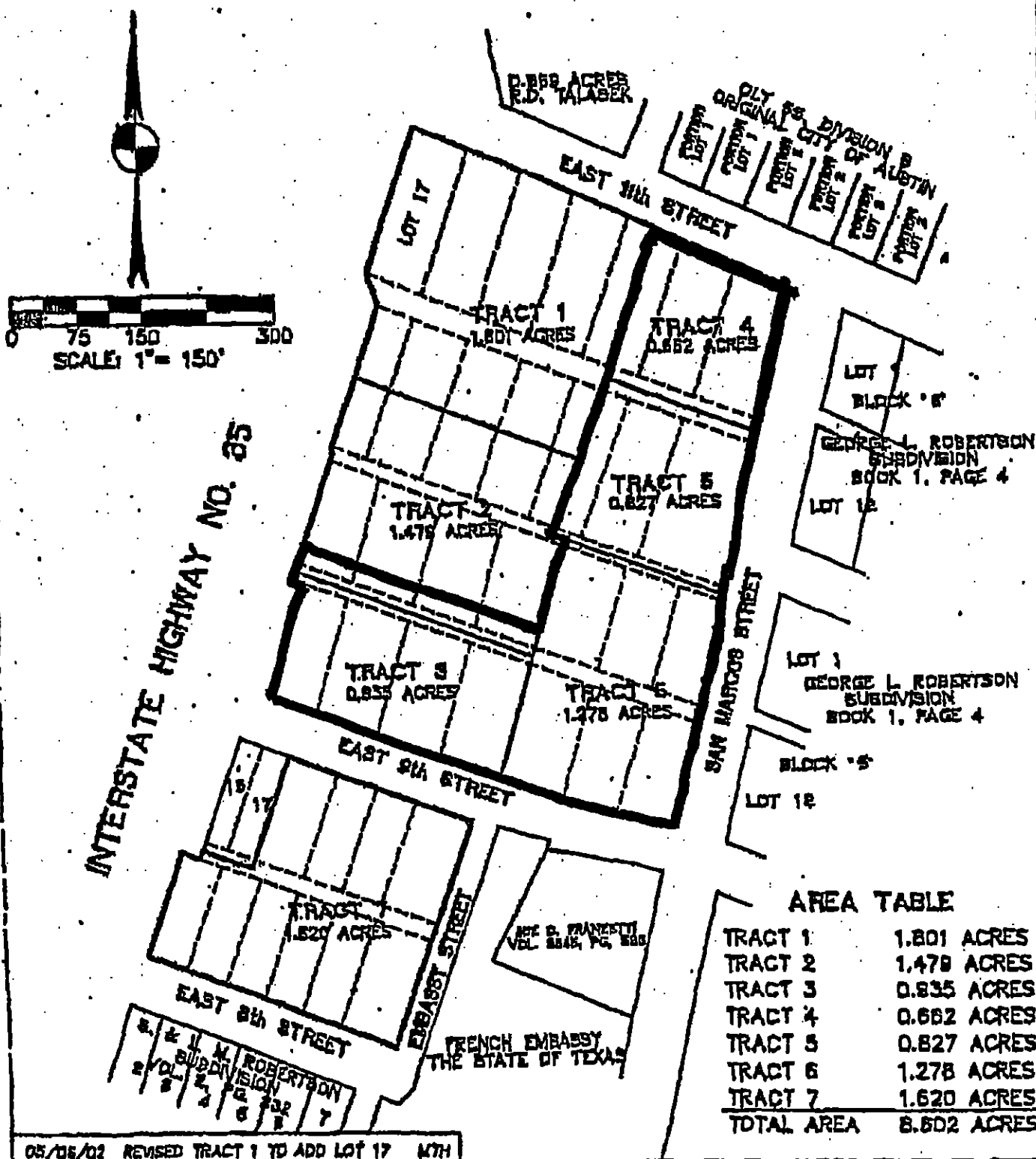
Tract	Legal Description Exhibit A	
1	North 100 ft & east 41 ft of Lot 4, north 100 ft of Lots 5-7, north 100 ft & west 32 ft of Lot 8, west 32 ft of Lot 13, Lots 14-17 Outlot 1, Division B Fred Carleton Subdivision Plus Partial Street Vacation of East 10 1/2 St	
2	South 100 ft & east 41 ft of Lot 4, 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 <sup>th</sup> 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 4-8 of the Fred Carleton Subdivision (between E 9 <sup>th</sup> and E 10 <sup>th</sup> Sts) & Street Vacation of East 10 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> and E 10 <sup>th</sup> 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 <sup>th</sup> and E 10 <sup>th</sup> Sts) & Street Vacation of East 10 <sup>th</sup> 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 <sup>th</sup> and E 9 <sup>th</sup> Sts)	

**FILED AND RECORDED**  
OFFICIAL PUBLIC RECORDS

*Don Williams*

45-12-2001 10 23 AM 2001097022  
BENAVIDESV 813 00  
DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

RECORDERS MEMORANDUM-At 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.



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

**JPI TEXAS  
DEVELOPMENT, INC.**

**ROBERTSON HILL/  
RIATA TRACT**

DATE: 04/30/02

FILE: H:\512\89\512882.dwg

PN No: N/A

DRAWN BY: MTH

PROJ. No: 512-84.95

**10. Rezoning:** **C14-05-0215 - Maverick-Miller House**  
**Location:** 910 Poplar Street, Shoal Creek Watershed, West University NPA  
**Owner/Applicant:** Applicant: COA NPZD; Owner: B&H Enterprises, Inc.  
**Agent:** Tina Bui, COA NPZD  
**Request:** **MF-4-H-NP to LO-MU-H-CO-NP**  
**Staff Rec.:** **RECOMMENDED**  
**Staff:** Tina Bui, 974.2275, tina.bui@ci.austin.tx.us  
 NPZD

**APPROVED STAFF'S RECOMMENDATION FOR LO-MU-H-CO-NP DISTRICT ZONING;  
 BY CONSENT.**

**[D.SULLIVAN; M.DEALEY 2<sup>ND</sup>] (9-0)**

**11. Rezoning:** **C14-00-2062 RCA(2) - Robertson Hill - Martens Zoning**  
**Location:** 807 E 11th St, Waller Creek Watershed, Central East Austin NPA  
**Owner/Applicant:** Steve Martens  
**Agent:** David Armbrust  
**Postponements:** Postponed from 12/13/05 (applicant); 1/10/06 (applicant)  
**Request:** **AMENDMENT OF RESTRICTIVE COVENANT**  
**Staff Rec.:** **RECOMMENDED**  
**Staff:** Robert Heil, 974-2330, Robert.Heil@ci.austin.tx.us  
 Neighborhood Planning and Zoning

**APPROVED AMENDMENT TO THE RESTRICTIVE COVENANT; EXCEPT FOR THE  
 78724 ZIP CODE AREA.**

**[J.REDDY; D.SULLIVAN 2<sup>ND</sup>] (9-0)**

**SUMMARY**

*This item was pulled from the Consent agenda.*

*Commissioner Cortez had a question about whether there was anybody from the neighborhood to speak on behalf of the neighborhood's view on this case.*

*There was no one present to speak on behalf of the neighborhood.*

*Commissioner Cortez – I just don't feel comfortable voting for it until I've heard something from the neighborhood. I would feel better about it if the Guadalupe Neighborhood Development Corporation was here or some note from SMART Housing, or somebody who can tell me what the impact of this will be on the affordable housing in those particular neighborhoods. It seems that we're exasperating an already big problem in those neighborhoods. I'm for having affordable housing spread throughout the City, but it seems like that particular piece of agreement was specifically crafted for those neighborhoods.*

*No presentation from staff was given.*

*Commissioner Sullivan – What is the process that was used to select the other zip codes? Is this a routine thing, have we done this before and just not on the radar screen? Is this the first time for something like this?*

*Robert Heil, staff – This is a custom agreement, in that regard, it is not routine. As to the mechanism and how the negotiations went to expand from the two zip codes to the five zip codes, the applicant is more able to speak about that than I can.*

*Commissioner Cortez – Was there notification?*

*Mr. Heil – Yes, the neighborhood organizations within the area were notified, including the Guadalupe Neighborhood Corporation, PODER, OCEAN, El Conselio, GAIN, and others were notified. I know that Guadalupe was part of the conversations that had been going on; and I know that they have been in discussions with the applicant and I they had discussions about how they can participate in some of the provisions of the affordable housing.*

*Commissioner Riley – This amendment would go to Council?*

*Mr. Heil – That's correct.*

*Kris Kasper, applicant – Discussion with the neighborhoods was the reason for postponement last time; this has been postponed twice; we wanted to make sure because we hadn't heard anything, which kind of made us nervous. We have spoken with members of GAIN; we thought Mr. Rogers was going to be here on a separate issue tonight, but he isn't here. The way the restrictive covenant is drafted, a minimum of 5% has to remain within that project, 10% remains on-site or have the option to do 5% on-site and 5% off-site, but there will be an affordable component within that area. The reason that the additional zip codes were drafted was an affordability issue for them; that property is very difficult to buy right now. With regard to whether this is a common practice, it is not a common practice; the reason for us going back and amending this restrictive covenant is because in the original, this requirement was thrown in and no one knew what it meant, so we looked at it, got with the neighbors, got with the City and figured out what everybody wanted from this and went from there. That's how this process developed. W*

*Commissioner Riley – Requested a map with different zip codes.*

*A map was made available.*

*Commissioner Riley – The original agreement said that the outside parcels would have to be in the 78722 or 78702; and this amendment would add options of having it in 78721, 78723 and 78724.*

*Rance Klaus, Inner Urban Development – The zip codes are expanding to East Austin an opportunity; this development agreement was put in place before we got involved with the property; we made an acquisition last March, so we've inherited all the conditions and happy to comply with those. Our company is focused on urban development and redevelopment, we have a SMART Housing project under construction on South Congress, we were the first to cross the Ben White threshold and bring affordable housing in a larger scale context to South Austin. We've*

Facilitator: Sue Welch

City Attorney: Marci Morrison, 974-2568

*met with Mark Rodgers this morning to address this and cover some other items with him and these discussions have been very cooperative and enlightening. One reason we thought to expand the zip codes is that we don't want to be in competition with some of the existing vehicles of affordable housing. The other part of the process for us is that we're looking to develop the first mid rise affordable for sale product in East Austin. We have to provide at least 5% of our units as affordable units on our development, on-site; we then have to have an additional 5% that need to on-site or can be in the surrounding zip code.*

*Commissioner Riley – Adding 78721, 78723 & 78724 expands the radius, with 78724 being the biggest one, it extends all the way out beyond FM 873; the whole zip code is east of 183.*

*Mr. Klaus – The idea was, this project and this agreement is in East Austin property and what we have seen in the market place, you have projects going on that are extending that reach by definition and affordability in East Austin as a sense of community; so for us literally fronting I-35 where that first step crosses with the project with the affordability component really belongs in a much broader area, in our opinion. The neighborhood has been notified and there doesn't appear to be an issue.*

*Commissioner Riley – Does the 78724 zip code include some areas that are outside the City Limits?*

*Mr. Klaus – I wouldn't know the answer to that...*

*Commissioner Riley – It goes beyond Lake Walter E. Long and as I recall the City Limit is somewhere out in that area.*

*Mr. Klaus – We chose the zip code definition as expansion because that's what was in the agreement; we could have said miles or radius, instead of zip code.*

*Commissioner Riley – Would it be a problem to drop that zip code?*

*Mr. Klaus – I wouldn't think that's critical for us. We're simply looking at expanding for East Austin, if that goes beyond the scope and intent for the City, we're happy to eliminate that one.*

*Commissioner Riley – I just want to keep affordability close to the central City, my preference would be to drop that one.*

*Commissioner Cortez – I would suggest something in writing from the neighborhood associations.*

*Mr. Klaus – I can't make people come or say something that they don't oppose, but we will make the effort to get something in writing.*

### **FAVOR**

*No Speakers*

Facilitator: Sue Welch  
City Attorney: Marci Morrison, 974-2568

**OPPOSITION**

*No Speakers.*

*Commissioner Cortez and Reddy moved to close the public hearing.*

**MOTION**

*Commissioner Reddy – I'll move to amend the restrictive covenant with the exception of 78724.*

*Commissioner Sullivan – Second.*

*Commissioner Sullivan – We just need to keep affordable closer to central Austin.*

*Mr. Heil – This would be for all three items?*

*Commissioner Reddy – Yes.*

*Motion carried. (9-0)*

<b>12. Rezoning:</b>	<b>C14-00-2062 RCA (3) - Robertson Hill - AMJRH Zoning</b>
Location:	811 E. 9th St; 808-818 E 8th St., Waller Creek Watershed, Central East Austin NPA
Owner/Applicant:	AMJRH Investments
Agent:	David Armbrust
Postponements:	Postponed from 12/13/05 (applicant); 01/10/06 (applicant)
Request:	<b>AMENDMENT OF RESTRICTIVE COVENANT</b>
Staff Rec.:	<b>RECOMMENDED</b>
Staff:	Robert Heil, 974-2330, Robert.Heil@ci.austin.tx.us Neighborhood Planning and Zoning

**APPROVED AMENDMENT TO THE RESTRICTIVE COVENANT; EXCEPT FOR THE 78724 ZIP CODE AREA. (Summary; see # 11)**  
**[J.REDDY; D.SULLIVAN 2<sup>ND</sup>] (9-0)**