

**Zoning Ordinance Approval  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**



**AGENDA ITEM NO.: 55  
AGENDA DATE: Thu 03/02/2006  
PAGE: 1 of 1**

**SUBJECT:** NPA-05-0020 - Pleasant Hill Subdistrict, Tract 30 - Approve third reading of an ordinance amending Ordinance No. 20050818-Z001, adopting the South Congress Combined Neighborhood Plan as an element of the Austin Tomorrow Comprehensive Plan, and establishing the land use designation on the future land use map for Tract 30, located at 103 Red Bird Lane and 0 Red Bird Lane (Pleasant Hill Addition south 68 feet average of lot 20 and east 50 feet of Lot 21, Block 1), in the Pleasant Hill Subdistrict of the West Congress Neighborhood Planning Area. The north boundary for the Pleasant Hill Subdistrict is the northern boundary of the Pleasant Hill Addition Subdivision, the eastern boundary is South Congress Avenue, the southern boundary is Stassney Lane, and the western boundary is Hummingbird Lane, which includes those lots with front and side yard frontages along Hummingbird Lane. The proposed change to the future land use map is from single-family to office mixed-use. On September 1, 2005, single-family land use designation was approved on First reading. Vote: 6-1, Mayor Wynn - Nay. On October 6, 2005, office mixed-use land use designation was approved on Second reading. Vote: 6-1, Thomas - Nay. On December 15, 2005, the Council postponed action on this item until January 12, 2006 with direction from Council to provide an alternate ordinance changing the land use designation from single-family to commercial mixed-use. The Council may consider single-family, high-density single-family, multi-family, office, office mixed-use, commercial, or commercial mixed-use land use designation. Applicant: City of Austin. Agent: Neighborhood Planning and Zoning Department. City Staff: Mark Walters, 974-7695.

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

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

**Zoning Ordinance Approval  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**



**AGENDA ITEM NO.: 41  
AGENDA DATE: Thu 02/16/2006  
PAGE: 1 of 1**

**SUBJECT:** NP-05-0020 - Pleasant Hill Subdistrict, Tract 30 - Approve third reading of an ordinance amending Ordinance No. 20050818-Z001, adopting the South Congress Combined Neighborhood Plan as an element of the Austin Tomorrow Comprehensive Plan, and establishing the land use designation on the future land use map for Tract 30, located at 103 Red Bird Lane and 0 Red Bird Lane (Pleasant Hill Addition south 68 feet average of lot 20 and east 50 feet of Lot 21, Block 1), in the Pleasant Hill Subdistrict of the West Congress Neighborhood Planning Area. The north boundary for the Pleasant Hill Subdistrict is the northern boundary of the Pleasant Hill Addition Subdivision, the eastern boundary is South Congress Avenue, the southern boundary is Stassney Lane, and the western boundary is Hummingbird Lane, which includes those lots with front and side yard frontages along Hummingbird Lane. The proposed change to the future land use map is from single-family to office mixed-use. On September 1, 2005, single-family land use designation was approved on First reading. Vote: 6-1, Mayor Wynn - Nay. On October 6, 2005, office mixed-use land use designation was approved on Second reading. Vote: 6-1, Thomas - Nay. On December 15, 2005, the Council postponed action on this item until January 12, 2006 with direction from Council to provide an alternate ordinance changing the land use designation from single-family to commercial mixed-use. The Council may consider single-family, high-density single-family, multi-family, office, office mixed-use, commercial, or commercial mixed-use land use designation. Applicant: City of Austin. Agent: Neighborhood Planning and Zoning Department. City Staff: Mark Walters, 974-7695.

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

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

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE NO. 20050818-Z001, WHICH ADOPTED THE SOUTH CONGRESS COMBINED NEIGHBORHOOD PLAN AS AN ELEMENT OF THE AUSTIN TOMORROW COMPREHENSIVE PLAN, TO ESTABLISH LAND USE DESIGNATIONS ON THE FUTURE LAND USE MAP FOR CERTAIN PROPERTIES LOCATED ON RED BIRD LANE (PLEASANT HILL SUBDISTRICT).**

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

**PART 1.** Ordinance No. 20050818-Z001 adopted the South Congress Combined Neighborhood Plan as an element of the Austin Tomorrow Comprehensive Plan.

**PART 2.** Ordinance No. 20050818-Z001 is amended to establish land use designations on the future land use map attached as Exhibit "A" and incorporated in this ordinance, and described in Case NP-05-0020 at the Neighborhood Planning and Zoning Department, for properties within the following address ranges:

**Addresses**

**Land Use Designation**

**Tract 30:**

**103 Red Bird Lane**

**Office mixed-use**

**0 Red Bird Lane (Pleasant Hill Addn  
S 68 feet AV of Lot 20 and  
East 50 feet of Lot 21 Blk 1)**

**Office mixed-use**

**PART 3.** This ordinance takes effect on \_\_\_\_\_, 2006.

**PASSED AND APPROVED**

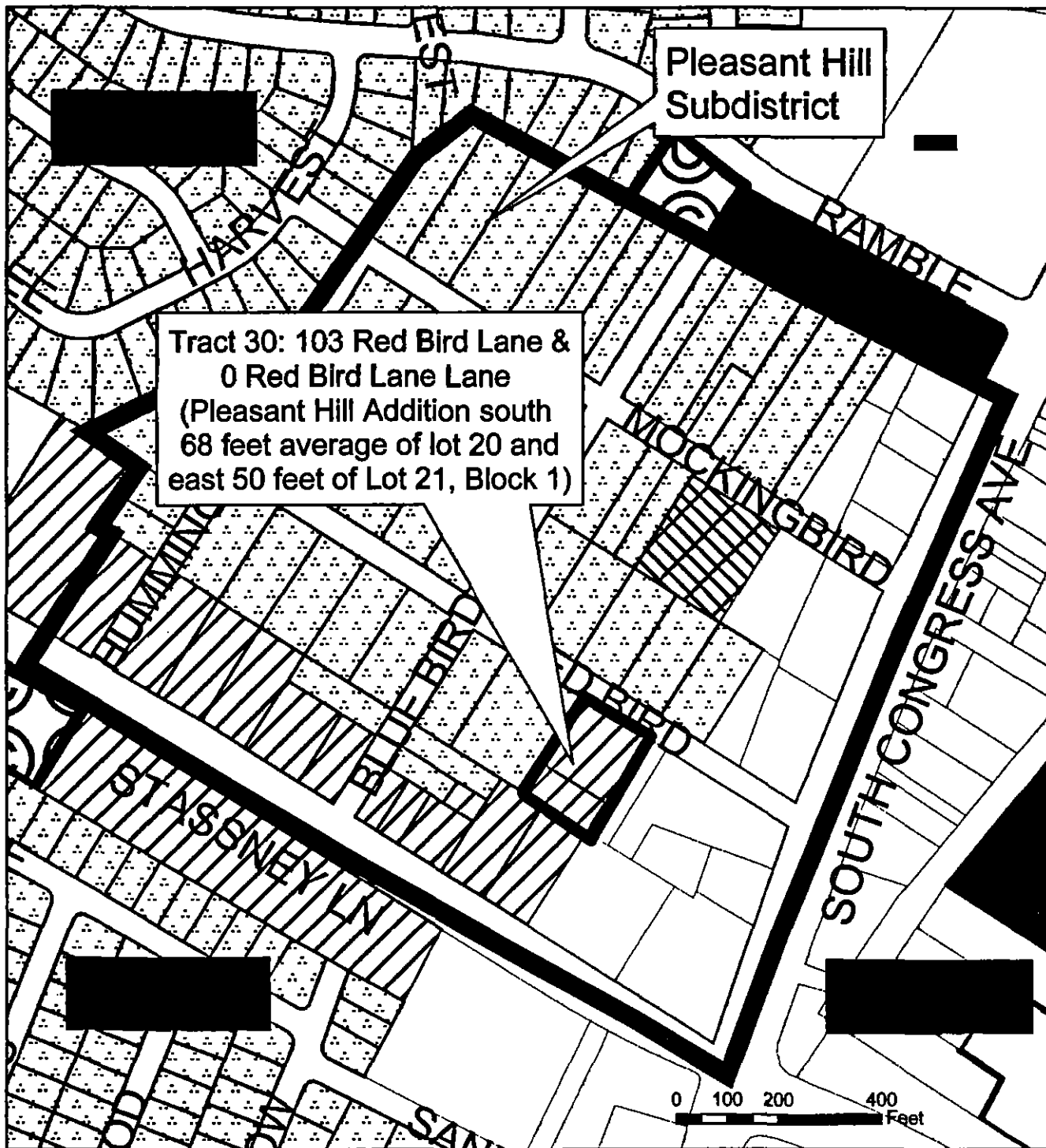
\_\_\_\_\_, 2006

§  
§  
§

\_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk



**Pleasant Hill Subdistrict of the  
West Congress Neighborhood Planning Area:  
Future Land Use Map  
NP-05-0020 (PART)**



City of Austin  
Neighborhood Planning and Zoning Department  
November 3, 2005

*A comprehensive plan does not constitute zoning.*

Exhibit A

**Future Land Uses**

- |                            |                  |
|----------------------------|------------------|
| Single-family              | Office           |
| High Density Single-family | Mixed Use/Office |
| Multi-family               | Industry         |
| Commercial                 | Civic            |
| Mixed Use                  | Open Space       |

Pleasant Hill Subdistrict

## **ALTERNATE**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE NO. 20050818-Z001, WHICH ADOPTED THE SOUTH CONGRESS COMBINED NEIGHBORHOOD PLAN AS AN ELEMENT OF THE AUSTIN TOMORROW COMPREHENSIVE PLAN, TO ESTABLISH LAND USE DESIGNATIONS ON THE FUTURE LAND USE MAP FOR CERTAIN PROPERTIES LOCATED ON RED BIRD LANE (PLEASANT HILL SUBDISTRICT).**

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**Addresses**

**Land Use Designation**

**Tract 30:**

103 Red Bird Lane

Commercial mixed-use

0 Red Bird Lane (Pleasant Hill Addn  
S 68 feet AV of Lot 20 and  
East 50 feet of Lot 21 Blk 1)

Commercial mixed-use

**PART 3.** This ordinance takes effect on \_\_\_\_\_, 2006.

**PASSED AND APPROVED**

\_\_\_\_\_, 2006

§  
§  
§

\_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk

**SUMMARY SHEET FOR TRACTS 30 AND 23A—SOUTH CONGRESS  
COMBINED NEIGHBORHOOD PLAN AND REZONINGS**

**CASE:** NP-05-0020 (PART)

**RELATED CASE:** C14-05-0106 (PART)

**SUBJECT PROPERTY:** TRACT 30 (103 Red Bird and 0 Red Bird Lane  
(Pleasant Hill Addition south 68 feet average of lot 20 and east 50 feet of Lot 21,  
Block 1)

**PROPERTY OWNER:** Mr. Tommy Harper

**CURRENT USE:** Construction Sales and Services (T. F. Harper & Associates)

**PROPOSED LAND USE CHANGE**

**FROM:** Single-family land use

**TO:** Limited-office mixed use

**RELATED PROPOSED ZONING CHANGE**

**FROM:** SF-3/SF-6

**TO:** LO-MU-CO-NP

**CITY COUNCIL PAST ACTIONS**

- August 18, 2005: Adopted on three readings the South Congress Combined Neighborhood Plan future land use map (FLUM) and rezonings except for those properties in Pleasant Hill Subdistrict (located to the northwest of the intersection of Stassney Ln. and South Congress Ave.).
- September 1, 2005: Approved on first reading the future land use map (FLUM) and rezonings for all properties (including Tract 30) in the Pleasant Hill Subdistrict. The public hearing was closed.
- October 6, 2005: Adopted on second and third reading the future land use map (FLUM) and rezonings for the majority of properties in the Pleasant Hill Subdistrict. Approved on second reading only limited-office mixed use and LO-MU-CO-NP zoning for Tract 30.
- November 3, 2005: Postponed third reading for Tract 30 to December 15, 2005 at staff's request.
- December 15, 2005: Postponed third reading for Tract 30 to January 12, 2006, with direction from Council to prepare an alternate ordinance that would change the land use designation from single-family to commercial mixed-use. (direction for related zoning case: prepare a rezoning ordinance from SF-3/SF-6 to CS-MU-CO-NP zoning and a restrictive covenant)
- January 12, 2006: Postponed third reading for Tract 30 to February 16, 2006, when a full Council was anticipated to attend (only six of seven were present on January 12). Rezoning for this tract has a valid petition submitted by the neighborhood.

- February 16, 2006: Postponed third reading for Tract 30 to March 2, 2006 at neighborhood's request. A meeting on February 14, 2006 with neighbors, property owner, and staff discussed a new compromise at a meeting on February 14, 2006, including an updated public restrictive covenant and zoning ordinance, and determined that more time was needed to finalize it. The neighbors requested the postponement; however, the day following the meeting the property owner contacted staff stating he opposed the postponement. *Neighbor's request to postpone is included as Exhibit "O."*

**UPDATE:** On February 14, 2006, neighbors, property owner and staff met to discuss the prepared zoning ordinance to CS-MU-CO-NP and public restrictive covenant with rollback provision, as per Council's direction on December 15, 2006. Staff informed the group that although the prepared zoning ordinance included a conditional overlay that imposed restrictions requested by the neighborhood, those conditions will only be triggered if the property owner is required to submit a site plan. With CS zoning and nonconforming status, the property owner may not be required to do so. Furthermore, the neighbors discussed a list of concerns in a January 7, 2006 letter to staff and hoped they could work out a better compromise more agreeable to everyone. (See Exhibit "N" for January 7, 2006 neighborhood requests)

After itemizing a list of conditions (reflecting requests in the January 7<sup>th</sup> letter, more or less) to add to the restrictive covenant that would better ensure implementation of the neighborhood's request for mitigation of the commercial use, the property owner and residents agreed to meet again to finalize and review a new restrictive covenant and zoning ordinance that reflected their general agreement.

On February 15, 2006, the property owner contacted staff, stating that he no longer supported the compromise reached at the February 14<sup>th</sup> meeting, and wished to go through with the Council meeting on February 16, 2006 in which Council would consider the CS-MU-CO-NP ordinance and restrictive covenant with rollback provision to LO-MU-NP previously drafted. However, the neighbors requested postponement, their first request for this tract, and the meeting dated was moved to March 2, 2006.

## **Background**

On October 12, 2005 the residents, property owner, and staff met to discuss the proposed land use and zoning changes to Tract 30. The residents and property owner could not agree upon a shared recommendation and agreed to disagree.

The current business (construction sales and services) is a nonconforming use because it began operation before the property was annexed and zoned single-family residential. However, the nonconforming status of the outdoor elements of the business has expired. Although the business, the office, and the warehouse can continue as nonconforming uses, the outdoor activities listed below are in violation of the Land Development Code (LDC).

The business is a Group "A" nonconforming use. Group "A" designates uses that are considerably more intense than their current zoning allows. An example is an industrial use on single-family zoned property. The LDC requires Group "A" activities that occur outdoors to cease ten years after the use becomes nonconforming. In this case, the ten years ended in the late 1970s.

The following outdoor activities for a Group "A" nonconforming use are in violation of Section 25-21-947 of the LDC. These include:

- Loading and unloading of construction materials
- Outside storage of construction materials
- Outside storage of materials
- Overnight parking of work trucks
- Storage structures less than \$10,000 in value.

#### **Scenarios**

- In order to continue the outside storage of construction materials, the property must be zoned Commercial Services (CS).
- If the property owner wants to build a new structure to store the materials, the zoning must be changed to CS because a Group "A" nonconforming use may not be expanded.
- If not rezoned to CS, the property owner must remove the materials or store them in existing structures valued at \$10,000 or greater.

#### **Stakeholder Recommendations**

- The Planning Commission and NPZD staff recommended LO-MU-CO-NP (CO—requires a 30' vegetative buffer adjacent to the single-family to the west).
- The neighborhood's recommendation is to leaving the zoning as it is (SF-3/SF-6). Their alternate recommendation is to support the Planning Commission recommendation.

- Mr. Harper supports changing the zoning to CS-MU-CO-NP. The proposed CO would limit commercial uses to those allowed in Limited Office (LO) zoning with the addition of Construction Sales and Services. Mr. Harper opposes the condition recommended by the Planning Commission that would require a 30' vegetative buffer.
- On first reading City Council approved SF-3-NP and Single-Family land use for the tract. At second reading Council approved LO-MU-CO-NP (CO—requires a 30' vegetative buffer) and Office Mixed-Use land use designation.

**Neighborhood Requested Conditions If CS-MU-CO-NP is adopted (as of 12-7-05)**

The neighborhood continues to recommend no change to the current zoning on the property (SF-3 and SF-6). They would support, however, an alternate recommendation of LO-MU-CO-NP (CO requiring 30' vegetative buffer on western property line) as recommended by Planning Commission.

If CS-MU-CO-NP is elected by City Council, the neighborhood would remain opposed. However, a representative of the neighborhood submitted a list of requests to be addresses if CS-MU-CO-NP is considered. **The following conditions have been captured in an alternate zoning ordinance and restrictive covenant:**

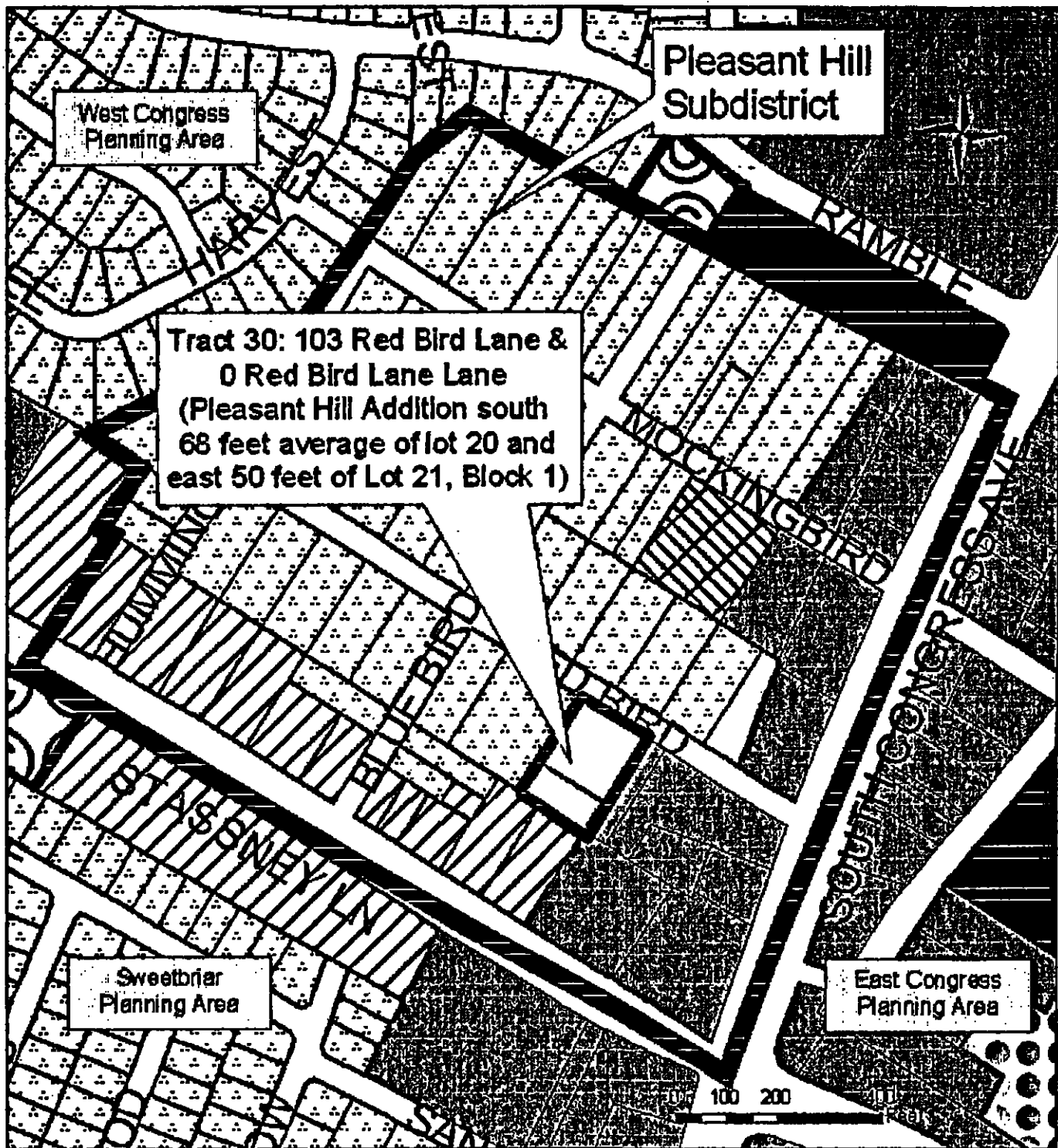
1. 30' vegetative buffer along the western property line (Councilmember Leffingwell instructed staff to limit this to 25').
2. Limit the uses to those allowed under LO-MU zoning with the addition of construction sales and services,
3. A solid fence across the front of the property,
4. No delivery or company trucks parked on the street,
5. All loading and unloading of trucks must be onsite and screened from view,
6. No forklifts on the street,
7. Correct the drainage problems and associated nearby flooding created when Mr. Harper backfilled the existing ditch and culverts adjacent to his property,
8. Mr. Harper agree to a voluntary zoning rollback to LO-MU-CO-NP and a land use designation of Office Mixed-Use on the plan's future land use map (FLUM) if the current use ceases for more than 90 days.

Items 6, 7, and part of item 5 (on-street loading and unloading of trucks) must be addressed by City Code Enforcement or Austin Police Department.

**Exhibits**

- A. Future Land Use Map
- B. Aerial Map

- C. West Congress NPA Boundary Map**
- D. Stakeholder Meeting Summary**
- E. Meeting Sign-in Sheet**
- F. Property Owner (Mr. Harper) Proposed Zoning and Conditional Overlay and affidavits and evidence of the existence of the business prior to annexation in October 1969. Submitted October 25, 2006**
- G. Neighborhood Letter of Opposition**
- H. Resident Letter of Opposition #1**
- I. Resident Letter of Opposition #2**
- J. Neighborhood Valid Petition**
- K. Property Owner (Mr. Harper) Letter of Recommendation, December 7, 2005;**
- L. Neighborhood Letter of Recommendations, December 11, 2005**
- M. Resident Letter of Opposition (including illustrative materials) #3**
- N. Neighborhood Letter of Recommendation, January 7, 2006**
- O. Neighborhood Request to Postpone, February 15, 2007o**



**Pleasant Hill Subdistrict of the  
West Congress Neighborhood Planning Area:  
Future Land Use Map  
NP-05-0020 (PART)**



City of Austin  
Neighborhood Planning and Zoning Department  
January 12, 2005

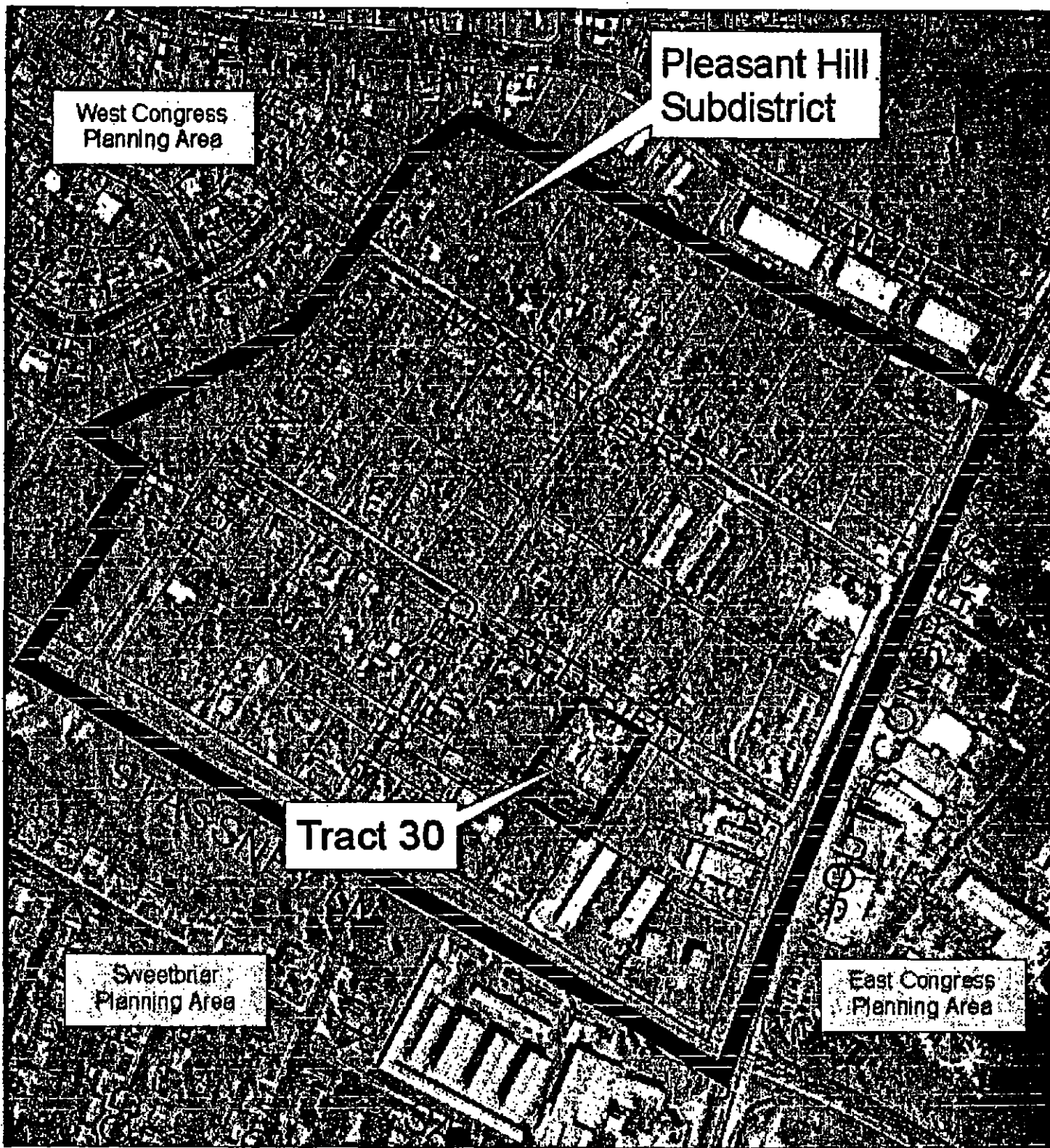
Exhibit A

*A comprehensive plan does not constitute zoning.*

**Future Land Uses**

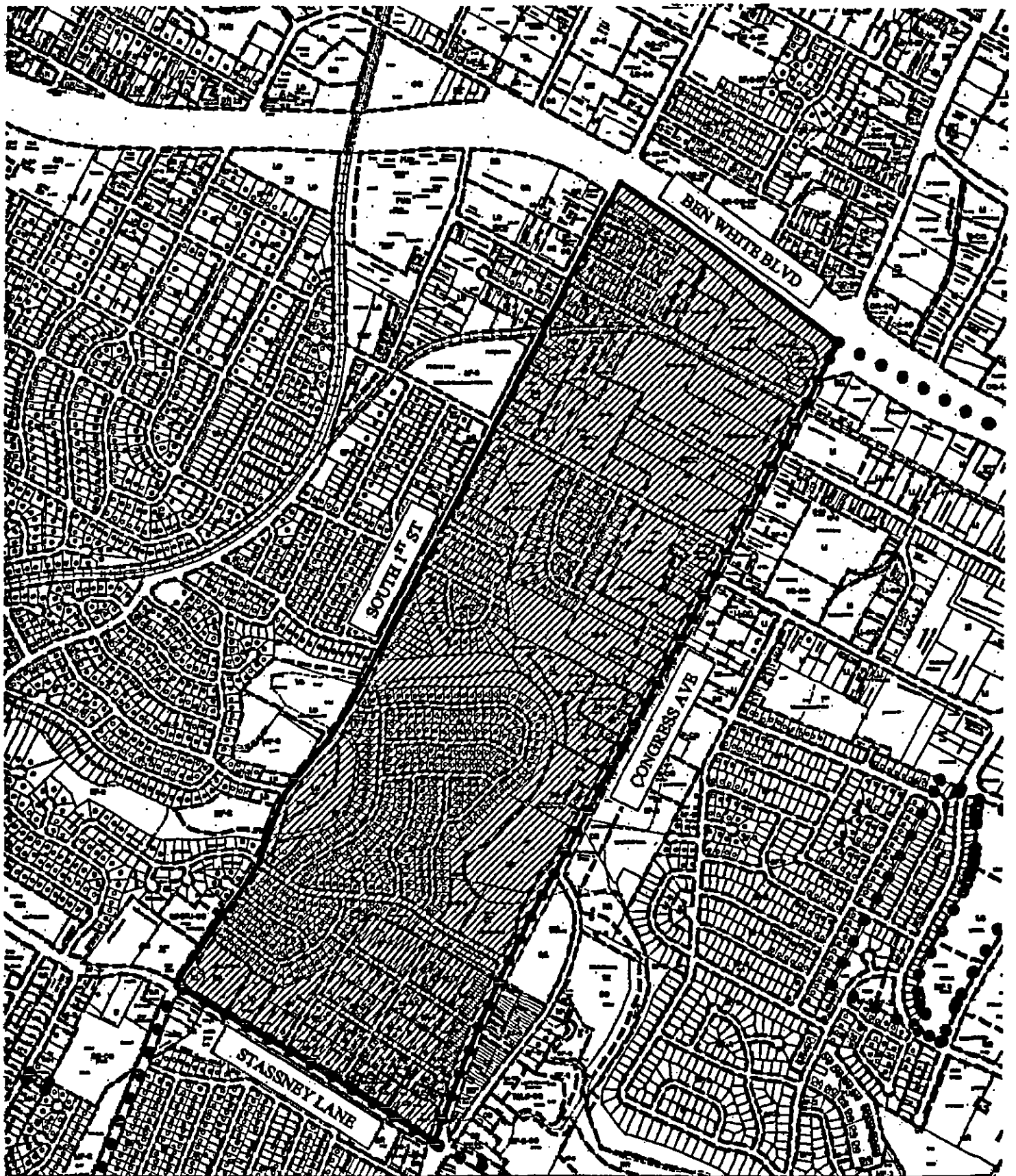
Single-family	Office
High Density Single-family	Mixed Use/Office
Multi-family	Industry
Commercial	Chile
Mixed Use	Open Space





Pleasant Hill Subdistrict



Pleasant Hill Subdistrict of the  
West Congress Neighborhood Planning Area:  
Aerial 2003  
NP-05-0020 (PART)





 <p> <b>SUBJECT TRACT</b>   <b>PENDING CASE</b>   <b>ZONING BOUNDARY</b>   <b>CASE MGR: W. WALSH</b> </p>	<p align="center"><b>ZONING EXHIBIT B</b></p> <p> <b>CASE #: C14-05-0106</b>  <b>ADDRESS: WEST CONGRESS</b>  <b>NEIGHBORHOOD PLANING AREA</b>  <b>SUBJECT AREA IMAGES: N/A</b> </p> <p> <b>DATE: 05-07</b>  <b>INTLS: 6M</b> </p>	<p> <b>CITY GRID</b>  <b>REFERENCE</b>  <b>NUMBER</b>  <b>G &amp; H17-18</b> </p>
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**Stakeholder Meeting: Tract 30 (103 and 0 Red Bird Lane)**  
**Date: October 12, 2005**

**Subject property:** Tract 30 (103 and 0 Red Bird Lane), located in the Pleasant Hill Subdistrict of the South Congress Neighborhood Planning Area

**Discussion:** Conflict over current construction sales and services use on Tract 30 and proposed rezonings/future land use designations

**Number in attendance:** Twelve (12) including the property owner, the property owner's administrative assistant, eight residents, and two City staff members

**Meeting Location:** T.F. Harper and Associates office, located at the subject property

**Summary**

The property owner and residents in the Pleasant Hill Neighborhood discussed the current construction sales and services use (T.F. Harper and Associates: General Contractor, Construction Management, Parks & Playground). The neighbors expressed distress about certain aspects of the business operation, while the property owner offered suggestions and current plans to mitigate some of the neighbors' complaints. He also offered reasons why the business should be allowed to remain. Staff moderated the discussion.

**Neighborhood Concerns:**

- Traffic from semi-trucks
- Significant expansion of business over past five years results in more truck traffic through the neighborhood, more employee vehicles (30-40), and more trafficking in and out of increased construction materials
- Idling trucks
- No fencing shields the business and construction materials out-of-doors
- The use itself is inappropriate in a neighborhood
- Lack of water detention exacerbates flooding in the area. Resident across street stated that his yard has been repeatedly flooded by run-off from the business site and is unable to support landscaping. Resident also stated that during the next severe rainstorm, he believes the front half of his house will be flooded
- Concern that drainage ditch on the west side of the property has been filled
- Unshielded, bright lights on the business site

**Neighborhood Suggestion:**

- Majority of neighbors would be willing to support the continued operation of the office and suggested the storage, transport, and incidental assembly of materials be performed at a more accessible commercial site

**Property Owner Concerns and Statements:**

- He cannot afford to move; his business would be forced to cease
- The family business has been operating there for more than thirty years
- He is currently working on a site plan that would allow trucks to park, deliver, and load at the rear of the property. He also plans to provide buffering, either landscaping, fencing, or other, to partially shield the business from the street and neighboring residence
- He stated that his business is grandfathered, but that if he does not receive commercial services (CS) zoning, he may not be able to build or alter the site in order to make the business more compatible
- He expressed willingness to work with the neighborhood to mitigate effects of the business
- He offered a CS-MU-CO-NP zoning proposal that allows construction sales and services but limits all remaining non-residential uses to those in the limited office (LO) district

**Conclusion**

No consensus was reached. Both the neighbors and the property owner stated they would maintain their respective recommendations at the next Council hearing.

- ◊ The neighbors recommend retaining SF-3 and SF-6 zoning as their first choice; and LO-MU-CO-NP (Planning Commission recommendation) as their second choice.
- ◊ The property owner requests CS-MU-CO-NP with a conditional overlay prohibiting intense commercial uses minus his current construction sales and services use.

## Sign-In List

Name / Email / Phone (optional)

, Rex Burns REXFORDJHAADVERTISING.COM 512.228.4040

Andrea Thomas athomas57@austin.rr.com 925-5214

BRAD MASSINGILL 110 RED BIRD 462-9834

Mary Rocamora 305 W. Mockingbird maryhln@earthlink.net

Mary Kay Hendrix 304 Red Bird Ln. marykay@austin.rr.com

Deral Hendrix 304 Red Bird Ln. deral@austin.rr.com

Bob Heise 5501 Blue Bird Ln A rtheise19@aol.com

Hilda Avila 103 Red Bird W. HildaA@tharper.com

Tommy Harper 103 Red Bird W. tth@tharper.com

bn Donaldson 305 W Mockingbird jdonalds@austinsd.org



103 Red Bird Lane, Austin, Texas 78745-3122

## **FAX TRANSMITTAL**

**DATE:** October 25, 2005  
**FAX TO:** City of Austin

**ATTENTION:** Mark Walter & Kathleen Welder

**OFFICE NUMBER:** 512-974-2856  
**FAX NUMBER:** 512-974-6054

**PAGES INCLUDING COVER:** 12

It is our request to ask staff to include our recommendation for zoning approval per attached Conditional Overlay. We feel we should be grandfather but we think it is best we settle this issue now so that we know where we stand and if the zoning issue arises again we don't have to spend the time researching etc. The best for everyone would be to make our company legal "zoning for our use" or not. Please review the following documents requested and let us know you have any questions.

1. Proposed Conditional Overlay for 103 Red Bird Lane, Austin, Texas 78745-3122 (1 page)
2. Affidavit from City of Austin residence & employees of T. F. Harper & Associates (3 pages)
3. Affidavit from Walter Rhodes defining use and time frame of business (1 page)
4. Affidavit from Carl Cole supplier of construction material showing use and time frame of business (1 page)
5. Photo provide from Miller Blue Print archive showing our warehouse and dated 4-13-1969 (1 page original on file at our office)
6. Proof of purchase of the property June 10, 1968 (3 pages)
7. Copy of my fathers tax return showing the warehouse acquired 1-69 (1 page)

Thank you,  
Tommy Harper

General Contractors, Construction Management  
Plumbing & Electrical Service  
Parks & Playgrounds  
512-440-0707 512-440-0736 Fax

**1****Proposed Conditional overlay for Tract 30****Rezone from SF-3 and SF-6 to CS-MU-CO-NP****Conditional Overlay limits uses to****A) All residential uses****B) The following commercial use:****Construction Sales and Services  
With a 25' Set-Back****C) All Limited Office (LO) uses:****Residential****Bed and Breakfast (Group 1)****Bed and Breakfast (Group 2)****Civic**

Club or Lodge (c)  
 College and University Facilities (c)  
 Communication Service Facilities  
 Community Events (1)  
 Community Recreation—Private (c)  
 Community Recreation—Public  
 Congregate Living (c)  
 Convalescent Services  
 Counseling Services  
 Cultural Services  
 Day Care Services—Commercial  
 Day Care Services—General  
 Day Care Services—Limited

Family Home  
 Group Home Class I—General  
 Group Home Class I—Limited  
 Group Home Class II (c)  
 Hospital Services—Limited (c)  
 Local Utility Services  
 Private Primary Educational Services  
 Private Secondary Educational Services (c)  
 Public Primary Educational Services  
 Public Secondary Educational Services  
 Religious Assembly  
 Residential Treatment (c)  
 Safety Services

**Commercial**

Administrative and Business Offices  
 Art Gallery  
 Art Workshop  
 Communication Services  
 Medical Offices—not exceeding  
 5,000 sq/ft of gross floor space

Medical Offices—exceeding  
 5,000 sq/ft of gross floor space  
 Professional Offices  
 Software Development  
 Special Use—Historic (c)

**Agricultural****Urban Farm****D) Prohibit drive-through as an accessory use**

2

## Affidavit

We the undersigned do request that the zoning issue on property at 103 Red Bird Lane, Austin, Texas 78745-3122 be approved with the Construction Services attached in whatever manner as it needs to be to meet the city's legal requirement. We all have listed the number of years we have worked for Mr. Harper and want you the City Council to know that your decision effects each of us as city of Austin citizens and our ability to continue living and working within the city of Austin.

1. We are resident of Austin, Texas.
2. We make this Affidavit for no improper purpose.

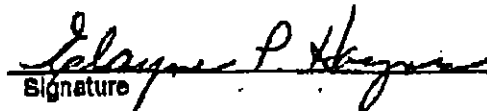
Witness my hand under the penalties of perjury October 10, 2005

SEE ATTACHMENT "A" FOR SIGNATURES

STATE OF Texas  
COUNTY OF Travis

On October 11, 2005 before me, personally appeared Each person listed, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in her/his authorized capacity, and that by her/his signature on the instrument the person executed the instrument.

WITNESS my hand and official seal.

  
Signature



2

ATTACHMENT A			
NAME:	YEARS	SIGNATURE	DATE
HILDA AVILA 8414 ALABAMA DR. AUSTIN, TX. 78745	8	<u>Hilda Avila</u>	<u>10-11-05</u>
JUAN CRUZ 7203 CARVER AVE AUSTIN, TX. 78752	18	<u>Juan Cruz</u>	<u>10-11-05</u>
EVER CRUZ 7203 CARVER AVE AUSTIN, TX. 78752	6	<u>EVER A Cruz</u>	<u>10-11-05</u>
JOSE G. CRUZ 6502 SANDSHOF DR. AUSTIN, TX. 78724	8	<u>Working out of town at this time</u>	
CARLOS CRUZ 7203 CARVER AVE #B AUSTIN, TX. 78752	5	<u>Carlos Cruz</u>	<u>10/11/05</u>
WIL CRUZ 7505 BENNETT AVE #B AUSTIN, TX. 78752	7	<u>Wil A Cruz</u>	<u>10-11-05</u>
RAUL CRUZ 7509 B BENNETT AVE AUSTIN, TX. 78752	3	<u>Raul Cruz</u>	<u>10-11-05</u>
ANTONIO CRUZ 7203 CARVER AVE AUSTIN, TX. 78752	1	<u>Antonio Cruz</u>	<u>10-11-05</u>
SANTOS M. CRUZ 7203 CARVER AVE B AUSTIN, TX. 78752	5 MOS.	<u>Santos Martin Cruz</u>	<u>10-11-05</u>
HECTOR FUENTES 7020 GRAND CANYON DR 252 AUSTIN, TX. 78752	4	<u>Working out of town at this time</u>	
JERRELL GARWOOD 7907 SIRINGO PASS AUSTIN, TX. 78749	1 MO.	<u>Jerrell Garwood</u>	<u>10-11-05</u>

2

BRIAN GRISWOLD 1  
2005 PARAMOUNT ST.  
AUSTIN, TX. 78704

Working out of town at this time

LARRY HARGROVE 1  
7504 BURLY OAK CIRCLE  
AUSTIN, TX. 78745

Working out of town at this time

TERRENCE HINES 1  
10106 LINDSHIRE LN.  
AUSTIN, TX. 78748

Terrence A. Hines  
Working away from office

CHARLES HOHMANN 9  
5213 JIM HOGG  
AUSTIN, TX. 78756

Charles R. Hohmann  
Working away from office

JOSE H. PAZ 2  
7203 CARVER AVE  
AUSTIN, TX. 78752

Working out of town at this time

OSCAR J. PAZ 6 MOS.  
7203 CARVER AVE B  
AUSTIN, TX. 78752

Oscar J. Paz - 10-11-05

MELBIN REYES 9  
9201 KEMPLER DR APT A  
AUSTIN, TX. 78748

Melbin Reyes 10/11/05

WALTER RHODES 18  
103 RED BIRD LN.  
AUSTIN, TX. 78745

Working out of town at this time

KARLAN SMITH 2 MOS.  
1143 SALINA #19  
AUSTIN, TX. 78702

Working out of town at this time

PAT VRAZEL 4  
6208 LIBYAN DR.  
AUSTIN, TX. 78745

Pat Vrazel 10/11/05

RICHARD WHITE 9  
1703 SARACEN  
AUSTIN, TX. 78733

Richard E. White 10/11/05

3

**Affidavit**

I, **Walter (Dutch) Rhodes** of **Austin, Texas**, being of legal age, do hereby depose and say under oath as follows:

Reference property at 103 Red Bird Lane, Austin, Texas 78745-3122

I worked for Mr. Joe B. Harper 1968-1970 off and on, with Charles Harper 1969-1972 and with Thomas F. Harper 1974-current (full time from 1987-current). During all of this time 103 Red Bird Lane has been the main warehouse and office.

1. I am a resident of Texas.
2. I make this Affidavit for no improper purpose.

Witness my hand under the penalties of perjury October 10, 2005

Walter M. Rhodes

Signature Of Deponent

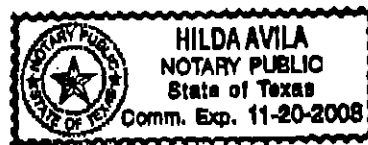
**STATE OF Texas**  
**COUNTY OF Travis**

On October 11, 2005 before me, Hilda Avila, personally appeared Walter Rhodes, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument.

WITNESS my hand and official seal.

Hilda Avila 10-10-05

Signature



4

**Affidavit**

I, Carl Cole of

address.

1810 Stockade Ranch Road / A162, TX 78659


, being of legal age, do hereby depose and say under oath as follows:

Reference property at 103 Red Bird Lane, Austin, Texas 78745-3122

I verify that the property referenced above has been a business to my knowledge since August, 1968. We (Sherwin Williams Paint and Central Texas Decorating) supplied materials and construction supplies to this site on a regular basis. We know that Mr. Joe B. Harper, Charles F. Harper and Thomas F. Harper have operated a business from this location and to my knowledge Mr. Thomas F. Harper still operates from this location.

1. I am a resident of Texas.
2. I make this Affidavit for no improper purpose.

Witness my hand under the penalties of perjury October 10, 2005

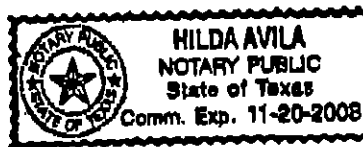
 10/17/05  
Signature of Deponent Date

STATE OF Texas  
COUNTY OF Travis

On October 11, 2005 before me, Hilda Avila, personally appeared Carl Cole, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument.

WITNESS my hand and official seal.

  
Signature





10-6525-4672 \* 350

6 3<sup>50</sup>  
5-0888

THE STATE OF TEXAS     ::     KNOW ALL MEN BY THESE PRESENTS,  
COUNTY OF TRAVIS     ::

That I, OLEN S. MITES, of Travis County, Texas, owning and claiming as my homestead property other than that herein described and conveyed, for and in consideration of the sum of TEN DOLLARS and other valuable and sufficient cash consideration this day to me in hand paid by the Grantee, hereinafter named, the receipt of which is here acknowledged and confessed and for the payment of which no right or lien, either express or implied, is retained, and the further consideration of the sum of TWO THOUSAND TWENTY-FIVE AND NO/100 (\$2,025.00) DOLLARS secured to be paid in accordance with one certain promissory purchase money note of even date herewith, executed by the Grantee herein, payable ~~to the order of~~ ~~to the order of~~ to the order of Grantor,

at Austin, Texas.

\$1000.00, payable to the order of JOE BAILEY HARPER and bearing interest as therein provided, said note further providing for the acceleration of maturity and the usual attorney's fees, and being additionally secured in its payment by the lien of a deed of trust of even date herewith, executed by the Grantee herein to Harry E. Brandt, Trustee;

HAVE GRANTED, SOLD AND CONVEYED and by these presents do Grant, Sell and Convey unto JOE BAILEY HARPER, of Travis County, Texas.

the following described property lying and being situated in Travis County, Texas, to wit:

**DEED RECORDS**  
**Texas County, Texas:**

**3486 1752**

6  
5-0889

A part of Lots Nos. Twenty (20) and Twenty-one (21) in Block No. One (1) of the Pleasant Hill Addition to the City of Austin, Travis County, Texas, according to the map or plat of said addition of record in Book 4, Page 7, of the Travis County Plat Records, described by metes and bounds as follows:  
BEGINNING at the northeast corner of Lot No. 20 of said Block No. 1, which said point is located in the south line of Red Bird Lane;  
THENCE S. 33° 53' W. along the east line of Lot No. 20 a distance of 150 feet to stake in said line for the south-east corner of this tract;  
THENCE N. 56° 07' W. 150 feet to stake set in Lot No. 21 for the southwest corner of this tract;  
THENCE N. 33° 53' E. 150 feet to stake set in the north line of Lot No. 21, being the south line of Red Bird Lane, for the northwest corner of this tract;  
THENCE S. 56° 07' E. along the south line of Red Bird Lane 150 feet to the place of beginning.

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the Grantee, above named, his heirs or assigns, forever. And I do hereby bind myself, my heirs, executors, and administrators TO WARRANT AND FOREVER DEFEND, all and singular, the said premises unto the said Grantee, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof; SUBJECT, however, to all valid restrictions and/or easements affecting the use of said property as this date reflected by the Records of Travis County, Texas.

BUT, it is expressly agreed and stipulated that the VENDOR'S LIEN is retained against the above described property, premises and improvements until the indebtedness, above mentioned and described, as evidenced by the hereinbefore described note, principal and interest, is fully paid according to its face and tenor, effect and reading, when this deed shall become absolute.

WITNESS MY HAND this 4th day of June, 1968.

Olen E. Miles  
Olen E. Miles

3486 1753

6 5-0030

THE STATE OF TEXAS :  
 COUNTY OF TRAVIS :

BEFORE ME, the undersigned authority, on this  
 day personally appeared Glen S. Miles,  
 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 10<sup>th</sup>  
 day of June, 1968.

(NOTARY SEAL)

 D. W. CALLIAS

Notary Public in and for Travis  
 County, Texas

STATE OF TEXAS  
 I hereby certify that this instrument was FILED at the  
 clerk and of the day entered before by me; and was duly  
 RECORDED, in the Volume and Page of the public RECORDS  
 of Travis County, Texas, as follows: Record by me, on

JUN 10 1968



*Emile Linsley*  
 COUNTY CLERK  
 TRAVIS COUNTY, TEXAS

FILED  
 JUN 10 4 21 PM 1968  
 EMILE LINSLEY  
 COUNTY CLERK  
 TRAVIS COUNTY, TEXAS

3486 1754

Schedule C (Form 1040) 1973

## CONTINUATION OF SCHEDULE C-1, EXPLANATION OF LINES 6, 12, 14, AND 24

Line No.	Explanation	Amount	Line No.	Explanation	Amount

## SCHEDULE C-2, EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 11

Note: For new depreciation rules, see Form 4832 (Revised). Form 4832 (Revised) also explains the effect the new rules have on guideline lives under Rev. Procs. 82-21 and 85-13. Taxpayers using these lives: Make no entry in column b, enter amounts in column c for assets held at end of year, and enter accumulated depreciation at end of year in column d. You may (1) group depreciable assets in accordance with the categories shown below, or (2) continue to list your assets in the same manner as in prior years. If you need more space, use Form 4562.

a. Group and guideline life or description of property	b. Date acquired	c. Cost or other basis	d. Depreciation allowed or allowable in prior years	e. Method of computing depreciation	f. Life or rate	g. Depreciation for this year
27 Total additional first-year depreciation (do not include in items below)						
28 Depreciation from Form 4832						
29 Other depreciation:						
Buildings						
Furniture and fixtures						
Transportation equipment						
Machinery and other equipment						
Other (specify)						
1965 Ford Pickup	7-85	1,389.96	1,389.96	S.L.	4yr	0
Air Compressor	9-85	1,280.00	853.90	S.L.	8yr	160.00
1967 Dodge Station Wagon	11-18-66	2,387.77	2,387.77	S.L.	4yr	0
1967 Intern. Scout	7-22-69	2,500.00	833.33	S.L.	3yr	833.33
1968 Dodge Pickup	11-10-71	1,450.00	0	S.L.	3yr	69.44
Casa Unilever & other	3-72	7,165.00	0	D.D.B.	3yr	2,388.50
Warehouse	1-69	12,500.00	625.00	S.L.	20yr	625.00
30 Totals		28,592.72				5,668.27
31 Less: Amount of depreciation claimed elsewhere in Schedule C						
32 Balance—Enter here and on page 1, line 11						5,668.27

## SUMMARY OF DEPRECIATION (Other Than Additional First Year Depreciation)

	Straight line	Declining balance	Sum of the years'-digits	Units of production	Other (specify)	Total
33 Under Rev. Procs. 82-21 and 85-13						
34 Depreciation from Form 4832						
35 Other	1,687.77	3,980.50				5,668.27

## EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than \$10,000, or for yourself if your expense account allowance plus line 26, page 1, is less than \$10,000. See separate instructions for Schedule C, for definition of "expense account."

Did you claim a deduction for expenses connected with:

(1) Entertainment facility (boat, resort, ranch, etc.)?

☐ YES ☒ NO (3) Employees' families at conventions or meetings?

☐ YES ☒ NO

(2) Living accommodations (except employees on business)?

☐ YES ☒ NO (4) Employer or family vacations not reported on Form W-2? ☐ YES ☒ NO

Name	Expense account	Salary and Wages
Owner		
1		
2		
3		
4		
5		

U.S. GOVERNMENT PRINTING OFFICE: 1971-0-118-142 10-1118273

\* Salvage Value of \$200 taken into account

October 4, 2005

Reference: C 14-05-0106

Reference: C 14-05-0106.02

Honorable Mayor Will Wynn and City of Austin Council Members,

As residents of the Pleasant Hill Addition sub-district located in the West Congress Avenue Neighborhood Planning Area, we are concerned about upcoming zoning decisions and their impact on our community. We are proud to live in a neighborhood that offers such a unique glimpse into Austin's historical, cultural and architectural heritage - a heritage we believe is worth protecting. Our neighborhood is in transition with restored turn-of-the-century homes and new homes being built. Additionally, the remaining natural areas in our community provide dwindling urban wildlife with critical travel routes, food, water, and shelter.

It is our sincere belief that the following zoning recommendations will safeguard current residents while preserving the area's unique flavor and resources for future generations to enjoy.

We respectfully request your support for the following zoning recommendations:

- SF-2 for Tract 18 (106-200 W. Mockingbird Lane)
- SF-2 for Tract 23A (106 Red Bird Lane, alternately shown as 116 Red Bird on the proposed zoning change sheets). Alternate request: LO-MU-CO-NP.
- SF-3 and SF-6 for Tract 30 (103 Red Bird). The property owner plans to request CS-MU-CO-NP zoning. However, according to the City's own Neighborhood Planning and Zoning Guidelines, "CS is generally incompatible with residential environments." (Neighborhood Planning Guide to Zoning, page 23, April 2005). We oppose the CS designation because a construction business on 3/4 acre with 30+ employees, service trucks and semi-truck deliveries is not compatible with a residential neighborhood with children and hearing-impaired adults. Mr. Harper's business has evolved over recent years and outgrown its location. We request to be heard regarding this parcel at the council meeting scheduled for October 6th. Alternate request: LO-MU-CO-NP.
- LO-MU-NP for Tract 35 (306-314 Stassney). LO is noted by city staff on the Future Land Use Map of August 18. The new GO recommendation is undesirable because it would allow a 60' building to be erected next to residences.
- LO-MU-NP for 400-414 Stassney. (Corner of Hummingbird; (See reference C14-05-0106.02).). Most of this property is in the flood plain, which limits its desirability for development. The city staff's GO recommendation is undesirable because it would allow a 60' building to be erected next to a residence. LO is listed on the Future Land Use Map of August 18.

Thank you for your consideration.

Sincerely,

*Andrea Thomas*

Andrea Thomas  
309 Red Bird Lane  
days: 512-445-5915  
cell: 512-925-5214  
athomas57@austin.rr.com

October 4, 2005

Page 1 of 2

Reference: C 14-05-0106  
Reference: C 14-05-0106.02

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Thank you for your consideration.

Sincerely,

1 REXFORD BURNS ~~Trish~~ 205 Red Bird  
2 Andrea Thomas Andrea Thomas 309 Red Bird  
3 Opal Keeling Opal Keeling 5502 Hummingbird Ln  
4 Felix Michener Canada ~~Felix Michener~~ 5507-5507 Blue Bird Ln  
209-206 5507

October 4, 2005

Page 2 of 2

Reference: C 14-05-0106

Reference: C 14-05-0106.02

6) SPEEDY N. PHILLIPS *Speedy N. Phillips* 5500 BLUEBIRD LN.

9) Chuck GRIMES *Chuck Grimes* 312 W Stassney LN

10) Luis PINHEIRO *Luis Pinheiro* 312 W. Stassney LN

Adam Hudson *Adam Hudson* 312 W. Stassney LN

7) EVAN A. HENDRIX *Evan A. Hendrix* 306 RED BIRD LN

8) William R. Hendrix *William R. Hendrix* 300 Red Bird Ln

9) H. B. MASSINGILL *H. B. Massingill* 110 REDBIRD LN

10) DOUGLAS J. FIELDS *Douglas J. Fields* 310 REDBIRD LN

Rachael Horner *Rachael Horner* 314 Redbird Ln.

12) Ann E. Harris *Ann E. Harris* 307 Redbird Ln

13) ALEJANDRO LOREDO *Alejandro Lored* 204 Red Bird LN

Lic Kempf *Lic Kempf* director of Day care ctr  
200 W. Stassney  
306 W. Stassney

14) Ernest LEONARD *Ernest Leonard* 5501 Blue Bird Ln A

15) Robert L. Heise *Robert L. Heise*

16) Shirley HITCHCOCK *Shirley Hitchcock* 313 Red Bird

17) DERA HENDRIX *Dera Hendrix* 304 Red Bird Ln.

18) Michelle C WALDRON *Michelle C. Waldron* 5505 Hummingbird Lane

RAYMOND CARLTON *Raymond Carlton* 309 B Red Bird Ln

(center of 10 yrs)

(18 homeowners + 2 renters)

October 4, 2005

Page 1 of 2

Reference: C 14-05-0106  
Reference: C 14-05-0106.02

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Sincerely,

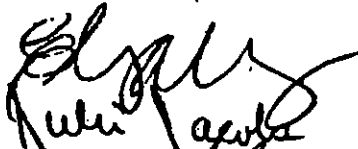
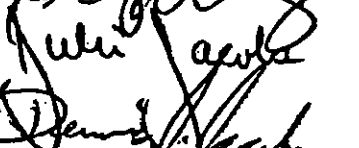
Mary Rocamora		305 W. Mockingbird Ln
Aldo Guevara		311 W Mockingbird Ln
Jon M. Donaldson	Jon M. Donaldson	305 W Mockingbird Ln
Robin H. Gary	Robin H. Gary	200 W. Mockingbird Ln
John Van Strien	John Van Strien	207 W. Mockingbird Ln.
THOM HAESE		110 W Mockingbird Ln.


October 4, 2005


Page 2 of 2


Reference: C 14-05-0106

Reference: C 14-05-0106.02

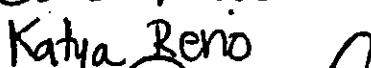
 Elizabeth Wallerstein 109 W. Mockingbird Ln.  
 Julie Jacobs 312 W. Mockingbird Ln.


 Dennis J. Jacobs 312 W. Mockingbird Ln.


 Audrey Powers 106 W. Mockingbird Ln.

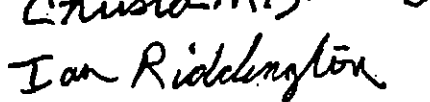
 Kevin Mackie 306 W. Mockingbird Ln.

 Chris Reno 128 W. Mockingbird Ln.

 Katya Reno 128 W. Mockingbird Ln.

~~ Pedro Jaramillo~~ Pedro Jaramillo 301 W. Mockingbird Ln.

 Christa M. Riddington 314 W. Mockingbird Ln.

 Ian Riddington 314 W. Mockingbird Ln.

12 properties represented:  
(11 homeowners + 1 renter)

12 properties, (2nd letter) represented

18 properties. (1st letter) represented

29 homeowners/ signed letters  
properties

3 renters signed letters  
(plus additional spouses)

October 3, 2005

Deral Hendrix  
304 Red Bird Lane  
Austin, Texas 78745  
512.447.4289  
deral@austin.rr.com

Re: C14-05-0106, Tract 30

Dear City Council:

I am one of 32 owner/occupants of property on the 'Bird' streets within the Pleasant Hill Subdistrict - West Congress Neighborhood Planning Area Rezoning. In this area there are also 5 lots, 2 unoccupied houses recently relinquished by elderly owner/occupants, 11 renters (7 of whom live in one condo unit), and then there is Tract 30, a business incompatible not only within this neighborhood but within any neighborhood. The obvious mathematical translation here is that 73% of our little enclave is owner/occupied. The business (Tract 30) comparison is somewhat less than 1%.

In the 8-30-05 neighborhood letter to you preceding the 9-1-05 council meeting, a description of the Tract 30 business from a neighborhood perspective was given. At that council meeting, the neighborhood recommended zoning of SF-3-NP was presented by city staff and noted that "staff does not object to the neighborhood's recommendations". Mr. Tommy Harper, owner-operator of Tract 30, appeared and spoke of a "grandfather clause" and the hardship and detrimental effect the SF-3-NP zoning would have on his business, should he have to move.

My understanding is that since that meeting the council-requested research by city staff reveals no "grandfather clause" for use of this lot, which means that Mr. Harper has not been compliant with zoning for over 20 years. He is now requesting that the council approve his request for zoning the property CS....., not the neighborhood-requested SF-3-NP nor the Planning Commission/city staff-requested LO-MU-CO-NP. I further understand that this CS..... zoning, which is totally incompatible within a residential neighborhood, "will not be objected to by staff". The only explanation I have garnered for this bizarre 180 degree sudden flip-flop by staff is that "Mr. Harper needs that zoning to be compliant", a truism of the first order.

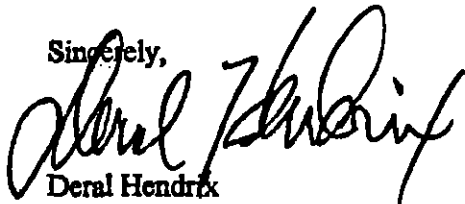
As for the detrimental effect spoken of by Mr. Harper, which he says means he will be forced out of business, thereby depriving 30+ people of their jobs and he and his family of its business income, this should be viewed with clear and open eyes. First of all, this business is on a lot less than twice the size of mine. Picture, if you will, seven or eight service trucks, two or three forklifts, three or four buildings, the usual multitude of stacks of construction and manufacturing materials, and the vehicles of that many employees all

on that size lot at least part of the day and the activity and neighborhood traffic resulting thereof. Add to that 18 wheelers making deliveries to Mr. Harper's property and maneuvering through the neighborhood and you have a fair picture of a neighborhood problem. Requiring that this business move to an appropriately -sized and -located property for its operation should not mean that it would "go out of business"; maintaining the status quo by legalizing something patently illegal will most certainly mean that our neighborhood will be put on the road to being "out of business".

I have lived in this neighborhood for 27 years. My three children grew up here and now two have bought houses here because of the improvements made within the neighborhood over the years. And I have my own 'grandfather clause'—my two-year-old grandson lives next door. There are other children of various ages in the neighborhood, as well as elderly and handicapped adults, young couples and college students. We in this neighborhood have always realized that we have to bend and remain flexible to absorb the increased development and population of Congress Ave. and Stassney Lane and the impact on us.

What we should not have to absorb is the geometric and monumental growth of Mr. Harper's business over these years. When I moved here and when we agonized over the rezoning that occurred during the early 1980s, Mr. Harper's business was a small electrical business with 2 trucks and 2 employees, no stack lot, no forklifts, and no 18 wheelers making deliveries. Thus, the neighborhood took a live and let live attitude. It is obvious that what we thought was a cute little bull snake has grown up into a rattlesnake that is bent on our destruction.

Sincerely,

A handwritten signature in black ink, appearing to read "Deral Hendrix". The signature is stylized with a large, sweeping "H" and a long, trailing "x".

Deral Hendrix

October 6, 2005

H. B. Massingill  
110 Red Bird Lane  
Austin, TX 78745

Re: c14-05-0106, Tract 30

Dear City Council,

Since moving into my house at 110 Red Bird Lane in 1998, I've watched Harper Construction Company (across the street from me) grow from a small contracting business into a large ongoing concern, with activity on the premise impacting me (and my neighbors) at every step of it's growth. Some of the problems I've had to deal with are:

- Semi-trucks parking in front of my house with their motor running, filling my 600 square foot house with carbon monoxide. Some mornings I'll wake up anxious with my heart racing, only to find a truck has been idling in front of my house waiting for someone to come accept delivery.
- Trucks have run over my mailbox 20 times. As a result I've missed checks, bills and business.
- Forklifts have disconnected my phone line twice, again causing much inconvenience and lost income do to lost jobs/missed calls.
- Noisy and bothersome activity, very disruptive and very early in the day:
  - Dumpster being picked up at 5:30-6:00 AM.
  - 3-4 semi-trucks daily being idled and unloaded 30 - 40 feet from my door.
  - Semi-trucks blocked me in on numerous occasions. I've missed work and appointments due to this.
  - Bobcat and other equipment being loaded on and off of trailers.
  - Work crew and trucks hanging out in front of my house (including litter).
- Mr. Harper filled in the drainage ditch on the front of his property (with no culvert) in such a way that all the rainwater from his property flows though my lot (sometimes up against my house) at a depth of 18" up to 3 feet wide, a veritable river.
- High wattage security lights shine right into my house.
- Until recently the building material was in piles up to the front of the property.
- Work crews "cat-calling" my daughter and ogling my female friends.

- Pallets brought in from warehouses and industrial areas bringing with them rat nest, mice, possums, hornets.
- There is a dumpster with garbage & food in it, attracting animals.
- Piles of material and equipment have lured thieves onto the lot. I've scared off more than one trespasser.
- I have a 100 square foot organic garden on the back of my lot and I worry about the runoff from all the machines and chemicals stored, seeping into the ground.
- Earlier this week a surveyor was in my yard painting marks on my grass. When I asked him what he was doing, he said he was hired by Mr. Harper. No one ever asked if they could come on my property.
- I also wonder what impact all the semi-truck traffic is having on my street and the infrastructure underneath it.

The final thing I'd like to point out is many contractors competed for the playground contract with the city that Mr. Harper is now fulfilling. How would other contractors feel if they knew the winning bid went to some one in an illegal business space? People playing by the rules didn't get the contract.

I urge you to zone Tract 30 LO-MU-CO-NP.

Sincerely,



Brad Massingill  
110 Red Bird La.  
462-9834

# HARPER CONSTRUCTION

207 REDBIRD

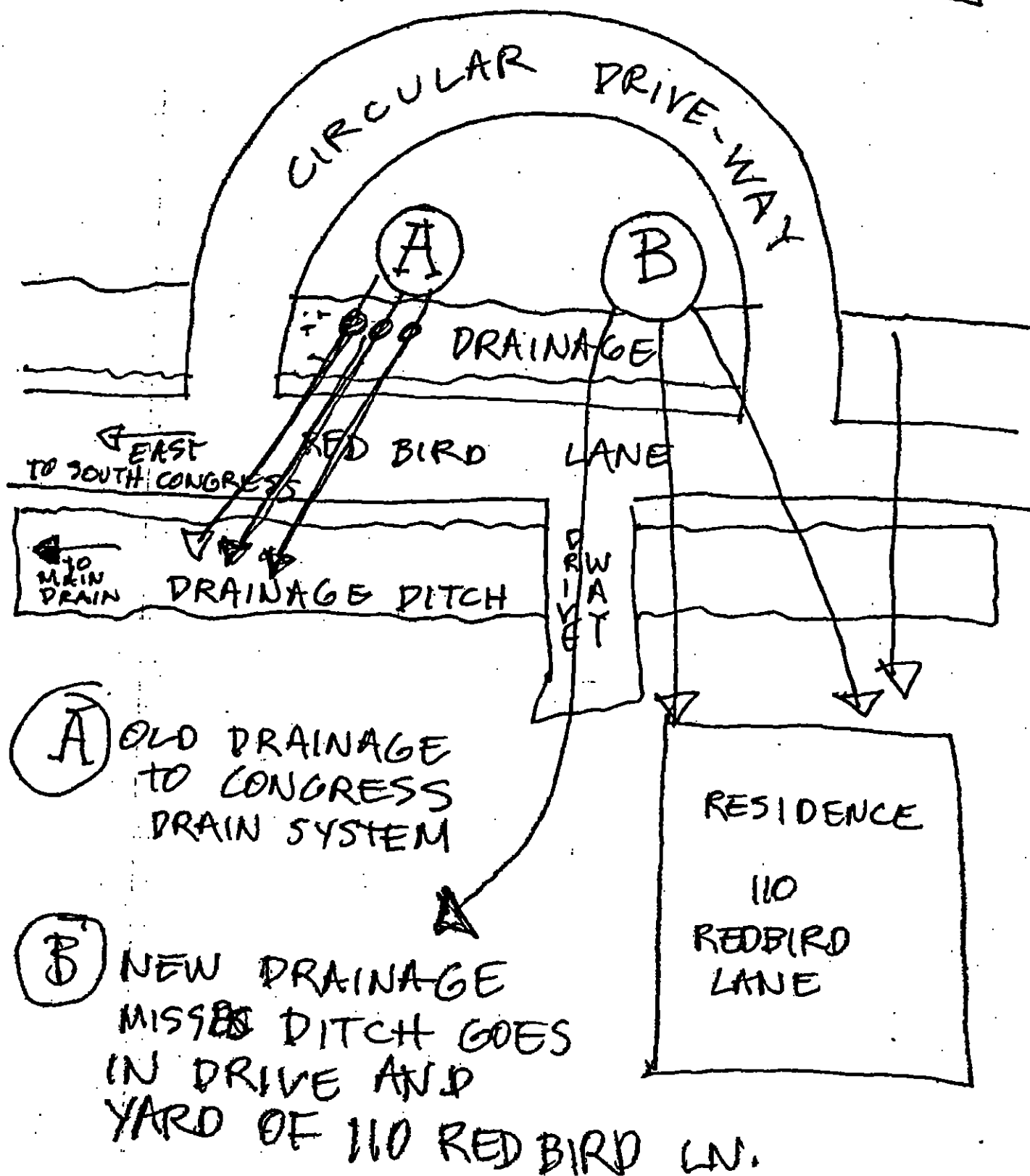


Exhibit J

# PETITION

CONTACT: Rexford Burns 512.228.4040

Date: 10-04-2005

File Number: C 14-05-0106

103 Red Bird Lane Austin, Texas 78745

Rezoning Request: LO-MU-CO-NP

## To: Austin City Council

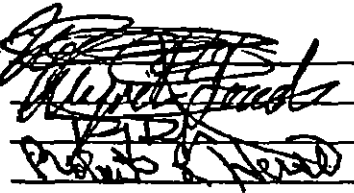
We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any classification other than LO-MU-CO-NP

The property owner plans to request CS-MU-CO-NP zoning. However, according to the City's own Neighborhood Planning and Zoning Guidelines, "CS is generally incompatible with residential environments." (Neighborhood Planning Guide to Zoning, page 23, April 2005). We oppose the CS designation because a construction business on 3/4 acre with 30+ employees, service trucks and semi-truck deliveries is not compatible with a residential neighborhood with children and hearing-impaired adults. Mr. Harper's business has evolved over recent years and has outgrown its location.

Signature

Printed Name

Address



H.B. MASSINGILL  
ALEJANDRO LOREDO  
REXFORD BURNS  
Robert L. Heise

110 RED BIRD LN  
204 RED BIRD LN  
205 RED BIRD  
5501 Blue Bird LN

Contact number : Rex Burns : cell 228-4040 WK 444-0716

# PETITION

Case Number:

**C14-05-0106**

Date:

Oct. 5, 2005

Total Area within 200' of subject tract: (sq. ft.)

271,314.05

1	04-1508-0411	MASSINGILL BRADFORD III	17,411.27	6.42%
2	04-1508-0413	LOREDO ALEJANDRO & SERAFIN LOR	14,258.30	5.26%
3	04-1609-0302	BURNS REXFORD J JR	41,300.32	15.22%
4	04-1609-0301	HEISE ROBERT LEE	7,443.76	2.74%
5				0.00%
6				0.00%
7				0.00%
8				0.00%
9				0.00%
10				0.00%
11				0.00%
12				0.00%
13				0.00%
14				0.00%
15				0.00%
16				0.00%
17				0.00%
18				0.00%
19				0.00%
20				0.00%
21				0.00%
22				0.00%
23				0.00%
24				0.00%
25				0.00%
26				0.00%
27				0.00%
28				0.00%

Validated By:

Stacy Meeks

Total Area of Petitioner:

80,413.86

Total %

29.64%





103 Red Bird Lane, Austin, Texas 78745-3122

December 7, 2005

City of Austin  
Mr. Mark Walters  
Neighborhood Planning & Zoning  
One Texas Center, Suite 525

Mr. Mark Walters,

I would like you to include the conditions that I have supplied to staff as well as the council. I not sure why the information you are providing for the council meeting only includes "Neighborhood Conditions for Support of CS-MU-CO-NP" and not my concerns.

Items supplied to staff and Council:

1. Our conditional overlay for 103 Red Bird Lane supplied 10/25/05.
2. Our letter why we are requesting this overlay supplied 10/25/05.
3. I think it would be beneficial for the council to know that we have submitted affidavit from 22 residence of the City of Austin that this decision will directly affect.

My answer to the conditions provided to me today from the neighbor is as follows.

1. As stated in my conditional overlay we are willing to meet the 25' setback a 30' setback will not allow us to continue the business we have been performing for the past 30 years.
2. These limits will not allow our business to continue.
3. A solid fence in front of our location will not allow access for our services.
4. We currently do not park company trucks on the street and only park delivery truck as they are waiting unloading.
5. This can be done to some extent if the city of Austin approves our building plan.
6. We currently have forklifts on the street because we are awaiting this decision before moving forward with our building program.
7. This is a city of Austin issue that we will be more than happy to work within their guidelines. We disagree and can provide grades that will show this issue is no worse than before we leveled the side of the roadway.

General Contractors, Construction Management  
Plumbing & Electrical Service  
Parks & Playgrounds

512-440-0707

512-440-0736 Fax

EX. K



103 Red Bird Lane, Austin, Texas 78745-3122

8. We are not willing to rollback any item that could cause the lowering of the value of this property.

I would like to add one more item for the council's consideration. We have been here doing the same type of work since 1969 and no one has questioned this. We have grown and changed part of the way we do business and I hope the City supports growth in small businesses. We have a plan to help many of the issues the neighborhood has but many of them require us to do most of our work off site and this is not economical.

Last there is no neighbor, that I have met, that has been here as long as we have. That means they all bought knowing what and how we do business. My closes neighbors have been less than 6 years and even at that not once have we ever had a written complaint to the City of Austin or any other entity. The main reason for this is we do our best to work with the neighborhood (will continue to do so) and everyone knows what we do.

Respectfully,

Thomas F. Harper  
Owner  
T. F. Harper & Associates

**General Contractors, Construction Management  
Plumbing & Electrical Service  
Parks & Playgrounds**

**512-440-0707**

**512-440-0736 Fax**

Ex. L

December 11, 2005

Reference: C 14-05-0106  
Tract 30 Pleasant Hill Addition

Honorable Mayor Will Wynn and City of Austin Council Members,

I am a resident of 20 years at 309 Red Bird Lane. I request your support to follow the neighborhood recommendations for Tract 30: keep the current zoning of SF-3 and SF-6 or, as an alternate, LO-MU-CO-NP (with CO being a 30' vegetative buffer).

A commercial business is not compatible in a residential neighborhood. When Mr. Harper's father lived in a trailer at 103 Red Bird and operated his business, he kept the place tidy. Enclosed are aerial photos from 1969, 1976, 1984 and a current photo. 1969 shows one building and 1976 & 1984 show one building and a trailer on the property. The elder Mr. Harper did not have 30+ employees with lean-to sheds, dump trucks, fork lifts etc., as the current photo shows, or semi trucks unloading. Recently the situation has gotten intolerable since Tommy Harper had to quit getting his playscape materials delivered to job sites because of theft. Instead, these materials come to 103 Red Bird via semi trucks and are stacked by the street. Often the road is blocked and it is difficult to drive from Congress on Red Bird to my house. We are concerned about the noise, the safety issues (there are kids and deaf people on this street), the poor drainage and the unsightly mess. This business is a detriment to our neighborhood. I am certain that no council member would want to live near this business. Businesses often have to relocate as they grow and while it is inconvenient, in the long run they're usually happier with more space.

Another concern for zoning Mr. Harper's property commercial is that when he retires and decides to sell the property, who knows what kind of commercial business would locate there?

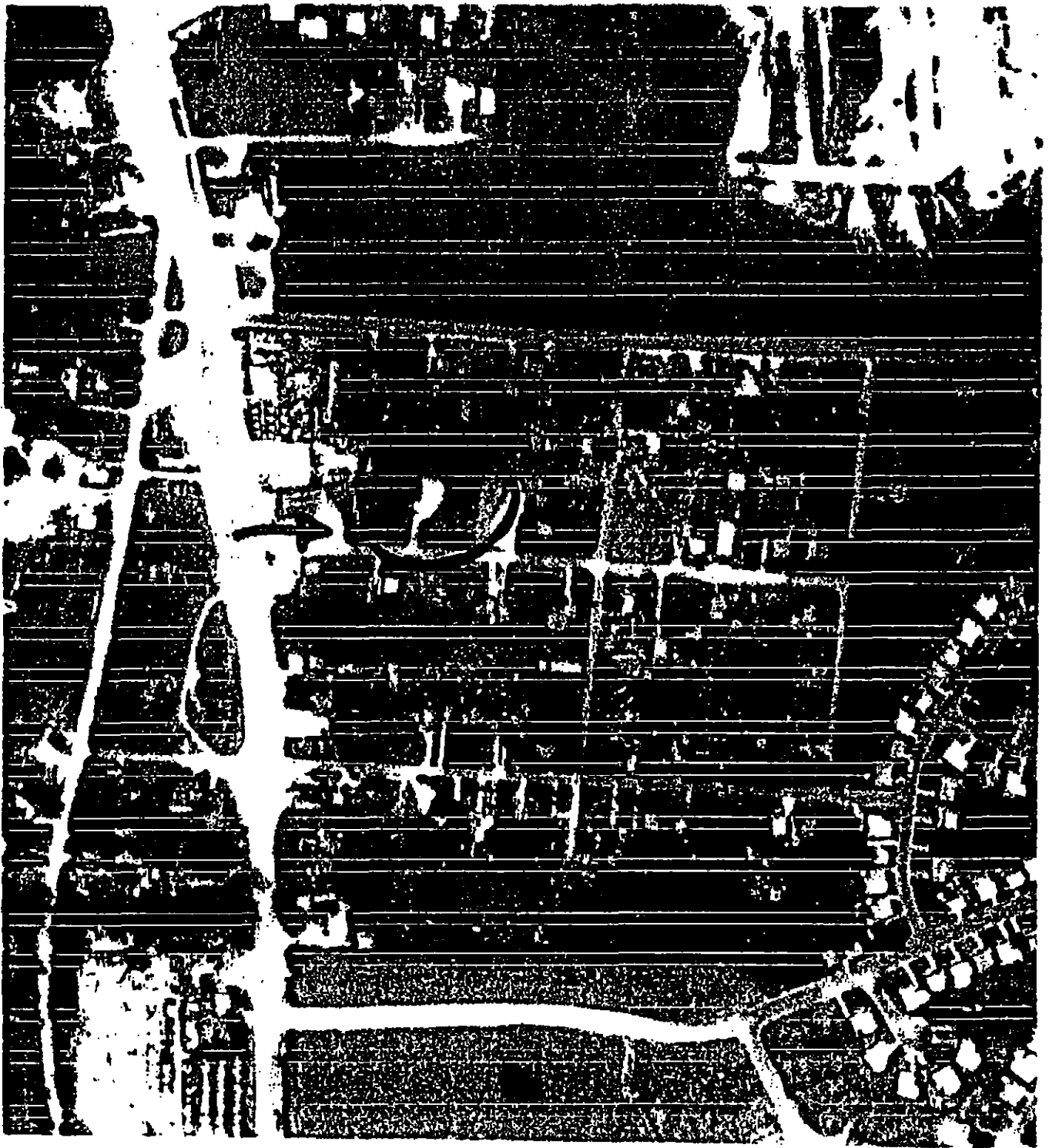
Our neighborhood is worth preserving. We accept that Congress and Stassney are becoming more commercial, but we don't want the commercial aspect encroaching into our neighborhood. We are a diverse group of home-owners with young singles, families with children, retired people, middle-aged, African Americans, Hispanics and Whites. There are new homes being built and older homes being renovated. My house is 88 years old and was moved from East Avenue when the upper level of I-35 was built.

Please keep commercial business out of our neighborhood and support the neighborhood recommendations.

Sincerely,

*Andrea Thomas*

Andrea Thomas  
309 Red Bird Lane  
(512)445-5915



103 Red Bird

4-28-69

single building  
single drive



circle drive  
(ditch not filled in)  
1 trailer  
1 building

1976

1984

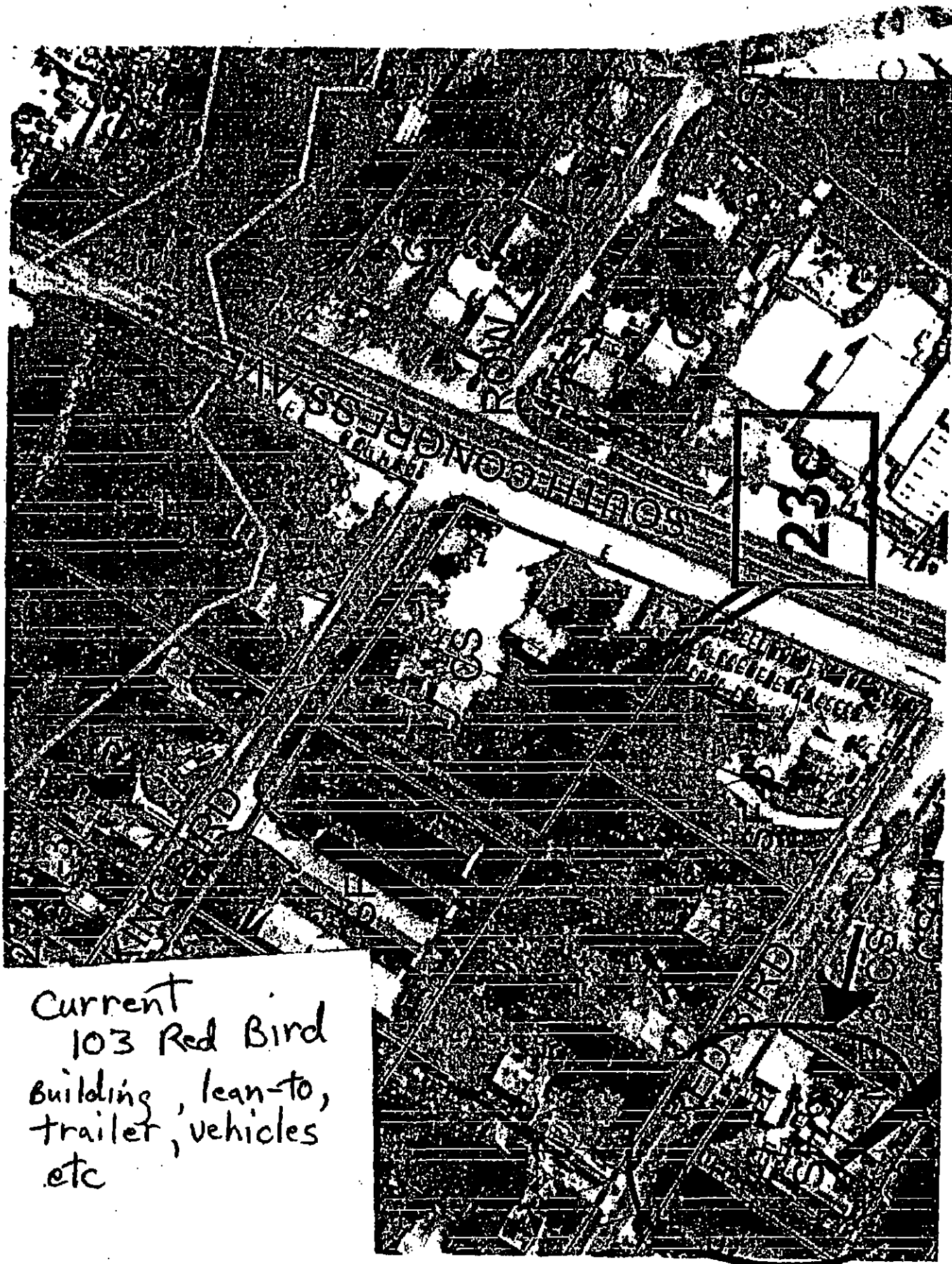
circle drive (drainage ditch not filled in)

1 trailer

1 building

1984





Current  
103 Red Bird  
Building, lean-to,  
trailer, vehicles  
etc

**December 11, 2005**

**Reference: C 14-05-0106**

**If City Council does not follow the neighborhood recommendations and zones Tract 30 CS, these are the neighborhood's conditions:**

**30' vegetative buffer along western property line**

**A solid fence with solid gate across the front of the property**

**No delivery or company trucks parked on the street, even while waiting to unload**

**All loading and unloading of trucks must be onsite and screened from view**

**No forklifts on the street**

**Correct drainage problems and associated nearby flooding created when Mr. Harper backfilled the existing ditch and culverts adjacent to his property**

**Mr. Harper must agree to a voluntary zoning rollback to LO-MU-CO-NP (the CO would be a 30' vegetative buffer) and a land use designation of Office Mixed-use on the plan's future land use map (FLUM)**

**No future use of auto sales, auto washing or pawn shops and limit business traffic to exit right towards Congress and not through the neighborhood**

Exhibit M

SORRY MY PRINTER IS  
ACTING UP, SO SOME OF THIS  
IS STILL IN HANDWRITTEN  
NOTES . . .

THANKS FOR YOUR  
PATIENCE TRYING TO  
DECYPHER IT . . .

BRAD MASSINGILL  
110 RED BIRD LN  
AUSTIN, TX 78745  
(512) 462-9834

15  
PAGES

Brad Massingill  
110 Redbird Lane  
Austin, Tx 78745  
(512)462-9834

Points I would like to make concerning the proposed zoning change for Lot 30 in the Pleasant Hill Neighborhood (103 or 203 Redbird Lane)

- #1 Why I was inadvertently left out of the Neighborhood Planning Process and why I am now trying to play "catch up" by the rules:
- #2 Point out Mr. Harper's change of use in 1999-2000 from a small shop operation to the present usage as a construction delivery facility with semi truck traffic and storage of industrial materials. These uses would have been impossible before Mr. Harper filed in the drainage easement on the front of his property at that time.
- #3 Demonstrate continued impact these new activities have had on me and my property at 110 Redbird Lane, directly across the street from Harper Construction /Tract 30 at 103 or 203 Redbird Lane (depending on which record you check).
- #4 Recommend LO-MU-CO-NP with a roll back to some type of SF zoning (as are the rest of the lots in our neighborhood) in addition I would propose Conditional Overlay restrictions on any use except as a business office or for activities performed on site before the non-reported change of use in 1999-2000.

How I was inadvertently left out of the FLUM process and denied input on proposed changes to Tract 30 of the Pleasant Hill Neighborhood

#1 A) I was involved in the South Congress Combined Neighborhood Plan as much as was possible, I've been working on my sister's house in Georgia since Fall of 2001. I was only in town for a week or two at a time back then, so my participation was primarily by phone with a zoning employee; Alex Koenig. I had contacted Alex when the meeting at Bedichek was approaching with several ideas and concerns for my neighborhood. Alex told me at that time the response from the Pleasant Hill Neighborhood was overwhelming. He instructed me to hold onto my comments because the meeting was to be rescheduled to accomodate the extra interest. I reminded him at that time that I had re-arranged my travel plans to attend the Bedichek Meeting and I would require at least a week notification to assure my attendance. He told me he would contact me in person (by phone) as soon as he knew something more concrete (at this time Tract 30 was not even listed in any documents concerning zone changes). Shortly thereafter, un-beknownst to me, Alex Koenig got transfered to another department and forgot to call me or tell anyone in Zoning about me...

#1 B) As a result, I never heard about the time of the Bedichek Meeting, where I assume my neighbors learned about the proposed changes to Tract 30.  
Since I wasn't able to sign up for

future mailings, updates and most importantly the times and locations for crucial votes at Planning and Zoning or the City Council's votes changing my neighborhood or the (FLUM) I have recieved nothing by phone or mail concerning any of the proposals or changes during any part of this process.

#1 C) My first knowledge of the proposed Zoning Change for Tract 30 came when my neighbor brought me a petition opposing the change; the monday or Tuesday before the October 6th, 2005 City Council Meeting. At that point it was already Second Reading with no comments from the public allowed.

#1 D) As a result of all these events, I at no point have had any direct input in the process,



## Neighborhood Planning & Zoning Department

505 Barton Springs Road  
P.O. Box 1088  
Austin, TX 78767



NEIGHBORHOODS FIRST

April 12, 2005

Dear Property Owner,

The City of Austin Neighborhood Planning staff has been working with community stakeholders in the South Congress Combined Neighborhood Planning Area since June of last year. This process will result in a neighborhood plan that will be adopted by the Austin City Council.

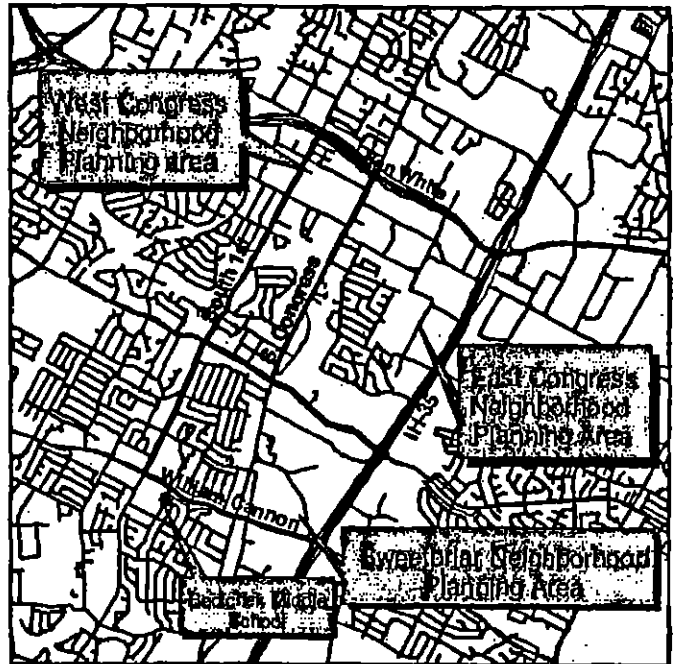
The planning process has produced a Future Land Use Map and proposed zoning recommendations that could affect your property.

Enclosed in this mailing are informational materials to help explain the proposed changes:

- A chart and map indicating where the properties with proposed zoning changes are located and the proposed changes
- An information sheet that explains the proposed infill options for the area
- An information sheet explaining the zoning terms.

We will be holding a public meeting to discuss these proposed zoning change recommendations on:

**Wednesday, April 27, 2004,  
6:00 PM to 8:00 PM  
Bedichek Middle School  
6800 Bill Hughes Rd**



**South Congress Combined Neighborhood  
Planning Area**

**DRAFT Rezoning Tract Table**  
**South Congress Combined Planning Area**

Printed April 8, 2008  
 Created by NPZD, City of Austin

**NOTE TRACT 30 IS NOT MENTIONED.**

	Tract	FROM	TO	Neighborhood Urban Center	Mixed Use Building	Residential Infill
West Congress Planning Area (cont)	25	CS-1, SF-3, SF-3, LO	LO-MU-CO-NP	yes	yes	
	26	CS-1	CS-1-MU-CO-NP	yes	yes	
	27	CS, MF-3	CS-MU-CO-NP	yes	yes	
	28	CS-CO	CS-MU-CO-NP	yes	yes	
	32	GR-MU-CO, LO, SF-3	LO-MU-CO-NP	yes	yes	
	35	SF-3	LO-MU-CO-NP		yes	
	39	GR	GR-MU-CO-NP	yes	yes	
East Congress Neighborhood Planning Area	100	LI, SF-3	CS-MU-NP		yes	
	101	LI	CH-CO-NP			
	102	LI, CS-1, CS-1-CO	CH-CO-NP			
	103	LI	CH-NP			
	104	LI	CH-NP			
	105	LI	LI-NP	yes	yes	
	107	SF-3	LI-NP			
	108	LI, CS, SF-3	CS-MU-CO-NP	yes	yes	
	110	LI, CS, GR-CO, SF-3	CS-MU-CO-NP	yes	yes	
	111	LI-CO	LI-CO-NP	yes	yes	
	112	LI, CS, SF-3	CS-MU-CO-NP	yes	yes	
	113	CS	CS-MU-CO-NP	yes	yes	
	114	CS	CS-MU-CO-NP	yes	yes	
	115	SF-3	LI-NP			
	116	SF-3	LI-NP			
	117	SF-3	CS-MU-NP	yes	yes	
	118	LI, SF-3	CS-MU-NP			
	119	LI	LI-CO-NP			
	120	LI	CS-MU-CO-NP	yes	yes	
	121	LI	LI-CO-NP	yes	yes	
	123	LI-SF-3	LI-NP			

# HARPER CONSTRUCTION

207 REDBIRD

SEMI-TRUCKS  
COULD NOT  
PASSED INTO  
BEFORE FILLING HARPER'S  
EASEMENT

CIRCULAR DRIVE-WAY

A

B

DRAINAGE

EAST  
TO SOUTH CONGRESS

RED BIRD

LANE

TO  
MAIN  
DRAIN

DRAINAGE DITCH

DRIVEWAY

A

OLD DRAINAGE  
TO CONGRESS  
DRAIN SYSTEM

B

NEW DRAINAGE  
MISSED DITCH GOES  
IN DRIVE AND  
YARD OF 110 RED BIRD LN.

RESIDENCE

110  
REDBIRD  
LANE

NEIGHBOR TO

#

CONTINUED

IMPACT ON

ME AT (B. MASSINGILL)

110 REDBIRD

- Pallets brought in from warehouses and industrial areas bringing with them rat nest, mice, possums, hornets.
- There is a dumpster with garbage & food in it, attracting animals.
- Piles of material and equipment have lured thieves onto the lot. I've scared off more than one trespasser.
- I have a 100 square foot organic garden on the back of my lot and I worry about the runoff from all the machines and chemicals stored, seeping into the ground.
- Earlier this week a surveyor was in my yard painting marks on my grass. When I asked him what he was doing, he said he was hired by Mr. Harper. No one ever asked if they could come on my property.
- I also wonder what impact all the semi-truck traffic is having on my street and the infrastructure underneath it.

The final thing I'd like to point out is many contractors competed for the playground contract with the city that Mr. Harper is now fulfilling. How would other contractors feel if they knew the winning bid went to some one in an illegal business space? People playing by the rules didn't get the contract.

I urge you to zone Tract 30 LO-MU-CO-NP.

Sincerely,



Brad Massingill  
110 Red Bird La.  
462-9834

WITH ROLL BACK TO  
SF 3-~~6~~  
OR  
LO W/ ALL USES  
PROHIBITED WITH  
THE EXCEPTION  
OF OFFICE USE  
AND OF USES  
PRIOR TO FILLING  
IN OF RIGHT OF  
WAY / DRAINAGE  
DITCH IN FRONT OF  
PROPERTY (CIRCA 1998)

N

January 7, 2006

Reference:

103 Red Bird La. Tract 30  
File C14-05-0106,  
Draft Ordinance No. 20050818-Z003

Dear Mayor Will Wynn and City of Austin Council Members,

This letter addresses the zoning for Tract 30 owned by Mr. Harper. We, the neighborhood of Pleasant Hill Addition recommend the following:

We support adoption of the draft ordinance No. 20050818-Z003 changing the zoning from SF-3 SF-6 to LO-MU-CO-NP. This corresponds with the validated neighborhood petition.

If the council votes against us for the draft ordinance changing the zoning from SF-3 SF6 to CS-MU-CO-NP, we request the following changes to the CS ordinance:

**Vehicular access to and from the property**

All traffic arrives and departs from Congress Avenue.

**Vegetative Buffer**

After consulting with nurseries and professional landscapers, we request the following readily available plants be used in the 25 ft. vegetative buffer:

On the **fence-line**: xylosma congestum planted to fill in entire fence line (an evergreen tall shrub, sun or shade, that grows to 12' quickly)

**The rest of the 25" area:** any combination of the following shrubs: primrose jasmine (jasminum mesnyi), Eleagnus ebbingii, Viburnum suspensum, or Yaupon vomitoria.

**No invasive plants** such as: Ligustrum, Japanese Privet, Nandina, Hackberry, or Red-tipped Photinia.

**Add to prohibited uses of the property**

Medical Offices-not exceeding 5,000 sq/ft of gross floor space  
Medical Offices-exceeding 5,000 sq/ft of gross floor space  
Private Primary Educational Services  
Private Secondary Educational services  
Public Primary Educational services  
Public Secondary Educational services  
Residential Treatment  
College and university facilities

Community recreation-private  
Community recreation-public  
Congregate living  
Group home class 1-general  
Group home class 1 - limited  
Group home class 11

**Fence**

We agree with the solid fence with access gate and request that the gate be screened.

**Restrictive Covenant**

We also ask that the restrictive covenant be signed by the Harpers and includes the Conditional Overlay of a 25' vegetative buffer.

The parking and unloading on the street and R.O.W. of semi-trucks with forklifts, the truck traffic through the neighborhood and the poor drainage remain a major problem for the neighborhood. If this can be dealt with in any way in the ordinance, it would be greatly appreciated.

Sincerely,

Andrea Thomas  
445-5915 & 925-5214 cell

Welder, Kathleen

From: rex [rexford@jhaadvertising.com]  
Sent: Wednesday, February 15, 2006 6:41 PM  
To: Welder, Kathleen  
Subject: C14-05-0106 and NP-05-0020 Postponement Request

>Dear Council Members,

>

>I am a representative of the Pleasant Hill neighborhood in the South  
>Congress Combined Neighborhood Planning Area. We respectfully request  
>a postponement of Cases C14-05-0106 and NP-05-0020 regarding the  
>property at  
>103 Red Bird Ln (Tract 30). This is our first request for this tract.

>

>Background:

>This Tuesday, February 14, 2006, we had a meeting with the property  
>owner (Mr. Tommy Harper) and staff to discuss all of our concerns about  
>the draft zoning ordinance and restrictive covenant, and about the case  
>itself. At the end of the meeting, we came closer to reaching a  
>compromise than we ever had before. We collectively decided to postpone  
>the case on Thursday (Feb  
>16) and staff was to redraft a restrictive covenant with conditions we  
>all discussed. We were to meet again in a couple of weeks.  
>Today, Wednesday, February 15th, we learned that the property owner has  
>changed his mind and neither supports redrafting the restrictive covenant,  
>nor recommends the postponement. Because this is so different than our  
>understanding from Tuesday night, we would like a postponement.  
>Moreover, we recently learned (and discussed at the meeting) a loophole  
>regarding the zoning ordinance. The conditional overlay in the draft  
>rezoning ordinance (an overlay that Council directed staff to write to  
>address some of the neighborhood's concerns and make the site more  
>compatible) may not take effect or be enforceable unless Mr. Harper  
>files

a site plan. According to staff, a site plan triggers implementation of those conditions,  
>and Mr. Harper most likely will not have to file one because of his  
>grandfathering status.

>We discussed this with the property owner at our Tuesday meeting, and  
>he was agreeable to putting those conditions in a restrictive covenant  
>- since it is effective with or without a site plan. In fact, Mr.  
>Harper stated that he sincerely wanted to make the property more  
>compatible with the neighborhood and was already making plans to  
>improve it at the time this zoning case came up as part of the  
>Neighborhood Planning process. However, he has changed his position  
>today, and we have not had the opportunity to talk with him further about it.

>

>

>Please consider our request as we already believed we were postponing  
>the case with the support of the property owner and were pursuing a  
>compromise supported by all.

>

>Sincerely,

>Rex Burns

>Resident of the Pleasant Hill Neighborhood  
>205 Red Bird Ln.

--

rexford burns  
designer

jha advertising  
2312 western trails, suite 303c —  
Austin, Texas 78745  
512.444.0716  
jhaadvertising.com