AGENDA

Thursday, June 22, 2006

Zone Hearings/App Ordinances/Restrictive Covenants

RECOMMENDATION FOR COUNCIL ACTION

Subject: C14R-82-006(RCT) - Austin Auto Park, Lot 1 - Conduct a public hearing and approve a restrictive covenant termination for the property locally known as 13553 Research Boulevard (Lake Creek Watershed). Zoning and Platting Commission Recommendation: To approve the request to terminate the restrictive covenant. Applicant: Asbury Automotive Texas Real Estate Holding (J. Gordon Smith). Agent: Hill, Ward & Henderson, LLP (M. Kristen Hyatt). City Staff: Sherri Sirwaitis, 974-3057.

For More Information: Sherri Sirwaitis, 974-3057

MEMORANDUM

TO: Will Wynn, Mayor and Members of the City Council
FROM: Greg Guernsey
        Director, Neighborhood Planning and Zoning Department
DATE: June 5, 2006
RE: C14r-82-006(RCT) Postponement Request

The Neighborhood Planning and Zoning Department would like to request a postponement of the above mentioned case until July 27, 2005. The staff is requesting an additional postponement of this case so that we can work with the applicant to draft the appropriate legal documents for this case to be heard by the City Council.

The postponement request was made in a timely manner and meets the City Council's policy.
RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14R-82-006 (RCT)  Z.A.P. DATE: April 18, 2006

ADDRESS: 13553 Research Boulevard (U.S. HWY 183 North)

OWNER/APPLICANT: Asbury Automotive Texas Real Estate Holding (J. Gordon Smith)

AGENT: Hill, Ward & Henderson, LLP (M. Kristen Hyatt)

ZONING: GR, GR-CO  AREA: 3.191 acres

SUMMARY STAFF RECOMMENDATION:

The staff recommends the applicant's request to terminate the restrictive covenant to eliminate the restrictions placed upon the property in question.

ZONING AND PLATTING COMMISSION:

4/18/06: Motion to postpone to May 2, 2006 (5-4); J. Martinez-1st, T. Rabago-2nd.

Approved staff recommendation to terminate the public restrictive covenant (7-1, J. Martinez-No; B. Baker-abstain); K. Jackson-1st, J. Gohil-2nd.

DEPARTMENT COMMENTS:

The applicant is requesting to terminate the public restrictive covenant for this property (Attachment A) that states, "In the event that said property is not at any time in the future used for Small Engine Sales & Service, the then owner of the property will not object to filing of an application for the rezoning of the said property to "O" Office." This tract of land was zoned from I-RR, Interim-Rural Residence District, zoning to GR-CO, Community Commercial-Conditional Overlay District, zoning on January 10, 2002 through zoning case C14-01-0155. This zoning case was filed in 2001 to bring the existing legal nonconforming automotive sales dealership on this site into conformance with the zoning regulations in the City of Austin Land Development Code. The applicant would like to terminate the covenant because they are concerned that, in the event that there is some sort of casualty which causes significant damage or the destruction of the improvements on the property, that the City would initiate a case to rezone the property to an office zoning category, which would not allow the continued use of the property as an automobile dealership.

The staff recommends the applicant's request to terminate the restrictive covenant because the intent of the covenant in no longer viable. This tract of land is located adjacent to existing commercial uses, including automotive sales and repair uses located to the north, and fronts onto a recently improved major arterial roadway, U. S. Highway 183 North. The termination of this public restrictive covenant will allow the applicant to clear the title to the property in question.

The applicant agrees with the staff's recommendation.
EXISTING ZONING AND LAND USES:

<table>
<thead>
<tr>
<th>Site</th>
<th>ZONING</th>
<th>LAND USES</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>GR, GR-CO</td>
<td>Automotive Sales</td>
</tr>
<tr>
<td>South</td>
<td>I-RR</td>
<td>Automotive Sales</td>
</tr>
<tr>
<td>East</td>
<td>County</td>
<td>City of Austin Water Tower</td>
</tr>
<tr>
<td>West</td>
<td>GR</td>
<td>Automotive Sales</td>
</tr>
</tbody>
</table>

AREA STUDY: N/A

WATERSHED: Lake Creek

CAPITOL VIEW CORRIDOR: N/A

NEIGHBORHOOD ORGANIZATIONS:

- 2 - Acres west Homeowners Association
- 157 - Courtyard Homeowner Association
- 281 - Anderson Mill Neighborhood Association
- 426 - River Place Residential Community Association, Inc.
- 454 - Neighborhood Association of Southwest Williamson County

CASE HISTORIES:

<table>
<thead>
<tr>
<th>NUMBER</th>
<th>REQUEST</th>
<th>COMMISSION</th>
<th>CITY COUNCIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>C14-03-0180</td>
<td>I-SF-2 to Tract 1: GR-CO, Tract 2: CS-1-CO</td>
<td>1/20/04: Approved staff's recommendation of GR-CO (Tract 1), CS-1-CO (Tract 2) zoning by consent (6-0, J. Cortez, J. Donisi, K. Jackson-absent); the CO will prohibit the following uses: Tract 1: Drop-Off Recycling Collection Facility, Residential Treatment; Tract 2: Drop-Off Recycling Collection Facility, Residential Treatment, Building Maintenance Services, Campground, Cocktail Lounge, Commercial Blood Plasma Center, Construction Sales and Services, Convenience Storage, Electronic Prototype Assembly, Equipment Repair Services, Equipment Sales, Kennels, Laundry Services, Plant Nursery, Vehicle Storage, Veterinary Services, Custom Manufacturing, Limited Warehousing and Distribution.</td>
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<tr>
<td>Case Number</td>
<td>Description</td>
<td>Date of Approval</td>
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<tr>
<td>C14-03-0104</td>
<td>I-RR, SF-2, GR, CS to GR-CO</td>
<td>8/12/03: Approved staff’s recommendation of GR-CO zoning by consent (9-0); the CO will limit the development intensity to less than 2,000 vehicle trips per day. 9/25/03: Granted GR-CO (7-0); all 3 readings</td>
<td></td>
</tr>
<tr>
<td>C14-02-0059</td>
<td>SF-3 to CS</td>
<td>6/04/02: Approved staff’s recommendation of GR-CO zoning on consent, with 2,000 vtpd limit and added condition prohibiting the following uses: Automotive Rentals, Automotive Repair Services, Automotive Sales, and Automotive Washing (8-0, K. Jackson-absent) 7/11/02: Approved ZAP recommendation of GR-CO with conditions (7-0)</td>
<td></td>
</tr>
<tr>
<td>C14-02-0020</td>
<td>I-RR to LR</td>
<td>4/9/02: Approved staff’s rec. of LR-CO zoning; limit the vehicle trips to 2,000 vehicle trips per day; prohibit Service Stations, Congregate Living, Family Homes, Group Homes, Residential Treatment; require dedication of the appropriate right-of-way (9-0) 8/29/02: Approved ZAP rec. of LR-CO, deleting Right-Of-Way dedication and added Restaurant (Drive-in, Fast Food) use to the list of prohibited uses (7-0); 1st reading 9/26/02: Approved LR-CO (7-0); 2nd/3rd readings</td>
<td></td>
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<tr>
<td>C14-01-0165</td>
<td>CS-CO to CS-CO</td>
<td>12/11/01: Approved staff rec. of CS-CO (7-0); the CO will limit the site to Convenience Storage as the only CS use, allow all LR uses with the exception of a Service Station, limit the site to a maximum building height of 45 feet, and limit the development intensity to less than 2,000 vehicle trips per day. 1/17/02: Approved ZAP rec. of CS-CO (6-0); all 3 readings</td>
<td></td>
</tr>
<tr>
<td>C14-01-0155</td>
<td>I-RR to GR</td>
<td>11/21/01: Approved staff rec. of GR-CO by consent (8-0); the CO will limit the development intensity to less than 2,000 vehicle trips per day 1/10/02: Approved GR-CO (6-0, Goodman out of room); all 3 readings</td>
<td></td>
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<tr>
<td>C14-00-2105</td>
<td>I-RR to GR</td>
<td>7/25/00: Approved staff rec. of GR-CO w/height limit of 35 ft. (7-1, BB-Nay) 8/24/00: Approved GR-CO (7-0), all 3 readings</td>
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<tr>
<td>Case #</td>
<td>Description</td>
<td>Date</td>
<td>Notes</td>
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<tr>
<td>C14-00-2244</td>
<td>I-RR to LR</td>
<td>2/6/01: Approved GR-CO for personal improvement use only &amp; all LR uses w/ conditions (9-0)</td>
<td>7/19/01: Withdrawn by applicant.</td>
</tr>
<tr>
<td>C14-00-2054</td>
<td>I-RR to LI-CO</td>
<td>11/14/00: Postponed indefinitely by applicant (re-notification required)</td>
<td>5/14/01: Administrative-Expired (Indefinite PP only good for 6 months)</td>
</tr>
<tr>
<td>C14-99-2140</td>
<td>I-RR to CS</td>
<td>3/7/00: Approved CS-CO (5-0-1, RC-abstain); CO would limit to convenience storage as the only CS use and allow all LR uses w/ exception of service stations, limit max height to 40', allow max of 2,000 vehicle trips per day</td>
<td>4/6/00: Approved CS-CO w/ conditions as recommended by PC; all 3 readings (6-0, Lewis out of room)</td>
</tr>
<tr>
<td>C14-99-2139</td>
<td>I-RR to CS</td>
<td>3/7/00: Approved W/LO-CO (5-0-1, RC-abstain); CO would limit site to convenience storage as only W/LO use, limit site to 2,000 vehicle trips per day</td>
<td>4/6/00: Approved W/LO-CO w/ conditions as recommended by PC; on all 3 readings (6-0, Lewis out of room)</td>
</tr>
<tr>
<td>C14-99-0137</td>
<td>I-RR to LI</td>
<td>8/24/99: Approved LI-CO; agree to rollback zoning to GR if use ceases, limited to 2,000 vehicle trips per day, dedicate ROW at time of subdivision process (5-1, RC-Nay)</td>
<td>12/2/99: Approved LI-CO; limited to 2,000 vehicle trips per day; require RC for to “GR” if use ceases (7-0); 3rd reading</td>
</tr>
<tr>
<td>C14-99-0019</td>
<td>I-SF-2 to CS</td>
<td>6/22/99: Approved CS-CO (Southern); GR-CO (Northern) w/conditions (6-0)</td>
<td>7/22/99: Approved PC rec. of CS-CO w/conditions (6-0); 1st reading</td>
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<tr>
<td>C14-98-0272</td>
<td>I-RR to LR</td>
<td>2/29/99: Approved staff recommendation of LR by consent (8-0)</td>
<td>3/4/99: Approved LR (7-0); 1st reading</td>
</tr>
<tr>
<td>C14-98-0086</td>
<td>SF-2 to GR</td>
<td>8/18/98: Approved GR-CO with conditions by consent (7-0)</td>
<td>10/8/98: Approved PC rec. of GR-CO w/ conditions (6-0); all 3 readings</td>
</tr>
<tr>
<td>C14-92-0029</td>
<td>SF-2 to GR</td>
<td>4/14/92: Approved GR</td>
<td>5/7/92: Approved GR on all 3 readings</td>
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<tr>
<td>C14-88-0018</td>
<td>SF-2 to CS-1</td>
<td>5/24/88: Postponed indefinitely (8-0)</td>
<td>Withdrawn by applicant.</td>
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</table>

**RELATED CASES:** C14-01-0155
ABUTTING STREETS:

<table>
<thead>
<tr>
<th>STREET</th>
<th>RIGHT-OF-WAY</th>
<th>PAVEMENT WIDTH</th>
<th>CLASSIFICATION</th>
<th>DAILY TRAFFIC</th>
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<tbody>
<tr>
<td>US Hwy 183</td>
<td>380'</td>
<td>Varies</td>
<td>Major Arterial</td>
<td>N/A</td>
</tr>
<tr>
<td>Pond Springs</td>
<td>100'</td>
<td>20'</td>
<td>Minor Arterial</td>
<td>N/A</td>
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</tbody>
</table>

CITY COUNCIL DATE: May 18, 2006

ACTION: Postponed by consent to June 22, 2006 at the staff's request (7-0)

ORDINANCE READINGS: 1st  2nd  3rd

ORDINANCE NUMBER:

CASE MANAGER: Sherri Sirwaitis

PHONE: 974-3057, sherri.sirwaitis@ci.austin.tx.us
MENAS, the City of Austin and V. D. Brooks

have agreed that the above described property should be impressed with certain

1. In the event that said property is not at any time
2. If any part or provision of this agreement or covenant herein

contemplated shall be declared invalid, by judgment or court order, the same
shall in no wise affect any of the other provisions of this agreement, and
such remaining portion of this agreement shall remain in full force and effect.
4. The failure at any time to enforce this agreement by the City of Austin, its successors and assigns, whether any violations thereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

5. This agreement may be modified, amended or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, or such other governing body as any succeed the City Council of the City of Austin, and (b) by the owners of the above described property at the time of such modification, amendment or termination.

EXEMPT, this the ___ day of June, 1981.

[Signature]

THE STATE OF TEXAS
COUNTY OF WILLIAMSON

BEFORE ME, the undersigned authority, a Notary Public in and for
Williamson County and State, on this day personally appeared W.D. BROWN,
known to me to be the person whose name is subscribed to the foregoing
instrument, and acknowledged to me that he executed the same for the purposes
and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ___ day of
June, 1981.

[Signature]

Notary Public in and for
Williamson County, Texas

THE STATE OF TEXAS
County of Williamson

I, JAMES H. ROYSTON, Clerk of the County Court of said County, do hereby
swear that the foregoing instrument is true, with the signatures of witnesses, and that I have acted in my official
capacity, in said cause, at the date and place stated therein.

[Signature]

JAMES H. ROYSTON, Clerk
County Court, Williamson County, Texas
December 12, 2005

Director of Watershed Protection &
Development Review Department
Watershed Protection & Development
Review Department
Austin, Texas 78767

Re: Request for Termination of Restrictive Covenant
Our File No.: 3568-162

Dear Director:

Our firm represents Asbury Automotive Texas Real Estate Holdings L.P., owner of the premises located at 13553 Research Boulevard (a/k/a U.S. Highway 183 North), Austin, Williamson County, Texas 78750 (the "Property"). The Property is subject to a restrictive covenant placed on the Property by W.D. Brooks, pursuant to an agreement between Mr. Brooks and the City of Austin, which restrictive covenant is recorded in Volume 890, Page 19, Records of Williamson County, Texas (the "Restrictive Covenant"), a copy of which is included in this package.

The Restrictive Covenant provides, in its paragraph number 1, that "in the event that the said property is not at any time in the future used for Small Engine Sales & Service, then the owner of the property will not object to filing of an application for the rezoning of the said property to "O" Office......". Our client is concerned that, in the event that there is some sort of casualty which causes significant damage or the destruction of the improvements on the Property, that the City could attempt to rezone the Property to Office, which would interfere with
the continued use of the Property as an automobile dealership. Accordingly, we hereby request that the City of Austin consider terminating the Restrictive Covenant.

Further, as the area is most likely more fully developed than it was at the time of the placement of the Restrictive Covenant on the Property, we feel that the conditions that caused Mr. Brooks and the City of Austin to place the Restrictive Covenant on the Property may no longer exist.

Please find the following materials in support of this request enclosed herein:

1. Application;
2. Tax Certificate;
3. Submittal Verification Form;
4. Acknowledgement Form;
5. Copy of Restrictive Covenant to be terminated;
6. Check in the amount of $495.00;

Thank you for your attention to this matter.

Sincerely yours,

HILL, WARD & HENDERSON, P.A.

M. Kristen Hyatt, Esq.

MKH/sgk
Enclosures