RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-84-346(RCT1) – Loyola Landing

ADDRESS: 5601 Durango Pass

AREA: 3.79 acres

Z.A.P. DATE: March 20, 2018

DISTRICT: 1

OWNERS/APPLICANT: Harold K. Kaemerle, Jr., Sharie Kaemerle, and Patrick T. Kaemerle; 3 S & D Interest (David Kalisz)

AGENT: A. Glasco Consulting (Alice Glasco)

ZONING: MF-3 and SF-3

SUMMARY STAFF RECOMMENDATION:
Staff recommends the restrictive covenant termination.

ZONING AND PLATTING COMMISSION RECOMMENDATION:
March 20, 2018: TO TERMINATE THE RESTRICTIVE COVENANT AS RECOMMENDED BY STAFF, ON CONSENT. (9-0-2) [J. Duncan- 1st, A. Aguirre- 2nd, Y. Flores, A. Tatkov- Absent]

ISSUES:
The proposed restrictive covenant termination (RCT) would eliminate requirements tied to a 1984 zoning case (City File #C14-84-346). Please refer to Exhibit A (Restrictive Covenant). Several other RCTs and one restrictive covenant amendment (RCA) are also being processed concurrently with this RCT request. Removing/modifying these restrictive covenants (RCs), would allow consolidation of the parcels for redevelopment. These are being processed under the following City File numbers: C14-75-042(RCT1), C14-75-042(RCT2), C14-76-083(RCA2), and C14-84-346(RCT2). Please note that C14-84-346(RCT2) is for a separate RC that was attached to the same 1984 zoning ordinance and applies to the same property. Using multiple RCs with a single zoning case is no longer standard City of Austin practice. Please refer to Exhibit B (RCT Map Exhibit).

A rezoning request is also being processed concurrently with this request; the request would rezone the tracts affected by these restrictive covenants to GR-MU and CS. (City File #C14-2008-0006).

By terminating the restrictive covenant (RC), the Applicant proposes removing the following requirements:

1. Lots 1-7 of Block A, lots 1-7 of Block B, and lots 1-28 of Block C of the Northeast Territory Subdivision, shall contain one duplex on each lot.

2. The street identified as “Durango Pass” on the Northeast Territory Subdivision, plat, C8-14-84-158.1(85) shall be completed prior to construction of the duplexes mentioned in condition 1 above.

3. Each of the lots mentioned in condition 1 above, (Lots 1-7 in Block A, Lots 1-7 in Block B, and Lots 11-28 in Block C) shall be sodded in its entirety only with St. Augustine grass; each of these lots shall be landscaped with two (2) trees and eight (8) shrubs.

The subdivision referenced above has expired, and the proposed redevelopment of this area is for multifamily housing, not duplexes. Durango Pass is not adjacent to the RC tract and is already constructed. All future development will be required to comply with current City Code, including subdivision and landscaping requirements. Please see Exhibit C (Applicant Correspondence).
**DEPARTMENT COMMENTS**

The 1984 rezoning case included 24.24 acres of land. The RC includes only 3.79 acres out of the 24.24 acres. The proposed restrictive covenant termination (RCT) would eliminate requirements tied to a 1984 zoning case and a subdivision (City Files C14-84-346 and C84.158.1(85)). The subdivision plat has expired.

The land affected by this RC is located at the terminus of Lazy Creek Drive, south of Purple Sage Drive. To the north is a residential neighborhood that is zoned SF-3. This neighborhood is primarily developed with duplex residences and LBJ High School. Immediately to the east is a small tributary to Walnut Creek that has 100-year floodplain and a 200’ wide creek buffer centered on the tributary. Any site development in this floodplain/buffer area would be extremely limited. East of the tributary is undeveloped land zoned SF-2-CO. Further east, across Millrace Drive, is more of the residential neighborhood, which is mostly zoned SF-2, with a few SF-3 properties as well. This area is developed with duplexes and single family residences. Southeast of the property are tracts that are under the same ownership as the subject property; these undeveloped tracts are the subject of the related cases referenced in the Issues Section. These are zoned SF-3, LO, and GR. To the west is undeveloped property zoned GR. Staff has received correspondence from LBJ Neighborhood Association supporting the rezoning, RCTs and RCA. *Please see Exhibit D (Neighborhood Correspondence).*

**STAFF RECOMMENDATION:**

Staff recommends the restrictive covenant amendment.

1. *The proposed zoning should promote consistent and orderly planning.*

The conditions of the 1984 are outdated and have been replaced by more appropriate and effective development regulations under current code. The existing restrictive covenants are a patchwork of outdated requirements that make cloud the property title and make regulatory application confusing. Moving forward with redevelopment of the property is significantly impacted by the existing RC.

2. *The proposed rezoning does not grant an unequal benefit to the landowner.*

Removal and/or modification of the restrictive covenant will make the property subject to current City codes and regulations, which is more consistent with other properties.

**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>SF-2, SF-3</td>
<td>Duplex, Single family, LBJ High School</td>
</tr>
<tr>
<td>South</td>
<td>GR, LO, SF-3</td>
<td>Undeveloped</td>
</tr>
<tr>
<td>East</td>
<td>SF-2-CO, SF-2, SF-3</td>
<td>Undeveloped, Duplex, Single family</td>
</tr>
<tr>
<td>West</td>
<td>GR</td>
<td>Undeveloped</td>
</tr>
</tbody>
</table>

**NEIGHBORHOOD ORGANIZATIONS:**

- Senate Hills Homeowners’ Association
- Austin Innercity Alliance
- Del Valle Community Coalition
- East MLK Combined Neighborhood Contact Team
- University Hills Neighborhood Association
- LBJ Neighborhood Association
- Homeless Neighborhood Association
- Claim Your Destiny Foundation
- Friends of Austin Neighborhoods
- Neighbors United for Progress
- East Austin Conservancy
- University Hills Neighborhood Plan Contact Team
- Austin Neighborhoods Council
- Friends of Northeast Austin
- SELTexas
- Black Improvement Association
CITY COUNCIL DATE/ACTION:
April 12, 2018:

ORDINANCE READINGS: 1st  2nd  3rd

CASE MANAGER: Heather Chaffin
e-mail: heather.chaffin@austintexas.gov

ORDINANCE NUMBER:

PHONE: 974-2122
Zoning Case No. C14-04-346

REstrictive CovenanT

THE STATE OF TEXAS
COUNTY OF TRAVIS

WHEREAS, Northeast Territory Joint Venture of Travis County, Texas, is the owner of the following described property, to-wit:

All that property in the Northeast Territory Subdivision, Lots 1-7 of Block A and Lots 1-7 of Block B and Lots 1-28 of Block C as described in City of Austin final subdivision plat number CB-84-158.1 (85). Field notes describing this property are attached as Exhibit "A".

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

NOW, THEREFORE, Owners for and in consideration of One and No/100 Dollars ($1.00) and other good and valuable consideration in hand to the undersigned paid by the City of Austin, the receipt of which is hereby acknowledged, does hereby agree with respect to said property described above, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on him, his successors and assigns, as follows, to-wit:

1. Lots 1-7 of Block A, Lots 1-7 of Block B, and Lots 1-28 of Block C of the Northeast Territory Subdivision, described above, shall contain one duplex on each lot.

2. The street identified as "Durango Pass" on the Northeast Territory Subdivision plat, described above, shall be completed prior to construction of the duplexes mentioned above in 1.

3. Each of the lots mentioned above in 1 (Lots 1-7 in Block A, Lots 1-7 in Block B, and Lots 1-28 in Block C) shall be sodded in its entirety only with St. Augustine grass; each of these lots shall be landscaped with two (2) trees and eight (8) shrubs.

4. If any person, persons, corporation or entity of any other character shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to...
prosecute proceedings at law, or in equity, against said person
or entity violating or attempting to violate such agreement or
covenant and to prevent said person or entity from violating or
attempting to violate such agreement or covenant.

5. If any part or provision of this agreement or covenant
herein contained 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.

6. The failure at any time to enforce this agreement by the
City of Austin, its successors and assigns, whether any
violations hereof are known or not, shall not constitute a waiver
or estoppel of the right to do so.

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

EXECUTED, this the 21st day of August, 1985.

Kim H. Kirkman

THE STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, a Notary Public in
and for said County and State, on this day personally appeared
Kim H. Kirkman, 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 21st day of

DAWNE COBEYARD
Notary Public in and for Travis
County, Texas

Typed or Printed Name of Notary
My commission expires: 2-18-86

10094 0938
ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF THE J. C. TANNEHILL LEAGUE NO. 29, TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF THAT SAME 24.24 ACRE TRACT OF LAND AS CONVEYED TO THE CITY NATIONAL BANK OF AUSTIN BY DEED RECORDED IN VOLUME 5478, PAGE 2212 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point in the Northeast line of the said 24.24 acre tract, being the Northeast corner of Lot 1, Block C of N & G Estates Section II, a subdivision in Travis County, Texas, as recorded in Plat Book 77, Page 31 of the Plat Records of Travis County, Texas, and being a point in the Southwest line of Lot 2, Block 8, LAS CIMAS Section One, a subdivision in Travis County, Texas, as recorded in Plat Book 65, Page 68 of the Plat Records of Travis County, Texas, for the Northwest corner thereof;

THENCE with the Northeast line of the said 24.24 acre tract, being the Southwest line of Las Cimas Section One, S 59° 39' E for a distance of 1,122.48 feet to an iron stake found at the Northeast corner of the said 24.24 acre tract, being the Southeast corner of Lot 4, Block 7 of Las Cimas Section One, and being a point in the Northwest line of Lot 5, Block 7, Las Cimas Section One for the Northeast corner thereof;

THENCE with the Southeast line of the said 24.24 acre tract, being a Northwest line of the said Las Cimas Section One, S 30° 06' W at a distance of 162.59 feet pass an iron stake found and continue on this line for a total distance of 457.71 feet to an iron stake found at the Southeast corner of the said 24.24 acre tract, being a point in the Northwest line of Lot 5, Block 1 of Las Cimas Section One and being a Northwest corner of a tract of land as conveyed to L. D. Turner by deed recorded in Volume 611, Page 253 of the Deed Records of Travis County, Texas, for the Southeast corner thereof;

THENCE with the Southwest line of the said 24.24 acre tract, being the Northwest line of the said L. D. Turner Tract, N 59° 56' W for a distance of 1,382.30 feet to a concrete monument found in the Southwest line of the said 24.24 acre tract, being the Southeast corner of the said Lot 1, Block C, for the Southwest corner thereof;

THENCE with the Northwest line of the herein described tract, being the Southwest line of the said Lot 1, Block C, the following courses:

N 32° 56' E for a distance of 77.30 feet to an iron stake found
N 42° 03' E for a distance of 148.67 feet to an iron stake found
N 42° 58' E for a distance of 123.21 feet to an iron stake found
N 34° 50' E for a distance of 121.67 feet to the PLACE OF BEGINNING and containing 14.265 acres of land, more or less.
January 11, 2018

Mr. Greg Guernsey, Director  
Planning and Zoning Department  
505 Barton Spring Road, Suite 500  
Austin, Texas 78704  

RE: Restrictive Covenant Termination - C14-84-346(RCT1)  

Dear Greg:  

I am representing 3S&D Interests (David Kalisz) as it relates to the termination of this 1984 restrictive covenant. My client has the subject property under contract with the intent of developing multifamily family housing.  

Background:  
Under zoning case number C14-84-346 (ordinance no. 870101-O), the area that was rezoned from SF-3 to MF-3 comprised 2.29 acres. However, the recorded restrictive covenant covered 24.24 acres. Two restrictive covenants were recorded — document 10094, page 0938 covers lots 1-7, of Block A, lots 1-7 of Block B, and lots 1-28 of Block C of the Northeast Territory Subdivision; while document 10094, page 0946 covers lots 8-20.  

Both restrictive covenants describe the lots as being found in final plat number C8-84.158.1(85), which was never recorded and therefore expired according to city records. My client intends to purchase ONLY 3.79 cares out of the 24.24 acres described in the recorded restrictive covenant.  

On February 12, 2015, a restrictive covenant for 10.49 acres, under case number C14-84-346(RCA1), was amended by the City Council to remove all restrictions called out in the document.  

The conditions listed in the original restrictive covenant are as follows:  

1. Lots 1-7 of Block A, lots 1-7 of Block B, and lots 1-28 of Block C of the Northeast Territory Subdivision, shall contain one duplex on each lot.
2. The street identified as “Durango Pass” on the Northeast Territory Subdivision, plat, C8-14-84-158.1(85) shall be completed prior to construction of the duplexes mentioned in condition 1 above.

3. Each of the lots mentioned in condition 1 above, (Lots 1-7 in Block A, Lots 1-7 in Block B, and Lots 11-28 in Block C) shall be sodded in its entirety only with St. Augustine grass; each of these lots shall be landscaped with two(2) trees and eight (8) shrubs.

Justification Restrictive Covenant Termination

- The proposed use is multifamily housing, not duplexes.

- All future development will be required to comply with applicable development regulations and standards, which include subdivision and landscaping requirements.

Please let me know if you have any questions or need additional information.

Sincerely,

Alice Glasco, President
AG Consulting

Cc: David Kalisz
    Heather Chaffin, Zoning Planner

Attachments
LBJ Neighborhood Association

February 10, 2018

Dear Mayor Adler, Mayor Pro-Tem Tovo, Council Members and
Zoning and Platting Commission Members

Re: Loyola Landing

On Thursday, February 8th, 2018, Ms. Glasco attended the LBJ Neighborhood
Association meeting to give a presentation about a rezoning request and five restrictive
covenant termination applications for 6651 Ed Bluestein Blvd. and 5601 Durango Pass.
The LBJ Neighborhood Association supports the applicant’s zoning change request and
restrictive covenant terminations as follows:

Rezoning Case no. C14-2018-0006:

Tract 1: from GR/LO/MF-3/SF-3 to GR-MU

Tract 2: from GR to CS-MU

Lazy Creek Road Extension:

We understand that the City’s transportation staff is requiring the extension of Lazy
Creek Drive as a condition of rezoning. Since we, as residents, cannot determine what
the pros and cons are of extending Lazy Creek Drive to Ed Bluestein Blvd. at this time,
the LBJ Neighborhood Association would like to request that the consideration of
whether to extend Lazy Creek Drive be deferred to the next stage of development when
the developer will have a site plan and a Traffic Impact Analysis submitted to the city.

We are concerned that extending Lazy Creek Drive would encourage drivers from US
Highway 290 East to cut through our neighborhoods. Therefore, waiting until the site
development stage to look at whether the extension of Lazy Creek Drive makes sense
will help the residents of Crystal Brook, Las Cimas, and Northridge determine what the
implications are of extending this road to Ed Bluestein Blvd.
Mayor Adler, Mayor Pro-Tem Tovo, Council Members and Zoning and Platting Commission Members

Re: Loyola Landing
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Termination of Restrictive Covenants Cases:
1. C14-84-346 (RCT1)
2. C14-84-346 (RCT2)
3. C14-76-083 (RCA2)
4. C14-75-042 (RCT1)
5. C14-75-042 (RCT2)

We support the termination of the five restrictive covenants because we believe any proposed development should be required to comply with current city regulations. Please feel free to contact me at 512-426-1622 should you have any questions.

Sincerely,

2/10/2018

Jack Nottingham
Jack Nottingham
V/P

Jack J. Nottingham, Vice President
LBJ Neighborhood Association