

AN ORDINANCE 2006-06-15-0719

**REMOVING THE CITY OF SAN ANTONIO AS A PARTY TO THE
DECLARATION OF PROTECTIVE COVENANTS AFFECTING
PROPERTY AT 11711 IH 35 NORTH.**

* * * * *

WHEREAS, the owner of property located at 11711 IH 35 North and described in **Exhibit A** attached hereto and which property is subject to the Declaration of Protective Covenants dated October 7, 1994, restricting certain uses of the property and naming the City of San Antonio as the party with enforcement authority; and

WHEREAS, the City of San Antonio took no action accepting the enforcement authority of the Declaration of Protective Covenants; and

WHEREAS, the City of San Antonio wishes to formally disclaim any role or interest regarding the Declaration of Protective Covenants regarding the property located at 11711 IH 35 North;
NOW THEREFORE;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City of San Antonio hereby rejects any role or interest in the Declaration of Protective Covenants for property located at 11711 IH 35 North. A copy of the Declaration of Protective Covenants is attached hereto as **Exhibit B** and further recorded at Volume 06278, Pages 01742-01744 of the Official Records of Real Property of Bexar County, Texas.

SECTION 2. The City of San Antonio regards the Declaration of Protective Covenants as void.

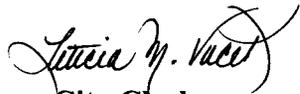
SECTION 3. This ordinance shall take effect on the 25th day of June 2006.

PASSED AND APPROVED this 15th day of June, 2006.



M A Y O R

PHIL HARBERGER

ATTEST: 
City Clerk

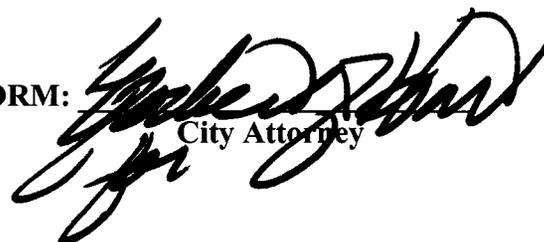
APPROVED AS TO FORM: 
City Attorney

EXHIBIT A

Being 22.330 acres of land lying in the Joseph Scott Survey No. 323 Abstract No. 676 and being Lot 18, N.C.B. 15724, of the Kmart Super Center Store No. 4941 (Kmart subdivision) as recorded in Volume 9528, Page 61 of the Deed and Plat Records of Bexar County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron rod set in the northwest right-of-way line of Interstate Highway 35 (300 foot wide right-of-way) at the southeast corner of the aforementioned Kmart subdivision, from which a Texas Department of Transportation right-of-way monument at the southerly cutback corner of Interstate Highway 35 and Crowpoint (formerly Bludau Bishop Road) bears N57°13'29"W, a distance of 506.18 feet;

THENCE with the northwest right-of-way line of Interstate Highway 35 and a southeasterly line of the aforementioned Kmart subdivision, S57°13'29"W a distance of 607.48 feet to a 1/2" iron rod set in the northeasterly line of the remaining portion of Lot 2, N.C.B. 15724, Gas and Eat Subdivision, as recorded in Volume 7500, Page 161 of the Deed and Plat Records of Bexar County, Texas;

THENCE, with a southwesterly line of the aforementioned Kmart subdivision and the northeasterly line of the aforementioned remaining portion of Lot 2 and the remaining portion of a 14.67 acre tract as recorded in Volume 4171, Pages 410 of the Deed and Plat Records of Bexar County, Texas, N33°42'31"W a distance of 453.42 feet to a 1/2" iron rod set at the north corner of said remaining portion of a 14.67 acre tract;

THENCE with a southeasterly line of the aforementioned Kmart subdivision and the northwesterly line of the aforementioned remaining portion of a 14.67 acre tract, S66°59'54"W a distance of 451.84 feet to a 1/2" iron rod set in the northeast right-of-way line of O'Connor Road;

THENCE along the northeast right-of-way line of O'Connor Road and a southwest of the aforementioned Kmart subdivision, N33°41'06"W a distance of 437.54 feet to a 1/2" iron rod set at the point of curvature of a non-tangent curve to the left having a central angle of 06° 36'29", a radius of 833.29 feet and a chord which bears N36°59'21"W a distance of 96.05 feet;

SuperKmart Store #4941
San Antonio, TX
12/12/94

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THENCE continuing with the northeast right-of-way line of O'Connor Road and the southwest line of the aforementioned Kmart subdivision and along said curve to the left an arc distance of 96.10 feet to a 1/2" iron rod set;

THENCE continuing with the northeast line of O'Connor Road and the southwest line of the aforementioned Kmart subdivision, N37°19'56"W, a distance of 83.66 feet to a 1/2" iron rod set at the most westerly corner of said Kmart subdivision and the most southerly corner of a 4.615 acre tract as described in Volume 1400, Page 283 of the Deed and Plat Records of Bexar County, Texas;

THENCE with the northwest line of the aforementioned Kmart subdivision and the southeast line of the aforementioned 4.615 acre tract and the remaining portion of an 11.013 acre tract as described in Volume 4223, Page 575 of the Deed and Plat Records of Bexar County, Texas, N57°23'42"E, at a distance of 722.78 feet past a 1/2" iron rod found at the south corner of Lot 18, Block 5 of Valley Forge Unit 6 subdivision as recorded in Volume 7800, Page 68 of the Deed and Plat Records of Bexar County, Texas, in all a total distance of 1037.78 feet to a 1/2" iron rod found at the north corner of said Kmart subdivision and the east corner of Lot 19, Block 6 of said Valley Forge Unit 6 subdivision;

THENCE with the northeast line of the aforementioned Kmart subdivision and with the southwest line of Lot 1, N.C.B. 15724, Bludau Bishop Subdivision, as recorded in Volume 7300, Page 172 of the Deed and Plat Records of Bexar County, Texas, and a 4.714 acre tract as described in Volume 5424, Page 553 of the Deed and Plat Records of Bexar County, Texas, S34°55'46"E, a distance of 1144.47 feet to the PLACE OF BEGINNING.

VOL 6413 PAGO 398

STATE OF TEXAS §
COUNTY OF BEXAR §

34- 0212601

DECLARATION OF PROTECTIVE COVENANTS

WHEREAS, SCC No. 4941, Inc., a Texas corporation, is the owner of the real property more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property is to be used for the construction and operation of a Super K-Mart Center or similar general retail and grocery store (the "Retail Store"); and

WHEREAS, the Retail Store to be constructed on the Property shall include an outdoor garden center, automobile service area, and certain other outdoor storage, service and sale areas for goods such as patio furniture, plants, lawn and garden supplies, automobile supplies and similar items which require I-1 zoning under the zoning provisions of the Unified Development Code for the City of San Antonio; and

WHEREAS, the City Council of San Antonio has approved I-1 zoning use for that portion of the Property more particularly described on Exhibit "B" attached hereto and incorporated herein by reference, and as part of the zoning process SCC No. 4941, Inc., as owner, agreed to impose certain restrictions on the I-1 zoned portion of the Property restricting the use of the I-1 zoned portion of the Property to uses consistent with and part of the operation of the Retail Store, such approved uses including, but not being limited to, the operation of an outdoor garden center for sales and storage, an automobile service area, and other general retail type businesses and uses associated with the Retail Store on the Property.

NOW, THEREFORE, for TEN and NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged and confessed, the undersigned, as owner of the Property, hereby imposes the following restrictions on the Property:

1. Permitted uses of the I-1 zoned portion of the Property shall include, but not be limited to, the operation of the Retail Store, outdoor garden center, automobile service area, outdoor storage, service and sale areas for goods such as patio furniture, plants, lawn and garden supplies, automobile supplies and other related sales and services, and all uses permitted in B-3 zoning.
2. The I-1 zoned portion of the land shall not be used for any use allowed in I-1 zoning and not allowed in B-3 zoning which I-1 use is not a part of the business of the Retail Store. The I-1 zoned land shall not be used for a purpose requiring I-1 rather than B-3 zoning other than the uses associated with the Retail Store on the Property without first obtaining the prior approval of the City of San Antonio to such additional I-1 uses, which approval may require that an application for a zoning change request be filed and approved.
3. The covenants and restrictions contained in this Declaration shall run with the I-1 zoned portion of the Property and shall inure to the benefit of and be enforceable by the City of San Antonio. The covenants and restrictions may be amended from time to time by written agreement of the then owner of the I-1 zoned portion of the Property or portions thereof and the City

Book D Vol 06278 Page 01744

Filed for Record in:
BEXAR COUNTY, TX
ROBERT D. GREEN/COUNTY CLERK

On Dec 02 1994

At 4:05pm

Receipt #: 91933
Recording: 5.00
Doc/Agat: 6.00

Doc/Num: 94-0212601

Deputy - Betty Sepulveda

Any provision herein which restricts the sale, rental, or use of the described real property because of race is invalid and unenforceable under Federal Law.
STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number 94-0212601 on the date and at the time stipulated hereon by me and was duly recorded in the Official Public Record of Real Property of Bexar County, Texas on:

DEC 05 1994



Robert D. Green
COUNTY CLERK BEXAR CO.

**CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley
FROM: Florencio Peña, Director Development Services
SUBJECT: Declaration of Protective Covenants for 11711 IH 35 North
DATE: June 15, 2006

SUMMARY AND RECOMMENDATION

The property owner has requested amendments to the Declaration of Protective Covenants affecting property at 11711 IH 35 North and recommended by Councilman Chip Haass. As an alternative, staff recommends that the City remove itself as one of the parties to the property deed restrictions. This action should be taken by ordinance and will have the necessary effect of allowing the property owner to utilize the building as proposed without the restrictions, unless otherwise enforced by other parties to the Protective Covenants.

BACKGROUND INFORMATION

The K-Mart property at the Northwest corner of the IH-35/0'Connor intersection (11711 Interstate Highway 35 North) has been vacant for approximately three years. The current property owner, John Rockey, is asking for City Council's consent to a change in the use restrictions on the property.

In 1994, to accommodate a K-Mart store with outdoor storage and sales areas and an automobile service center, the property was zoned I-1 General Industrial. At that time, protective covenants restricting the use of the property and naming the City of San Antonio as the sole enforcer were also put in place. However, the City is not a signatory on these documents. Those protective covenants limit the use of the property to the operation of a K-Mart type retail store. The only industrial uses permitted under the protective covenants are those industrial uses that are part of the store's operation (like the auto service area) and outdoor storage of the store's merchandise.

The current owner of the property intends to move forward with a planned redevelopment of the site for a business park with a range of allowable retail and light industrial tenants. In order to proceed with this development it is in the best interest of the property owner to amend or remove the protective covenants.

The Governance Council Committee heard this item on June 7, 2006 and recommended full City Council consideration on June 15, 2006.

POLICY ANALYSIS

Protective covenants and/or deed restrictions associated with zoning cases are private agreements that restrict, or limit, the use or activities that may take place on property in a subdivision and are not enforceable by the City.

The Council may consider these restrictions in an action, but these documents are not recognized in the zoning ordinances adopted with an approved rezoning of property. Formally accepting or recognizing deed restrictions in conjunction with a zoning action is not recommended. The City is not a signatory on these documents. Formal recognition of these documents obligates the City to perform, potentially rendering the City liable for the enforcement of land use activity that may contradict the provisions of the City's Unified Development Code.

Entering into such agreements essentially equates to contract zoning, which has been established through the courts as an illegal practice for municipalities and counties to pursue. Therefore, staff is recommending that City Council take formal action to reject the restrictive covenants.

FISCAL IMPACT

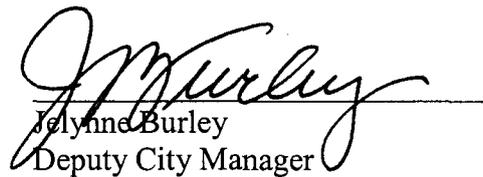
There is no immediate fiscal impact.

COORDINATION

This item has been coordinated with the City Attorney's Office.



Florencio Peña, Director
Development Services Department



Jolynne Burley
Deputy City Manager

Approved for Council Consideration:



Sheryl Sculley
City Manager

**CITY OF SAN ANTONIO
OFFICE OF THE CITY COUNCIL
INTERDEPARTMENTAL CORRESPONDENCE SHEET**

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
2006 MAY 26 A 10:33

TO: Mayor and Council

FROM: Councilman Chip Haass, District 10

COPIES TO: Sheryl Sculley, City Manager; Jelynn Le Blanc Burley, Deputy City Manager; Pat DiGiovanni, Deputy City Manager; Florencio Pena, Director of Development Services; Gayle McDaniel, Assistant to the City Council

SUBJECT: Request for Consent to a Proposed Amendment to Declaration of Protective Covenants relating to a certain tract of real property located at the corner of IH-35 and O'Connor Road in District 10

DATE: May 23, 2006

The K-Mart property at the Northwest corner of the IH-35 / O'Connor intersection (11711 Interstate Highway 35 North) has been vacant for approximately three years. As you know, there are certain problems that gravitate toward vacant properties in an urban environment. The owners of the K-Mart property have had an ongoing problem with graffiti and vandalism since the store's closing. In addition, I have received many complaints about unauthorized tractor-trailer trucks parking on the property, go-kart races being held there, and a problem with litter and trash being dumped on the property. The property owners have not been successful in obtaining a retail tenant or user for the property in about 3 years. The current property owner, John Rockey, is asking for City Council's consent to a change in the use restrictions on the property, and I am in favor of the Council giving such consent.

In 1994, to accommodate a K-Mart store with outdoor storage and sales areas and an automobile service center, the property was zoned I-1 (general industrial). At that time, protective covenants restricting the use of the property and benefiting the City of San Antonio were also put in place. Those protective covenants limit the use of the property to the operation of a K-Mart type retail store. The only industrial uses permitted under the protective covenants are those industrial uses that are part of the store's operation (like the auto service area) and outdoor storage of the store's merchandise.

The current owner of the property intends to move forward with a planned redevelopment of the site, which would turn the old K-Mart building into an attractive business park with a range of allowable retail and general industrial tenants comparable to the new developments by the Trammell Crow Company a short distance away at Wurzbach Parkway and Crosswinds Way. The redeveloped property is anticipated to include a mixed use of office, retail, industrial and showroom facilities, as well as some space for

the storage of merchandise and inventory of the businesses operating on the property in complete compliance with the Property's current zoning. One anticipated tenant is a moving and storage company whose primary business activity is servicing the moving requirements of active military personnel. The new uses would require less parking area, so the owner plans to construct additional flex office / warehouse space on the property. A copy of the proposed Site Development Plan for the property is attached as Exhibit A for your review.

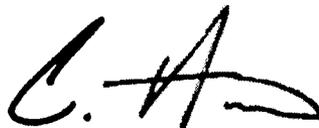
The purpose of this memorandum is to seek City Council approval to amend the Protective Covenants affecting the property, so as to allow the normal general I-1 industrial-type uses typical of this type of new project including, but not limited to:

1. Indoor warehousing or storage of merchandise and inventory of any business operating on the property.
2. Indoor warehousing or storage of household-type goods, such as, but not limited to, household furniture. An example (but not by way of limitation) of such storage would be a moving-and-storage business storing a customer's household items that were removed from the customer's residence, until such time as those items can be delivered to that customer's new residence.

The proposed First Amendment to Declaration of Protective Covenants is attached as Exhibit B. I know that the residents of District 10 will be in favor of this redevelopment of the property, and I intend to support John J. Rockey's request for the modification of the protective covenants.

This Amendment leaves in place the existing 150-foot buffer in the rear of the Property which does not allow any I-1 uses and avoids the time consuming rezoning process which will likely cause the proposed lessee to seek an alternate site to fulfill his contract with the Federal government to store military personnel's household goods. Much of the surrounding land has industrial zoning and the owner could seek an unrestricted industrial zoning thereby removing the current restrictions entirely.

Your favorable consideration is appreciated. Please contact me if you have any questions or concerns.



Chip Haass
Council Member, District 10

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2006 MAY 26 A 10:33

Phil Hardberger
Mayor

Patti Radle
Council Member, District 5

Roger Flores
Council Member, District 1

Sheila McNeil for discussion

Sheila McNeil
Council Member, District 2

Roland Gutierrez com

Roland Gutierrez
Council Member, District 3

Richard Perez

Richard Perez
Council Member, District 4

Delicia Herrera
Council Member, District 6

Elena Guajardo
Council Member, District 7

Art Hall

Council Member, District 8

Substitute for Kevin A. Wolff

Kevin Wolff
Council Member, District 9