

11-16-17

ORDINANCE NO. 30723

An ordinance changing the zoning classification on the following property:

BEING a tract of land in City Block D/8830; fronting approximately 256.01 feet on the north line of Rylie Crest Road west of Seagoville Road; and containing approximately 1.77 acres,

from an R-10(A) Single Family District to a CR Community Retail District; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the Charter of the City of Dallas, the state law, and the ordinances of the City of Dallas, have given the required notices and have held the required public hearings regarding the rezoning of the property described in this ordinance; and

WHEREAS, the city council finds that it is in the public interest to change the zoning classification; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the zoning classification is changed from an R-10(A) Single Family District to a CR Community Retail District on the property described in Exhibit A, which is attached to and made a part of this ordinance (“the Property”).

SECTION 2. That, pursuant to Section 51A-4.701 of Chapter 51A of the Dallas City Code, as amended, the property description in Section 1 of this ordinance shall be construed as including the area to the centerline of all adjacent streets and alleys.

SECTION 3. That the building official shall not issue a building permit or a certificate of occupancy for a use on the Property until there has been full compliance with the Dallas Development Code, the construction codes, and all other ordinances, rules, and regulations of the City of Dallas.

SECTION 4. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 5. That the zoning ordinances of the City of Dallas shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 6. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 7. That this ordinance shall take effect immediately from and after its passage and publication, in accordance with the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

LARRY E. GASTO, City Attorney

By 
Assistant City Attorney

DEC 13 2017

Passed _____

EXHIBIT A

Being a 1.770 acre tract of land situated in the William Latham Survey, Abstract No. 838, Dallas, Dallas County, Texas and being all of a called 1.373 acre tract described in a Deed from Carla Mae Black Grady to Matthew M. Smith and Barbara Good Smith in Volume 2005140, Page 06307 of the Official Public Records of Dallas County, Texas and also being the remainder of Tracts One and Two described in a Deed from Elizabeth Ann Adams to Matthew Smith under Clerk's Document Number 201600349806 of said Official Public Records of Dallas County, Texas, said 1.770 acre tract of land being more completely described as follows:

Beginning at a 4" x 4" concrete monument found (N:6942686.234, E:2551400.678) North American Datum 1983 (NAD 83), Texas State Plane, North Central FIPS 4202, Feet, at the Southwest corner of said 1.373 acre tract on the North right of way of Rylie Crest Road (variable width right of way), said monument also being the Southeast corner of a tract described in a Deed to Soon S. Song under clerk's Document Number 200900345323 of said Official Public Records of Dallas County, Texas;

Thence North 01 degrees 10 minutes 14 seconds West, a distance of 260.73 feet with the West boundary line of said 1.373 acre tract and East boundary line of said Soon S. Song tract to a point for corner at the Northwest corner of said 1.373 acre tract and also being the Southwest corner of Lot 1, Block D/8830 of Matt's Green Acres as shown by plat of record in Volume 2004039, Page 164 of the Map Records of Dallas County, Texas;

Thence North 88 degrees 26 minutes 32 seconds East, a distance of 208.44 feet with the North boundary line of said 1.373 acre tract and with South boundary line of said Lot 1 to a 1" iron rod found at the Northeast corner of said 1.373 acre tract, same being the Southeast corner of said Lot 1 and being on the West boundary line of said Second tract from Elizabeth Ann Adams;

Thence North 00 degrees 09 minutes 19 seconds West, a distance of 185.09 feet with the East boundary line of said Matt's Green Acres and West boundary line of said Second tract to a ½" iron rod found at the Southeast corner of a called 0.1315 acre tract described in a Deed to the City of Dallas under clerk's Document Number 201100223374 of said Official Public Records of Dallas County, Texas and also being the Southwest corners of a called 0.0159 acre tract described in a Deed to the City of Dallas under clerk's Document Number 201600317514 of said Official Public Records of Dallas County, Texas;

Thence South 45 degrees 03 minutes 50 seconds East, a distance of 31.21 feet to a ½" iron rod found on the South boundary line of 0.0159 acre tract and with the South boundary line of a called 0.1374 acre tract described in a Deed to the City of Dallas under clerk's Document Number 201200111224 of said Official Public Records of Dallas County, Texas;

Thence North 89 degrees 50 minutes 32 seconds East, a distance of 34.86 feet with the South boundary line of said 0.1374 acre tract to a ½" iron rod found at the Southeast corner of said 0.1374 acre tract on the East boundary line of said Elizabeth Ann Adams First tract and also being on the West boundary line of Nicholas Seagoville Addition as shown in Volume 2004079, Page 113 of the Map Records of Dallas County, Texas;

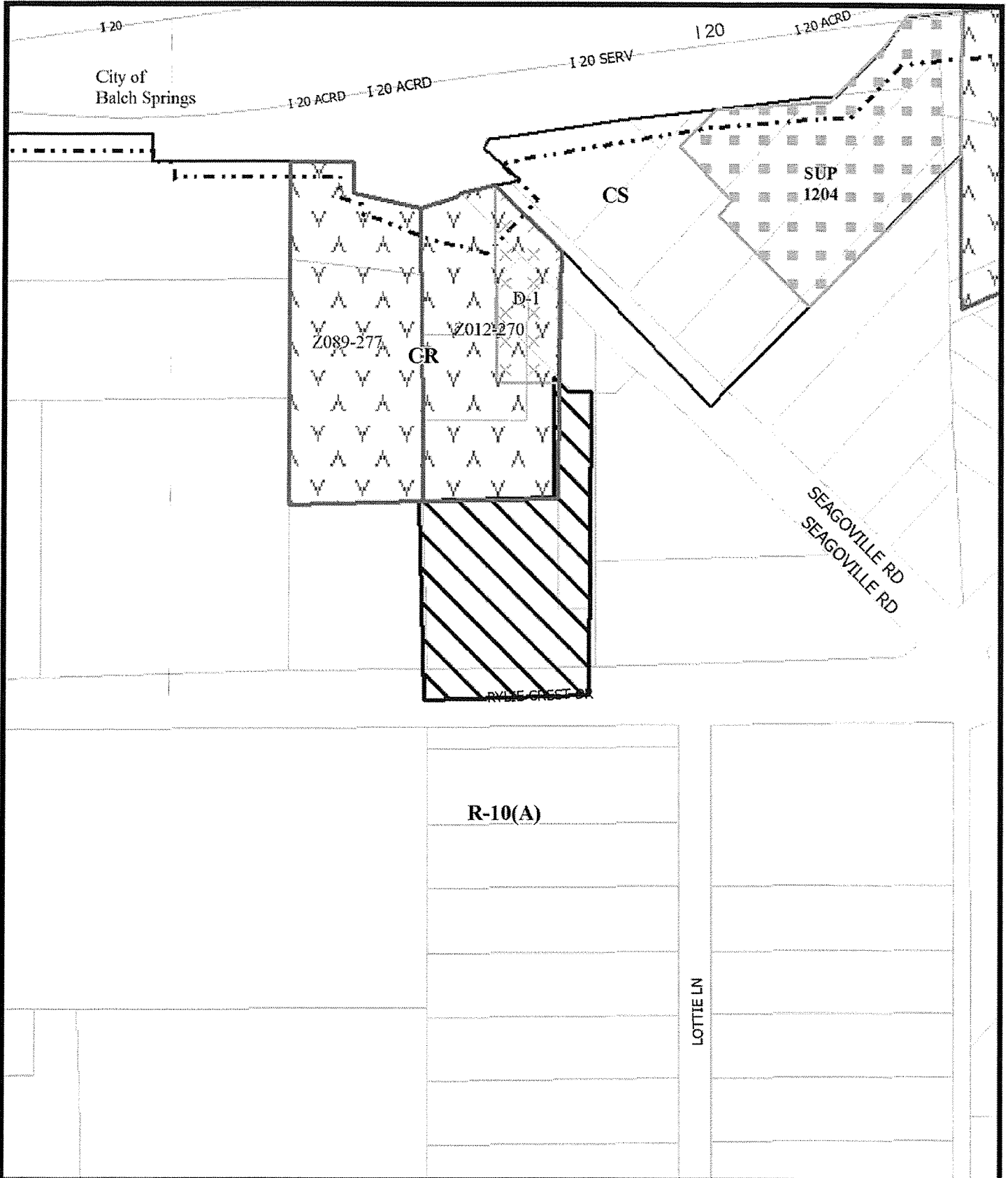
30723

Thence South 00 degrees 29 minutes 02 seconds West, a distance of 422.85 feet with said East boundary of First tract and with the West boundary line of said Nicholas Seagoville Addition to a 1/2" iron rod set with red plastic cap stamped "KLK #4687" at the Southeast corner of said 1.373 acre tract on the North right of way of Rylie Crest Road;

Thence South 88 degrees 30 minutes 41 seconds West, a distance of 256.01 feet with the South boundary line of said 1.373 acre tract and said North right of way of Rylie Crest Road to the place of beginning, containing 1.770 acres of land.

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1:2,400

ZONING MAP

Case no: Z167-375
 Date: 9/22/2017

COUNCIL CHAMBER

December 13, 2017

WHEREAS, the deed restrictions in the attached instrument have been volunteered in connection with property located on the north line of Rylie Crest Drive, west of Seagoville Road which is the subject of Zoning Case No. Z167-375(SM); and

WHEREAS, the City Council desires to accept the deed restrictions in the attached instrument; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the deed restrictions in the attached instrument are accepted by the City Council of the City of Dallas to be used in conjunction with the development of property that is the subject of Zoning Case No. Z167-375(SM).

Section 2. That these deed restrictions must be filed in the Deed Records of Dallas County, Texas.

Section 3. That this resolution shall take effect immediately from and after its passage in accordance with the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By



Assistant City Attorney

 APPROVED _____
 HEAD OF DEPARTMENT

 APPROVED _____
 DIRECTOR OF FINANCE

 APPROVED _____
 CITY MANAGER

DEED RESTRICTIONS

THE STATE OF TEXAS)
)
 COUNTY OF DALLAS) KNOW ALL PERSONS BY THESE PRESENTS:

I.

The undersigned, Drake Capital Income Fund, LP, a Texas Limited Partnership ("the Owner"), is the owner of the following described property ("the Property"), being in particular a **1.770 acre tract of land** situated in the William Latham Survey, Abstract No. 838, City Block D/8830, Dallas, Dallas County, Texas and being all of a called 1.373 acre tract described in a Deed from Carla Mae Black Grady to Matthew M. Smith and Barbara Good Smith in Volume 2005140, Page 06307 of the Official Public Records of Dallas County, Texas and also being the remainder of Tracts One and Two described in a Deed from Elizabeth Ann Adams to Matthew Smith under Clerk's Document Number 201600349806 of said Official Public Records of Dallas County, Texas, said 1.770 acre tract of land being more completely described as follows:

See Exhibit A.

II.

The Owner does hereby impress all of the Property with the following deed restrictions ("restrictions"), to wit:

- (1) The following uses are prohibited on the Property:
- Animal shelter or clinic without outside runs.
 - Auto service center.
 - Car wash.
 - Cemetery or mausoleum.
 - Commercial amusement (outside).
 - Commercial parking lot or garage.
 - Crop production.
 - Mini-warehouse.
 - Mortuary, funeral home, or commercial wedding chapel.
 - Motor vehicle fueling station.
 - Pawn shop.
 - Recycling buy-back center.
 - Restaurant with drive-in or drive through service.
 - Swap or buy shop.
- (2) Motor vehicle access to the Property is prohibited from Rylie Crest Road.

- (3) Pavement may not be installed within the 100 foot drainage easement along Rylie Crest Road.
- (4) A fence must be installed to screen the Property from Rylie Crest Road and be located a minimum of 50 feet from Rylie Crest Road.
- (5) Any permitted use on the Property may only operate between 7:00 a.m. and 7:00 p.m., Monday through Saturday, and between 12:00 p.m. (noon) and 7:00 p.m. on Sunday.

III.

These restrictions shall continue in full force and effect for a period of 20 years from the date of execution, and shall automatically be extended for additional periods of 10 years unless amended or terminated in the manner specified in this document.

IV.

These restrictions may be amended or terminated as to any portion of the Property, upon application to the City of Dallas by the current owner of that portion of the Property, without the concurrence of the owners of the remaining portion of the Property. These restrictions may be amended or terminated only after a public hearing before the City Plan Commission and a public hearing before and approval by the City Council of the City. Notice of the public hearings must be given as would be required by law for a zoning change on the Property. The amending or terminating instrument must be approved as to form by the city attorney. If the City Council approves an amendment or termination of these restrictions, the Owner must then file the amending or terminating instrument in the Deed Records of the county or counties where the Property is located at his or her sole cost and expense before the amendment or termination becomes effective.

V.

These restrictions are not intended to restrict the right of the City Council of the City to exercise its legislative duties and powers insofar as zoning of the Property is concerned.

VI.

The Owner agrees that these restrictions inure to the benefit of the City. The Owner hereby grants the City the right to enforce these restrictions by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against the person violating or attempting to violate these restrictions, either to prevent the violation or to require its correction. If the City substantially prevails in a legal proceeding to enforce these restrictions, the Owner agrees that the City shall be entitled to recover damages, reasonable attorney's fees, and court costs. For further remedy, the Owner agrees that the City may withhold any certificate of occupancy or final inspection necessary for the lawful use of the Property until these restrictions are complied with. The right of the City to enforce these restrictions shall not be waived, expressly or otherwise.

VII.

The Owner agrees to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with the provisions of this document.

VIII.

The provisions of this document are hereby declared covenants running with the land and are fully binding on all successors, heirs, and assigns of the Owner who acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part thereof, thereby agrees and covenants to abide by and fully perform the provisions of this document.

IX.

Unless stated otherwise in this document, the definitions and provisions of Chapter 51A of the Dallas City Code, as amended, apply and are incorporated into this document as if recited in this document.

X.

The Owner understands and agrees that this document shall be governed by the laws of the State of Texas.

XI.

The Owner certifies and represents that there are no mortgages or liens, other than liens for ad valorem taxes, against the Property if there are no signatures of mortgagees or lienholders subscribed below.

XII.

The invalidation of any provision in this document by any court shall in no way affect any other provision, which shall remain in full force and effect, and to this end the provisions are declared to be severable.

EXECUTED this the 20 day of November, 2017.

Drake Capital Income Fund, LP by
Owner Drake Capital Income Fund GP, LLC
By: [Signature]
Printed Name: matthew marshall
Title: member

N/A
Owner
By: _____
Printed Name: _____
Title: _____

CONSENT AND CONCURRENCE OF
LIENHOLDER OR MORTGAGEE

Michael Hede Banco Corp South
Property Lienholder or Mortgagee
By: [Signature]
Printed Name: Michael Henderson
Title: Division President

APPROVED AS TO FORM:
LARRY E. CASTO, City Attorney

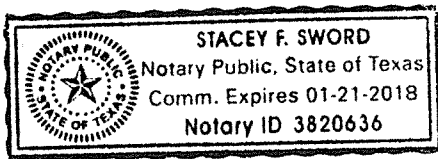
By: [Signature]
Assistant City Attorney

ACKNOWLEDGMENT PAGE

STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on November 20, 2017 (date of acknowledgment) by MATTHEW K. MARSHALL, as Member of Drake Capital Income Fund, LP, a Texas limited partnership, by Drake Capital Income Fund GP, LLC, on behalf of said limited partnership.



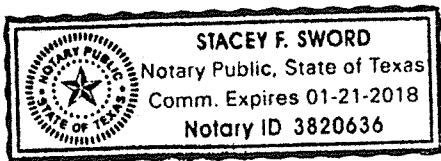
Stacey F. Sword Notary Public
Stacey F. Sword

(Notary stamp here)

STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on November 27, 2017 (date of acknowledgment) by MICHAEL HENDERSON, as Division President of Bancorp South, Property Lienholder or Mortgagee, on behalf of said Property Lienholder or Mortgagee.



Stacey F. Sword Notary Public

(Notary stamp here)

EXHIBIT A

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Thence North 01 degrees 10 minutes 14 seconds West, a distance of 260.73 feet with the West boundary line of said 1.373 acre tract and East boundary line of said Soon S. Song tract to a point for corner at the Northwest corner of said 1.373 acre tract and also being the Southwest corner of Lot 1, Block D/8830 of Matt's Green Acres as shown by plat of record in Volume 2004039, Page 164 of the Map Records of Dallas County, Texas;

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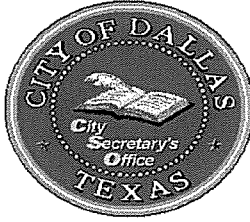
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Thence South 88 degrees 30 minutes 41 seconds West, a distance of 256.01 feet with the South boundary line of said 1.373 acre tract and said North right of way of Rylie Crest Road to the place of beginning, containing 1.770 acres of land.



PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL DEC 13 2017

ORDINANCE NUMBER 30723

DATE PUBLISHED DEC 16 2017

ATTESTED BY: