



City of Colleyville City Council Agenda

City Hall
100 Main Street
Colleyville, Texas 76034
817.503.1000
www.colleyville.com

Tuesday, November 20, 2018

WORKSESSION
5:30 PM
EXECUTIVE CONFERENCE ROOM - THIRD FLOOR
CALL TO ORDER

- WS-1** Presentation and discussion of City Plaza - 95% design phase
- WS-2** Discussion of the City Plaza Traffic Pattern Design
- WS-3** Update on the Federal Communications Commission ("FCC") Declaratory Ruling and Third Report and Order, adopted September 26, 2018, titled FCC-18-133A.1-Network Node FCC Order
- WS-4** Discussion of the November 20, 2018, City Council regular agenda items
- 1. EXECUTIVE SESSION - In accordance with Texas Government Code, Chapter 551, Subchapter D**
- Section 551.071 - Legal - Consultation with attorney on legal issues raised by items on the agenda
- Section 551.071 - Legal - Consultation with attorney regarding contemplated and/or pending litigation, including:
- Glade Road eminent domain cases for Parcels 150 and 159
- Section 551.072 - Real Estate - Deliberate the purchase, exchange, lease, or value of real property for City facilities, including:
- Glade Road Project Phases 1B and 2
 - Acquisition of real property along SH26
- Section 551.074 – Personnel – Deliberate the appointment, employment, evaluations, and duties of the Fire Chief
- Section 551.087 – Economic Development - Discuss or deliberate regarding commercial or financial information that the City has received from business prospects that the City seeks to have locate, stay, or expand in the City and with which the City is conducting economic development negotiations; deliberate the offer of a financial or other incentive to a business prospect

**REGULAR MEETING
7:30 P.M.
CITY COUNCIL CHAMMBERS**

INVOCATION: Alvaro Matehuala, Colleyville Prayer Room

PLEDGE OF ALLEGIANCE: City Attorney Whitt Wyatt

2. EXECUTIVE SESSION READING AND PUBLIC HEARING: CONSIDER AND TAKE ANY ACTION(S) NECESSARY RELATIVE TO ITEMS DISCUSSED IN EXECUTIVE SESSION - RESOLUTION R-18-4325

3. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

Announcements of civic and charitable events

Presentation of calendar events and updates

Announcements of awards and recognition

Expression of appreciation to Colleyville City Council - Peace Together Walk
Organizer Howard Rosenthal

In recognition of the Featured Business of the Month - Westlake Ace
Hardware, 4701 Colleyville Boulevard, Suite 100 - Mayor Richard Newton
and Assistant City Manager Mark Wood

4. CONSENT: READING AND PUBLIC HEARING- RESOLUTION R-18-4326

4a Approval of the minutes of the regular City Council meeting of
November 5, 2018

4b Approval of a professional services agreement with Dunaway
Associates, L.P., in an amount not to exceed \$144,508 for the design
of the Bransford Road Elevated Storage Tank Site Rehabilitation and
Overland Trail Ground Storage Tank Site Demolition Project, and
authorizing the City Manager to execute the agreement

5. ITEMS NOT FOR CITY COUNCIL ACTION

5a Monthly Financial Report - October 30, 2018

6. ORDINANCE(S): SECOND READING AND PUBLIC HEARING**6a Ordinance O-18-2065**

Consideration of a zoning change from R-40 Single Family Residential district to PUD-C Planned Unit Development – Commercial district on Tract 1, Abstract 1154, in the R H McEwing Survey and Tract 1G, Abstract A1182, in the Less Homesite Survey, located at 8060 Precinct Line Road, Case ZC18-028

7. ORDINANCE(S): FIRST READING AND PUBLIC HEARING**7a Ordinance O-18-2066**

Consideration of a zoning change from R-40 Single Family Residential district to R-20 Single Family Residential district on Lot C, McEwing Subdivision & 1B02A, 1B2, 1B3, and 1B4, Abstract 1154, in the R H McEwing Survey, located at 712-810 Lavaca Trail, Case ZC18-033

7b Ordinance O-18-2067

Consideration of amendments to the Land Development Code, specifically Chapter 3 – Land Use

8. TABLED: ORDINANCE(S) READING AND PUBLIC HEARING**8a Ordinance O-18-2064**

Consideration of a zoning change from AG Agricultural district to R-30 Single Family Residential district on Tracts 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey, located at 1309 Glade Road, Case ZC18-023

9. RESOLUTION(S): READING AND PUBLIC HEARING**9a Resolution R-18-4327**

Consideration of a waiver request to the sidewalk requirements and subsequent refund, on Lot 1R, Block 1, of the Van Oaks addition located at 201 Van Oaks Drive

9b Resolution R-18-4328

Consideration of appointments to the Colleyville Community Garden Advisory Committee

10. TABLED: RESOLUTION(S) READING AND PUBLIC HEARING**10a Resolution R-18-4323**

Consideration of a combination Preliminary/Final Plat for Carmel Place Estates East on Tracts 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey, located at 1309 Glade Road, Case PC18-012

10b Resolution R-18-4294

RESOLUTION R-18-4294 - Consideration of a final plat for Lots 1, 2, and 3X, Block 1, Old Grove Addition, Phase II, located at 105 and 103 John McCain Road and 7189 Cast Iron Forest Trail, Case PC17-004

11. CITIZEN COMMENTS/PRESENTATIONS REGARDING ITEMS NOT ON THE AGENDA**12. REPORTS**

12a Annual activity report of the Colleyville Economic Development Corporation

12b Quarterly Performance Management Report

13. ACTION/RESOLUTION: DISCUSSION AND CONSIDERATION OF A RESOLUTION RATIFYING COUNCIL AGENDA ACTION FOR NOVEMBER 20, 2018 - READING AND PUBLIC HEARING - RESOLUTION R-18-4329**14. ADJOURNMENT**

I hereby certify this agenda was posted on City Hall bulletin boards Friday, November 16, 2018 by 5:00 p.m.

Christine Loven, TRMC
City Secretary

A quorum of any Colleyville board, commission, or committee may be present at this meeting. Any matter on this agenda may, at the discretion of the governing body, be opened for public comment and discussion.

If you plan to attend this public meeting and have a disability that requires special accommodations, please advise the City Secretary at least 48 hours in advance at 817.503.1133, and reasonable accommodations will be made to assist you.



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number WS-1
Type Worksession
Department City Manager

Agenda Date 11/20/2018

Title

Presentation and discussion of City Plaza - 95% design phase

Strategic Plan

5.1 Create and sustain an identifiable Colleyville brand

Explanation

In February 2018, the City engaged Freese and Nichols, Inc., to develop three conceptual designs for the plaza in front of City Hall, conduct a public engagement process, and take the input from the City Council and community to develop a final proposed conceptual design. At the April 17, 2018 City Council Worksession, a final conceptual design was presented and received positive feedback and support from the City Council. This design was a product of not only worksession discussions with the City Council, but significant community input gathered from two public engagement meetings, booths at community events, and a traveling exhibit and comment card box. Now that a final conceptual design has been determined, the next phase of the project is to develop the detailed construction documents necessary to bid the project for construction. Fifty percent design plans were presented to the City Council at the September 4, 2018 Worksession.

This agenda item provides for discussion of the project at the 95% design point, which involves more detailed design and selection of specific materials. Freese & Nichols will present the attached presentation, reviewing their recommendations for various project materials and seeking City Council input in order to finalize the design process. Freese and Nichols will then submit a complete package to be placed out for bid in January.

Attachments

1. Freese and Nichols November 20, 2018 Presentation

COLLEYVILLE PLAZA CREATING AN EXCEPTIONAL SPACE

WENDY SHABAY, PRINCIPAL, AICP
SHANE FRIESE, LANDSCAPE ARCHITECT, R.L.A.
GAYLEN LAING, ARCHITECT, AIA
MICHAEL WEBB, FOUNTAIN ENGINEER



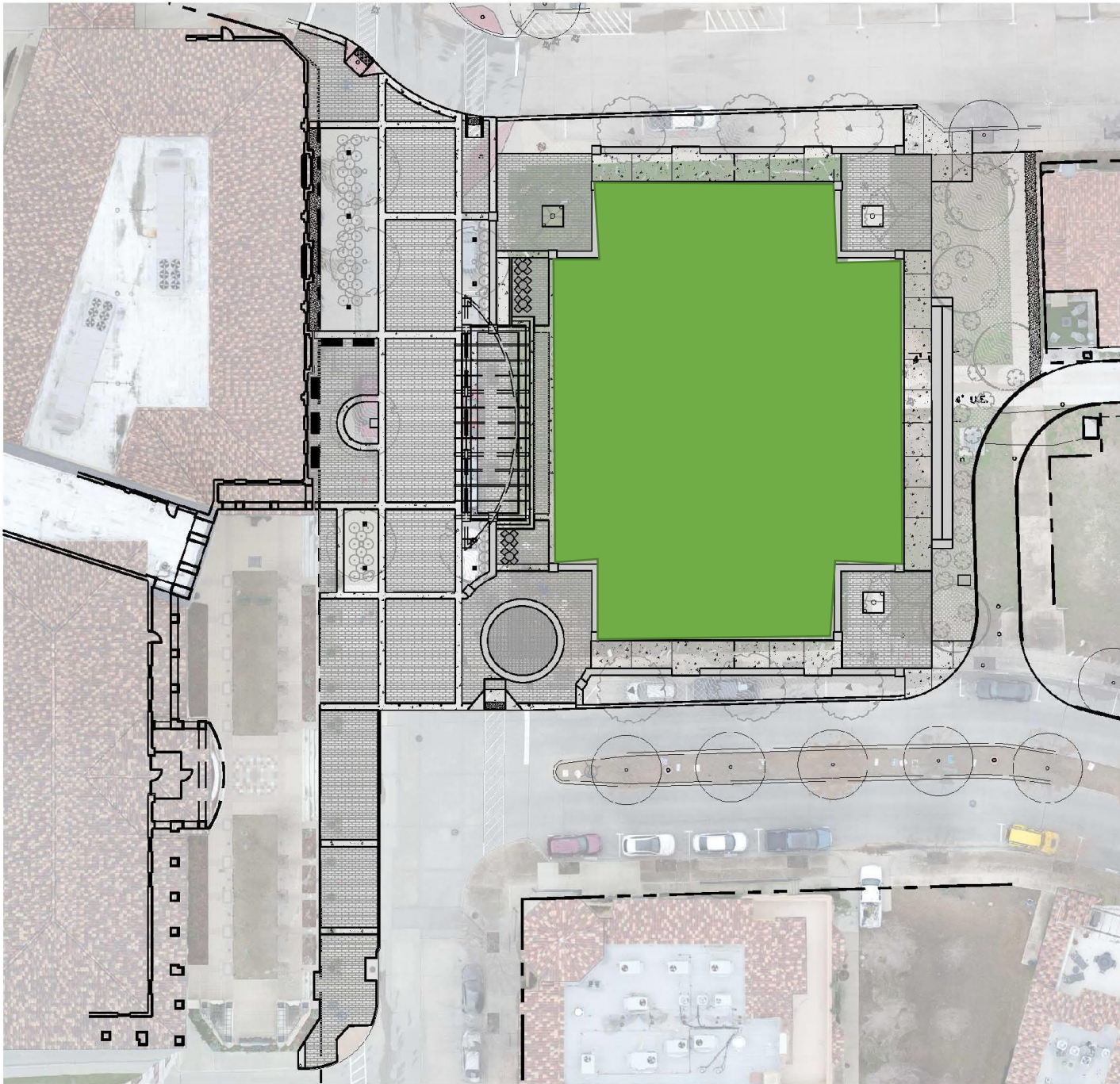
GOAL: TO GET YOUR FEEDBACK

- LAYOUT UPDATES
- FOLLOW-UP ITEMS
- CITY HALL ENTRY PAVING



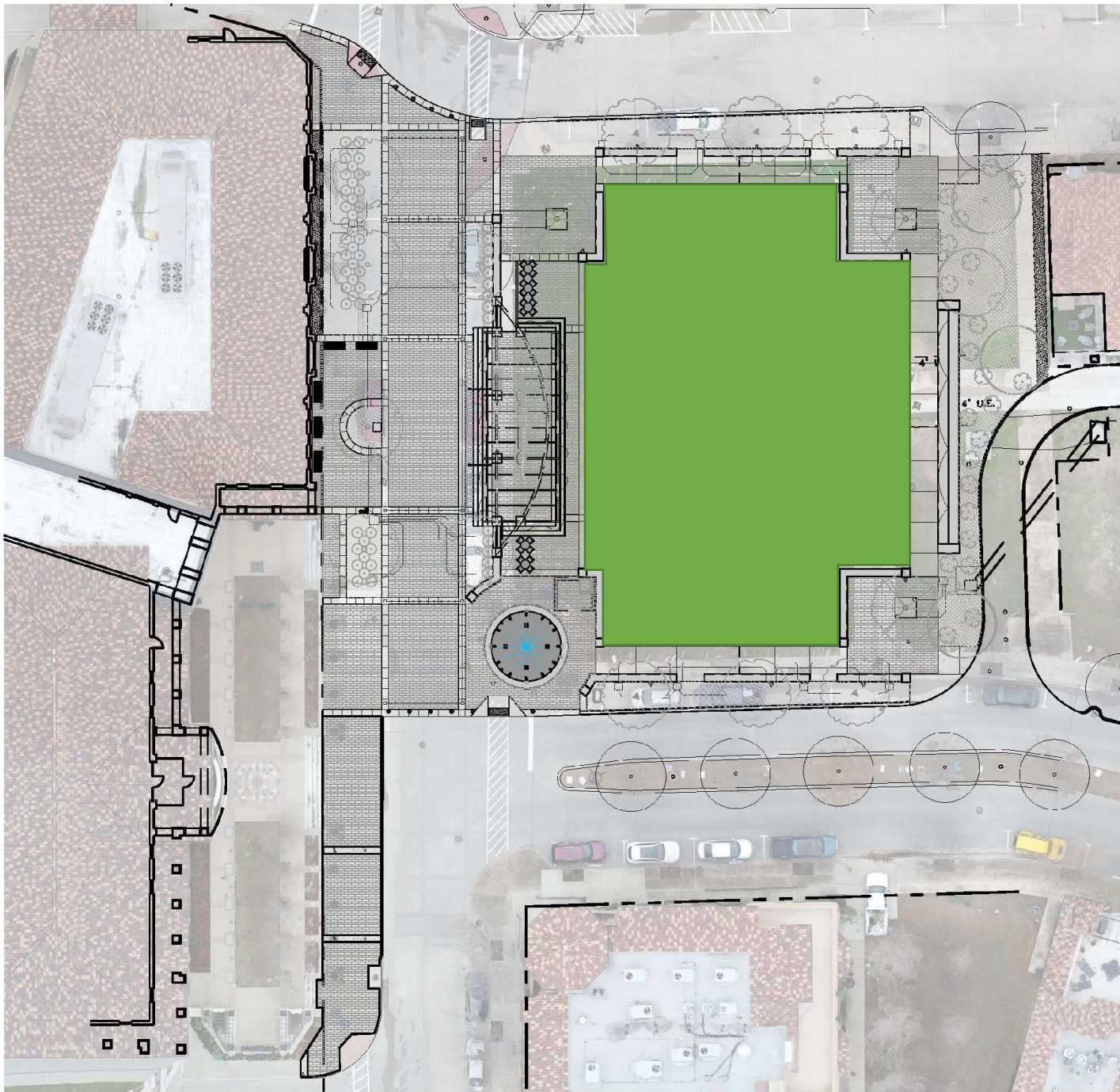
LAYOUT UPDATES





LAWN AREA = 11,790 S.F.

STAGE AREA = 800 S.F.

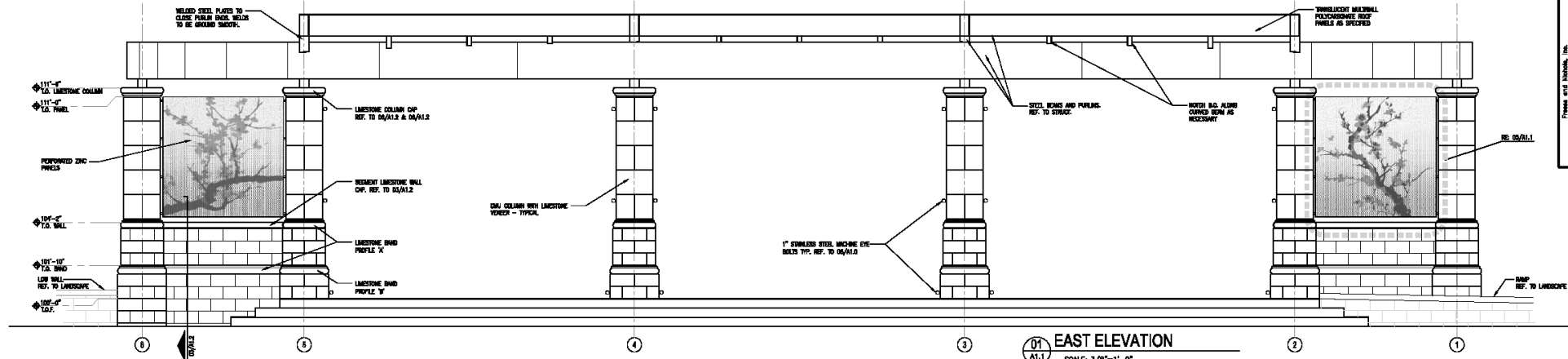


LAWN AREA = 11,200 S.F.
5% REDUCTION

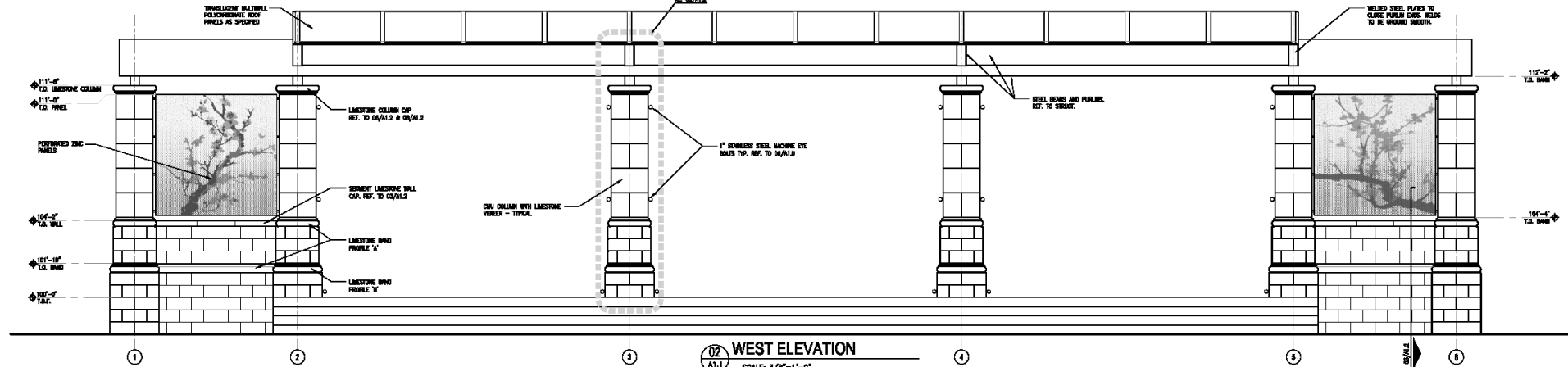
STAGE AREA = 1,100 S.F.
37% INCREASE

SHADE STRUCTURE

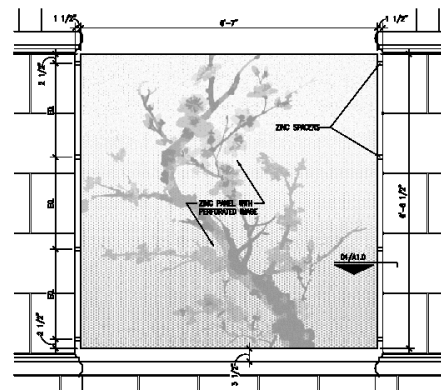




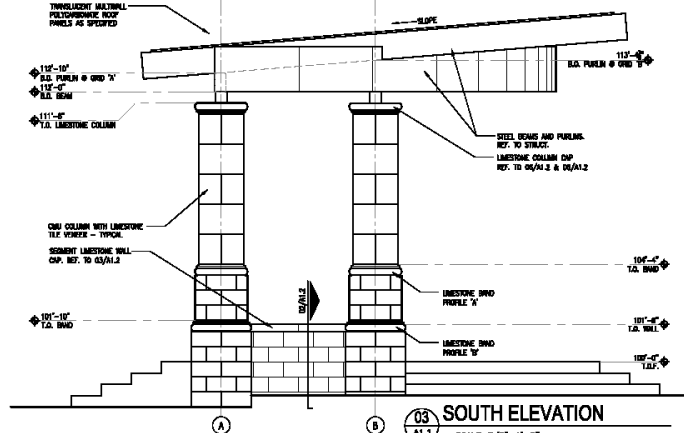
01 EAST ELEVATION
A1.1 SCALE: 3/8"=1'-0"



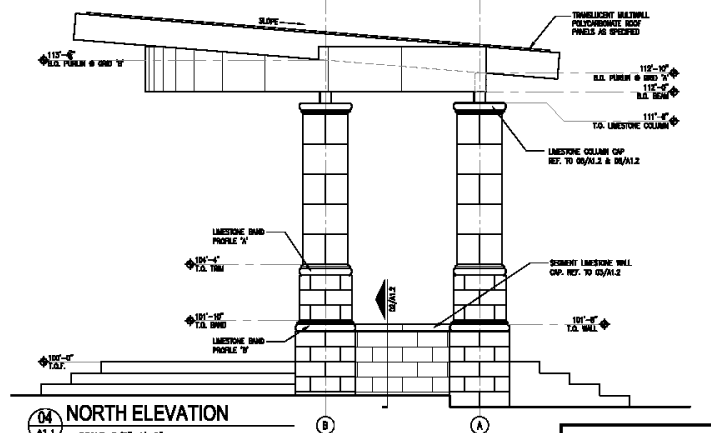
02 WEST ELEVATION
A1.1 SCALE: 3/8"=1'-0"



05 METAL PANEL ELEVATION
A1.1 SCALE: 1/2"=1'-0"



03 SOUTH ELEVATION
A1.1 SCALE: 3/8"=1'-0"



04 NORTH ELEVATION
A1.1 SCALE: 3/8"=1'-0"

City of Colville
1715 North Washington Ave., Ste. 3300
Colville, WA 99111
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www.colvillewa.gov

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INTERIOR
DESIGN
ART
DIRECTION
PHOTOGRAPHY
VIDEO
PRODUCTION
P-2144

**GREENE
NICHOLS**
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GHLA

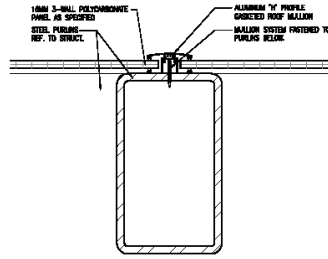
CITY OF COLVILLE
COLVILLE PLAZA
ARCHITECTURE

COLVILLE PLAZA

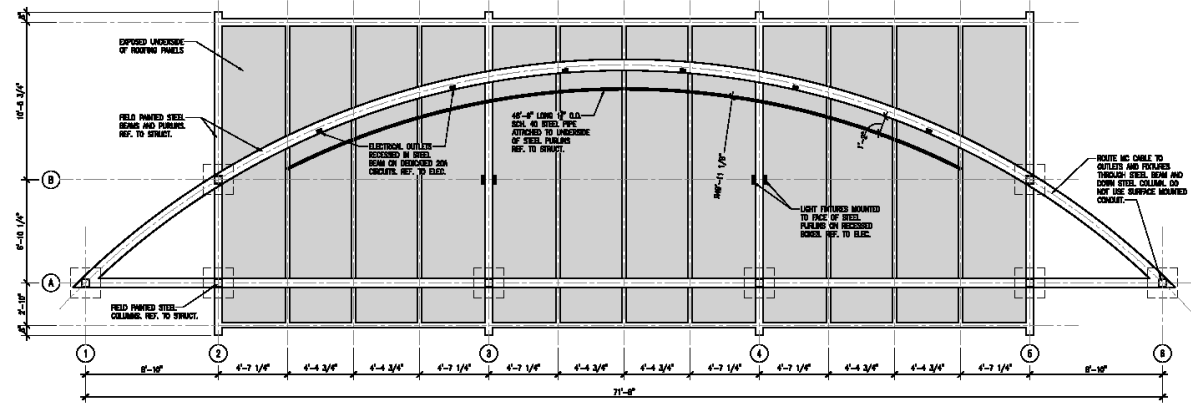
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02	01/15/18	CLV/MS	MS	ISSUED FOR PERMIT
03	01/15/18	CLV/MS	MS	ISSUED FOR PERMIT
04	01/15/18	CLV/MS	MS	ISSUED FOR PERMIT
05	01/15/18	CLV/MS	MS	ISSUED FOR PERMIT
06	01/15/18	CLV/MS	MS	ISSUED FOR PERMIT
07	01/15/18	CLV/MS	MS	ISSUED FOR PERMIT
08	01/15/18	CLV/MS	MS	ISSUED FOR PERMIT
09	01/15/18	CLV/MS	MS	ISSUED FOR PERMIT
10	01/15/18	CLV/MS	MS	ISSUED FOR PERMIT

A1.1

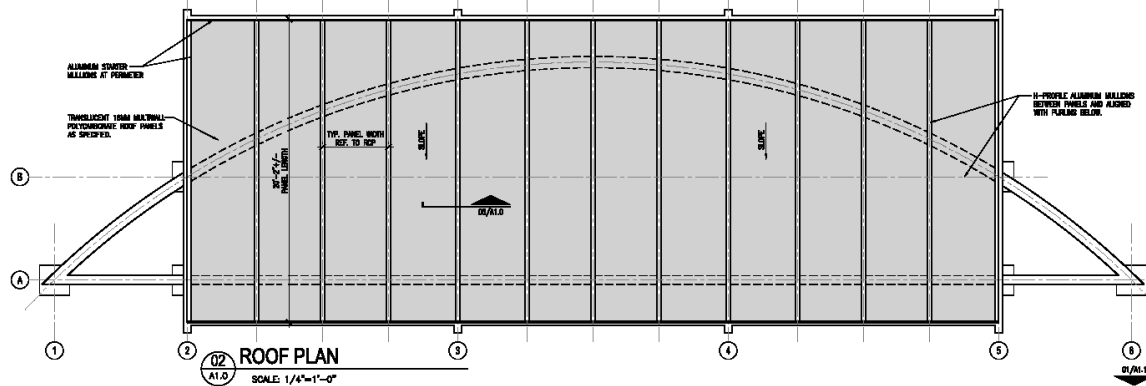
95% SUBMITTAL



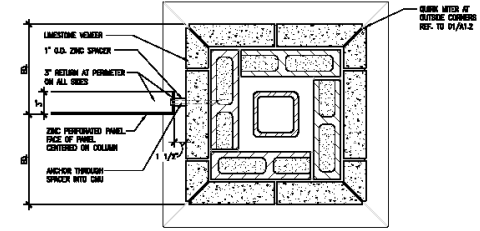
05 ROOF CONNECTION DETAIL
A1.0 SCALE: 3\"/>



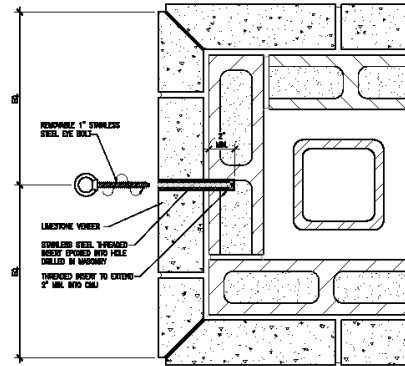
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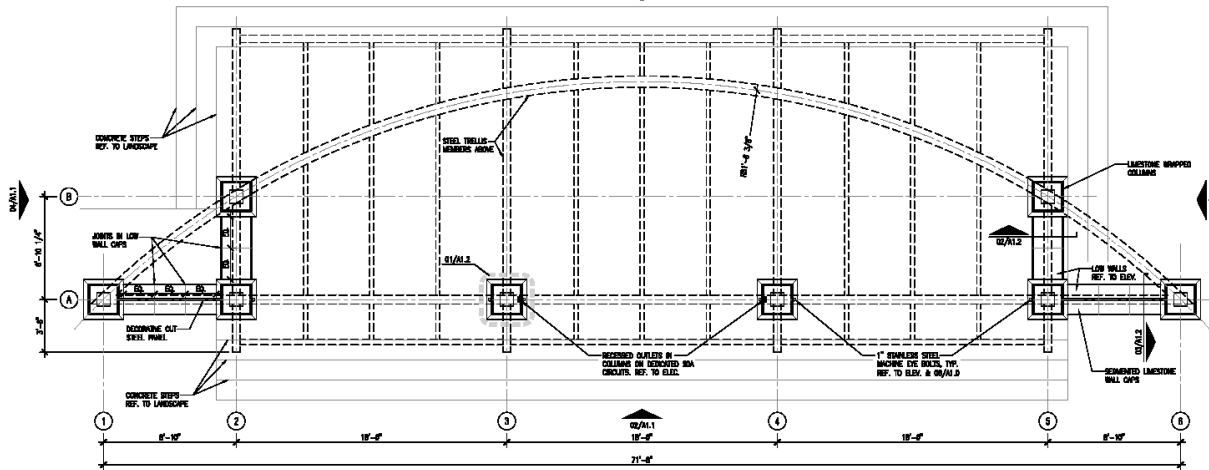
02 ROOF PLAN
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04 STEEL PANEL PLAN DETAIL
A1.0 SCALE: 1 1/2\"/>



06 EYE BOLT PLAN DETAIL
A1.0 SCALE: 3\"/>



01 FLOOR PLAN
A1.0 SCALE: 1/4\"/>

Prepared and Issued: 11/15/18
Texas Registered Professional Engineer: P-2114

PRELIMINARY
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ARCHITECTURE
2711 North Loop West, Suite 3300
Houston, TX 77010
Phone: (713) 511-2000
Fax: (713) 511-2001
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GHILA
ARCHITECTURE
CITY OF COLLEVILLE
COLLEVILLE PLAZA
COLLEVILLE, PLAZA

ARCHITECTURAL
PLANNING
DESIGN
817.201.7200
www.ggha-hill.com

CITY OF COLLEVILLE
COLLEVILLE PLAZA
ARCHITECTURE
COLLEVILLE, PLAZA

NO. 01	DATE	11/15/18	BY	CLV/BAJ
REVISION	DATE		BY	
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

A1.0
95% SUBMITTAL

PLAZA FOUNTAIN





FOUNTAIN FINISHES

COLOR/FINISH: LIMESTONE TO MATCH EXISTING
TILE: FROST PROOF GLASS TILE 1X2

HARDSCAPE



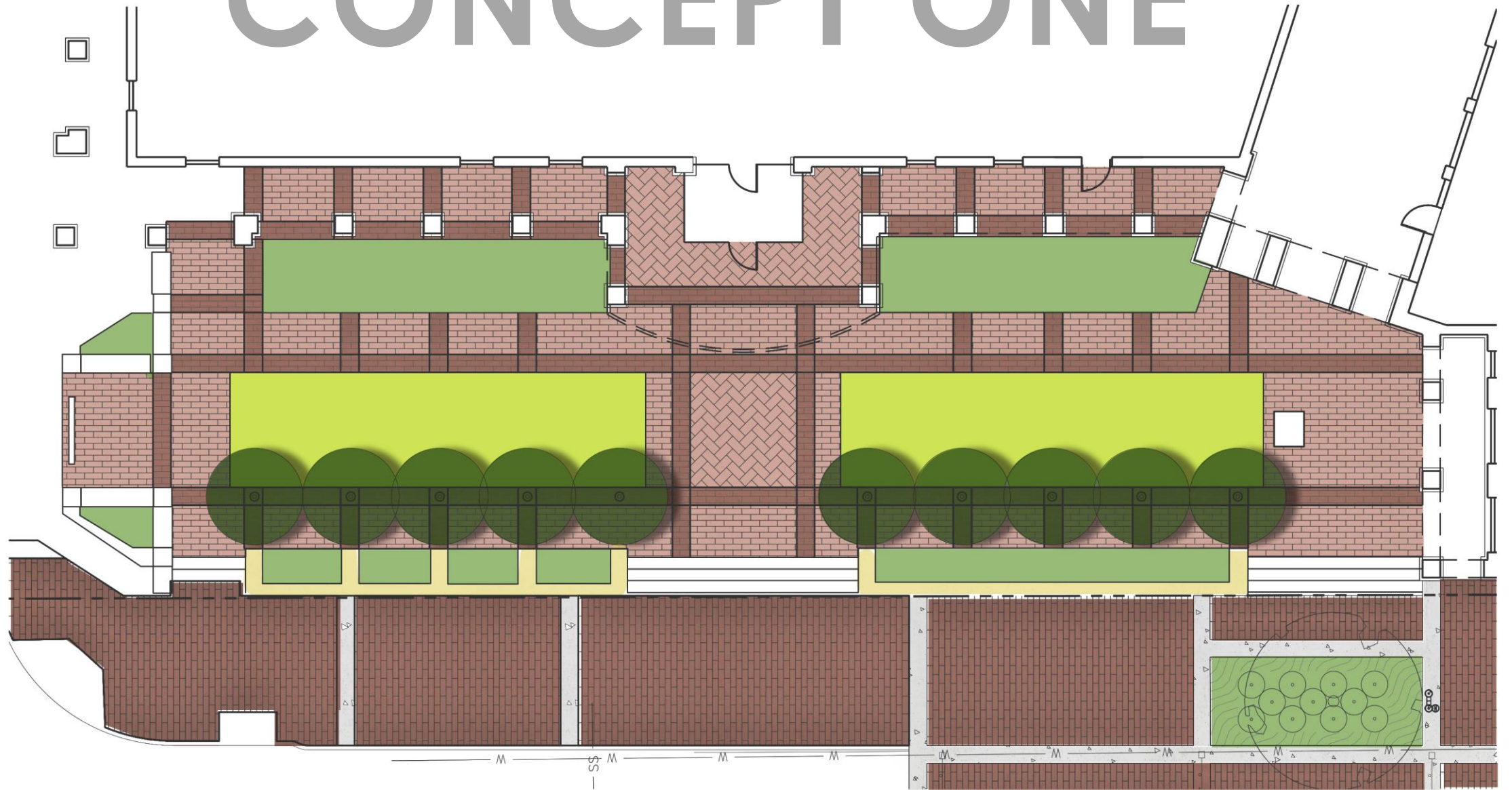




CONCEPT ONE



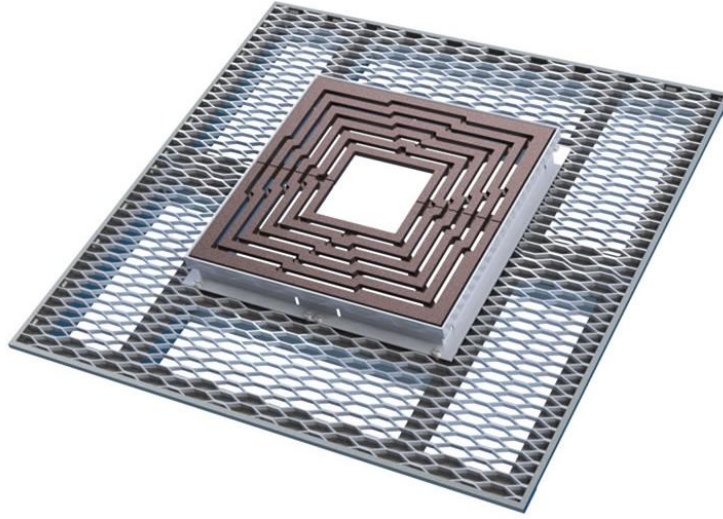
CONCEPT ONE



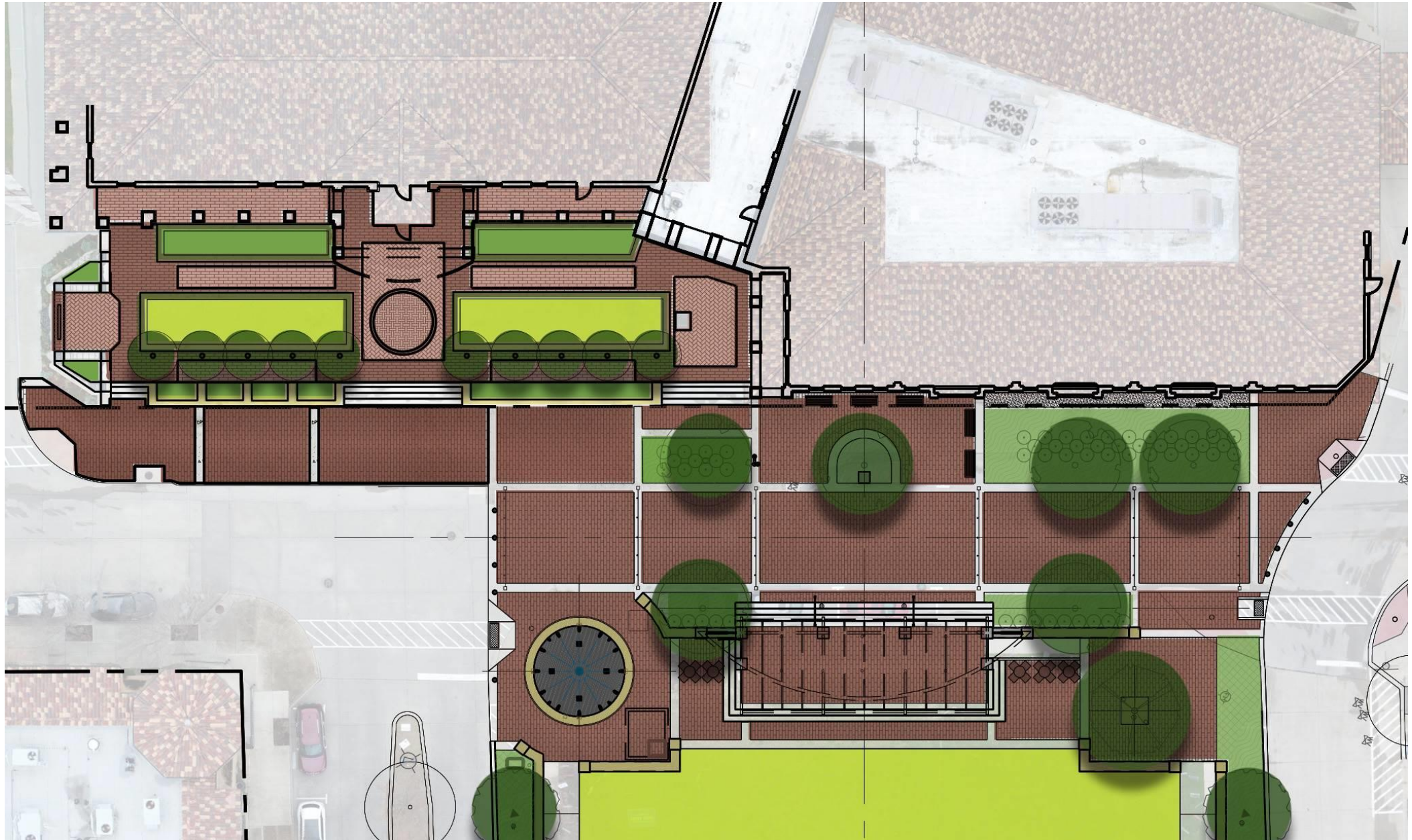
0 10' 20'
SCALE IN FEET



MATERIALS



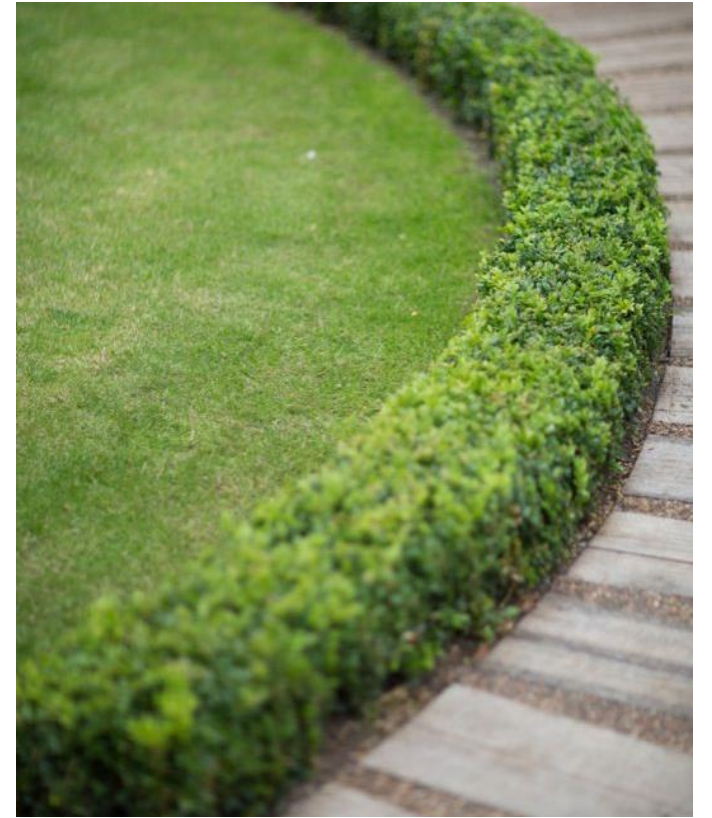
CONCEPT TWO

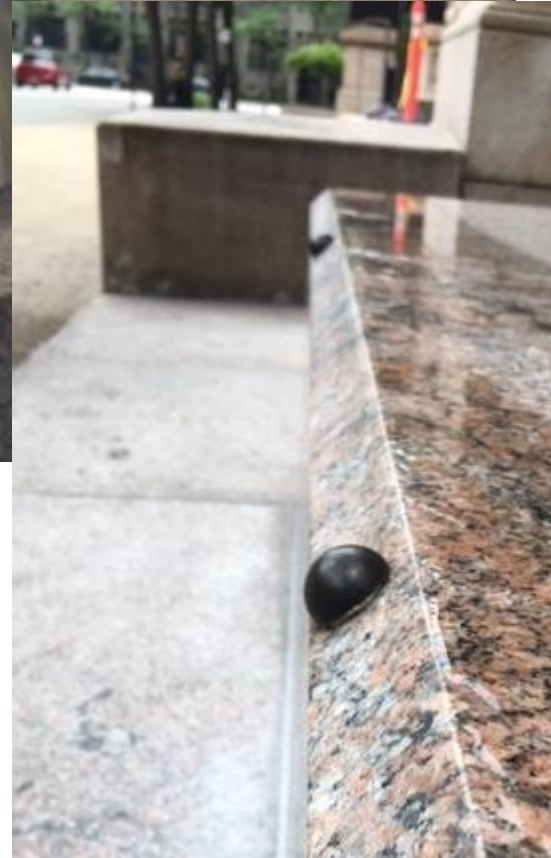


The site plan for Concept Two is a symmetrical layout. At the top, a large rectangular green space is flanked by two smaller rectangular green spaces. Below these, a central circular feature is surrounded by a paved area. The bottom section features two large rectangular green spaces, each flanked by a row of five circular trees. A central paved area runs through the middle, connecting the top and bottom sections. The entire plan is enclosed by a boundary line, with various smaller rectangular and circular features scattered throughout, representing landscaping and building footprints.

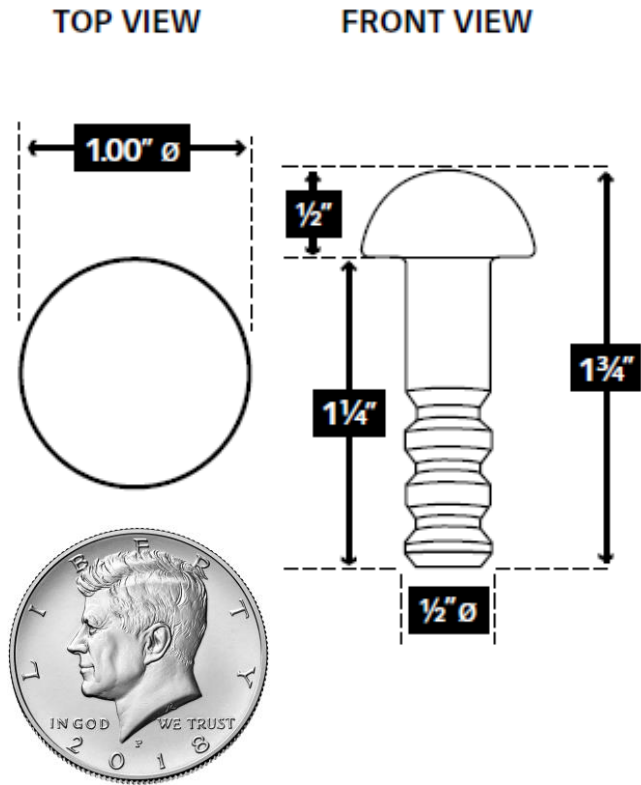


MATERIALS





LOW WALLS SKATEBOARD DETERRENTS
COLOR/FINISH: STAINLESS STEEL



LOW WALLS SKATEBOARD DETERRENTS

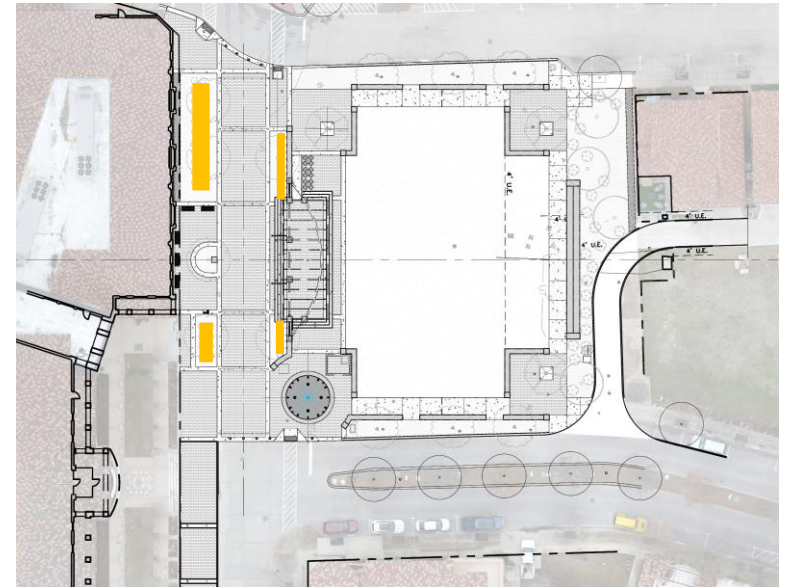
COLOR/FINISH: STAINLESS STEEL or S/S WITH BLACK OXIDE FINISH

PLANT MATERIAL -SUBSTITUTION-



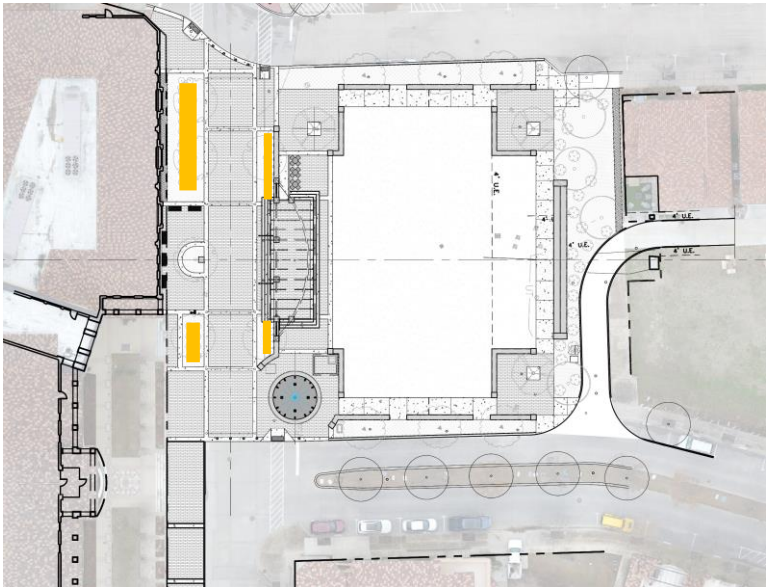


LIMELIGHT HYDRANGEA - JULY



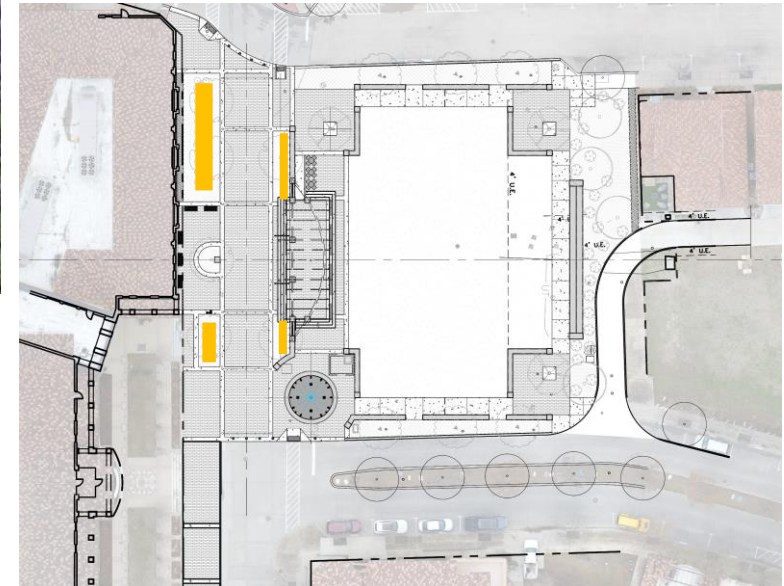


LIMELIGHT HYDRANGEA – SEPT.





LACEY BLUE RUSSIAN SAGE



OPINION OF PROBABLE COST

SUMMARY OF CONSTRUCTION TOTALS:

✓	1.	SITE PREPARATION AND GRADING	\$120,830
✓	2.	VEHICULAR PAVING	\$111,932
✓	3.	SHADE STRUCTURE / STAGE AREA	\$309,300
✓	4.	TIERED LOW WALLS	\$98,300
✓	5.	PEDESTRIAN PAVING AND WALKS	\$134,750
✓	6.	LANDSCAPE DEVELOPMENT	\$123,939
✓	7.	SITE FURNISHINGS & MISC. ELEMENTS	\$131,450
✓	8.	SITE UTILITIES & LIGHTING	\$282,000
✓	9.	WATER FEATURE	\$255,000

TOTAL

BASE TOTAL	\$1,567,501
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+ 12% CONTINGENCY	\$188,100
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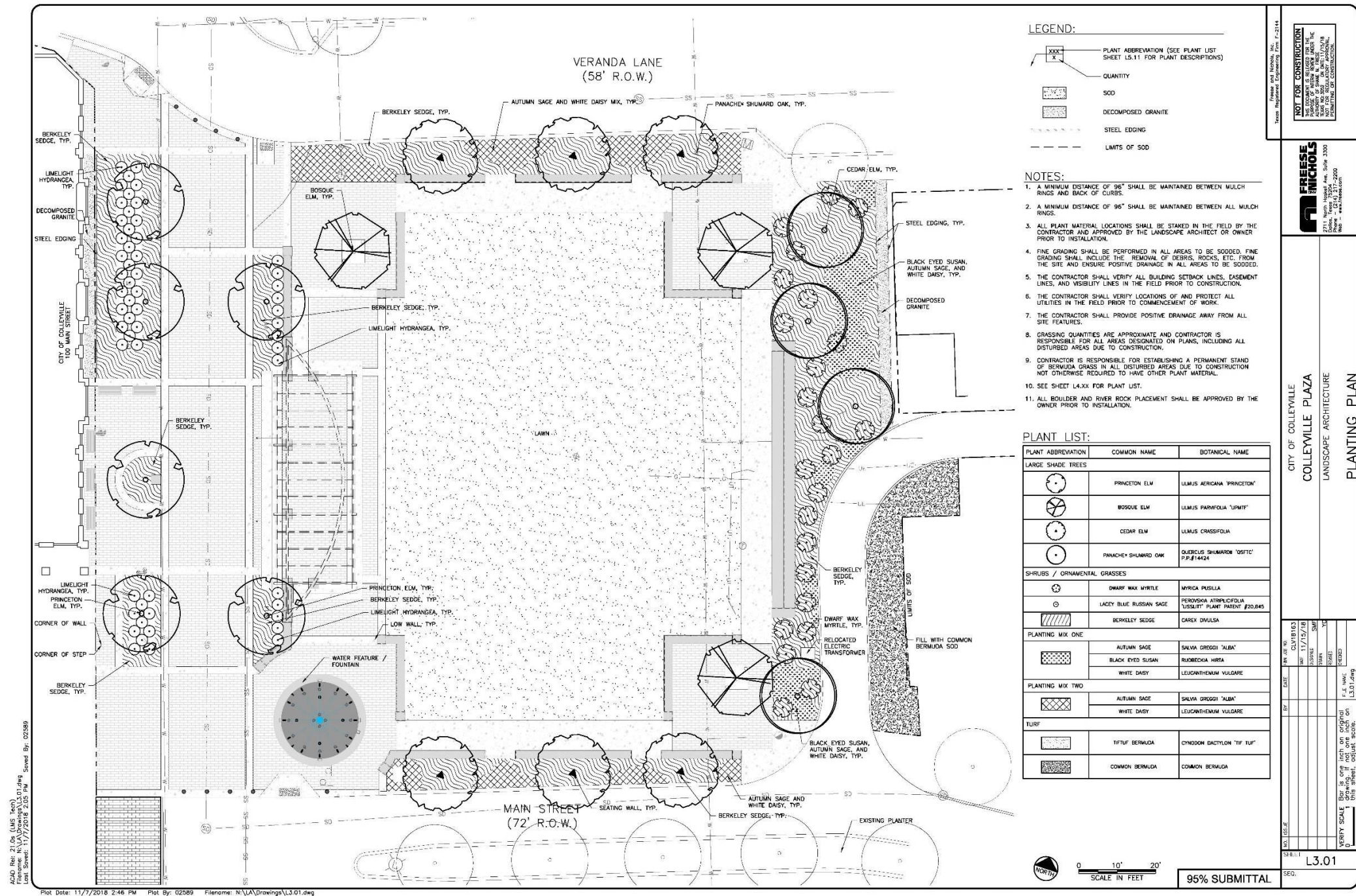
CONSTRUCTION TOTAL	\$1,755,601
---------------------------	--------------------

COLLEYVILLE PLAZA

- OPEN DISCUSSION -

WENDY SHABAY, PRINCIPAL, AICP
SHANE FRIESE, LANDSCAPE ARCHITECT, R.L.A.
GAYLEN LAING, ARCHITECT, AIA
MICHAEL WEBB, FOUNTAIN ENGINEER







City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number WS-2

Agenda Date 11/20/2018

Type Worksession

Department Public Works

Title

Discussion of the City Plaza Traffic and Parking Design

Strategic Plan

1.4 Communicate thoroughly and strategically

Explanation

This item is provided as an opportunity to discuss the City Plaza and its effects on traffic and parking for City Hall.

Staff has put together seven (7) traffic and parking options for the two one-way roads located on the south side of the City Hall building. Staff is seeking City Council direction and guidance regarding the seven (7) traffic and parking options. Per City Council direction, staff will follow up with more details on the selected traffic and parking situation options.

Attachments

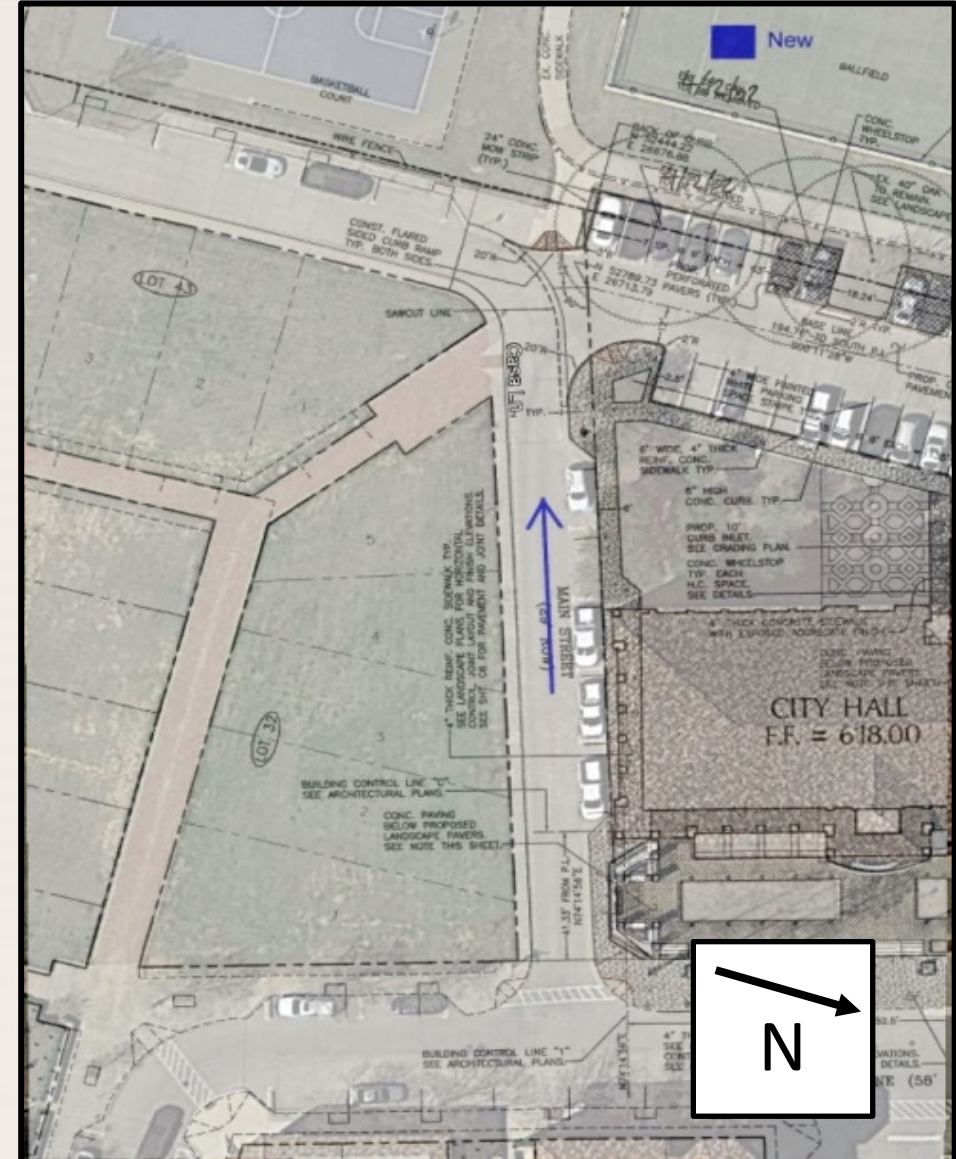
1. City Hall Traffic and Parking Design Presentation

Discussion of City Plaza Traffic and Parking Options

**Worksession
November 20, 2018**

Option 1

1. Flip one way sign to the other direction.

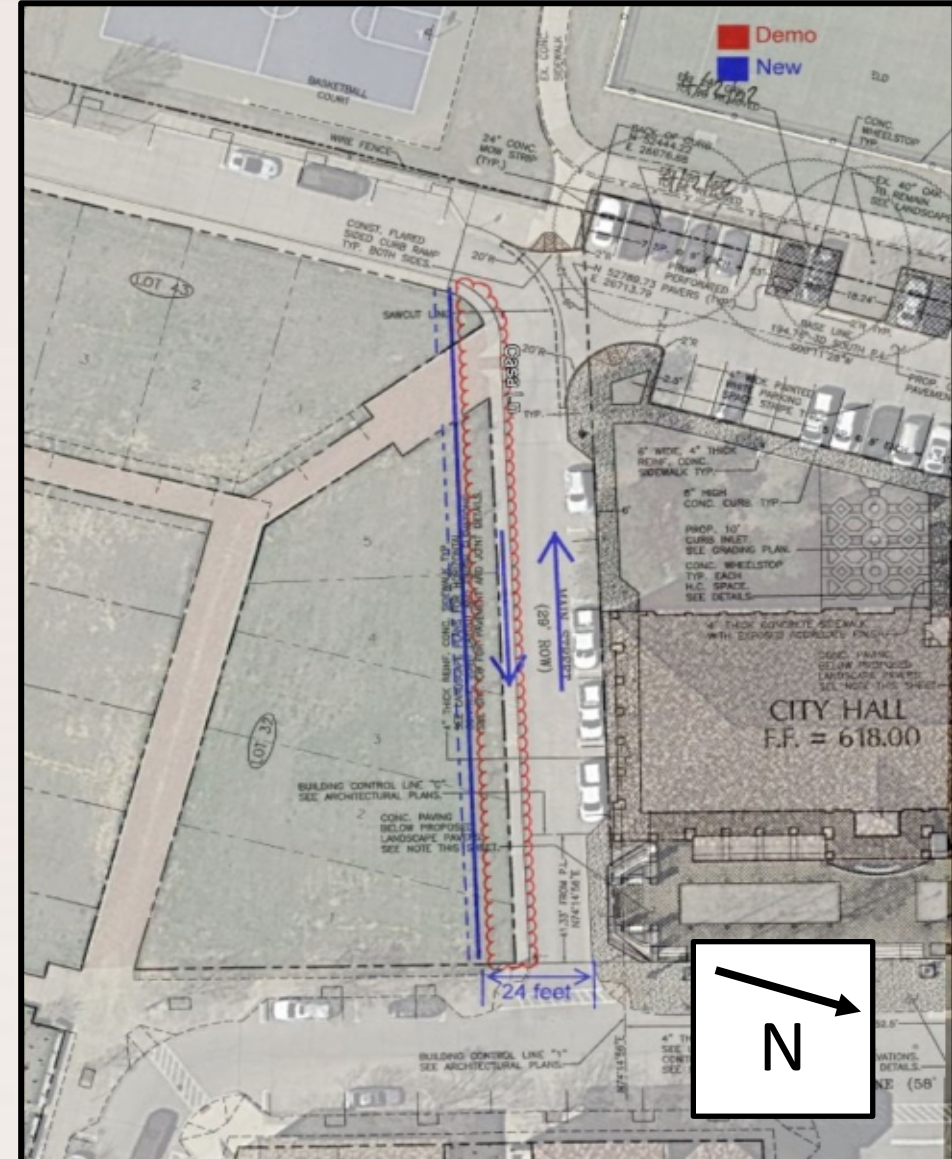


Casa Lane – Option 2



Option 2

1. Demo existing sidewalk, grassy area and small trees.
2. Remove brick paver with care for possible reuse along sidewalk where new meets existing.
3. Create new two-way drive lane (min. 24 feet).
4. Replace sidewalk along south end of extended drive lane.

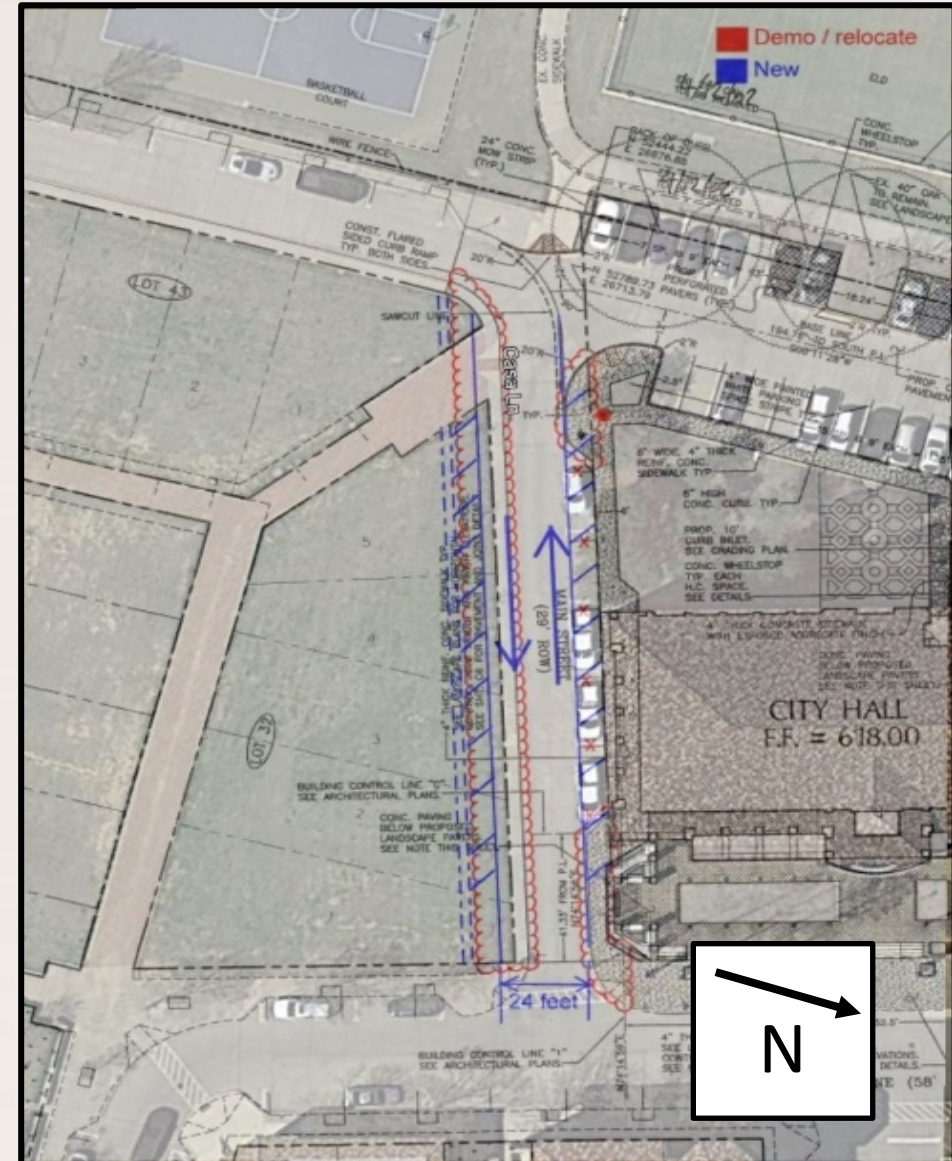


Casa Lane – Option 4

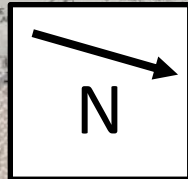


Option 4

1. Relocate the fire hydrant on the southwest corner approximately 8 to 10 feet to the north.
2. Demo curbs on west and east end of parallel parking spots.
3. Demo existing sidewalk, grassy area and small trees (on south side of roadway).
4. Remove brick paver with care for possible reuse along sidewalk where new meets existing.
5. Eliminate parallel parking spots.
6. Create new two-way drive lane (min. 24 feet).
7. Create new front-end parking on the north and south of new two-way drive lane.
8. Replace sidewalk along south end of extended driveway and front-end parking.



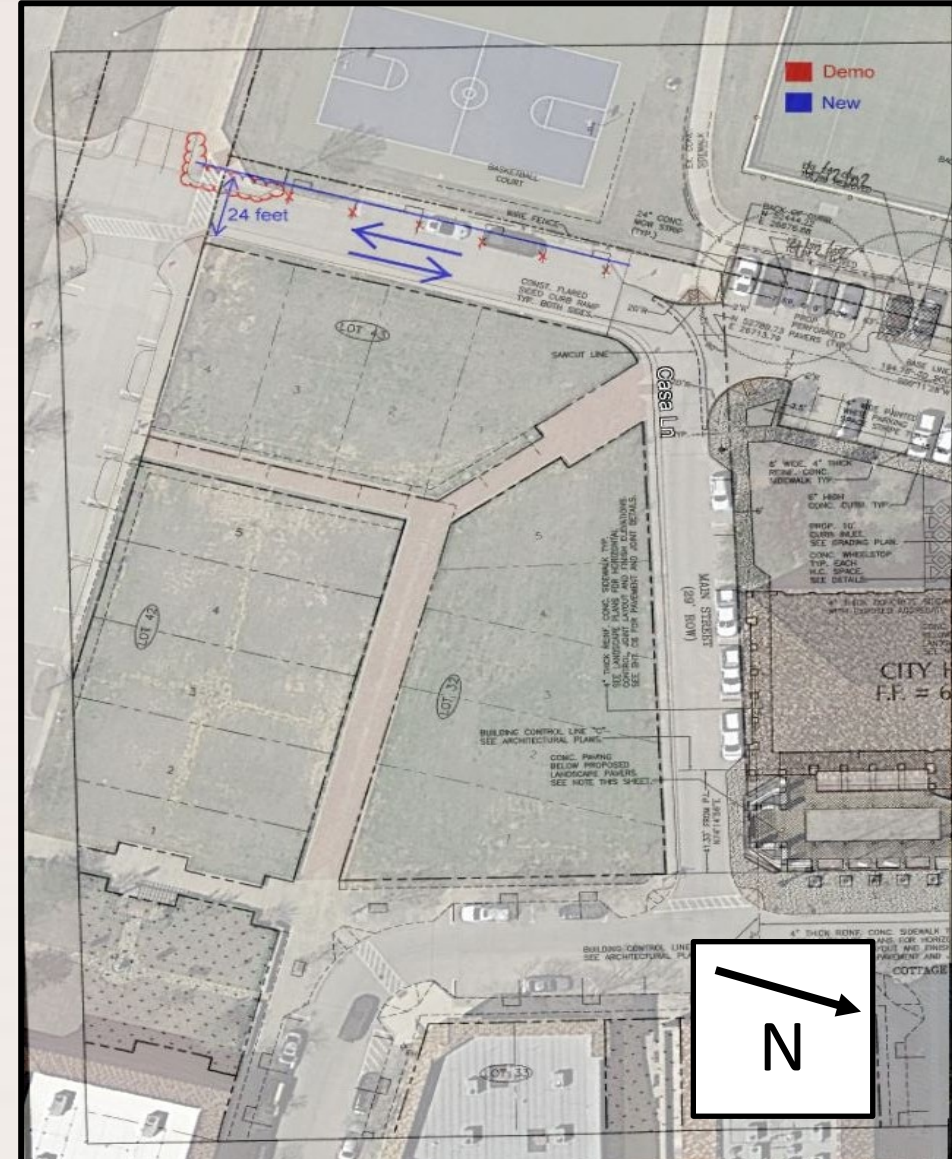
1. Demo existing sidewalk and grassy area.
2. Extend driveway limits for two-way traffic (min. 24 feet).
3. Replace sidewalk along east end of extended driveway.



Back Road – Option 2

Option 2

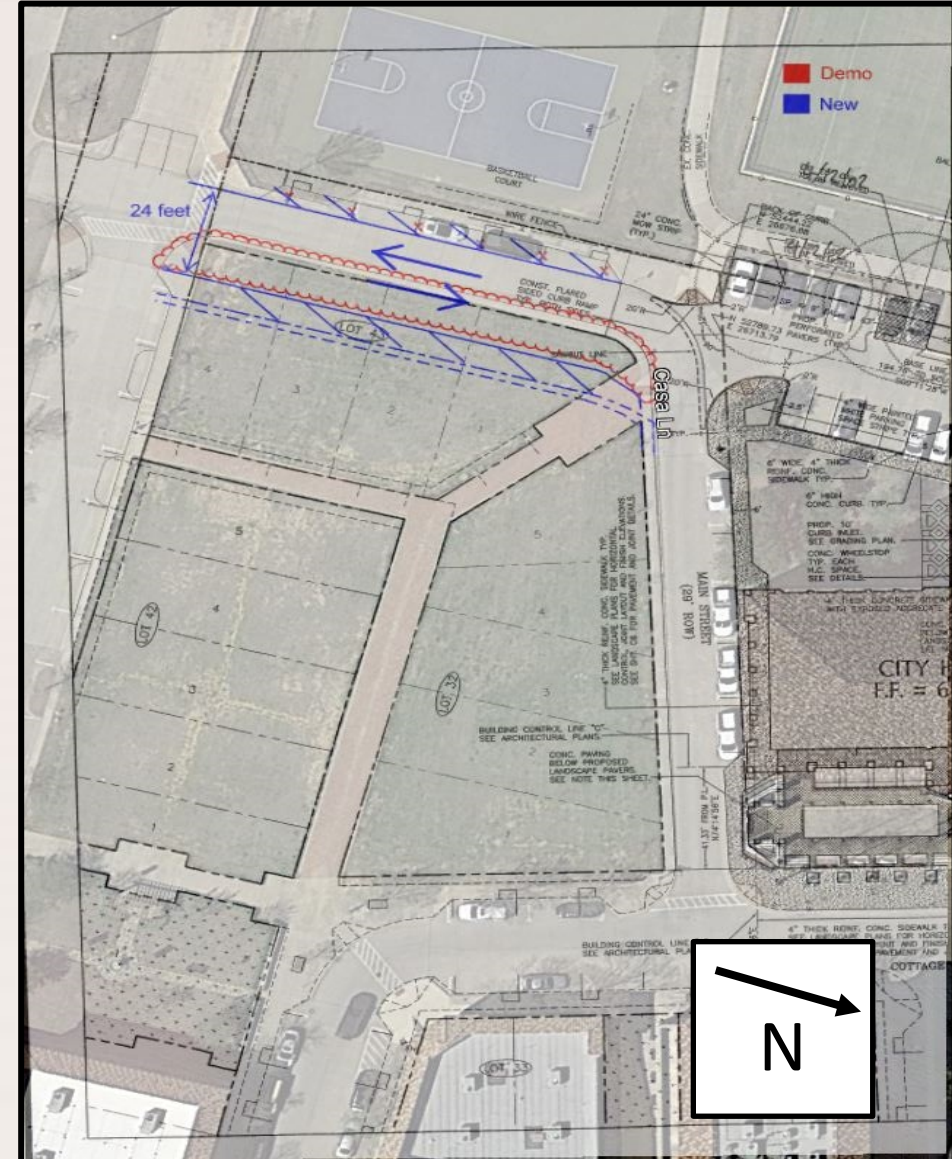
1. Demo curb and grassy area.
2. Eliminate the parallel parking spots.
3. Create new two-way drive lane (min. 24 feet).



Back Road – Option 3

Option 3

1. Demo existing sidewalk and grassy area.
2. Remove brick paver with care for possible reuse along sidewalk where new meets existing.
3. Eliminate parallel parking spots.
4. Create new two-way drive lane (min. 24 feet).
5. Create new front-end parking on west and east of new two-way drive lane.
6. Replace sidewalk along east end of extended driveway and front-end parking.



Questions and Discussion



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number WS-3
Type Worksession
Department Public Works

Agenda Date 11/20/2018

Title

Update on the Federal Communications Commission ("FCC") Declaratory Ruling and Third Report and Order, adopted September 26, 2018, titled FCC-18-133A.1-Network Node FCC Order

Strategic Plan

1.4 Communicate thoroughly and strategically

Explanation

Effective September 1, 2017 S.B. 1004 adopted Chapter 284 of the Local Government Code concerning the installation of equipment, specifically wireless network equipment, in public right-of-way, providing a state-wide regulatory scheme and limiting individual cities' abilities to further regulate this equipment. These provisions are applicable to the installation of "network nodes" (equipment that enables wireless communications between the communications network and the user's equipment) and related equipment, and applies to both the "wireless service provider", who provides the service directly to the public, and to "network providers", which are entities who do not provide service to the end-user, but whom build the equipment on behalf of a wireless service provider. On August 15, 2017, City Council approved Ordinance O-17-2023 adopting the appropriate changes to the City's ordinances.

Recent Action: On September 26, 2018, the Federal Communications Commission ("FCC") adopted a Declaratory Ruling and Third Report and Order, see attachment. The ruling takes action to preempt local control over the deployment of fifth generation ("5G") wireless infrastructure. Small cell deployments (also known as "network nodes") are the means to support the exploding demand for wireless broadband services.

The order will require Texas municipalities to adjust their processes and regulatory provisions affecting the installation of wireless facilities in public rights-of-way that have been in effect for only one year.

Staff in consultation with the City Attorney will make the necessary changes to the City's ordinances for public reading and adoption in December.

Attachments

1. FCC Declaratory Ruling
2. Ordinance O-17-2023

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment by	)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment	)	
	)	
Accelerating Wireline Broadband Deployment by	)	WC Docket No. 17-84
Removing Barriers to Infrastructure Investment	)	

DECLARATORY RULING AND THIRD REPORT AND ORDER

Adopted: September 26, 2018

Released: September 27, 2018

By the Commission: Chairman Pai and Commissioners O’Rielly and Carr issuing separate statements;
Commissioner Rosenworcel approving in part, dissenting in part and issuing a statement.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	14
A. Legal Background	14
B. The Need for Commission Action	23
III. DECLARATORY RULING	30
A. Overview of the Section 253 and Section 332(c)(7) Framework Relevant to Small Wireless Facilities Deployment	34
B. State and Local Fees	43
C. Other State and Local Requirements that Govern Small Facilities Deployment.....	81
D. States and Localities Act in Their Regulatory Capacities When Authorizing and Setting Terms for Wireless Infrastructure Deployment in Public Rights of Way.....	92
E. Responses to Challenges to Our Interpretive Authority and Other Arguments.....	98
IV. THIRD REPORT AND ORDER	103
A. New Shot Clocks for Small Wireless Facility Deployments	104
1. Two New Section 332 Shot Clocks for Deployment of Small Wireless Facilities	105
2. Batched Applications for Small Wireless Facilities	113
B. New Remedy for Violations of the Small Wireless Facilities Shot Clocks.....	116
C. Clarification of Issues Related to All Section 332 Shot Clocks	132
1. Authorizations Subject to the “Reasonable Period of Time” Provision of Section 332(c)(7)(B)(ii).....	132
2. Codification of Section 332 Shot Clocks	138
3. Collocations on Structures Not Previously Zoned for Wireless Use	140
4. When Shot Clocks Start and Incomplete Applications	141
V. PROCEDURAL MATTERS	148
VI. ORDERING CLAUSES	151
APPENDIX A -- Final Rules	
APPENDIX B -- Comments and Reply Comments	
APPENDIX C -- Final Regulatory Flexibility Analysis	

I. INTRODUCTION

1. America is in the midst of a transition to the next generation of wireless services, known as 5G. These new services can unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country. The FCC is committed to doing our part to help ensure the United States wins the global race to 5G to the benefit of all Americans. Today's action is the next step in the FCC's ongoing efforts to remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new services. We proceed by drawing on the balanced and commonsense ideas generated by many of our state and local partners in their own small cell bills.

2. Supporting the deployment of 5G and other next-generation wireless services through smart infrastructure policy is critical. Indeed, upgrading to these new services will, in many ways, represent a more fundamental change than the transition to prior generations of wireless service. 5G can enable increased competition for a range of services—including broadband—support new healthcare and Internet of Things applications, speed the transition to life-saving connected car technologies, and create jobs. It is estimated that wireless providers will invest \$275 billion¹ over the next decade in next-generation wireless infrastructure deployments, which should generate an expected three million new jobs and boost our nation's GDP by half a trillion dollars.² Moving quickly to enable this transition is important, as a new report forecasts that speeding 5G infrastructure deployment by even one year would unleash an additional \$100 billion to the U.S. economy.³ Removing barriers can also ensure that every community gets a fair shot at these deployments and the opportunities they enable.

3. The challenge for policymakers is that the deployment of these new networks will look different than the 3G and 4G deployments of the past. Over the last few years, providers have been increasingly looking to densify their networks with new small cell deployments that have antennas often no larger than a small backpack. From a regulatory perspective, these raise different issues than the construction of large, 200-foot towers that marked the 3G and 4G deployments of the past. Indeed, estimates predict that upwards of 80 percent of all new deployments will be small cells going forward.⁴ To support advanced 4G or 5G offerings, providers must build out small cells at a faster pace and at a far greater density of deployment than before.

4. To date, regulatory obstacles have threatened the widespread deployment of these new services and, in turn, U.S. leadership in 5G. The FCC has lifted some of those barriers, including our decision in March 2018, which excluded small cells from some of the federal review procedures designed for those larger, 200-foot towers. But as the record here shows, the FCC must continue to act in partnership with our state and local leaders that are adopting forward leaning policies.

5. Many states and localities have acted to update and modernize their approaches to small cell deployments. They are working to promote deployment and balance the needs of their communities. At the same time, the record shows that problems remain. In fact, many state and local officials have urged the FCC to continue our efforts in this proceeding and adopt additional reforms. Indeed, we have

¹ See Accenture Strategy, Accelerating Future Economic Value from the Wireless Industry at 2 (2018) (Accelerating Future Economic Value Report), <https://www.ctia.org/news/accelerating-future-economic-value-from-the-wireless-industry>, attached to Letter from Scott K. Bergmann, Senior Vice Pres., Reg. Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed July 19, 2018).

² See Accenture Strategy, Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities, (2017) <http://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf>; attached to Letter from Scott Bergmann, Vice Pres. Reg. Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-421, (filed Jan. 13, 2017).

³ Accelerating Future Economic Value Report at 2.

⁴ Letter from John T. Scott, Counsel for Mobilitie, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2-3 (filed Sept. 12, 2018).

heard from a number of local officials that the excessive fees or other costs associated with deploying small scale wireless infrastructure in large or otherwise “must serve” cities are materially inhibiting the buildout of wireless services in their own communities.

6. We thus find that now is the appropriate time to move forward with an approach geared at the conduct that threatens to limit the deployment of 5G services. In reaching our decision today, we have benefited from the input provided by a range of stakeholders, including state and local elected officials.⁵ FCC leadership spent substantial time over the course of this proceeding meeting directly with local elected officials in their jurisdictions. In light of those discussions and our consideration of the record here, we reach a decision today that does not preempt nearly any of the provisions passed in recent state-level small cell bills. We have reached a balanced, commonsense approach, rather than adopting a one-size-fits-all regime. This ensures that state and local elected officials will continue to play a key role in reviewing and promoting the deployment of wireless infrastructure in their communities.

7. Although many states and localities support our efforts, we acknowledge that there are others who advocated for different approaches.⁶ We have carefully considered these views, but nevertheless find our actions here necessary and fully supported. By building on state and local ideas, today’s action boosts the United States’ standing in the race to 5G. According to a study submitted by Corning, our action would eliminate around \$2 billion in unnecessary costs, which would stimulate around \$2.4 billion of additional buildouts.⁷ And that study shows that such new service would be

⁵ See, e.g., Letter from Brian D. Hill, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 31, 2018) (“While the FCC and the Ohio Legislature have worked to reduce the timeline for 5G deployment, the same cannot be said for all local and state governments. Regulations written in a different era continue to dictate the regulatory process for 5G infrastructure”); Letter from Maureen Davey, Commissioner, Stillwater County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 18, 2018) (“[T]he Commission’s actions to lower regulatory barriers can enable more capital spending to flow to areas like ours. Reducing fees and shortening review times in urban areas, thereby lowering the cost of deployment in such areas, can promote speedier deployment across all of America.”); Letter from Board of County Commissioners, Yellowstone County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 21, 2018) (“Reducing these regulatory barriers by setting guidelines on fees, siting requirements and review timeframes, will promote investment including rural areas like ours.”); Letter from Board of Commissioners, Harney County, Oregon, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 5, 2018) (“By taking action to speed and reduce the costs of deployment across the country, and create a more uniform regulatory framework, the Commission will lower the cost of deployment, enabling more investment in both urban and rural communities.”); Letter from Niraj J. Antani, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 4, 2018) (“[T]o truly expedite the small cell deployment process, broader government action is needed on more than just the state level.”); Letter from Michael C. Taylor, Mayor, City of Sterling Heights, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 30, 2018) (“[T]here are significant, tangible benefits to having a nation-wide rule that promotes the deployment of next-generation wireless access without concern that excessive regulation or small cell siting fees slows down the process.”).

⁶ See, e.g., Letter from Linda Morse, Mayor, City of Manhattan, KS to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 13, 2018) (City of Manhattan, KS Sept. 13, 2018 *Ex Parte* Letter); Letter from Ronny Berdugo, Legislative Representative, League of California Cities to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 18, 2018) (Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter); Letter from Damon Connolly, Marin County Board of Supervisors to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 17, 2018) (Damon Connolly Sept. 17, 2018 *Ex Parte* Letter).

⁷ See Letter from Thomas J. Navin, Counsel to Corning, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1, Attach. A at 2-3 (filed Sept. 5, 2018) (Corning Sept. 5, 2018 *Ex Parte* Letter).

deployed where it is needed most: 97 percent of new deployments would be in rural and suburban communities that otherwise would be on the wrong side of the digital divide.⁸

8. The FCC will keep pressing ahead to ensure that every community in the country gets a fair shot at the opportunity that next-generation wireless services can enable. As detailed in the sections that follow, we do so by taking the following steps.

9. In the Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. We thus address and reconcile this split in authorities by taking three main actions.

10. First, we express our agreement with the U.S. Courts of Appeals for the First, Second, and Tenth Circuits that the “materially inhibit” standard articulated in 1997 by the Clinton-era FCC’s *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

11. Second, we note, as numerous courts and prior FCC cases have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress’s limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision.⁹ Namely, fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality’s reasonable costs. In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. We do so to help avoid unnecessary litigation over fees.

12. Third, we focus on a subset of other, non-fee provisions of local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities, recognizing that certain reasonable aesthetic considerations do not run afoul of Sections 253 and 332. This responds in particular to many concerns we heard from state and local governments about deployments in historic districts.

⁸ *Id.*

⁹ “Small Wireless Facilities,” as used herein and consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

- (1) The facilities—
 - (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
 - (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facilities do not require antenna structure registration under part 17 of this chapter;
- (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

13. Next, we issue a Report and Order that addresses the “shot clocks” governing the review of wireless infrastructure deployments. We take three main steps in this regard. First, we create a new set of shot clocks tailored to support the deployment of Small Wireless Facilities. In particular, we read Sections 253 and 332 as allowing 60 days for reviewing the application for attachment of a Small Wireless Facility using an existing structure and 90 days for the review of an application for attachment of a small wireless facility using a new structure. Second, while we do not adopt a “deemed granted” remedy for violations of our new shot clocks, we clarify that failing to issue a decision up or down during this time period is not simply a “failure to act” within the meaning of applicable law. Rather, missing the deadline also constitutes a presumptive prohibition. We would thus expect any locality that misses the deadline to issue any necessary permits or authorizations without further delay. We also anticipate that a provider would have a strong case for quickly obtaining an injunction from a court that compels the issuance of all permits in these types of cases. Third, we clarify a number of issues that are relevant to all of the FCC’s shot clocks, including the types of authorizations subject to these time periods.

II. BACKGROUND

A. Legal Background

14. In the Telecommunications Act of 1996 (the 1996 Act), Congress enacted sweeping new provisions intended to facilitate the deployment of telecommunications infrastructure. As U.S. Courts of Appeals have stated, “[t]he [1996] Act ‘represents a dramatic shift in the nature of telecommunications regulation.’”¹⁰ The Senate floor manager, Senator Larry Pressler, stated that “[t]his is the most comprehensive deregulation of the telecommunications industry in history.”¹¹ Indeed, the purpose of the 1996 Act is to “provide for a pro-competitive, deregulatory national policy framework . . . by opening all telecommunications markets to competition.”¹² The conference report on the 1996 Act similarly indicates that Congress “intended to remove all barriers to entry in the provision of telecommunications services.”¹³ The 1996 Act thus makes clear Congress’s commitment to a competitive telecommunications marketplace unhindered by unnecessary regulations, explicitly directing the FCC to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”¹⁴

15. Several provisions of the 1996 Act speak directly to Congress’s determination that certain state and local regulations are unlawful. Section 253(a) provides that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”¹⁵ Courts have observed that Section 253 represents a “broad preemption of laws that inhibit competition.”¹⁶

16. The Commission has issued several rulings interpreting and providing guidance regarding the language Congress used in Section 253. For instance, in the 1997 *California Payphone* decision, the Commission, under the leadership of then Chairman William Kennard, stated that, in determining whether a state or local law has the effect of prohibiting the provision of telecommunications services, it

¹⁰ *Sprint Telephony PCS LP v. County of San Diego*, 543 F.3d 571, 575 (9th Cir. 2008) (en banc) (*County of San Diego*) (quoting *Cablevision of Boston, Inc. v. Pub. Improvement Comm’n*, 184 F.3d 88, 97 (1st Cir. 1999)).

¹¹ 141 Cong. Rec. S8197 (daily ed. June 12, 1995).

¹² H.R. Conf. Rep. No. 104-458, at 113 (1996), reprinted in 1996 U.S.C.C.A.N. (100 Stat. 5) 124.

¹³ S. Rep. No. 104-230, at 126 (1996) (Conf. Rep.).

¹⁴ Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996); *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371 (1999) (noting that the 1996 Act “fundamentally restructures local telephone markets” to facilitate market entry); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 857-58 (1997) (“The Telecommunications Act was an unusually important legislative enactment . . . designed to promote competition.”).

¹⁵ 47 U.S.C. § 253(a).

¹⁶ *Puerto Rico Tel. Co. v. Telecomm. Reg. Bd. of Puerto Rico*, 189 F.3d 1, 11 n.7 (1st Cir. 1999).

“consider[s] whether the ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”¹⁷

17. Similar to Section 253, Congress specified in Section 332(c)(7) that “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—(I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”¹⁸ Clause (B)(ii) of that section further provides that “[a] State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”¹⁹ Section 332(c)(7) generally preserves state and local authority over the “placement, construction, and modification of personal wireless service facilities” but with the important limitations described above.²⁰ Section 332(c)(7) also sets forth a judicial remedy, stating that “[a]ny person adversely affected by any final action or failure to act by a State or local government” that is inconsistent with the requirements of Section 332(c)(7) “may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction.”²¹ The provision further directs the court to “decide such action on an expedited basis.”²²

18. The Commission has previously interpreted the language Congress used and the limits it imposed on state and local authority in Section 332. For instance, in interpreting Section 332(c)(7)(B)(i)(II), the Commission has found that “a State or local government that denies an application for personal wireless service facilities siting solely because ‘one or more carriers serve a given geographic market’ has engaged in unlawful regulation that ‘prohibits or ha[s] the effect of prohibiting the provision of personal wireless services,’ within the meaning of Section 332(c)(7)(B)(i)(II).”²³ In adopting this interpretation, the Commission explained that its “construction of the provision achieves a balance that is most consistent with the relevant goals of the Communications Act” and its understanding that “[i]n promoting the construction of nationwide wireless networks by multiple carriers, Congress sought ultimately to improve service quality and lower prices for consumers.”²⁴ The Commission also noted that an alternative interpretation would “diminish the service provided to [a wireless provider’s] customers.”²⁵

¹⁷ *California Payphone Ass’n*, 12 FCC Rcd 14191, 14206, para. 31 (1997) (*California Payphone*).

¹⁸ 47 U.S.C. § 332(c)(7)(B)(i).

¹⁹ 47 U.S.C. § 332(c)(7)(B)(ii).

²⁰ 47 U.S.C. § 332(c)(7)(A) (stating that, “[e]xcept as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless services facilities”). The statute defines “personal wireless services” to include CMRS, unlicensed wireless services, and common carrier wireless exchange access services. 47 U.S.C. § 332(c)(7)(C). In 2012, Congress expressly modified this preservation of local authority by enacting Section 6409(a), which requires local governments to approve certain types of facilities siting applications “[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified in substantial part as Section 332(c)(7)] . . . or any other provision of law.” Spectrum Act, 47 U.S.C. § 6409(a)(1).

²¹ 47 U.S.C. § 332(c)(7)(B)(v).

²² 47 U.S.C. § 332(c)(7)(B)(v).

²³ *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994, 14016, para. 56 (2009) (*2009 Declaratory Ruling*), *aff’d*, *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012) (*City of Arlington*), *aff’d*, 569 U.S. 290 (2013).

²⁴ *2009 Declaratory Ruling*, 24 FCC Rcd at 14017-18, para. 61.

²⁵ *Id.*

19. In the *2009 Declaratory Ruling*, the Commission acted to speed the deployment of then-new 4G services and concluded that, “[g]iven the evidence of unreasonable delays [in siting decisions] and the public interest in avoiding such delays,” it should offer guidance regarding the meaning of the statutory phrases “reasonable period of time” and “failure to act” “in order to clarify when an adversely affected service provider may take a dilatory State or local government to court.”²⁶ The Commission interpreted “reasonable period of time” under Section 332(c)(7)(B)(ii) to be 90 days for processing collocation applications and 150 days for processing applications other than collocations.²⁷ The Commission further determined that failure to meet the applicable time frame enables an applicant to pursue judicial relief within the next 30 days.²⁸ In litigation involving the 90-day and 150-day time frames, the locality may attempt to “rebut the presumption that the established timeframes are reasonable.”²⁹ If the agency fails to make such a showing, it may face “issuance of an injunction granting the application.”³⁰ In its *2014 Wireless Infrastructure Order*,³¹ the Commission clarified that the time frames under Section 332(c)(7) are presumptively reasonable and begin to run when the application is submitted, not when it is found to be complete by a siting authority.³²

20. In 2012, Congress adopted Section 6409 of the Middle Class Tax Relief and Job Creation Act (the Spectrum Act), which provides further evidence of Congressional intent to limit state and local laws that operate as barriers to infrastructure deployment. It states that, “[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified as 47 U.S.C. § 332(c)(7)] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”³³ Subsection (a)(2) defines the term “eligible facilities request” as any request for modification of an existing wireless tower or base station that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.³⁴ In implementing Section 6409 and in an effort to “advance[e] Congress’s goal

²⁶ *Id.* at 14008, para. 37; *see also id.* at 14029 (Statement of Chairman Julius Genachowski) (“[T]he rules we adopt today . . . will have an important effect in speeding up wireless carriers’ ability to build new 4G networks—which will in turn expand and improve the range of wireless choices available to American consumers.”).

²⁷ *Id.* at 14012, para. 45.

²⁸ *Id.* at 14005, 14012, paras. 32, 45.

²⁹ *Id.* at 14008-10, 14013-14, paras. 37-42, 49-50.

³⁰ *Id.* at 14009, para. 38; *see also City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115 (2005) (proper remedies for Section 332(c)(7) violations include injunctions but not constitutional tort damages).

³¹ Specifically, the Commission determined that once a siting application is considered complete for purposes of triggering the Section 332(c)(7) shot clocks, those shot clocks run regardless of any moratoria imposed by state or local governments, and the shot clocks apply to DAS and small-cell deployments so long as they are or will be used to provide “personal wireless services.” *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report & Order, 29 FCC Rcd 12865, 12966, 12973, paras. 243, 270, (2014) (*2014 Wireless Infrastructure Order*), *aff’d*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015) (*Montgomery County*); *see also Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330, 3339, para. 22 (2017) (*Wireless Infrastructure NPRM/NOI*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, WC Docket No. 17-84 and WT Docket No. 17-79, FCC 18-111, paras. 140-68 (rel. Aug. 3, 2018) (*Moratoria Declaratory Ruling*).

³² *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12970, para. 258. (“Accordingly, to the extent municipalities have interpreted the clock to begin running only after a determination of completeness, that interpretation is incorrect.”).

³³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6409(a)(2), 126 Stat. 156 (2012).

³⁴ *Id.*

of facilitating rapid deployment,”³⁵ the Commission adopted rules to expedite the processing of eligible facilities requests, including documentation requirements and a 60-day period for states and localities to review such requests.³⁶ The Commission further determined that a “deemed granted” remedy was necessary for cases in which the reviewing authority fails to issue a decision within the 60-day period in order to “ensur[e] rapid deployment of commercial and public safety wireless broadband services.”³⁷ The Fourth Circuit, affirming that remedy, explained that “[f]unctionally, what has occurred here is that the FCC—pursuant to properly delegated Congressional authority—has preempted state regulation of wireless towers.”³⁸

21. Consistent with these broad federal mandates, courts have recognized that the Commission has authority to interpret Sections 253 and 332 of the Act to further elucidate what types of state and local legal requirements run afoul of the statutory parameters Congress established.³⁹ For instance, the Fifth Circuit affirmed the *2009 Declaratory Ruling in City of Arlington*. The court concluded that the Commission possessed the “authority to establish the 90– and 150–day time frames” and that its decision was not arbitrary and capricious.⁴⁰ More generally, as the agency charged with administering the Communications Act, the Commission has the authority, responsibility, and expert judgement to issue interpretations of the statutory language and to adopt implementing regulations that clarify and specify the scope and effect of the Act. Such interpretations are particularly appropriate where the statutory language is ambiguous, or the subject matter is “technical, complex, and dynamic,” as it is in the Communications Act, as recognized by the Supreme Court.⁴¹ Here, the Commission has ample experience monitoring and regulating the telecommunications sector. It is well-positioned, in light of this experience and the record in this proceeding, to issue a clarifying interpretation of Sections 253 and 332(c)(7) that accounts both for the changing needs of a dynamic wireless sector that is increasingly reliant on Small Wireless Facilities and for state and local oversight that does not materially inhibit wireless deployment.

22. The congressional and FCC decisions described above point to consistent federal action, particularly when faced with changes in technology, to ensure that our country’s approach to wireless infrastructure deployment promotes buildout of the facilities needed to provide Americans with next-generation services. Consistent with that long-standing approach, in the *2017 Wireless Infrastructure NPRM/NOI*, the Commission sought comment on whether the FCC should again update its approach to infrastructure deployment to ensure that regulations are not operating as prohibitions in violation of Congress’s decisions and federal policy.⁴² In August 2018, the Commission concluded that state and local moratoria on telecommunications services and facilities deployment are barred by Section 253(a).⁴³

³⁵ *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12872, para. 15.

³⁶ *Id.* at 12922, 12956-57, paras. 135, 214-15.

³⁷ *Id.* at 12961-62, paras. 226, 228.

³⁸ *Montgomery County*, 811 F.3d at 129.

³⁹ See, e.g., *City of Arlington*, 668 F.3d at 253-54; *County of San Diego*, 543 F.3d at 578; *RT Commc’ns., Inc. v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000).

⁴⁰ *City of Arlington*, 668 F.3d at 254, 260-61.

⁴¹ *Nat’l Cable & Telecomm. Ass’n v. Gulf Power Co.*, 534 U.S. 327, 328 (2002); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000) (recognizing “agency’s greater familiarity with the ever-changing facts and circumstances surrounding the subjects regulated”); see also, e.g., *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 983-986 (2005) (Commission’s interpretation of an ambiguous statutory provision overrides earlier court decisions interpreting the same provision).

⁴² See generally *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3332-39, paras. 4-22.

⁴³ See generally *Moratoria Declaratory Ruling*, FCC 18-111, paras. 140-68.

B. The Need for Commission Action

23. In response to the opportunities presented by offering new wireless services, and the problems facing providers that seek to deploy networks to do so, we find it necessary and appropriate to exercise our authority to interpret the Act and clarify the preemptive scope that Congress intended. The introduction of advanced wireless services has already revolutionized the way Americans communicate and transformed the U.S. economy. Indeed, the FCC's most recent wireless competition report indicates that American demand for wireless services continues to grow exponentially. It has been reported that monthly data usage per smartphone subscriber rose to an average of 3.9 gigabytes per subscriber per month, an increase of approximately 39 percent from year-end 2015 to year-end 2016.⁴⁴ As more Americans use more wireless services, demand for new technologies, coverage and capacity will necessarily increase, making it critical that the deployment of wireless infrastructure, particularly Small Wireless Facilities, not be stymied by unreasonable state and local requirements.

24. 5G wireless services, in particular, will transform the U.S. economy through increased use of high-bandwidth and low-latency applications and through the growth of the Internet of Things.⁴⁵ While the existing wireless infrastructure in the U.S. was erected primarily using macro cells with relatively large antennas and towers, wireless networks increasingly have required the deployment of small cell systems to support increased usage and capacity. We expect this trend to increase with next-generation networks, as demand continues to grow, and providers deploy 5G service across the nation.⁴⁶ It is precisely "[b]ecause providers will need to deploy large numbers of wireless cell sites to meet the country's wireless broadband needs and implement next-generation technologies" that the Commission has acknowledged "an urgent need to remove any unnecessary barriers to such deployment, whether caused by Federal law, Commission processes, local and State reviews, or otherwise."⁴⁷ As explained below, the need to site so many more 5G-capable nodes leaves providers' deployment plans and the underlying economics of those plans vulnerable to increased per site delays and costs.

25. Some states and local governments have acted to facilitate the deployment of 5G and other next-gen infrastructure, looking to bring greater connectivity to their communities through forward-looking policies. Leaders in these states are working hard to meet the needs of their communities and balance often competing interests. At the same time, outlier conduct persists. The record here suggests that the legal requirements in place in other state and local jurisdictions are materially impeding that deployment in various ways.⁴⁸ Crown Castle, for example, describes "excessive and unreasonable" "fees

⁴⁴ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, 32 FCC Rcd 8968, 8972, para. 20 (2017) (*Twentieth Wireless Competition Report*).

⁴⁵ See *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3331, para. 1.

⁴⁶ See, e.g., Letter from Brett Haan, Principal, Deloitte Consulting, U.S., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Sept. 17, 2018) ("Significant investment in new network infrastructure is needed to deploy 5G networks at-scale in the United States. 5G's speed and coverage capabilities rely on network densification, which requires the addition of towers and small cells to the network. . . . This requires carriers to add 3 to 10 times the number of existing sites to their networks. Most of this additional infrastructure will likely be built with small cells that use lampposts, utility poles, or other structures of similar size able to host smaller, less obtrusive radios required to build a densified network." (citation omitted)); see also Deloitte LLP, 5G: The Chance to Lead for a Decade (2018) (Deloitte 5G Paper), available at <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-5gdeployment-imperative.pdf>.

⁴⁷ See *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3331, para. 2.

⁴⁸ See, e.g., Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 10, 2018) ("Unfortunately, many municipalities are unable, unwilling, or do not make it a priority to act on applications within the shot clock period."); Letter from Keith Buell, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Aug. 13, 2018) (Sprint Aug. 13, 2018 *Ex Parte* Letter); Letter from Katherine R. Saunders, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 21,

to access the [rights-of-way] that are completely unrelated to their maintenance or management.” It also points to barriers to market entry “for independent network and telecommunications service providers,” including municipalities that “restric[t] access to the [right-of-way] only to providers of commercial mobile services” or that impose “onerous zoning requirements on small cell installations when other similar [right of way] utility installations are erected with simple building permits.”⁴⁹ Crown Castle is not alone in describing local regulations that slow deployment. AT&T states that localities in Maryland, California, and Massachusetts have imposed fees so high that it has had to pause or decrease deployments.⁵⁰ Likewise, AT&T states that a Texas city has refused to allow small cell placement on any structures in a right-of-way (ROW).⁵¹ T-Mobile states that the Town of Hempstead, New York requires service providers who seek to collocate or upgrade equipment on existing towers that have been properly constructed pursuant to Class II standards to upgrade and certify these facilities under Class III standards that apply to civil and national defense and military facilities.⁵² Verizon states that a Minnesota town has proposed barring construction of new poles in rights-of-way and that a Midwestern suburb where it has been trying to get approval for small cells since 2014 has no established procedures for small cell approvals.⁵³ Verizon states that localities in New York and Washington have required special use permits involving multiple layers of approval to locate small cells in some or all zoning districts.⁵⁴ While some localities dispute some of these characterizations, their submissions do not persuade us that there is no basis or need for the actions we take here.

26. Further, the record in this proceeding demonstrates that many local siting authorities are not complying with our existing Section 332 shot clock rules.⁵⁵ WIA states that its members routinely face lengthy delays and specifically cite localities in New Jersey, New Hampshire, and Maine as being

(Continued from previous page)

2018) (“[L]ocal permitting delays continue to stymie deployments.”); Letter from Kenneth J. Simon, Crown Castle, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018); Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 30, 2018) (CTIA Aug. 30, 2018 *Ex Parte* Letter).

⁴⁹ Crown Castle Comments at 7; *see also* Letter from Kenneth J. Simon, Senior Vice President and General Counsel, Crown Castle International Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 19, 2018) (“In Hillsborough, California, Crown Castle submitted applications covering 16 nodes, and was assessed \$60,000 in application fees. Not only did Hillsborough go on to deny these applications, following that denial it also then sent Crown Castle an invoice for an additional \$351,773 (attached as Exhibit A), most of which appears to be related to outside counsel fees—all for equipment that was not approved and has not yet been constructed.”).

⁵⁰ Letter from Henry Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Aug. 6, 2018) (AT&T Aug. 6, 2018 *Ex Parte* Letter).

⁵¹ AT&T Comments at 6-7.

⁵² T-Mobile Reply Comments at 7-9; *see also* CCA Reply Comments at 12; CTIA Reply Comments at 18; WIA Reply Comments at 22-23.

⁵³ *See* Verizon Comments at 7.

⁵⁴ *See* Verizon Comments at 35.

⁵⁵ *See, e.g.,* T-Mobile Comments at 8 (stating that “roughly 30% of all of its recently proposed sites (including small cells) involve cases where the locality failed to act in violation of the shot clocks.”). According to WIA, one of its members “reports that 70% of its applications to deploy Small Wireless Facilities in the public ROWs during a two-year period exceeded the 90-day shot clock for installation of Small Wireless Facilities on an existing utility pole, and 47% exceeded the 150-day shot clock for the construction of new towers.” WIA Comments at 7. A New Jersey locality took almost five years to deny a Sprint application. *See Sprint Spectrum L.P. v. Zoning Bd. of Adjustment of the Borough of Paramus, N.J.*, 21 F. Supp. 3d 381, 383, 387 (D.N.J. 2014), *aff’d*, 606 Fed. Appx. 669 (3d Cir. 2015). Another locality took almost three years to deny a Crown Castle application to install a DAS system. *See Crown Castle NG East, Inc. v. Town of Greenburgh*, 2013 WL 3357169, *6-8 (S.D.N.Y. 2013), *aff’d*, 552 Fed. Appx. 47 (2d Cir. 2014).

problematic.⁵⁶ Similarly, AT&T identified an instance in which it took a locality in California 800 days to process an application.⁵⁷ GCI provides an example in which it took an Alaska locality nine months to decide an application.⁵⁸ T-Mobile states that a community in Colorado and one in California have lengthy pre-application processes for all small cell installations that include notification to all nearby households, a public meeting, and the preparation of a report, none of which these jurisdictions view as triggering a shot clock.⁵⁹ Similarly, Lighttower provides examples of long delays in processing siting applications.⁶⁰ Finally, Crown Castle describes a case in which a “town took approximately two years and nearly twenty meetings, with constantly shifting demands, before it would even ‘deem complete’ Crown Castle’s application.”⁶¹

27. Our Declaratory Ruling and Third Report and Order are intended to address these issues and outlier conduct. Our conclusions are also informed by findings, reports, and recommendations from the FCC Broadband Deployment Advisory Committee (BDAC), including the Model Code for Municipalities, the Removal of State and Local Regulatory Barriers Working Group report, and the Rates and Fees Ad Hoc Working Group report, which the Commission created in 2017 to identify barriers to deployment of broadband infrastructure, many of which are addressed here.⁶² We also considered input from numerous state and local officials about their concerns, and how they have approached wireless deployment, much of which we took into account here. Our action is also consistent with congressional efforts to hasten deployment, including bi-partisan legislation pending in Congress like the STREAMLINE Small Cell Deployment Act and SPEED Act. The STREAMLINE Small Cell Deployment Act proposes to streamline wireless infrastructure deployments by requiring siting agencies to act on deployment requests within specified time frames and by limiting the imposition of onerous

⁵⁶ WIA Comments at 8. WIA states that one of its “member reports that the wireless siting approval process exceeds 90 days in more than 33% of jurisdictions it surveyed and exceeds 150 days in 25% of surveyed jurisdictions.” WIA Comments at 8. In some cases, WIA members have experienced delays ranging from one to three years in multiple jurisdictions—significantly longer than the 90- and 150-day time frames that the Commission established in 2009.

⁵⁷ See WIA Comments at 9 (citing and discussing AT&T’s Comments in the 2016 Streamlining Public Notice, WT Docket No. 16-421).

⁵⁸ GCI Comments at 5-6.

⁵⁹ T-Mobile Comments at 21.

⁶⁰ Lighttower submits that average processing timeframes have increased from 300 days in 2016 to approximately 570 days in 2017, much longer than the Commission’s shot clocks. Lighttower states that “forty-six separate jurisdictions in the last two years had taken longer than 150 days to consider applications, with twelve of those jurisdictions—representing 101 small wireless facilities—taking more than a year.” Lighttower Comments at 5-6. See also WIA Comments at 9 (citing and discussing Lighttower’s Comments in the 2016 Streamlining Public Notice, WT Docket No. 16-421).

⁶¹ WIA Comments at 8 (citing and discussing Crown Castle’s Comments in 2016 Streamlining Public Notice, WT Docket No. 16-421).

⁶² BDAC Report of the Removal of State and Local Regulatory Barriers Working Group, <https://www.fcc.gov/sites/default/files/bdac-regulatorybarriers-01232018.pdf> (approved by the BDAC on January 23, 2018) (BDAC Regulatory Barriers Report); Draft Final Report of the Ad Hoc Committee on Rates and Fees to the BDAC, <https://www.fcc.gov/sites/default/files/bdac-07-2627-2018-rates-fees-wg-report-07242018.pdf> (July 26, 2018) (Draft BDAC Rates and Fees Report); BDAC Model Municipal Code (Harmonized), <https://www.fcc.gov/sites/default/files/bdac-07-2627-2018-harmonization-wg-model-code-muni.pdf> (approved July 26, 2018) (BDAC Model Municipal Code). The Draft Final Report of the Ad Hoc Committee on Rates and Fees to the BDAC was presented to the BDAC on July 26, 2018 but has not been voted by the BDAC as of the adoption of this Declaratory Ruling. Certain members of the Removal of State and Local Barriers Working Group also submitted a minority report disagreeing with certain findings in the BDAC Regulatory Barriers Report. See Minority Report Submitted by McAllen, TX, San Jose, CA, and New York, NY, GN Docket No. 17-83 (Jan 23, 2018); Letter from Kevin Pagan, City Attorney of McAllen to Marlene Dortch, Secretary, FCC (filed September 14, 2018).

conditions and fees.⁶³ The SPEED Act would similarly streamline federal permitting processes.⁶⁴ In the same vein, the Model Code for Municipalities adopts streamlined infrastructure siting requirements while other BDAC reports and recommendations emphasize the negative impact of high fees on infrastructure deployments.⁶⁵

28. As do members of both parties of Congress and experts on the BDAC, we recognize the urgent need to streamline regulatory requirements to accelerate the deployment of wireless infrastructure for current needs and for the next generation of wireless service in 5G.⁶⁶ State government officials also have urged us to act to expedite the deployment of 5G technology, in particular, by streamlining overly burdensome regulatory processes to ensure that 5G technology will expand beyond just urban centers. These officials have expressed their belief that reducing high regulatory costs and delays in urban areas would leave more money and encourage development in rural areas.⁶⁷ “[G]etting [5G] infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources. The solution is to streamline relevant policies—allowing more modern rules for modern infrastructure.”⁶⁸ State officials have acknowledged that current regulations are “outdated” and “could hinder the timely arrival of 5G throughout the country,” and urged the FCC “to push for more reforms that will streamline infrastructure rules from coast to coast.”⁶⁹ Although many states and localities support our efforts, we acknowledge that there are others who advocated for different approaches, arguing, among other points,

⁶³ See, e.g., STREAMLINE Small Cell Deployment Act, S.3157, 115th Congress (2017-2018).

⁶⁴ See, e.g., Streamlining Permitting to Enable Efficient Deployment of Broadband Infrastructure Act of 2017 (SPEED Act), S. 1988, 115th Cong. (2017).

⁶⁵ See BDAC Model Municipal Code; Draft BDAC Rates and Fees Report; BDAC Regulatory Barriers Report.

⁶⁶ See, e.g., Letter from Patricia Paoletta, Counsel to Deloitte Consulting LLP, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 20, 2018) (“Deloitte noted that, as with many technology standard evolutions, the value of being a first-mover in 5G will be significant. Being first to LTE afforded the United States macroeconomic benefits, as it became a test bed for innovative mobile, social, and streaming applications. Being first to 5G can have even greater and more sustained benefits to our national economy given the network effects associated with adding billions of devices to the 5G network, enabling machine-to-machine interactions that generates data for further utilization by vertical industries”).

⁶⁷ Letter from Montana State Senator Duane Ankney to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 31, 2018) (Duane Ankney July 31, 2018 *Ex Parte* Letter); Letter from Fred A. Lamphere, Butte County Sheriff, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1 (filed Sept. 11, 2018) (Fred A. Lamphere Sept. 11, 2018 *Ex Parte* Letter); Letter from Todd Nash, Susan Roberts, Paul Catstilleja, Wallowa County Board of Commissioners, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Aug. 20, 2018); Letter from Lonnie Gilbert, First Responder, National Black Growers Council Member, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1 (filed Sept. 12, 2018); Letter from Jason R. Saine, North Carolina House of Representatives, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed Sept. 14, 2018) (Jason R. Saine Sept. 14, 2018 *Ex Parte* Letter) (minimal regulatory standard across the United States is critical to ensure that the United States wins the race to the 5G economy).

⁶⁸ Letter from LaWana Mayfield, City Council Member, Charlotte, NC, to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 31, 2018) (LaWana Mayfield July 31, 2018 *Ex Parte* Letter); see also Letter from South Carolina State Representative Terry Alexander to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed August 7, 2018) (“[P]olicymakers at all levels of government must streamline complex siting stipulations that will otherwise slow down 5G buildout for small cells in particular.”); Letter from Sal Pace, Pueblo County Commissioner, District 3, CO, to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 30, 2018) (Sal Pace July 30, 2018 *Ex Parte* Letter) (“[T]he FCC should ensure that localities are fully compensated for their costs . . . Such fees should be reasonable and non-discriminatory, and should ensure that localities are made whole. Lastly, the FCC should set reasonable and enforceable deadlines for localities to act on wireless permit applications. . . . The distinction between siting large macro-towers and small cells should be reflected in any rulemaking.”)

⁶⁹ Letter from Dr. Carolyn A. Prince, Chairwoman, Marlboro County Council, SC, to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 31, 2018) (Dr. Carolyn Prince July 31, 2018 *Ex Parte* Letter)

that the FCC lacks authority to take certain actions.⁷⁰ We have carefully considered these views, but nevertheless find our actions here necessary and fully supported.

29. Accordingly, in this Declaratory Ruling and Third Report and Order, we act to reduce regulatory barriers to the deployment of wireless infrastructure and to ensure that our nation remains the leader in advanced wireless services and wireless technology.

III. DECLARATORY RULING

30. In this Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. In light of these diverging views, Congress's vision for a consistent, national policy framework, and the need to ensure that our approach continues to make sense in light of the relatively new trend towards the large-scale deployment of Small Wireless Facilities, we take this opportunity to clarify and update the FCC's reading of the limits Congress imposed. We do so in three main respects.

31. First, in Part III.A, we express our agreement with the views already stated by the First, Second, and Tenth Circuits that the "materially inhibit" standard articulated in 1997 by the Clinton-era FCC's *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

32. Second, in Part III.B, we note, as numerous courts have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can effectively prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress's limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision. Namely, fees are only permitted to the extent that they represent a reasonable approximation of the local government's objectively reasonable costs, and are non-discriminatory.⁷¹ In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. We do so to help avoid unnecessary litigation, while recognizing that it is the standard itself, not the particular, presumptive fee levels we articulate, that ultimately will govern whether a particular fee is allowed under Sections 253 and 332. So fees above

⁷⁰ See, e.g., *City of Manhattan*, KS Sept. 13, 2018 *Ex Parte* Letter at 1-2; Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter at 1-2; Damon Connolly Sept. 17, 2018 *Ex Parte* Letter at 1-2.

⁷¹ Fees charged by states or localities in connection with Small Wireless Facilities would be "compensation" for purposes of Section 253(c). This Declaratory Ruling interprets Section 253 and 332(c)(7) in the context of three categories of fees, one of which applies to all deployments of Small Wireless Facilities while the other two are specific to Small Wireless Facilities deployments inside the ROW. (1) "Event" or "one-time" fees are charges that providers pay on a non-recurring basis in connection with a one-time event, or series of events occurring within a finite period. The one-time fees addressed in this Declaratory Ruling are not specific to the ROW. For example, a provider may be required to pay fees during the application process to cover the costs related to processing an application building or construction permits, street closures, or a permitting fee, whether or not the deployment is in the ROW. (2) Recurring charges for a Small Wireless Facility's use of or attachment to property inside the ROW owned or controlled by a state or local government, such as a light pole or traffic light, is the second category of fees addressed here, and is typically paid on a per structure/per year basis. (3) Finally, ROW access fees are recurring charges that are assessed, in some instances, to compensate a state or locality for a Small Wireless Facility's access to the ROW, which includes the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property (including when such property is government-owned). A ROW access fee may be charged even if the Small Wireless Facility is not using government owned property within the ROW. AT&T Comments at 18 (describing three categories of fees); Letter from Tamara Preiss, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 11 (filed Aug. 10, 2018) (Verizon Aug. 10, 2018 *Ex Parte* Letter) (characterizing fees as recurring or non-recurring); see also Draft BDAC Rates and Fees Report at p. 15-16. Unless otherwise specified, a reference to "fee" or "fees" herein refers to any one of, or any combination of, these three categories of charges.

those levels would be permissible under Sections 253 and 332 to the extent a locality's actual, reasonable costs (as measured by the standard above) are higher.

33. Finally, in Part III.C, we focus on a subset of other, non-fee provisions of state and local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities. We note that the Small Wireless Facilities that are the subject of this Declaratory Ruling remain subject to the Commission's rules governing Radio Frequency (RF) emissions exposure.⁷²

A. Overview of the Section 253 and Section 332(c)(7) Framework Relevant to Small Wireless Facilities Deployment

34. In Sections 253(a) and 332(c)(7)(B) of the Act, Congress determined that state or local requirements that prohibit or have the effect of prohibiting the provision of service are unlawful and thus preempted.⁷³ Section 253(a) addresses "any interstate or intrastate telecommunications service," while Section 332(c)(7)(B)(i)(II) addresses "personal wireless services."⁷⁴ Although the provisions contain identical "effect of prohibiting" language, the Commission and different courts over the years have each employed inconsistent approaches to deciding what it means for a state or local legal requirement to have the "effect of prohibiting" services under these two sections of the Act. This has caused confusion among both providers and local governments about what legal requirements are permitted under Sections 253 and 332(c)(7). For example, despite Commission decisions to the contrary construing such language under Section 253, some courts have held that a denial of a wireless siting application will "prohibit or have the effect of prohibiting" the provision of a personal wireless service under Section 332(c)(7)(B)(i)(II) only if the provider can establish that it has a significant gap in service coverage in the

⁷² See 47 CFR §§ 1.1307, 1.1310. We disagree with commenters who oppose the Declaratory Ruling on the basis of concerns regarding RF emissions. See, e.g., Comments from Judy Aizuss, Comments from Jeffrey Arndt, Comments from Jeanice Barcelo, Comments from Kristin Beatty, Comments from James M. Benster, Comments from Terrie Burns, Comments from EMF Safety Network, Comments from Kate Reese Hurd, Comments from Marilynne Martin, Comments from Lisa Mayock, Comments from Kristen Moriarty Termunde, Comments from Sage Associates, Comments from Elizabeth Shapiro, Comments from Paul Silver, Comments from Natalie Ventrice. The Commission has authority to adopt and enforce RF exposure limits, and nothing in this Declaratory Ruling changes the applicability of the Commission's existing RF emissions exposure rules. See, e.g., Section 704(b) of the Telecommunications Act of 1996, Pub. L. No. 104-104 (directing Commission to "prescribe and make effective rules regarding the environmental effects of radio frequency emissions" upon completing action in then-pending rulemaking proceeding that included proposals for, *inter alia*, maximum exposure limits); 47 U.S.C. § 332(c)(7)(B)(iv) (recognizing legitimacy of FCC's existing regulations on environmental effects of RF emissions of personal wireless service facilities, by proscribing state and local regulation of such facilities on the basis of such effects, to the extent such facilities comply with Commission regulations concerning such RF emissions); 47 U.S.C. § 151 (creating the FCC "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service, . . . for the purpose of [*inter alia*] promoting safety of life and property through the use of wire and radio communications"). See also H.R. Rep. No. 204(I), 104th Cong., 1st Sess. 94 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 61 (1996) (in legislative history of Section 704 of 1996 Telecommunications Act, identifying "adequate safeguards of the public health and safety" as part of a framework of uniform, nationwide RF regulations); ; *Reassessment of FCC Radiofrequency Exposure Limits and Policies*, First Report and Order, Further Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 3498, 3530-31, para. 103, n.176 (2013).

⁷³ 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II).

⁷⁴ *Id.* The actions in this proceeding update the FCC's approach to Sections 253 and 332 by addressing effective prohibitions that apply to the deployment of services covered by those provisions. Our interpretations in this proceeding do not provide any basis for increasing the regulation of services deployed consistent with Section 621 of the Cable Communications Policy Act of 1984.

area and a lack of feasible alternative locations for siting facilities.⁷⁵ Other courts have held that evidence of an already-occurring or complete inability to offer a telecommunications service is required to demonstrate an effective prohibition under Section 253(a).⁷⁶ Conversely, still other courts like the First, Second, and Tenth Circuits have endorsed prior Commission interpretations of what constitutes an effective prohibition under Section 253(a) and recognized that, under that analytical framework, a legal requirement can constitute an effective prohibition of services even if it is not an insurmountable barrier.⁷⁷

35. In this Declaratory Ruling, we first reaffirm, as our definitive interpretation of the effective prohibition standard, the test we set forth in *California Payphone*, namely, that a state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”⁷⁸ We then explain how this “material inhibition” standard applies in the context of state and local fees and aesthetic requirements. In doing so, we confirm the First, Second, and Tenth Circuits’ understanding that under this analytical framework, a legal requirement can “materially inhibit” the provision of services even if it is not an insurmountable barrier.⁷⁹ We also resolve the conflicting court interpretations of the

⁷⁵ Courts vary widely regarding the type of showing needed to satisfy the second part of that standard. The First, Fourth, and Seventh Circuits have imposed a “heavy burden” of proof on applicants to establish a lack of alternative feasible sites, requiring them to show “not just that *this* application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try.” *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 40 (1st Cir. 2014); *accord New Cingular Wireless PCS, LLC v. Fairfax County*, 674 F.3d 270, 277 (4th Cir. 2012); *T-Mobile Northeast LLC v. Fairfax County*, 672 F.3d 259, 266-68 (4th Cir. 2012) (*en banc*); *Helcher v. Dearborn County*, 595 F.3d 710, 723 (7th Cir. 2010) (*Helcher*). The Second, Third, and Ninth Circuits have held that an applicant must show only that its proposed facilities are the “least intrusive means” for filling a coverage gap in light of the aesthetic or other values that the local authority seeks to serve. *Sprint Spectrum, LP v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999) (*Willoth*); *APT Pittsburgh Ltd. P’ship v. Penn Township*, 196 F.3d 469, 480 (3d Cir. 1999) (*APT*); *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1056-57 (9th Cir. 2014); *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995-99 (9th Cir. 2009) (*City of Anacortes*).

⁷⁶ *See, e.g., County of San Diego*, 543 F.3d at 579-80; *Level 3 Commc’ns, LLC v. City of St. Louis*, 477 F.3d 528, 533-34 (8th Cir. 2007) (*City of St. Louis*).

⁷⁷ *See Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 450 F.3d 9, 18 (1st Cir. 2006) (*Municipality of Guayanilla*); *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002) (*City of White Plains*); *RT Communications v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000) (“[Section] 253(a) forbids any statute which prohibits or has ‘the effect of prohibiting’ entry. Nowhere does the statute require that a bar to entry be insurmountable before the FCC must preempt it.”) (*RT Communications*) (*affirming Silver Star Tel. Co. Petition for Preemption and Declaratory Ruling*, 12 FCC Rcd 15639 (1997)).

⁷⁸ *California Payphone*, 12 FCC Rcd at 14206, para. 31. A number of circuit courts have cited *California Payphone* as the leading authority regarding the standard to be applied under Section 253(a). *See, e.g., County of San Diego*, 543 F.3d at 578; *City of St. Louis*, 477 F.3d at 533; *Municipality of Guayanilla*, 450 F.3d at 18; *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1270 (10th Cir. 2004) (*City of Santa Fe*); *City of White Plains*, 305 F.3d at 76. Crown Castle argues that the Eighth and Ninth Circuit cited the FCC’s *California Payphone* decision, but read the standard in an overly narrow fashion. *See, e.g., Letter from Kenneth J. Simon, Senior Vice Pres. and Gen. Counsel, Crown Castle, et al., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 12* (filed June 7, 2018) (Crown Castle June 7, 2018 *Ex Parte* Letter); *see also Smart Communities Comments at 60-61* (describing circuit split). Some commenters cite selected dictionary definitions or otherwise argue for a narrow definition of “prohibit.” *See, e.g., Smart Communities Reply at 53*. But because they do not go on to dispute the validity of the *California Payphone* standard that has been employed not only by the Commission but also many courts, those arguments do not persuade us to depart from the *California Payphone* standard here.

⁷⁹ *See, e.g., City of White Plains*, 305 F.3d at 76; *Municipality of Guayanilla*, 450 F.3d at 18; *see also, e.g., Crown Castle June 7, 2018 Ex Parte Letter at 12*. Because the clarifications in this order should reduce uncertainty regarding the application of these provisions for state and local governments as well as stakeholders, we are not persuaded by some commenters’ arguments that an expedited complaint process is required. *See, e.g., AT&T Comments at 28; CTIA Reply at 21*. We do not address, at this time, recently-filed petitions for reconsideration of our August 2018 *Moratoria Declaratory Ruling*. *See, e.g., Smart Communities Petition for Reconsideration, WC*

‘effective prohibition’ language so that continuing confusion on the meaning of Sections 253 and 332(c)(7) does not materially inhibit the critical deployments of Small Wireless Facilities and our nation’s drive to deploy 5G.⁸⁰

36. As an initial matter, we note that our Declaratory Ruling applies with equal measure to the effective prohibition standard that appears in both Sections 253(a) and 332(c)(7).⁸¹ This ruling is consistent with the basic canon of statutory interpretation that identical words appearing in neighboring provisions of the same statute generally should be interpreted to have the same meaning.⁸² Moreover, both of these provisions apply to wireless telecommunications services⁸³ as well as to commingled services and facilities.⁸⁴

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Docket No. 17-84 & WT Docket No. 17-79 (filed Sept. 4, 2018); New York City Petition for Reconsideration, WC Docket No. 17-84 & WT Docket No. 17-79 (filed Sept. 4, 2018). Nor do we address requests for clarification and/or action on other issues raised in the record beyond those expressly discussed in this order. These other issues include arguments regarding other statutory interpretations that we do not address here. *See, e.g.*, CTIA Reply at 23 (raising broader questions about the precise interplay of Section 253 and Section 332(c)(7)); Crown Castle June 7, 2018 *Ex Parte* Letter at 16-17 (raising broader questions about the scope of “legal requirements” under Section 253(a)). Consequently, this order should not be read as impliedly taking a position on those issues.

⁸⁰ *See, e.g.*, Crown Castle June 7, 2018 *Ex Parte* Letter at 11-12 (arguing that “[d]espite the Commission’s efforts to define the boundaries of federal preemption under Section 253, courts have issued a number of conflicting decisions that have only served to confuse the preemption analysis under section 253” and that “the Commission should clarify that the *California Payphone* standard as interpreted by the First and Second Circuits is the appropriate standard going forward”); *see also* BDAC Regulatory Barriers Report at p. 9 (“The Commission should provide clarity on what actually constitutes an “excessive” fee for right-of-way access and use. The FCC should provide guidance on what constitutes a fee that is excessive and/or duplicative, and that therefore is not “fair and reasonable.” The Commission should specifically clarify that “fair and reasonable” compensation for right-of way access and use implies some relation to the burden of new equipment placed in the ROW or on the local asset, or some other objective standard.”). Because our decision provides clarity by addressing conflicting court decisions and reaffirming that the “materially inhibits” standard articulated in the Commission’s *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as an effective prohibition within the meaning of Sections 253 and 332, we reject arguments that our action will increase conflicts and lead to more litigation. *See e.g.*, Letter from Michael Dylan Brennan, Mayor, City of University Heights, Ohio, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Sept. 19, 2018) (stating that “...this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding”).

⁸¹ *See infra* Part III.A, B.

⁸² *See County of San Diego*, 543 F.3d at 579 (“We see nothing suggesting that Congress intended a different meaning of the text ‘prohibit or have the effect of prohibiting’ in the two statutory provisions, enacted at the same time, in the same statute. * * * * As we now hold, the legal standard is the same under either [Section 253 or 332(c)(7)].”); *see also, e.g., Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (citing *Sullivan v. Stroup*, 496 U.S. 478, 484 (1990) (reading same term used in different parts of the same Act to have the same meaning); *Northcross v. Board of Ed. of Memphis City Schools*, 412 U.S. 427, 428 (1973) (per curiam) (“[S]imilarity of language . . . is . . . a strong indication that the two statutes should be interpreted *pari passu*”); Verizon Comments at 9-10; AT&T Reply at 3-4; Crown Castle June 7, 2018 *Ex Parte* Letter at 15.

⁸³ Common carrier wireless services meet the definition of “telecommunications services,” and thus are within the scope of Section 253(a) of the Act. *See, e.g., Moratoria Declaratory Ruling*, FCC 18-111, para 142 n.523; *see also, e.g.*, League of Minnesota Cities Comments at 11; Verizon Reply at 9-10. While some commenters cite certain distinguishing factual characteristics between wireline and wireless services, the record does not reveal why those distinctions would be material to whether wireless telecommunications services are covered by Section 253 in the first instance. *See, e.g., City of San Antonio et al. Comments*, Exh. A at 13; Virginia Joint Commenters Comments at 5, Exh. A at 45-46. To the contrary, Section 253(e) expressly preserves “application of section 332(c)(3) of this title to commercial mobile service providers” notwithstanding Section 253—a provision that would be meaningless if wireless telecommunications services already fell outside the scope of Section 253. 47 U.S.C. § 253(e). For this same reason, we also reject claims that the existence of certain protections for personal wireless services in Section 332(c)(7), or the phrase “nothing in this chapter” in Section 332(c)(7)(A), demonstrate that states’ or localities’

37. As explained in *California Payphone* and reaffirmed here, a state or local legal requirement will have the effect of prohibiting wireless telecommunications services if it materially inhibits the provision of such services. We clarify that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service.⁸⁵ This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service

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regulations affecting wireless telecommunications services must fall outside the scope of Section 253. *See, e.g.,* Virginia Joint Commenters Comments, Exh. A at iii, 45-46; Smart Communities Comments at 56. Even if, as some parties argue, the phrase “nothing in this chapter” could be construed as preserving state or local decisions on the placement, construction, or modification of personal wireless service facilities from preemption by other sections of the Communications Act, Section 332(c)(7)(A) goes on to make clear that such state or local decisions are *not* immune from preemption if they violate any of the standards set forth in Section 332(c)(7)(B)—including Section 332(c)(7)(B)(i)(II)’s ban of requirements that “prohibit or have the effect of prohibiting” the provision of service, which is identical to the preemption provision in Section 253(a). Thus, states and localities may charge fees and dispose of applications relating to the matters subject to Section 332(c)(7) in any manner they deem appropriate, so long as that conduct does not amount to a prohibition or effective prohibition, as interpreted in this Declaratory Ruling or otherwise run afoul of federal or state law; but because Sections 332(c)(7)(B)(i)(II) and 253(a) use identical “effective prohibition” language, the standard for what is saved and what is preempted is the same under both provisions.

⁸⁴ *See infra* para. 40 (discussing use of small cells to close coverage gaps, including voice gaps); *see also, e.g.,* *Moratoria Declaratory Ruling*, FCC 18-111, para 145 n.531; *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 425, para. 190 (2018); Letter from Andre J. Lachance, Associate General Counsel, Verizon to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 3 (filed Sept. 19, 2018) (confirming that “telecommunications services can be provided over small cells and Verizon has deployed Small Wireless Facilities in its network that provide telecommunications services.”); Letter from David M. Crawford, Senior Corporate Counsel, Fed. Reg. Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 19, 2018) (stating that “small wireless facilities are a critical component of T-Mobile’s network deployment plans to support both the 5G evolution of wireless services, as well as more traditional services such as mobile broadband and even voice calls. T-Mobile, for example, uses small wireless facilities to densify our network to provide better coverage and greater capacity, and to provide traditional services such as voice calls in areas where our macro site coverage is insufficient to meet demand.”); Letter from Henry G. Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 20, 2018) (“AT&T has operated and continues to operate commercial mobile radio services as well as information services from small wireless facilities...”); *see also, e.g.,* *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d 425, 441-42 (E.D.N.Y. 2009) (finding that a restriction on advertising on newly-installed payphones was subject to Section 253(a) where the advertising was a material factor in the provider’s ability to provide the payphone service itself). The fact that facilities are sometimes deployed by third parties not themselves providing covered services also does not place such deployment beyond the purview of Section 253(a) or Section 332(c)(7)(B)(i) insofar as the facilities are used by wireless service providers on a wholesale basis to provide covered services (among other things). *See, e.g.,* T-Mobile Comments at 26. Given our conclusion that neither commingling of services nor the identity of the entity engaged in the deployment activity changes the applicability of Section 253(a) or Section 332(c)(7)(B)(i)(II) where the facilities are being used for the provisioning of services within the scope of the relevant statutory provisions, we reject claims to the contrary. *See, e.g.,* Colorado Communications and Utility Alliance *et al.* Comments at 15-16; City of San Antonio *et al.* Comments, Exh. A at 12; *id.*, Exh. C at 13-15. Because local jurisdictions do not have the authority to regulate these interstate services, there is no basis for local jurisdictions to conduct proceedings on the types of personal wireless services offered over particular wireless service facilities or the licensee’s service area, which are matters within the Commission’s licensing authority. Furthermore, local jurisdictions do not have the authority to require that providers offer certain types or levels of service, or to dictate the design of a provider’s network. *See* 47 U.S.C. § 332(c)(3)(A); *see also* *Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 989 (7th Cir. 2000).

⁸⁵ By “covered service” we mean a telecommunications service or a personal wireless service for purposes of Section 253 and Section 332(c)(7), respectively.

capabilities.⁸⁶ Under the *California Payphone* standard, a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services. Thus, an effective prohibition includes materially inhibiting additional services or improving existing services.⁸⁷

38. Our reading of Section 253(a) and Section 332(c)(7)(B)(i)(II) reflects and supports a marketplace in which services can be offered in a multitude of ways with varied capabilities and performance characteristics consistent with the policy goals in the 1996 Act and the Communications Act. To limit Sections 253(a) and 332(c)(7)(B)(i)(II) to protecting only against coverage gaps or the like would be to ignore Congress’s contemporaneously-expressed goals of “promot[ing] competition[,] . . . secur[ing] . . . higher quality services for American telecommunications consumers and encourage[ing] the rapid deployment of new telecommunications technologies.”⁸⁸ In addition, as the Commission recently explained, the implementation of the Act “must factor in the fundamental objectives of the Act, including the deployment of a ‘rapid, efficient . . . wire and radio communication service with adequate facilities at reasonable charges’ and ‘the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays[, and] efficient and

⁸⁶ See, e.g., Crown Castle Comments at 54-55; Free State Foundation Comments at 12; T-Mobile Comments at 43-45; CTIA Reply at 14; WIA Reply at 26; Crown Castle June 7, 2018 *Ex Parte* Letter at 13-14; Letter from Kara Romagnino Graves, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 8-9 (filed June 27, 2018) (CTIA June 27, 2018 *Ex Parte* Letter). As T-Mobile explains, for example, a provider might need to improve “signal strength or system capacity to allow it to provide reliable service to consumers in residential and commercial buildings.” T-Mobile Comments at 43; see also, e.g., *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, *et al.*, Notice of Proposed Rulemaking, 28 FCC Rcd 14238, 14253, para. 38 (2013) (observing that “DAS and small cell facilities[] are critical to satisfying demand for ubiquitous mobile voice and broadband services”). The growing prevalence of smart phones has only accelerated the demand for wireless providers to take steps to improve their service offerings. See, e.g., *Twentieth Wireless Competition Report*, 32 FCC Rcd at 9011-13, paras. 62-65.

⁸⁷ Our conclusion finds further support in our broad understanding of the statutory term “service,” which, as we explained in our recent *Moratoria Declaratory Ruling*, means “any covered service a provider wishes to provide, incorporating the abilities and performance characteristics it wishes to employ, including to provide existing services more robustly, or at a higher level of quality—such as through filling a coverage gap, densification, or otherwise improving service capabilities.” *Moratoria Declaratory Ruling*, FCC 18-111, para. 162 n.594; see also *Public Utility Comm’n of Texas Petition for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3496, para. 74 (1997) (*Texas PUC Order*) (interpreting the scope of ‘telecommunications services’ covered by Section 253(a) and clarifying that it would be an unlawful prohibition for a state or locality to specify “the means or facilities” through which a service provider must offer service); Crown Castle June 7, 2018 *Ex Parte* Letter at 10-11 (discussing this precedent). We find this interpretation of “service” warranted not only under Section 253(a), but Section 332(c)(7)(B)(i)(II)’s reference to “services” as well.

⁸⁸ Preamble to the Telecommunications Act of 1996, Pub. Law. No. 104-104, § 202, 110 Stat. 56 (1996). Consequently, we reject arguments suggesting that the provision of some level of wireless service in the past necessarily demonstrates that there is no effective prohibition of service under the state or local legal requirements that applied during those periods or that an effective prohibition only is present if a provider can provide no covered service whatsoever. See, e.g., City and County of San Francisco Comments at 25-26; Virginia Joint Commenters Comments, Exh. A at 31-33. Nor, in light of these goals, do we find it reasonable to interpret the protections of these provisions as doing nothing more than guarding against a monopoly as some suggest. See, e.g., Smart Communities Comments, WC Docket No. 17-84, at 8-9 (filed June 15, 2017) cited in Smart Communities Comments at 57 n.141.

intensive use of the electromagnetic spectrum.”⁸⁹ These provisions demonstrate that our interpretation of Section 253 and Section 332(c)(7)(B)(i)(II) is in accordance with the broader goals of the various statutes that the Commission is entrusted to administer.

39. *California Payphone* further concluded that providers must be allowed to compete in a “fair and balanced regulatory environment.”⁹⁰ As reflected in decisions such as the Commission’s *Texas PUC Order*, a state or local legal requirement can function as an effective prohibition either because of the resulting “financial burden” in an absolute sense, or, independently, because of a resulting competitive disparity.⁹¹ We clarify that “[a] regulatory structure that gives an advantage to particular services or facilities has a prohibitory effect, even if there are no express barriers to entry in the state or local code; the greater the discriminatory effect, the more certain it is that entities providing service using the disfavored facilities will experience prohibition.”⁹² This conclusion is consistent with both Commission and judicial precedent recognizing the prohibitory effect that results from a competitor being treated materially differently than similarly-situated providers.⁹³ We provide our authoritative interpretation below of the circumstances in which a “financial burden,” as described in the *Texas PUC Order*, constitutes an effective prohibition in the context of certain state and local fees.

40. As we explained above, we reject alternative readings of the effective prohibition language that have been adopted by some courts and used to defend local requirements that have the effect of prohibiting densification of networks. Decisions that have applied solely a “coverage gap”-based approach under Section 332(c)(7)(B)(i)(II) reflect both an unduly narrow reading of the statute and an outdated view of the marketplace.⁹⁴ Those cases, including some that formed the foundation for

⁸⁹ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, FCC 18-30, para. 62 (rel. Mar. 30, 2018) (*Wireless Infrastructure Second R&O*) (quoting 47 U.S.C. §§ 151, 309(j)(3)(A), (D)).

⁹⁰ *California Payphone*, 12 FCC Rcd at 14206, para. 31.

⁹¹ *Texas PUC Order*, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81; *see also, e.g.*, Crown Castle June 7, 2018 *Ex Parte* at 10-11, 13.

⁹² Crown Castle June 7, 2018 *Ex Parte* Letter at 13.

⁹³ *See, e.g.*, *Texas PUC Order*, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81; *Federal-State Joint Board on Universal Service*; *Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities*, Declaratory Ruling, 15 FCC Rcd 15168, 15173, paras. 12-13 (2000) (*Western Wireless Order*); *Pittencrieff Communications, Inc. Petition for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 1735, 1751-52, para. 32 (1997) (*Pittencrieff*), *aff’d*, *Cellular Telecomm. Indus. Ass’n v. FCC*, 168 F.3d 1332 (5th Cir. 1999); *City of White Plains*, 305 F.3d at 80.

⁹⁴ Smart Communities seeks clarification of whether this Declaratory Ruling is meant to say that the “coverage gap” standard followed by a number of courts should include consideration of capacity as well as coverage issues. Letter from Gerard Lavery Lederer, Counsel, Smart Communities and Special Districts Coalition, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Att. at 17 (Sept. 19, 2018) (Smart Communities Sept. 19 *Ex Parte* Letter). We are not holding that prior “coverage gap” analyses are consistent with the standards we articulate here as long as they also take into account “capacity gaps”; rather, we are articulating here the effective prohibition standard that should apply while, at the same time, noting one way in which prior approaches erred by requiring coverage gaps. Accordingly, we reject both the version of the “coverage gap” test followed by the First, Fourth, and Seventh Circuits (requiring applicants to show “not just that *this* application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try”) and the version endorsed by the Second, Third, and Ninth Circuits (requiring applicants to show that the proposed facilities are the “least intrusive means” for filling a coverage gap) *See supra* n. 75. We also note that some courts have expressed concern about alternative readings of the statute that would lead to extreme outcomes—either always requiring a grant under some interpretations, or never preventing a denial under other interpretations. *See, e.g.*, *Willoth*, 176 F.3d at 639-41; *APT*, 196 F.3d at 478-79; *Town of Amherst v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9, 14 (1st Cir. 1999); *AT&T Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 428 (4th Cir. 1998) (*City Council of Virginia Beach*); *see also, e.g.*, Greenling Comments at 2; City and County of San Francisco Reply

“coverage gap”-based analytical approaches, appear to view wireless service as if it were a single, monolithic offering provided only via traditional wireless towers.⁹⁵ By contrast, the current wireless marketplace is characterized by a wide variety of offerings with differing service characteristics and deployment strategies.⁹⁶ As Crown Castle explains, coverage gap-based approaches are “simply

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at 16. Our interpretation avoids those concerns while better reflecting the text and policy goals of the Communications Act and 1996 Act than coverage gap-based approaches ultimately adopted by those courts. Our approach ensures meaningful constraints on state and local conduct that otherwise would prohibit or have the effect of prohibiting the provision of personal wireless services. At the same time, our standard does not preclude all state and local denials of requests for the placement, construction, or modification of personal wireless service facilities, as explained below. *See infra* III.B, C.

⁹⁵ *See, e.g., Willoth*, 176 F.3d at 641-44; *360 Degrees Commc’ns Co. v. Board of Supervisors of Albemarle County*, 211 F.3d 79, 86-88 & n.1 (4th Cir. 2000) (*Albemarle County*); *see also, e.g.,* ExteNet Comments at 29; T-Mobile Comments at 42; Verizon Comments at 18; WIA Comments at 38-40. Even some cases that implicitly recognize the limitations of a gap-based test fail to account for those limitations in practice when applying Section 332(c)(7)(B)(i)(II). *See, e.g., Second Generation Properties v. Town of Pelham*, 313 F.3d 620, 633 n.14 (4th Cir. 2002) (discussing scenarios where a carrier has coverage but insufficient capacity to adequately handle the volume of calls or where new technology emerges and a carrier would like to use it in areas that already have coverage using prior-generation technology). Courts that have sought to identify limited set of characteristics of personal wireless services covered by the Act essentially allow actual or effective prohibition of many personal wireless services that providers wish to offer with additional or more advanced characteristics. *See, e.g., Willoth*, 176 F.3d at 641-43 (drawing upon certain statutory definitions); *Cellular Tel. Co. v. Zoning Bd. of Adjustment of the Borough of Ho-Ho-Kus*, 197 F.3d 64, 70 (3d Cir. 1999) (*Borough of Ho-Ho-Kus*) (concluding that it should be up to state or local authorities to assess and weigh the benefits of differing service qualities); *Albemarle County*, 211 F.3d at 87 (citing 47 CFR §§ 22.99, 22.911(b) as noting the possibility of some ‘dead spots’); *cf. USCOC of Greater Iowa, Inc. v. Zoning Bd. of Adjustment of the City of Des Moines*, 465 F.3d 817 (8th Cir. 2006) (describing as a “dubious proposition” the argument that a denial of a request to construct a tower resulting in “less than optimal” service quality could be an effective prohibition). An outcome that allows the actual or effective prohibition of some covered services is contrary to the Act. Section 253(a) applies to any state or local legal requirement that prohibits or has the effect of prohibiting any entity from providing “any” interstate or intrastate telecommunications service, 47 U.S.C. § 253(a). Similarly, Section 332(c)(7)(B)(i)(II) categorically precludes state or local regulation of the placement, construction, or modification of personal wireless service facilities that prohibits or has the effect of prohibiting the provision of personal wireless “services.” 47 U.S.C. § 332(c)(7)(B)(i)(II). We find the most natural interpretation of these sections is that any service that meets the definition of “telecommunications service” or “personal wireless service” is encompassed by the language of each provision, rather than only some subset of such services or service generally. The notion that such state or local regulation permissibly could prohibit some personal wireless services, so long as others are available, is at odds with that interpretation. In addition, as we explain above, a contrary approach would fail to advance important statutory goals as well as the interpretation we adopt. Further, the approach reflected in these court decisions could involve state or local authorities “inquir[ing] into and regulat[ing] the services offered—an inquiry for which they are ill-qualified to pursue and which could only delay infrastructure deployment.” Crown Castle June 7, 2018 *Ex Parte* Letter at 14. Instead, our effective prohibition analysis focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public.

⁹⁶ *See generally, e.g., Twentieth Wireless Competition Report*, 32 FCC Rcd at 8968; *see also, e.g.,* T-Mobile Comments at 42-43; AT&T Reply at 4-5; CTIA Reply at 13-14; WIA Reply at 23-24; Crown Castle June 7, 2018 *Ex Parte* Letter at 15. We do not suggest that viewing wireless service as if it were a single, monolithic offering provided only via traditional wireless towers would have reflected an accurate understanding of the marketplace in the past, even if it might have been somewhat more understandable that courts held such a simplified view at that time. Rather, the current marketplace conditions highlight even more starkly the shortcomings of coverage gap-based approaches, which do not account for other characteristics and deployment strategies. *See, e.g., Twentieth Wireless Competition Report*, 32 FCC Rcd at 8974-75, para. 12 (observing that “[p]roviders of mobile wireless services typically offer an array of mobile voice and data services,” including “interconnected mobile voice services”); *id.* at 8997-97, paras. 42-43 (discussing various types of wireless infrastructure deployment to, among

incompatible with a world where the vast majority of new wireless builds are going to be designed to add network capacity and take advantage of new technologies, rather than plug gaps in network coverage.”⁹⁷ Moreover, a critical feature of these new wireless builds is to accommodate increased in-building use of wireless services, necessitating deployment of small cells in order to ensure quality service to wireless callers within such buildings.⁹⁸

41. Likewise, we reject the suggestion of some courts like the Eighth and Ninth Circuits that evidence of an existing or complete inability to offer a telecommunications service is required under 253(a).⁹⁹ Such an approach is contrary to the material inhibition standard of *California Payphone* and the correct recognition by courts “that a prohibition does not have to be complete or ‘insurmountable’” to constitute an effective prohibition.¹⁰⁰ Commission precedent beginning with *California Payphone* itself makes clear that an insurmountable barrier is not required to find an effective prohibition under Section 253(a).¹⁰¹ The “effectively prohibit” language must have some meaning independent of the “prohibit”

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other things, “improve spectrum efficiency for 4G and future 5G services,” “to fill local coverage gaps, to densify networks and to increase local capacity”).

⁹⁷ Crown Castle June 7, 2018 *Ex Parte* Letter at 15; *see also id.* at 13 (“Densification of networks will be key for augmenting the capacity of existing networks and laying the groundwork for the deployment of 5G.”); *id.* at 15-16 (“When trying to maximize spectrum re-use and boost capacity, moving facilities by just a few hundred feet can mean the difference between excellent service and poor service. The FCC’s rules, therefore, must account for the effect siting decisions would have on every level of service, including increasing capacity and adding new spectrum bands. Practices and decisions that prevent carriers from doing either materially prohibit the provision of telecommunications service and thus should be considered impermissible under Section 332.”). Contrary approaches appear to occur in part when courts’ policy balancing places more importance on broadly preserving state and local authority than is justified. *See, e.g., APT*, 196 F.3d at 479; *Albemarle County*, 211 F.3d at 86; *City Council of Virginia Beach*, 155 F.3d at 429; *National Tower, LLC v. Plainville Zoning Bd. of Appeals*, 297 F.3d 14 (1st Cir. 2002); *see also, e.g., League of Arizona Cities et al. Joint Comments* at 45; *Smart Communities Reply* at 33. As explained above, our interpretation that “telecommunications services” in Section 253(a) and “personal wireless services” in Section 332(c)(7)(B)(i)(II) are focused on the covered services that providers seek to provide—including the relevant service characteristics they seek to incorporate—not only is consistent with the text of those provisions but better reflects the broader policy goals of the Communications Act and the 1996 Act.

⁹⁸ *See WIA Comments* at 39; *T-Mobile Comments* at 43-44.

⁹⁹ *See, e.g., County of San Diego*, 543 F.3d at 577, 579-80; *City of St. Louis*, 477 F.3d at 533-34; *see also, e.g., Virginia Joint Commenters Comments*, Exh. A at 39-41. Although the Ninth Circuit in *County of San Diego* found that “the unambiguous text of §253(a)” precluded a prior Ninth Circuit approach that found an effective prohibition based on broad governmental discretion and the “mere possibility of prohibition,” that holding is not implicated by our interpretations here. *County of San Diego*, 543 F.3d at 578; *cf. City of St. Louis*, 477 F.3d at 532. Consequently, those decisions do not preclude the Commission’s interpretations here, *see, e.g., Verizon Reply* at 7, and we reject claims to the contrary. *See, e.g., Smart Communities Comments* at 60.

¹⁰⁰ *City of White Plains*, 305 F.3d at 76 (citing *RT Commc’ns*, 201 F.3d at 1268); *see also, e.g., Municipality of Guayanilla*, 450 F.3d at 18 (quoting *City of White Plains*, 305 F.3d at 76 and citing *City of Santa Fe*, 380 F.3d at 1269); Crown Castle June 7, 2018 *Ex Parte* Letter at 12; Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach at 5. Indeed, the Eighth Circuit’s *City of St. Louis* decision acknowledges that under Section 253 “[t]he plaintiff need not show a complete or insurmountable prohibition,” even while other aspects of that decision suggest that an insurmountable barrier effectively would be required. *City of St. Louis*, 477 F.3d at 533 (citing *City of White Plains*, 305 F.3d at 76).

¹⁰¹ In *California Payphone*, the Commission concluded that the ordinance at issue “does not ‘prohibit’ the ability of any payphone service provider to provide payphone service in the Central Business District within the meaning of section 253(a),” but went on to evaluate the possibility of an effective prohibition by considering “whether the Ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” *California Payphone*, 12 FCC Rcd at 14205, 14206, paras. 28, 31. In the *Texas PUC Order*, the Commission found that state law build-out requirements would require “substantial financial investment” and a “comparatively high cost per loop sold” in particular areas, interfering with the

language, and we find that the interpretation of the First, Second, and Tenth Circuits reflects that principle, while being more consistent with the *California Payphone* standard than the approach of the Eighth and Ninth Circuits.¹⁰² The reasonableness of our interpretation that ‘effective prohibition’ does not require a showing of an insurmountable barrier to entry is demonstrated not only by a number of circuit courts’ acceptance of that view, but in the Supreme Court’s own characterization of Section 253(a) as “prohibit[ing] state and local regulation that *impedes* the provision of ‘telecommunications service.’”¹⁰³

42. The Eighth and Ninth Circuits’ suggestion that a provider must show an insurmountable barrier to entry in the jurisdiction imposing the relevant regulation is at odds with relevant statutory purposes and goals, as well. Section 253(a) is designed to protect “any entity” seeking to provide telecommunications services from state and local barriers to entry, and Sections 253(b) and (c) emphasize the importance of “competitively neutral” and “nondiscriminatory” treatment of providers.¹⁰⁴ Yet focusing on whether the carrier seeking relief faces an insurmountable barrier to entry would lead to disparities in statutory protections among providers based merely on considerations such as their access to capital and the breadth or narrowness of their entry strategies.¹⁰⁵ In addition, the Commission has observed in connection with Section 253: “Each local government may believe it is simply protecting the

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“statewide entry” plans that new entrants “may reasonable contemplate” in violation of Section 253(a) notwithstanding claims that the specific new entrants at issue had “‘vast resources and access to capital’ sufficient to meet those added costs. *Texas PUC Order*, 13 FCC Rcd at 3498, para. 78. The Commission also has expressed “great concern” about an exclusive rights-of-way access agreement that “appear[ed] to have the potential to adversely affect the provision of telecommunications services by facilities-based providers, in violation of the provision of section 253(a).” *Minnesota Order*, 14 FCC Rcd at 21700, para. 3. As another example, in the *Western Wireless Order*, the Commission stated that a “universal service fund mechanism that provides funding only to ILECs” would likely violate Section 253(a) not because it was insurmountable but because it would “effectively lower the price of ILEC-provided service relative to competitor-provided service” and thus “give customers a strong incentive to choose service from ILECs rather than competitors.” *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8.

¹⁰² We discuss specific applications of the *California Payphone* standard in the context of certain fees and non-fee regulations in the sections below; we leave others to be addressed case-by-case as they arise or otherwise are taken up by the Commission or courts in the future.

¹⁰³ *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 491 (2002) (emphasis added); see also, e.g., *Level 3 Communications*, Petition for a Writ of Certiorari, *Level 3 Communications, LLC v. City of St. Louis*, No. 08-626, at 13 (filed Nov. 7, 2008) (“[T]he term ‘[p]rohibit’ commonly has a less absolute meaning than that adopted below, and properly refers to actions that ‘hold back,’ ‘hinder,’ or ‘obstruct.’” (quoting Random House Webster’s Unabridged Dictionary 1546 (2d ed. 1998))). We thus are not compelled to interpret ‘effective prohibition’ to set the high bar suggested by some commenters based on other dictionary definitions. Smart Communities Petition for Reconsideration, WC Docket No. 17-84, WT Docket No. 17-79 at 7 (filed Sept. 4, 2018). Because we are unpersuaded that the statutory terminology requires us to interpret an effective prohibition as satisfied only by an insurmountable barrier to entry, we likewise reject commenters’ attempts to argue that “effective prohibition” must be understood to set a higher bar by comparison to the “impairment” language in Section 251 of the Act and associated regulatory interpretations of network unbundling requirements taken from that context. *Id.* at 6. In addition, commenters do not demonstrate why the statutory framework and regulatory context of network unbundling under Section 251—and the specific concerns about access by non-facilities-based providers to competitive networks underlying the court precedent they cite—is sufficiently analogous to that of Section 253 and Section 332(c)(7)(B)(i)(II) that statements from that context should inform our interpretation here. See, e.g., *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. at 392. In responding to these discrete arguments raised in a petition for reconsideration of the *Moratoria Declaratory Ruling* that bear on actions we take in this order we do not thereby resolve any of the petition’s arguments with respect to that order. The requests for relief raised in the petition remain pending in full.

¹⁰⁴ 47 U.S.C. § 253(a), (b), (c).

¹⁰⁵ See, e.g., *Texas PUC Order*, 13 FCC Rcd at 3498, para. 78 (rejecting claims that there should be a higher bar to find an effective prohibition for providers with significant financial resources and recognizing that the effects of the relevant state requirements on a given provider could differ depending on the planned geographic scope of entry).

interests of its constituents. The telecommunications interests of constituents, however, are not only local. They are statewide, national and international as well. We believe that Congress' recognition of this fact was the genesis of its grant of preemption authority to this Commission."¹⁰⁶ As illustrated by our consideration of effective prohibitions flowing from state and local fees, there also can be cases where a narrow focus on whether an insurmountable barrier can be shown within the jurisdiction imposing a particular legal requirement would neglect the serious effects that flow through in other jurisdictions as a result, including harms to regional or national deployment efforts.¹⁰⁷

B. State and Local Fees

43. Federal courts have long recognized that the fees charged by local governments for the deployment of communications infrastructure can run afoul of the limits Congress imposed in the effective prohibition standard embodied in Sections 253 and 332.¹⁰⁸ In *Municipality of Guayanilla*, for example, the First Circuit addressed whether a city could lawfully charge a 5 percent gross revenue fee. The court found that the "5% gross revenue fee would constitute a substantial increase in costs" for the provider, and that the ordinance consequently "will negatively affect [the provider's] profitability."¹⁰⁹ The fee, together with other requirements, thus "place a significant burden" on the provider.¹¹⁰ In light of this analysis, the First Circuit agreed that the fee "'materially inhibits or limits the ability'" of the provider "'to compete in a fair and balanced legal and regulatory environment.'"¹¹¹ The court thus held that the fee does not survive scrutiny under Section 253. In doing so, the First Circuit also noted that the inquiry is not limited to the impact that a fee would have on deployment in the jurisdiction that imposes the fee. Rather, the court noted the aggregate effect of fees when totaled across all relevant jurisdictions.¹¹² At the same time, the First Circuit did not decide whether the fair and reasonable compensation allowed under Section 253 must be limited to cost recovery or, at the very least, related to the actual use of the ROW.¹¹³

44. In *City of White Plains*, the Second Circuit likewise faced a 5 percent gross revenue fee, which it found to be "[t]he most significant provision" in a franchise agreement implementing an ordinance that the court concluded effectively prohibited service in violation of Section 253.¹¹⁴ While the court noted that "compensation is . . . sometimes used as a synonym for cost,"¹¹⁵ it ultimately did not resolve whether fair and reasonable compensation "is limited to cost recovery, or whether it also extends to a reasonable rent," relying instead on the fact that "White Plains has not attempted to charge Verizon

¹⁰⁶ *TCI Cablevision of Oakland County, Inc. Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e), and 253*, Memorandum Opinion and Order, 12 FCC Rcd 21396, 21442, para. 106 (1997) (*TCI Cablevision Order*).

¹⁰⁷ See *infra* Part III.B.

¹⁰⁸ The Commission also has recognized the potential for fees to result in an effective prohibition. See, e.g., *Pittencrieff*, 13 FCC Rcd at 1751-52, para. 37 (observing that "even a neutral [universal service] contribution requirement might under some circumstances effectively prohibit an entity from offering a service").

¹⁰⁹ *Municipality of Guayanilla*, 450 F.3d at 18-19.

¹¹⁰ *Id.* at 19.

¹¹¹ *Id.* (quoting *City of White Plains*, 305 F.3d at 76).

¹¹² *Municipality of Guayanilla*, 450 F.3d at 17 (looking at the aggregate cost of fees charged across jurisdictions given the interconnected nature of the service).

¹¹³ *Id.* at 22 ("We need not decide whether fees imposed on telecommunications providers by state and local governments must be limited to cost recovery. We agree with the district court's reasoning that fees should be, at the very least, related to the actual use of rights of way and that 'the costs [of maintaining those rights of way] are an essential part of the equation.'").

¹¹⁴ *City of White Plains*, 305 F.3d at 77.

¹¹⁵ *Id.* In this context, the court stated that the term "compensation" is "flexible" and capable of different meanings depending on the context in which it is used. *Id.*

the fee that it seeks to charge TCG,” thus failing Section 253’s “competitively neutral and nondiscriminatory” standard.¹¹⁶ But the court did observe that “Section 253(c) requires compensation to be reasonable essentially to prevent monopolist pricing by towns.”¹¹⁷

45. In another example, the Tenth Circuit in *City of Santa Fe* addressed a \$6,000 per foot fee set for Qwest’s use of the ROW.¹¹⁸ The court held “that the rental provisions are prohibitive because they create[d] a massive increase in cost” for Qwest.¹¹⁹ The court recognized that Section 253 allows the recovery of cost-based fees, though it ultimately did not decide whether to “measure ‘fair and reasonable’ by the City’s costs or by a ‘totality of circumstances test’” applied in other courts because it determined that the fees at issue were not cost-based and “fail[ed] even the totality of the circumstances test.”¹²⁰ Consequently, the fee was preempted under Section 253.

46. At the same time, the courts have adopted different approaches to analyzing whether fees run afoul of Section 253, at times failing even to articulate a particular test.¹²¹ Among other things, courts have expressed different views on whether Section 253 limits states’ and localities’ fees to recovery of their costs or allows fees set in excess of that level.¹²² We articulate below the Commission’s interpretation of Section 253(a) and the standards we adopt for evaluating when a fee for Small Wireless Facility deployment is preempted, regardless how the fee is challenged. We also clarify that the Commission interprets Section 332(c)(7)(B)(i)(II) to have the same substantive meaning as Section 253(a).

47. *Record Evidence on Costs Associated with Small Wireless Facilities.* Keeping pace with the demands on current 4G networks and upgrading our country’s wireless infrastructure to 5G require

¹¹⁶ *City of White Plains*, 305 F.3d at 79. In particular, the court concluded that “fees that exempt one competitor are inherently not ‘competitively neutral,’ regardless of how that competitor uses its resulting market advantage,” *id.* at 80, and thus “[a]llowing White Plains to strengthen the competitive position of the incumbent service provider would run directly contrary to the pro-competitive goals of the [1996 Act],” *id.* at 79.

¹¹⁷ *Id.*

¹¹⁸ *City of Santa Fe*, 380 F.3d at 1270-71.

¹¹⁹ *Id.* at 1271.

¹²⁰ *Id.* at 1272 (observing that “[t]he City acknowledges . . . that the rent required by the Ordinance is not limited to recovery of costs”).

¹²¹ Compare, e.g., *Municipality of Guayanilla*, 450 F.3d at 18-19 (finding that fees were significant and had the effect of prohibiting service); *City of Santa Fe*, 380 F.3d at 1271 (similar); with, e.g., *Qwest v. Elephant Butte Irrigation Dist.*, 616 F. Supp. 2d 1110, 1123-24 (D.N.M. 2008) (rejecting Qwest’s reliance on preceding finding of effective prohibition from quadrupled costs where the fee at issue was a penny per foot); *Qwest v. City of Portland*, 2006 WL 2679543, *15 (D. Or. 2006) (asserting with no explanation that “a registration fee of \$35 and a refundable deposit of \$2,000 towards processing expenses . . . could not possibly have the effect of prohibiting Qwest from providing telecommunications services”).

¹²² For example and as noted above, in *Municipality of Guayanilla* the First Circuit reserved judgment on whether the fair and reasonable compensation allowed under Section 253 must be limited to cost recovery or if it was sufficient if the compensation was related to the actual use of rights of way. *Municipality of Guayanilla*, 450 F.3d at 22. Other courts have found reasonable compensation to require cost-based fees. *XO Missouri v. City of Maryland Heights*, 256 F. Supp. 2d 987, 993-95 (E.D. Mo. 2003) (*City of Maryland Heights*); *Bell Atlantic–Maryland, Inc. v. Prince George’s County*, 49 F. Supp. 2d 805, 818 (D. Md. 1999) (*Prince George’s County*) vacated on other grounds, 212 F.3d 863 (4th Cir. 2000). Still other courts have applied a test that weighs a number of considerations when evaluating whether compensation is fair and reasonable. *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 625 (6th Cir. 2000) (*City of Dearborn*) (considering “the amount of use contemplated . . . the amount that other providers would be willing to pay . . . and the fact that TCG had agreed in earlier negotiations to a fee almost identical to what it now was challenging as unfair”).

the deployment of many more Small Wireless Facilities.¹²³ For example, Verizon anticipates that network densification and the upgrade to 5G will require 10 to 100 times more antenna locations than currently exist. AT&T estimates that providers will deploy hundreds of thousands of wireless facilities in the next few years alone—equal to or more than the number providers have deployed in total over the last few decades.¹²⁴ Sprint, in turn, has announced plans to build at least 40,000 new small sites over the next few years.¹²⁵ A report from Accenture estimates that, overall, during the next three or four years, 300,000 small cells will need to be deployed—a total that it notes is “roughly double the number of macro cells built over the last 30 years.”¹²⁶

48. The many-fold increase in Small Wireless Facilities will magnify per-facility fees charged to providers. Per-facility fees that once may have been tolerable when providers built macro towers several miles apart now act as effective prohibitions when multiplied by each of the many Small Wireless Facilities to be deployed. Thus, a per-facility fee may affect a prohibition on 5G service or the densification needed to continue 4G service even if that same per-facility fee did not effectively prohibit previous generations of wireless service.

49. Cognizant of the changing technology and its interaction with regulations created for a previous generation of service, the *2017 Wireline Infrastructure NPRM/NOI* sought comment on whether government-imposed fees could act as a prohibition within the meaning of Section 253, and if so, what fees would qualify for 253(c)’s savings clause.¹²⁷ The *2017 Wireless Infrastructure NPRM/NOI* similarly sought comment on the scope of Sections 253 and 332(c)(7) and on any new or updated guidance the Commission should provide, potentially through a Declaratory Ruling.¹²⁸ In particular, the Commission sought comment on whether it should provide further guidance on how to interpret and apply the phrase “prohibit or have the effect of prohibiting.”¹²⁹

50. We conclude that ROW access fees, and fees for the use of government property in the ROW,¹³⁰ such as light poles, traffic lights, utility poles, and other similar property suitable for hosting

¹²³ See CTIA June 27, 2018 *Ex Parte* Letter at 6 (“[s]mall cell technology is needed to support 4G densification and 5G connectivity.”); see also *Accelerating Wireless Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, 32 FCC Rcd 9760, 9765, para. 12 (2017) (*2017 Pole Replacement Order*) (recognizing that Small Wireless Facilities will be increasingly necessary to support the rollout of next-generation services).

¹²⁴ See Verizon Comments at 3; AT&T Comments at 1.

¹²⁵ See Letter from Keith C. Buell, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Feb. 21, 2018).

¹²⁶ *Accelerating Future Economic Value* Report at 6; see also Deloitte 5G Paper.

¹²⁷ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3266, 3296-97, paras. 100 -101 and 3298-99, paras. 104-105 (2017).

¹²⁸ *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3360, para. 87. In addition, in 2016, the Wireless Telecommunications Bureau released a public notice seeking comment on ways to expedite the deployment of next generation wireless infrastructure, including providing guidance on application processing fees and charges for use of rights of way. See *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*, Public Notice, 31 FCC Rcd 13360 (WTB 2016).

¹²⁹ *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3362, para. 90.

¹³⁰ We do not find these fees to be taxes within the meaning of Section 601(c)(2) of the 1996 Act. See, e.g., Smart Communities Reply at 36 (quoting the savings clause for “State or local law pertaining to taxation” in Section 601(c)(2) of the 1996 Act). It is ambiguous whether a fee charged for access to ROWs should be viewed as a tax for purposes of Section 601(c)(2) of the 1996 Act. See, e.g., *City of Dallas v. FCC*, 118 F.3d 393, 397-98 (5th Cir. 1997) (distinguishing “the price paid to rent use of public right-of-ways” from a “tax” and citing similar precedent). Given that Congress clearly contemplated in Section 253(c) that states’ and localities’ fees for access to ROWs could be subject to preemption where they violate Section 253—or else the savings clause in that regard would be superfluous—we find the better view is that such fees do not represent a tax encompassed by Section 601(c)(2) of

Small Wireless Facilities, as well as application or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of Small Wireless Facilities inside and outside the ROW, violate Sections 253 or 332(c)(7) unless these conditions are met: (1) the fees are a reasonable approximation of the state or local government's costs,¹³¹ (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.¹³²

51. We base our interpretation on several considerations, including the text and structure of the Act as informed by legislative history, the economics of capital expenditures in the context of Small Wireless Facilities (including the manner in which capital budgets are fixed *ex ante*), and the extensive record evidence that shows the actual effects that state and local fees have in deterring wireless providers from adding to, improving, or densifying their networks and consequently the service offered over them (including, but not limited to, introducing next-generation 5G wireless service). We address each of these considerations in turn.

52. *Text and Structure.* We start our analysis with a consideration of the text and structure of Section 253. That section contains several related provisions that operate in tandem to define the roles that Congress intended the federal government, states, and localities to play in regulating the provision of telecommunications services. Section 253(a) sets forth Congress's intent to preempt state or local legal requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."¹³³ Section 253(b), in turn, makes clear Congress's intent that state "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights

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the 1996 Act. We do not address whether particular fees could be considered taxes under other statutes not administered by the FCC, but we reject the suggestion that tests courts use to determine what constitute "taxes" in the context of such other statutes should apply to the Commission's interpretation of Section 601(c)(2) here in light of the statutory context for Section 601(c)(2) in the 1996 Act and the Communications Act discussed above. *See, e.g., Qwest Corp. v. City of Surprise*, 434 F.3d 1176, 1183-84 & n.3 (9th Cir. 2006) (holding that particular fees at issue there were taxes for purposes of the Tax Injunction Act and stating in dicta that had the Tax Injunction Act not applied it would agree with the conclusion of the district court that it was covered by Section 601(c)(2) of the 1996 Act); *MCI Communications Services, Inc. v. City of Eugene*, 359 F. Appx. 692, 696 (9th Cir. 2009) (asserting without analysis that the same test would apply to determine if a fee constitutes a tax under both the Tax Injunction Act and Section 601(c)(2) of the 1996 Act).

¹³¹ By costs, we mean those costs specifically related to and caused by the deployment. These include, for instance, the costs of processing applications or permits, maintaining the ROW, and maintaining a structure within the ROW. *See Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 354 F. Supp. 2d 107, 114 (D.P.R. 2005) (*Guayanilla District Ct. Opinion*), *aff'd*, 450 F.3d 9 (1st Cir. 2006) ("fees charged by a municipality need to be related to the degree of actual use of the public rights-of way" to constitute fair and reasonable compensation under Section 253(c)).

¹³² We explain above what we mean by "fees." *See supra* note 71. Contrary to some claims, we are not asserting a "general ratemaking authority." Virginia Joint Commenters Comments at 6. Our interpretations in this order bear on whether and when fees associated with Small Wireless Facility deployment have the effect of prohibiting wireless telecommunications service and thus are subject to preemption under Section 253(a), informed by the savings clause in Section 253(c). While that can implicate issues surrounding how those fees were established, it does so only to the extent needed to vindicate Congress's intent in Section 253. We do not interpret Section 253(a) or (c) to authorize the regulation or establishment of state and local fees as an exercise in itself. We likewise are not persuaded by undeveloped assertions that the Commission's interpretation of Section 253 in the context of fees would somehow violate constitutional separation of powers principles. *See, e.g.,* Virginia Joint Commenters Comments, Exh. A at 52.

¹³³ 47 U.S.C. § 253(a).

of consumers” are not preempted.¹³⁴ Of particular importance in the fee context, Section 253(c) reflects a considered policy judgment that “[n]othing in this section” shall prevent states and localities from recovering certain carefully delineated fees. Specifically, Section 253(c) makes clear that fees are not preempted that are “fair and reasonable” and imposed on a “competitively neutral and nondiscriminatory basis,” for “use of public rights-of-way on a “nondiscriminatory basis,” so long as they are “publicly disclosed” by the government.¹³⁵ Section 253(d), in turn, provides one non-exclusive mechanism by which a party can obtain a determination from the Commission of whether a specific state or local requirement is preempted under Section 253(a)—namely, by filing a petition with the Commission.¹³⁶

53. In reviewing this statutory scheme, the Commission previously has construed Section 253(a) as “broadly limit[ing] the ability of state[s] to regulate,” while the remaining subsections set forth “defined areas in which states may regulate.”¹³⁷ We reaffirm this conclusion, consistent with the view of most courts to have considered the issue—namely, that Sections 253(b) and (c) make clear that certain state or local laws, regulations, and legal requirements are not preempted under the expansive scope of Section 253(a).¹³⁸ Our interpretation of Section 253(a) is informed by this statutory context,¹³⁹ and the observation of courts that when a preemption provision precedes a narrowly-tailored savings clause, it is reasonable to infer that Congress intended a broad preemptive scope.¹⁴⁰ We need not decide today whether Section 253(a) preempts all fees not expressly saved by Section 253(c) with respect to all types of deployments. Rather, we conclude, based on the record before us, that with respect to Small Wireless Facilities, even fees that might seem small in isolation have material and prohibitive effects on deployment,¹⁴¹ particularly when considered in the aggregate given the nature and volume of anticipated Small Wireless Facility deployment.¹⁴² Against this backdrop, and in light of significant evidence, set forth herein, that Congress intended Section 253 to preempt legal requirements that effectively prohibit service, including wireless infrastructure deployment, we view the substantive standards for fees that Congress sought to insulate from preemption in Section 253(c) as an appropriate ceiling for state and local fees that apply to the deployment of Small Wireless Facilities in public ROWs.¹⁴³

¹³⁴ 47 U.S.C. § 253(b).

¹³⁵ 47 U.S.C. § 253(c).

¹³⁶ 47 U.S.C. § 253(d).

¹³⁷ *Texas PUC Order*, 13 FCC Rcd at 3481, para. 44.

¹³⁸ See, e.g., *Connect America Fund*; *Sandwich Isles Communications, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5881, 5885-87, paras. 8, 19-25 (2017) (*Sandwich Isles Section 253 Order*); *Texas PUC Order*, 13 FCC Rcd at 3480-81, paras. 41-44; *Global Network Commc’ns, Inc. v. City of New York*, 562 F.3d 145, 150-51 (2d Cir. 2009); *Southwestern Bell Tel. Co. v. City of Houston*, 529 F.3d 257, 262 (5th Cir. 2008); *City of St. Louis*, 477 F.3d at 531-32 (8th Cir. 2007); *Municipality of Guayanilla*, 450 F.3d at 15-16; *City of Santa Fe*, 380 F.3d at 1269; *BellSouth Telecomm’s, Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1187-89 (11th Cir. 2001). Some courts appear to have viewed Section 253(c) as an independent basis for preemption. See, e.g., *City of Dearborn*, 206 F.3d at 624 (after concluding that a franchise fee did not violate Section 253(a), going on to evaluate whether it was “fair and reasonable” under Section 253(c)). We find more persuasive the Commission and other court precedent to the contrary, which we find better adheres to the statutory language.

¹³⁹ See, e.g., *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2442 (2014).

¹⁴⁰ See, e.g., *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44-45 (1987); *City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 189-90 (2d Cir. 2010); *Frank v. Delta Airlines, Inc.*, 314 F.3d 195, 199 (5th Cir. 2002); cf. *United States v. Kay*, 359 F.3d 738 (5th Cir. 2004) (justifying a broad reading of a statute given that Congress “narrowly defin[ed] exceptions and affirmative defenses against a backdrop of broad applicability”).

¹⁴¹ See *infra* paras. 62-63.

¹⁴² See, e.g., *Wireless Infrastructure Second R&O*, FCC 18-30, at para. 64.

¹⁴³ See, e.g., Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 9-10. We therefore reject the view of those courts that have concluded that Section 253(a) necessarily requires some additional showing beyond the fact that a particular fee is not cost-based. See, e.g., *Qwest v. City of Berkeley*, 433 F.3d 1253, 1257 (9th Cir. 2006) (“we

54. In addition, notwithstanding that Section 253(c) only expressly governs ROW fees, we find it appropriate to look to its substantive standards as a ceiling for other state and local fees addressed by this *Declaratory Ruling*.¹⁴⁴ For one, our evaluation of the material effects of fees on the deployment of Small Wireless Facilities does not differ whether the fees are for ROW access, use of government property within the ROW, or one-time application and review fees or the like—any of which drain limited capital resources that otherwise could be used for deployment—and we see no reason why the Act would tolerate a greater prohibitory effect in the case of application or review fees than for ROW fees.¹⁴⁵ In addition, elements of the substantive standards for ROW fees in Section 253(c) appear at least analogous to elements of the *California Payphone* standard for evaluating an effective prohibition under Section 253(a). In pertinent part, both incorporate principles focused on the legal requirements to which a provider may be fairly subject,¹⁴⁶ and seek to guard against competitive disparities.¹⁴⁷ Without resolving the precise interplay of those concepts in Section 253(c) and the *California Payphone* standard, their similarities support our use of the substantive standards of Section 253(c) to inform our evaluation of fees at issue here that are not directly governed by that provision.

55. From the foregoing analysis, we can derive the three principles that we articulate in this Declaratory Ruling about the types of fees that are preempted. As explained in more detail below, we also interpret Section 253(c)'s "fair and reasonable compensation" provision to refer to fees that represent a reasonable approximation of actual and direct costs incurred by the government, where the costs being passed on are themselves objectively reasonable.¹⁴⁸ Although there is precedent that "fair and reasonable" compensation could mean not only cost-based charges but also market-based charges in certain instances,¹⁴⁹ the statutory context persuades us to adopt a cost-based interpretation here. In particular, while the general purpose of Section 253(c) is to preserve certain state and local conduct from preemption, it includes qualifications and limitations to cabin state and local action under that savings clause in ways that ensure appropriate protections for service providers. The reasonableness of interpreting the qualifications and limitations in the Section 253(c) savings clause as designed to protect the interests of service providers is emphasized by the statutory language. The "competitively neutral and

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decline to read" prior Ninth Circuit precedent "to mean that all non-cost based fees are automatically preempted, but rather that courts must consider the substance of the particular regulation at issue"). At the same time, our interpretation does not take the broader view of the preemptive scope of Section 253 adopted by the Sixth Circuit, which interpreted Section 253(c) as an independent prohibition on conduct that is not itself prohibited by Section 253(a). *City of Dearborn*, 206 F.3d at 624.

¹⁴⁴ See *supra* note 71.

¹⁴⁵ Cf. *Cheney R. Co. v. ICC*, 902 F.2d 66, 69 (D.C. Cir. 1990) (observing that the *expressio unius* canon is a "feeble helper in an administrative setting, where Congress is presumed to have left to reasonable agency discretion questions that it has not directly resolved," and concluding there that "Congress's mandate in one context with its silence in another suggests not a prohibition but simply a decision not to mandate any solution in the second context, i.e., to leave the question to agency discretion").

¹⁴⁶ For ROW compensation to be saved under Section 253(c) it must be "fair and reasonable," while the *California Payphone* standard looks to whether a legal requirement "materially limits or inhibits" the ability to compete in a "fair" legal environment for a covered service. *California Payphone*, 12 FCC Rcd at 14206, para. 31.

¹⁴⁷ For ROW compensation to be saved under Section 253(c) it also must be "competitively neutral and nondiscriminatory," while the *California Payphone* standard also looks to whether a legal requirement "materially limits or inhibits" the ability to compete in a "balanced" legal environment for a covered service. *California Payphone*, 12 FCC Rcd at 14206, para. 31.

¹⁴⁸ See *infra* paras. 69-77; see also, e.g., *City of Maryland Heights*, 256 F. Supp. 2d at 993-95; *Bell Atlantic–Maryland*, 49 F. Supp. 2d at 818.

¹⁴⁹ See, e.g., *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) (statute did not unambiguously require the SEC to interpret "fair and reasonable" to mean cost-based, and the SEC's reliance on market-based rates as "fair and reasonable" where there was competition was a reasonable interpretation).

nondiscriminatory” and public disclosure qualifications in Section 253(c) appear most naturally understood as protecting the interest of service providers from fees that otherwise would have been saved from preemption under Section 253(c) absent those qualifiers. Under the *noscitur a sociis* canon of statutory interpretation, that context persuades us that the “fair and reasonable” qualifier in Section 253(c) similarly should be understood as focused on protecting the interest of providers.¹⁵⁰ As discussed in greater detail below, while it might well be fair for providers to bear basic, reasonable costs of entry,¹⁵¹ the record does not reveal why it would be fair or reasonable from the standpoint of protecting providers to require them to bear costs beyond that level, particularly in the context of the deployment of Small Wireless Facilities. In addition, the text of Section 253(c) provides that ROW access fees must be imposed on a “competitively neutral and nondiscriminatory basis.” This means, for example, that fees charged to one provider cannot be materially higher than those charged to a competitor for similar uses.¹⁵²

56. Other considerations support our approach, as well. By its terms, Section 253(a) preempts state or local legal requirements that “prohibit” or have the “effect of prohibiting” the provision of services, and we agree with court precedent that “[m]erely allowing the [local government] to recoup its processing costs . . . cannot in and of itself prohibit the provision of services.”¹⁵³ The Commission has long understood that Section 253(a) is focused on state or local barriers to entry for the provision of service,¹⁵⁴ and we conclude that states and localities do not impose an unreasonable barrier to entry when they merely require providers to bear the direct and reasonable costs caused by their decision to enter the market.¹⁵⁵ We decline to interpret a government’s recoupment of such fundamental costs of entry as having the effect of prohibiting the provision of services, nor has any commenter argued that recovery of cost by a government would prohibit service in a manner restricted by Section 253(a).¹⁵⁶ Reasonable state and local regulation of facilities deployment is an important predicate for a viable marketplace for

¹⁵⁰ See, e.g., *Life Technologies Corp. v. Promega Corp.*, 137 S. Ct. 734 (2017) (“A word is given more precise content by the neighboring words with which it is associated.” (internal alteration and quotation marks omitted)).

¹⁵¹ See *infra* para. 56.

¹⁵² See, e.g., *City of White Plains*, 305 F.3d at 80.

¹⁵³ *City of Santa Fe*, 380 F.3d at 1269; see also Verizon Comments at 17.

¹⁵⁴ See, e.g., *Sandwich Isles Section 253 Order*, 32 FCC Rcd at 5878, 5882-83, paras. 1, 13; *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8; *Petition of the State of Minnesota for a Declaratory Ruling regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights of Way*, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21707, para. 18 (*Minnesota Order*); *Hyperion Order*, 14 FCC Rcd at 11070, para. 13; *Texas PUC Order*, 13 FCC Rcd at 3480, para. 41; *TCI Cablevision Order*, 12 FCC Rcd at 21399, para. 7; *California Payphone*, 12 FCC Rcd at 14209, para. 38; see also, e.g., *AT&T Comm’ns of the Sw. v. City of Dallas*, 8 F. Supp. 2d 582, 593 (N.D. Tx. 1998) (*AT&T v. City of Dallas*) (“[A]ny fee that is not based on AT&T’s use of City rights-of-way violates § 253(a) of the FTA as an economic barrier to entry.”); Verizon Comments at 11-12; Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 7. Because we view the *California Payphone* standard as reflecting a focus on barriers to entry, we decline requests to adopt a distinct, additional standard with that as an explicit focus. See, e.g., T-Mobile Comments at 35.

¹⁵⁵ See, e.g., *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5301-03, paras. 142-45 (2011) (rejecting an approach to defining a lower bound rate for pole attachments that “would result in pole rental rates below incremental cost” as contrary to cost causation principles); *Investigation of Interstate Access Tariff Non-Recurring Charges*, Memorandum Opinion and Order, 2 FCC Rcd 3498, 3502, para. 34 (1987) (observing in the rate regulation context that “the public interest is best served, and a competitive marketplace is best encouraged, by policies that promote the recovery of costs from the cost-causer”). Our interpretation limiting states and localities to the recovery of a reasonable approximation of objectively reasonable cost also takes into account state and local governments’ exclusive control over access to the ROW.

¹⁵⁶ For example, Verizon states that “[a]lthough any fee could be said to raise the cost of providing service,” Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 9, “[t]he Commission should interpret . . . Section 253(a) to allow cost-based fees for access to public rights-of-way and structures within them, but to prohibit above-cost fees that generate revenue in excess of state and local governments’ actual costs.” *Id.*, Attach. at 6.

communications services by protecting property rights and guarding against conflicting deployments that could harm or otherwise interfere with others' use of property.¹⁵⁷ By contrast, fees that recover more than the state or local costs associated with facilities deployment—or that are based on unreasonable costs, such as exorbitant consultant fees or the like—go beyond such governmental recovery of fundamental costs of entry. In addition, interpreting Section 253(a) to prohibit states and localities from recovering a reasonable approximation of reasonable costs could interfere with the ability of states to exercise the police powers reserved to them under the Tenth Amendment.¹⁵⁸ We therefore conclude that Section 253(a) is circumscribed to permit states and localities to recover a reasonable approximation of their costs related to the deployment of Small Wireless Facilities.

57. *Commission Precedent.* We draw further confidence in our conclusions from the Commission's *California Payphone* decision, which we reaffirm here, finding that a state or local legal requirement would violate Section 253(a) if it "materially limits or inhibits" an entity's ability to compete in a "balanced" legal environment for a covered service.¹⁵⁹ As explained above, fees charged by a state or locality that recover the reasonable approximation of reasonable costs do not "materially inhibit" a provider's ability to compete in a "balanced" legal environment. To the contrary, those costs enable localities to recover their necessary expenditures to provide a stable and predictable framework in which market participants can enter and compete. On the other hand, in the *Texas PUC Order* interpreting *California Payphone*, the Commission concluded that state or local legal requirements such as fees that impose a "financial burden" on providers can be effectively prohibitive.¹⁶⁰ As the record shows, excessive state and local governments' fees assessed on the deployment of Small Wireless Facilities in the ROW in fact materially inhibit the ability of many providers to compete in a balanced environment.¹⁶¹

58. *California Payphone* and *Texas PUC* separately support the conclusion that fees cannot be discriminatory or introduce competitive disparities, as such fees would be inconsistent with a "balanced" regulatory marketplace. Thus, fees that treat one competitor materially differently than other competitors in similar situations are themselves grounds for finding an effective prohibition—even in the case of fees that are a reasonable approximation of the actual and reasonable costs incurred by the state or locality. Indeed, the Commission has previously recognized the potential for subsidies provided to one

¹⁵⁷ See, e.g., *TCI Cablevision Order*, 12 FCC Rcd at 21441, para. 103; see also, e.g., Garrett Hardin, *The Tragedy of the Commons*, 162 Sci. 1243 (1968). States' or localities' regulation premised on addressing effects of deployment besides these costs caused by facilities deployment are distinct issues, which we discuss below. See *infra* Part III.C.

¹⁵⁸ The Supreme Court has recognized that land use regulation can involve an exercise of police powers. See, e.g., *Hodel v. Va. Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 289 (1981). As that Court observed, "[i]t would . . . be a radical departure from long-established precedent for this Court to hold that the Tenth Amendment prohibits Congress from displacing state police power laws regulating private activity." *Id.* at 292. At the same time, the Court also has held that "historic police powers of the States" are not to be preempted by federal law "unless that was the clear and manifest purpose of Congress." *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 605 (1991) (internal quotation marks omitted). As relevant here, we see no clear and manifest intent that Congress intended to preempt publicly disclosed, objectively reasonable cost-based fees imposed on a nondiscriminatory basis, particularly in light of Section 253(c).

¹⁵⁹ We disagree with suggestions that the Commission applied an additional and more stringent "commercial viability" test in *California Payphone*. See, e.g., Crown Castle June 7, 2018 *Ex Parte* Letter at 10. Instead, the Commission was simply evaluating the Section 253 petition on its own terms, see, e.g., *California Payphone*, 12 FCC Rcd at 14204, 14210, paras. 27, 41, and, without purporting to define the bounds of Section 253(a), explaining that the petitioner "ha[d] not sufficiently supported its allegation" that the provision of service at issue "would be 'impractical and uneconomic.'" *Id.* at 14210, para. 41. Confirming that this language was simply the Commission's short-hand reference to arguments put forward by the petitioner itself, and not a Commission-announced standard for applying Section 253, the Commission has not applied a "commercial viability" standard in other decisions, as these same commenters recognize. See, e.g., Crown Castle June 7, 2018 *Ex Parte* Letter at 10.

¹⁶⁰ *Texas PUC Order*, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81.

¹⁶¹ See *infra* paras. 60-65.

competitor to distort the marketplace and create a barrier to entry in violation of Section 253(a).¹⁶² We reaffirm that conclusion here.

59. *Legislative History.* While our interpretation follows directly from the text and structure of the Act, our conclusion finds further support in the legislative history, which reflects Congress's focus on the ability of states and localities to recover the reasonable costs they incur in maintaining the rights of way.¹⁶³ Significantly, Senator Dianne Feinstein, during the floor debate on Section 253(c), "offered examples of the types of restrictions that Congress intended to permit under Section 253(c), including [to] 'require a company to pay fees to *recover an appropriate share of the increased street repair and paving costs* that result from repeated excavation.'" ¹⁶⁴ Representative Bart Stupak, a sponsor of the legislation, similarly explained during the debate on Section 253 that "if a company plans to run 100 miles of trenching in our streets and wires to all parts of the cities, it *imposes a different burden* on the right-of-way than a company that just wants to string a wire across two streets to a couple of buildings," making clear that the compensation described in the statute is related to the burden, or cost, from a provider's use of the ROW.¹⁶⁵ These statements buttress our interpretation of the text and structure of Section 253 and confirm Congress's apparent intent to craft specific safe harbors for states and localities, and to permit recovery of reasonable costs related to the ROW as "fair and reasonable compensation," while preempting fees above a reasonable approximation of cost that improperly inhibit service.¹⁶⁶

60. *Capital Expenditures.* Apart from the text, structure, and legislative history of the 1996 Act, an additional, independent justification for our interpretation follows from the simple, logical premise, supported by the record, that state and local fees in one place of deployment necessarily have the effect of reducing the amount of capital that providers can use to deploy infrastructure elsewhere, whether the reduction takes place on a local, regional or national level.¹⁶⁷ We are persuaded that providers and infrastructure builders, like all economic actors, have a finite (though perhaps fluid)¹⁶⁸ amount of resources to use for the deployment of infrastructure. This does not mean that these resources are limitless, however. We conclude that fees imposed by localities, above and beyond the recovery of localities' reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere.¹⁶⁹ This and regulatory uncertainty created by such effectively prohibitive conduct¹⁷⁰ creates an

¹⁶² See, e.g., *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8.

¹⁶³ See, e.g., WIA Comments, Attach. 2 at 70.

¹⁶⁴ WIA Comments, Attach. 2 at 70 (quoting 141 Cong. Rec. S8172 (daily ed. June 12, 1995) (statement of Sen. Feinstein, quoting letter from Office of City Attorney, City and County of San Francisco)) (emphasis added)); see also, e.g., Verizon Comments at 15 (similar); *City of Maryland Heights*, 256 F. Supp. 2d at 995-96.

¹⁶⁵ 141 Cong. Rec. H8460-01, H8460 (daily ed. Aug. 4, 1995).

¹⁶⁶ We reject other comments downplaying the relevance of legislative statements by some commenters as inconsistent with the text and structure of the Act. See, e.g., League of Arizona Cities *et al.* Joint Comments at 27-28; NATOA Comments, Exh. A at 26-28; Smart Communities Reply at 57-58; Cities of San Antonio *et al.* Reply at 20-21; see also, e.g., *City of Portland v. Electric Lightwave, Inc.*, 452 F. Supp. 2d 1049, 1071-72 (D. Or. 2005).

¹⁶⁷ At a minimum, this analysis complements and reinforces the justifications for our interpretation provided above. While the relevant language of Section 253(a) and Section 332(c)(7)(B)(i)(II) is not limited just to Small Wireless Facilities, we proceed incrementally in our Declaratory Ruling here and address the record before us, which indicates that our interpretation of the effective prohibition standard here is particularly reasonable in the context of Small Wireless Facility deployment.

¹⁶⁸ For example, the precise amount of these resources might shift as a service provider encounters unexpected costs, recovers costs passed on to subscribers, or earns a profit above those costs.

¹⁶⁹ As Verizon observes, "[a] number of states enacted infrastructure legislation because they determined that rate relief was necessary to ensure wireless deployment," and thus could be seen as having "acknowledged that excessive fees impose a substantial barrier to the provision of service." Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 7-8. In view of the evidence in the record regarding the effect of state and local fees on capital expenditures, see, e.g., Corning Sept. 5, 2018 *Ex Parte* Letter (noting that cost savings from reduced small cell attachment and application

appreciable impact on resources that materially limits plans to deploy service. This record evidence emphasizes the importance of evaluating the effect of fees on Small Wireless Facility deployment on an aggregate basis. Consistent with the First Circuit's analysis in *Municipality of Guayanilla*, the record persuades us that fees associated with Small Wireless Facility deployment lead to "a substantial increase in costs"—particularly when considered in the aggregate—thereby "plac[ing] a significant burden" on carriers and materially inhibiting their provision of service contrary to Section 253 of the Act.¹⁷¹

61. The record is replete with evidence that providers have limited capital budgets that are constrained by state and local fees.¹⁷² As AT&T explains, "[a]ll providers have limited capital dollars to invest, funds that are quickly depleted when drained by excessive ROW fees."¹⁷³ AT&T added that "[c]ompetitive demands will force carriers to deploy small cells in the largest cities. But, when those largest cities charge excessive fees to access ROWs and municipal ROW structures, carriers' finite capital dollars are prematurely depleted, leaving less for investment in mid-level cities and smaller communities. Larger municipalities have little incentive to not overcharge, and mid-level cities and smaller

(Continued from previous page)

fees could result in \$2.4 billion in capital expenditure and that 97% of this capital expenditure would go toward investments in rural and suburban areas), we disagree with arguments that fees do not affect the deployment of wireless facilities in rural and underserved areas. *See, e.g.*, Letter from Sam Liccardo, Mayor, City of San Jose, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 4 (filed Sept. 18, 2018) (City of San Jose Sept. 18, 2018 *Ex Parte* Letter) (stating that "whether or not a provider wishes to invest in a dense urban area, including underserved urban areas, or a rural area is fundamentally based on the size of the customer base and the market demand for service—not on the purported wiles of a 'must-serve' jurisdiction somehow forcing investment away from rural areas because a right of way or attachment fee is charged."); Letter from Joanne Hovis, Chief Executive Officer, Coalition for Local Internet Choice, James Baller, President, Coalition for Local Internet Choice, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 3 (filed Sept. 18, 2018) ("in lucrative areas, carriers will pay market fees for access to property just as they would any other cost of doing business. But they will not, as rational economic actors, necessarily apply new profits (created by FCC preemption) to deploying in otherwise unattractive areas.").

¹⁷⁰ *See, e.g.*, CTIA Comments at 32 (identifying "disparate interpretations" regarding the fees that are preempted and seeking FCC clarification to "dispel the resulting uncertainty"); Verizon Comments at 10 (similar); Letter from Cathleen A. Massey, Vice Pres.-Fed. Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 7 (filed Sept. 21, 2017) (seeking clarification of Section 253); BDAC Regulatory Barriers Report, p. 9 ("The FCC should provide guidance on what constitutes a fee that is excessive and/or duplicative, and that therefore is not 'fair and reasonable.' The Commission should specifically clarify that 'fair and reasonable' compensation for right-of way access and use implies some relation to the burden of new equipment placed in the ROW or on the local asset, or some other objective standard.").

¹⁷¹ *Municipality of Guayanilla*, 450 F.3d at 19.

¹⁷² *See, e.g.*, AT&T Comments at 2; Conterra Broadband et al. Comments at 6; Mobilitie Comments at 3; Sprint Comments at 17; Letter from Courtney Neville, Associate General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2-3 (filed July 16, 2018) (CCA July 16, 2018 *Ex Parte* Letter); Letter from Henry Hultquist, Vice President, Federal Regulatory, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed June 8, 2018) (AT&T June 8, 2018 *Ex Parte* Letter); Crown Castle June 7, 2018 *Ex Parte* Letter at 2; Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed June 21, 2018) (Verizon June 21, 2018 *Ex Parte* Letter); Letter from Ronald W. Del Sesto, Jr., Counsel for Uniti Fiber, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 5 (filed Oct. 30, 2017); Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 2-4. When developing capital budgets, companies rationally would account for anticipated revenues associated with the services that can be provided by virtue of planned facilities deployment, and the record does not reveal—nor do we see any basis to assume—that such revenues would be so great as to eliminate constraints on providers' capital budgets so as to enable full deployment notwithstanding the level of state and local fees.

¹⁷³ AT&T Aug. 6, 2018 *Ex Parte* Letter at 2.

municipalities have no ability to avoid this harm.”¹⁷⁴ As to areas that might not be sufficiently crucial to deployment to overcome high fees, AT&T identified jurisdictions in Maryland, California, and Massachusetts where high fees have directly resulted in paused or decreased deployments.¹⁷⁵ Limiting localities to reasonable cost recovery will “allow[] AT&T and other providers to stretch finite capital dollars to additional communities.”¹⁷⁶ Verizon similarly explains that “[c]apital budgets are finite. When providers are forced to spend more to deploy infrastructure in one locality, there is less money to spend in others. The leverage that some cities have to extract high fees means that other localities will not enjoy next generation wireless broadband services as quickly, if at all.”¹⁷⁷ Sprint, too, affirms that, because “all carriers face limited capital budgets, they are forced to limit the number and pace of their deployment investments to areas where the delays and impediments are the least onerous, to the detriment of their customers and, ultimately and ironically, to the very jurisdictions that imposed obstacles in the first place.”¹⁷⁸ Sprint gives a specific example of its deployments in two adjacent jurisdictions—the City of Los Angeles and Los Angeles County—and describes how high fees in the county prevented Sprint from activating any small cells there, while more than 500 deployments occurred in the city, which had significantly lower fees.¹⁷⁹ Similarly, Conterra Broadband states that “[w]hen time and capital are diverted away from actual facility installation and instead devoted to clearing regulatory roadblocks, consumers and enterprises, including local small businesses, schools and healthcare centers, suffer.”¹⁸⁰ Based on the record, we find that fees charged by states and localities are causing *actual* delays and restrictions on deployments of Small Wireless Facilities in a number of places across the country in violation of Section 253(a).¹⁸¹

62. Our conclusion finds further support when one considers the aggregate effects of fees imposed by individual localities, including, but not limited to, the potential limiting implications for a nationwide wireless network that reaches all Americans, which is among the key objectives of the statutory provisions in the 1996 Act that we interpret here.¹⁸² When evaluating whether fees result in an effective prohibition of service due to financial burden, we must consider the marketplace regionally and nationally and thus must consider the cumulative effects of state or local fees on service in multiple geographic areas that providers serve or potentially would serve. Where providers seek to operate on a regional or national basis, they have constrained resources for entering new markets or introducing, expanding, or improving existing services, particularly given that a provider’s capital budget for a given

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* (pausing or delaying deployments in Citrus Heights, CA, Oakland, CA and three Maryland counties; decreasing deployments in Lowell, MA and decreasing deployments from 98 to 25 sites in Escondido, CA).

¹⁷⁶ *Id.*

¹⁷⁷ Verizon Aug. 10, 2018 *Ex Parte* Letter at 5, Attach. at 2-4.

¹⁷⁸ Sprint Comments at 17.

¹⁷⁹ Sprint Aug. 13, 2018 *Ex Parte* Letter at 1-2.

¹⁸⁰ Conterra Broadband *et al.* Comments at 6; *see also* Letter from John Scott, Counsel for Mobilitie, LLC to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (“high fees imposed by some cities hurt other cities that have reasonable fees, because they reduce capital resources that might have gone to those cities, and because they pressure other financially strapped cities not to turn away what appears to be a revenue opportunity”).

¹⁸¹ Letter from Kenneth J. Simon, Senior Vice President and General Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 4 (filed August 10, 2018) (Crown Castle Aug. 10, 2018 *Ex Parte* Letter).

¹⁸² *New England Public Comms. Council Petition for Preemption Pursuant to Section 253*, Memorandum Opinion and Order, 11 FCC Rcd 19713, 19717, para. 9 (1996) (1996 Act intent of “accelerat[ing] deployment of advanced telecommunications services to all Americans by opening all telecommunications markets to competition.”); *see also* Crown Castle Aug. 10, 2018 *Ex Parte* Letter at 7.

period of time is often set in advance.¹⁸³ In such cases, the resources consumed in serving one geographic area are likely to deplete the resources available for serving other areas.¹⁸⁴ The text of Section 253(a) is not limited by its terms only to effective prohibitions within the geographic area targeted by the state or local fee. Where a fee in a geographic area affects service outside that geographic area, the statute is most naturally read to encompass consideration of all affected areas.

63. A contrary, geographically-restrictive interpretation of Section 253(a) would exacerbate the digital divide by giving dense or wealthy states and localities that might be most critical for a provider to serve the ability to leverage their unique position to extract fees for their own benefit at the expense of regional or national deployment by decreasing the deployment resources available for less wealthy or dense jurisdictions.¹⁸⁵ As a result, the areas likely to be hardest hit by excessive government fees are not necessarily jurisdictions that charge those fees, but rather areas where the case for new, expanded, or improved service was more marginal to start—and whose service may no longer be economically justifiable in the near-term given the resources demanded by the “must-serve” areas. To cite some examples of harmful aggregate effects, AT&T notes that high annual recurring fees are particularly harmful because of their “continuing and compounding nature.”¹⁸⁶ It also states that, “if, as S&P Global Market Intelligence estimates, small-cell deployments reach nearly 800,000 by 2026, a ROW fee of \$1000 per year ... would result in nearly \$800 million annually in forgone investment.”¹⁸⁷ Yet another commenter notes that, “[f]or a deployment that requires a vast number of small cell facilities across a metropolitan area, these fees quickly mount up to hundreds of thousands of dollars, often making deployment economically infeasible,” and “far exceed[ing] any costs the locality incurs by orders of magnitude, while taking capital that would otherwise go to investment in new infrastructure.”¹⁸⁸ Endorsing such a result would thwart the purposes underlying Section 253(a). As Crown Castle observes, “[e]ven where the fees do not result in a direct lack of service in a high-demand area like a city or urban core, the high cost of building and operating facilities in these jurisdictions consume [sic] capital and revenue that could otherwise be used to expand wireless infrastructure in higher cost areas. This impact of egregious fees is prohibitory and should be taken into account in any prohibition analysis.”¹⁸⁹

64. Some municipal commenters endorse a cost-based approach to “ensure that localities are fully compensated for their costs [and that] fees should be reasonable and non-discriminatory, and should ensure that localities are made whole”¹⁹⁰ in recognition that “getting [5G] infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources.”¹⁹¹ Commenters from smaller municipalities recognize that “thousands and thousands of small cells are needed for 5G... [and]

¹⁸³ See, e.g., AT&T June 8, 2018 *Ex Parte* Letter at 2; Crown Castle June 7, 2018 *Ex Parte* Letter at 2; Verizon June 21, 2018 *Ex Parte* Letter at 2.

¹⁸⁴ See, e.g., *Municipality of Guayanilla*, 450 F.3d at 17 (“Given the interconnected nature of utility services across communities and the strain that the enactment of gross revenue fees in multiple municipalities would have on PRTC’s provision of services, the Commonwealth-wide estimates are relevant to determining how the ordinance affects PRTC’s ‘ability . . . to provide any interstate or intrastate telecommunications service’” under Section 253(a)).

¹⁸⁵ See, e.g., Letter from Sam Liccardo, Mayor of San Jose, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, Attachment at 1-2 (filed Aug. 2, 2018) (describing payment by providers of \$24 million to a Digital Inclusion Fund in order to deploy small cells in San Jose on city owned light poles).

¹⁸⁶ AT&T Comments at 19.

¹⁸⁷ AT&T Comments at 19-20.

¹⁸⁸ Mobilitie Comments at 3.

¹⁸⁹ Crown Castle Aug. 10, 2018 *Ex Parte* Letter at 2.

¹⁹⁰ Sal Pace July 30, 2018 *Ex Parte* Letter at 1.

¹⁹¹ LaWana Mayfield July 31, 2018 *Ex Parte* Letter at 1

old regulations could hinder the timely arrival of 5G throughout the country”¹⁹² and urge the Commission to “establish some common-sense standards insofar as it relates to fees associated with the deployment of small cells [due to] a cottage industry of consultants [] who have wrongly counseled communities to adopt excessive and arbitrary fees.”¹⁹³ Representatives from non-urban areas in particular caution that, “if the investment that goes into deploying 5G on the front end is consumed by big, urban areas, it will take longer for it to flow outwards in the direction of places like Florence, [SC].”¹⁹⁴ “[R]educing the high regulatory costs in urban areas would leave more dollars to development in rural areas [because] most of investment capital is spent in the larger urban areas [since] the cost recovery can be made in those areas. This leaves the rural areas out.”¹⁹⁵ We agree with these commenters, and we further agree with courts that have considered “the *cumulative effect* of future similar municipal [fees ordinances]” across a broad geographic area when evaluating the effect of a particular fee in the context of Section 253(a).¹⁹⁶ To the extent that other municipal commenters argue that our interpretation gives wireless providers preferential treatment compared to other users of the ROW, the record does not contain data about other users that would support such a conclusion.¹⁹⁷ In any event, Section 253 of the Communications Act expressly bars legal requirements that effectively prohibit telecommunications service without regard to whether it might result in preferential treatment for providers of that service.¹⁹⁸

65. Applying this approach here, the record reveals that fees above a reasonable approximation of cost, even when they may not be perceived as excessive or likely to prohibit service in isolation, will have the effect of prohibiting wireless service when the aggregate effects are considered, particularly given the nature and volume of anticipated Small Wireless Facility deployment.¹⁹⁹ The record reveals that these effects can take several forms. In some cases, the fees in a particular jurisdiction will lead to reduced or entirely forgone deployment of Small Wireless Facilities in the near term for that

¹⁹² Dr. Carolyn Prince July 31, 2018 *Ex Parte* Letter at 2.

¹⁹³ Letter from Ashton J. Hayward III, Mayor, Pensacola, FL to the Hon. Brendan Carr, Commissioner, WT Docket No. 17-79 at 1 (filed June 8, 2018).

¹⁹⁴ Representative Terry Alexander Aug. 7, 2018 *Ex Parte* Letter at 1.

¹⁹⁵ Senator Duane Ankney July 31, 2018 *Ex Parte* Letter at 1; *see also* Letter from Elder Alexis D. Pipkins, Sr. to the Hon. Brendan Carr, Commissioner, FCC at 1 (filed July 26, 2018) (“the race to 5G is global...instead of each city or state for itself, we should be working towards aligned, streamlined frameworks that benefit us all.”); Letter from Jeffrey Bohm, Chairman of the Board of Commissioners, County of St. Clair to Brendan Carr, Commissioner, FCC, WT Docket 17-79 at 1-2 (filed August 22, 2018) (“Smaller communities, such as those located in St. Clair County would benefit from having the Commissions reduce the costly and unnecessary fee’s that some larger communities place on small cells as a condition of deployment. These fees, wholly disproportionate to any cost, put communities like ours at an unfair disadvantage”); Letter from Scott Niesler, Mayor, City of Kings Mountain, to Brendan Carr, Commissioner, FCC, WT Docket 17-79 at 1-2 (filed June 4, 2018) (“the North Carolina General Assembly has enacted legislation to encourage the deployment of small cell technology to limit exorbitant fees which can siphon off capital from further expansion projects. I was encouraged to see the FCC taking similar steps to enact policies that help clear the way for the essential investment”).

¹⁹⁶ *Guayanilla District Ct. Opinion*, 354 F. Supp. 2d at 111-12; *but see, e.g.*, Letter from Nina Beety to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 at 5 (filed Sept. 17, 2018) (Nina Beety Sept. 17, 2018 *Ex Parte* Letter) (asserting that providers artificially under-capitalize their deployment budgets to build the case for poverty).

¹⁹⁷ Letter from Larry Hanson, Executive Director, Georgia Municipal Association to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Sept. 17, 2018) (Georgia Municipal Association Sept. 17, 2018 *Ex Parte* Letter).

¹⁹⁸ 47 U.S.C. § 253(a).

¹⁹⁹ *See, e.g., Wireless Infrastructure Second R&O*, FCC 18-30, at para. 64. In addition, although one could argue that, in theory, a sufficiently small departure from actual and reasonable costs might not have the effect of prohibiting service in a particular instance, the record does not reveal an alternative, administrable approach to evaluating fees without a cost-based focus.

jurisdiction.²⁰⁰ In other cases, where it is essential for a provider to deploy in a given area, the fees charged in that geographic area can deprive providers of capital needed to deploy elsewhere, and lead to reduced or forgone near-term deployment of Small Wireless Facilities in other geographic areas.²⁰¹ In both of those scenarios the bottom-line outcome on the national development of 5G networks is the same—diminished deployment of Small Wireless Facilities critical for wireless service and building out 5G networks.²⁰²

66. Some have argued that our decision today regarding Sections 253 and 332 should not be applied to preempt agreements (or provisions within agreements) entered into prior to this Declaratory Ruling.²⁰³ We note that courts have upheld the Commission’s preemption of the enforcement of provisions in private agreements that conflict with our decisions.²⁰⁴ We therefore do not exempt existing agreements (or particular provisions contained therein) from the statutory requirements that we interpret here. That said, however, this Declaratory Ruling’s effect on any particular existing agreement will depend upon all the facts and circumstances of that specific case.²⁰⁵ Without examining the particular features of an agreement, including any exchanges of value that might not be reflected by looking at fee provisions alone, we cannot state that today’s decision does or does not impact any particular agreement entered into before this decision.

67. *Relationship to Section 332.* While the above analysis focuses on the text and structure of the Act, legislative history, Commission orders, and case law interpreting Section 253(a), we reiterate that in the fee context, as elsewhere, the statutory phrase “prohibit or have the effect of prohibiting” in Section 332(c)(7)(B)(i)(II) has the same meaning as the phrase “prohibits or has the effect of prohibiting” in Section 253(a). As noted in the prior section, there is no evidence to suggest that Congress intended for virtually identical language to have different meanings in the two provisions.²⁰⁶ Instead, we find it

²⁰⁰ See, e.g., AT&T June 8, 2018 *Ex Parte* Letter at 1-2; Crown Castle June 7, 2018 *Ex Parte* Letter at 2.

²⁰¹ AT&T June 8, 2018 *Ex Parte* Letter at 1-2; Crown Castle June 7, 2018 *Ex Parte* Letter at 2; Verizon June 21, 2018 *Ex Parte* Letter at 2; CCA July 16, 2018 *Ex Parte* Letter at 2-3.

²⁰² See, e.g., Letter from Thomas J. Navin, Counsel to Corning, Inc. to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Jan 25, 2018), Attach. at 6-7 (comparing different effects on deployment between a base case and a high fee case, and estimating that pole attachment fees nationwide assuming high fees would result in 28.2M fewer premises passed, or 31 percent of the 5G Base case results, and an associated \$37.9B in forgone network deployment).

²⁰³ City of San Jose Sept. 18, 2018 *Ex Parte* Letter at 1-2.

²⁰⁴ See, e.g., *Building Owners and Managers Ass’n Int’l v. FCC*, 254 F.3d 89 (D.C. Cir. 2001) (OTARD rules barring exclusivity provisions in lease agreements). As the D.C. Circuit has recognized, “[w]here the Commission has been instructed by Congress to prohibit restrictions on the provision of a regulated means of communication, it may assert jurisdiction over a party that directly furnishes those restrictions, and, in so doing, the Commission may alter property rights created under State law.” *Id.* at 96; see also *Lansdowne on the Potomac Homeowners Ass’n v. OpenBand at Lansdowne, LLC*, 713 F.3d 187 (4th Cir. 2013).

²⁰⁵ For example, the City of Los Angeles asserts that fee provisions in its agreements with providers are not prohibitory and must be examined in light of a broader exchange of value contemplated by the agreements in their entirety. Letter from Eric Garcetti, Mayor, City of Los Angeles to the Hon. Ajit Pai, Chairman, FCC, WT Docket No. 17-79 (filed Sept 18, 2018). We agree that agreements entered into before this decision will need to be examined in light of their potentially unique circumstances before a decision can be reached about whether those agreements or any particular provisions in those agreements are or are not impacted by today’s FCC decision.

²⁰⁶ We reject the claims of some commenters that Section 332(c)(7)(B)(i)(II) is limited exclusively to decisions on individual requests and therefore must be interpreted differently than Section 253(a). See, e.g., San Francisco Comments at 24-26. Section 332(c)(7)(B)(i) explicitly applies to “regulation of the placement, construction, and modification,” and it would be irrational to interpret “regulation” in that paragraph to mean something different from the term “regulation” as used in 253(a) or to find that it does not encompass generally applicable “regulations” as well as decisions on individual applications. Moreover, even assuming *arguendo* that San Francisco’s position reflects the appropriate interpretation of the scope of Section 332(c)(7)(B)(i)(II), the record does not reveal why a

more reasonable to conclude that the language in both sections generally should be interpreted to have the same meaning and to reflect the same standard, including with respect to preemption of fees that could “prohibit” or have “the effect of prohibiting” the provision of covered service. Both sections were enacted to address concerns about state and local government practices that undermined providers’ ability to provide covered services, and both bar state or local conduct that prohibits or has the effect of prohibiting service.

68. To be sure, Sections 253 and 332(c)(7) may relate to different categories of state and local fees. Ultimately, we need not resolve here the precise interplay between Sections 253 and 332(c)(7). It is enough for us to conclude that, collectively, Congress intended for the two provisions to cover the universe of fees charged by state and local governments in connection with the deployment of telecommunications infrastructure. Given the analogous purposes of both sections and the consistent language used by Congress, we find the phrase “prohibit or have the effect of prohibiting” in Section 332(c)(7)(B)(i)(II) should be construed as having the same meaning and governed by the same preemption standard as the identical language in Section 253(a).²⁰⁷

69. *Application of the Interpretations and Principles Established Here.* Consistent with the interpretations above, the requirement that compensation be limited to a reasonable approximation of objectively reasonable costs and be non-discriminatory applies to all state and local government fees paid in connection with a provider’s use of the ROW to deploy Small Wireless Facilities including, but not limited to, fees for access to the ROW itself, and fees for the attachment to or use of property within the ROW owned or controlled by the government (*e.g.*, street lights, traffic lights, utility poles, and other infrastructure within the ROW suitable for the placement of Small Wireless Facilities). This interpretation applies with equal force to any fees reasonably related to the placement, construction, maintenance, repair, movement, modification, upgrade, replacement, or removal of Small Wireless Facilities within the ROW, including, but not limited to, application or permit fees such as siting applications, zoning variance applications, building permits, electrical permits, parking permits, or excavation permits.

70. Applying the principles established in this Declaratory Ruling, a variety of fees not reasonably tethered to costs appear to violate Sections 253(a) or 332(c)(7) in the context of Small Wireless Facility deployments.²⁰⁸ For example, we agree with courts that have recognized that gross

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distinction between broadly-applicable requirements and decisions on individual requests would call for a materially different analytical approach, even if it arguably could be relevant when evaluating the application of that analytical approach to a particular preemption claim. In addition, although some commenters assert that such an interpretation “would make it virtually impossible for local governments to enforce their zoning laws with regard to wireless facility siting,” they provide no meaningful explanation why that would be the case. *See, e.g.*, San Francisco Reply at 16. While some local commenters note that the savings clauses in Section 253(b) and (c) do not have express counterparts in the text of Section 332(c)(7)(B)(i), *see, e.g.*, San Francisco Comments at 26, we are not persuaded that this compels a different interpretation of the virtually identical language restricting actual or effective prohibitions of service in Section 253(a) and Section 332(c)(7)(B)(i)(II), particularly given our reliance on considerations in addition to the savings clauses themselves when interpreting the “effective prohibition” language. *See supra* paras. 57-65. We offer these interpretations both to respond to comments and in the event that some court decision could be viewed as supporting a different result.

²⁰⁷ Section 253(a) expressly addresses state or local activities that prohibit or have the effect of prohibiting “any entity” from providing a telecommunications service. 47 U.S.C. § 253(a). In the *2009 Declaratory Ruling*, the Commission likewise interpreted Section 332(c)(7)(B)(i)(II) as implicated where the state or local conduct prohibits or has the effect of prohibiting the provision of personal wireless service by one entity even if another entity already is providing such service. *See 2009 Declaratory Ruling*, 24 FCC Rcd at 14016-19, paras. 56-65.

²⁰⁸ We acknowledge that a fee not calculated by reference to costs might nonetheless happen to land at a level that is a reasonable approximation of objectively reasonable costs, and otherwise constitute fair and reasonable compensation as we describe herein. If all these criteria are met, the fee would not be preempted.

revenue fees generally are not based on the costs associated with an entity's use of the ROW,²⁰⁹ and where that is the case, are preempted under Section 253(a). In addition, although we reject calls to preclude a state or locality's use of third party contractors or consultants, or to find all associated compensation preempted,²¹⁰ we make clear that the principles discussed herein regarding the reasonableness of cost remain applicable. Thus, fees must not only be limited to a reasonable approximation of costs, but in order to be reflected in fees, the *costs themselves* must also be reasonable. Accordingly, any unreasonably high costs, such as excessive charges by third party contractors or consultants, may not be passed on through fees even though they are an actual "cost" to the government. If a locality opts to incur unreasonable costs, Sections 253 and 332(c)(7) do not permit it to pass those costs on to providers. Fees that depart from these principles are not saved by Section 253(c), as we discuss below.

71. *Interpretation of Section 253(c) in the Context of Fees.* In this section, we turn to the interpretation of several provisions in Section 253(c), which provides that state or local action that otherwise would be subject to preemption under Section 253(a) may be permissible if it meets specified criteria. Section 253(c) expressly provides that state or local governments may require telecommunications providers to pay "fair and reasonable compensation" for use of public ROWs but requires that the amounts of any such compensation be "competitively neutral and nondiscriminatory" and "publicly disclosed."²¹¹

72. We interpret the ambiguous phrase "fair and reasonable compensation," within the statutory framework we outlined for Section 253, to allow state or local governments to charge fees that recover a reasonable approximation of the state or local governments' actual and reasonable costs. We conclude that an appropriate yardstick for "fair and reasonable compensation," and therefore an indicator of whether a fee violates Section 253(c), is whether it recovers a reasonable approximation of a state or local government's objectively reasonable costs of, respectively, maintaining the ROW, maintaining a structure within the ROW, or processing an application or permit.²¹²

73. We disagree with arguments that "fair and reasonable compensation" in Section 253(c) should somehow be interpreted to allow state and local governments to charge "any compensation," and we give weight to BDAC comments that, "[a]s a policy matter, the Commission should recognize that local fees designed to maximize profit are barriers to deployment."²¹³ Several commenters argue, in

²⁰⁹ See, e.g., *Municipality of Guayanilla*, 450 F.3d at 21; *City of Maryland Heights*, 256 F. Supp. 2d at 993-96; *Prince George's County*, 49 F. Supp. 2d at 818; *AT&T v. City of Dallas*, 8 F. Supp. 2d at 593; see also, e.g., CTIA Comments at 30, 45; *id.* Attach. at 17; ExteNet Comments, Exh. 1 at 41; T-Mobile Comments at 7; WIA Comments at 52-53.

²¹⁰ See, e.g., CCA Comments at 17-21 (asking the Commission to declare franchise fees or percentage of revenue fees outside the scope of fair and reasonable compensation and to prohibit state and localities from requiring service providers to obtain business licenses for individual cell sites). For example, although fees imposed by a state or local government calculated as a percentage of a provider's revenue are unlikely to be a reasonable approximation of cost, if such a percentage-of-revenue fee were, in fact, ultimately shown to amount to a reasonable approximation of costs, the fee would not be preempted.

²¹¹ 47 U.S.C. § 253(c).

²¹² *Guayanilla District Ct. Opinion*, 354 F. Supp. 2d at 114 ("fees charged by a municipality need to be related to the degree of actual use of the public rights-of way" to constitute fair and reasonable compensation under Section 253(c)); *New Jersey Payphone Ass'n, Inc. v. Town of West New York*, 130 F. Supp. 2d 631, 638 (D.N.J. 2001), *aff'd* 299 F. 3d 235 (3d Cir. 2002) (*New Jersey Payphone*) ("Plainly, a fee that does more than make a municipality whole is not compensatory in the literal sense, and risks becoming an economic barrier to entry.")

²¹³ BDAC Regulatory Barriers Report, Appendix C, p. 3 (a "[ROW] burden-oriented [fee] standard is flexible enough to suit varied localities and network architectures, would ensure that fees are not providing additional

particular, that Section 253(c)'s language must be read as permitting localities latitude to charge any fee at all²¹⁴ or a "market-based rent."²¹⁵ Many of these arguments seem to suggest that Section 253 or 332 have not previously been read to impose limits on fees, but as noted above courts have long read these provisions as imposing such limits. Still others argue that limiting the fees state and local governments may charge amounts to requiring taxpayers to subsidize private companies' use of public resources.²¹⁶ We find little support in the record, legislative history, or case law for that position.²¹⁷ Indeed, our

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revenues for other localities purposes unrelated to providing and maintaining the ROW, and would provide some basis to challenge fees that, on their face, are so high as to suggest their sole intent is to maximize revenue.")

²¹⁴ See, e.g., Baltimore Comments at 15-16 (noting that local governments traditionally impose fees based on rent, and other ROW users pay market-based fees and arguing that citizens should not have to "subsidize" wireless deployments); Bellevue *et al.* Reply at 12-13 (stating that "the FCC should compensate municipalities at fair market value because any physical invasion is a taking under the Fifth Amendment, and just compensation is "typically" calculated using fair market value."); NLC Comments at 5 ("local governments, like private landlords, are entitled to collect rent for the use of their property and have a duty to their residents to assess appropriate compensation. This does not necessarily translate to restricting this compensation to just the cost of managing the asset—just as private property varies in value, so does municipal property."); Smart Communities Reply at 7-10 (stating that "fair and reasonable compensation (i.e., fair market value) is not, as some commenters contend, measured by the regulatory cost for use of a ROW or other property; rather it is measured by what it would cost the user of the ROW to purchase rights from a local property owner.").

²¹⁵ Draft BDAC Rates and Fees Report, p. 10 (listing "Local Government Perspectives").

²¹⁶ See, e.g., NLC Comments, Statement of the Hon. Gary Resnick, Mayor, Wilton Manors, FL Comments at 6-7 ("preemption of local fees or rent for use of government-owned light and traffic poles, or fees for use of the right-of-way amounts to a taxpayer subsidy of wireless providers and wireless infrastructure companies. There is no corresponding benefit for such taxpayers such as requiring the broadband industry to reduce consumer rates or offer advanced services to all communities within a certain time frame."); Letter from Rondella M. Hawkins, Officer, City of Austin—Telecommunications & Regulatory Affairs, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 7, 2018) at 1. These commenters do not explain why allowing recovery of a reasonable approximation of the state or locality's objectively reasonable costs would involve a taxpayer subsidy of service providers, and we are not persuaded that our interpretation would create a subsidy.

²¹⁷ As discussed more fully above, Congress intended through Section 253 to preempt state and local governments from imposing barriers in the form of excessive fees, while also preserving state and local authority to protect specified interests through competitively neutral regulation consistent with the Act. Our interpretation of Section 253(c) is consistent with Congress's objectives. Our interpretation of "fair and reasonable compensation" in Section 253(c) is also consistent with prior Commission action limiting fees, and easing access, to other critical communications infrastructure. For example, in implementing the requirement in the Pole Attachment Act that utilities charge "just and reasonable" rates, the Commission adopted rules limiting the rates utilities can impose on cable companies for pole attachments. Based on the costs associated with building and operation of poles, the rates the Commission adopted were upheld by the Supreme Court, which found that the rates imposed were permissible and not "confiscatory" because they "provid[ed] for the recovery of fully allocated cost, including the actual cost of capital." See *FCC v. Florida Power Corp.*, 480 U.S. 245, 254 (1987). Here, based on the specific language in the separate provision of Section 253, we interpret the "effective prohibition" language, as applied to small cells, to permit state and local governments to recover only "fair and reasonable compensation" for their maintenance of ROW and government-owned structures within ROW used to host Small Wireless Facilities. Relatedly, Smart Communities errs in arguing that the Commission's Order "provides localities 60 days to provide access and sets the rate for access," making it a "classic taking." Smart Communities Sept. 19, 2018 *Ex Parte* Letter at 25. To the contrary, the Commission has not given providers any right to compel access to any particular state or local property. Cf. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). There may well be legitimate reasons for states and localities to deny particular placement applications, and adjudication of whether such decisions amount to an effective prohibition must be resolved on a case-by-case basis. In this regard, we note that the record in this proceeding reflects that the vast majority of local jurisdictions voluntarily accept placement of wireless, utility, and other facilities in their rights-of-way. And in any event, cost-based recovery of the type we provide here has been approved as just compensation for takings purposes in the context of such facilities. See *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1368, 1370-71 (11th Cir. 2002). See also *United States v. 564.54 Acres*

approach to compensation ensures that cities are not going into the red to support or subsidize the deployment of wireless infrastructure.

74. The existence of Section 253(c) makes clear that Congress anticipated that “effective prohibitions” could result from state or local government fees, and intended through that clause to provide protections in that respect, as discussed in greater detail herein.²¹⁸ Against that backdrop, we find it unlikely that Congress would have left providers entirely at the mercy of effectively unconstrained requirements of state or local governments.²¹⁹ Our interpretation of Section 253(c), in fact, is consistent with the views of many municipal commenters, at least with respect to one-time permit or application fees, and the members of the BDAC Ad Hoc Committee on Rates and Fees, who unanimously concurred that one-time fees for municipal applications and permits, such as an electrical inspection or a building permit, should be based on the cost to the government of processing that application.²²⁰ The Ad Hoc Committee noted that “[the] cost-based fee structure [for one-time fees] unanimously approved by the committee accommodates the different siting related costs that different localities may incur to review and process permit applications, while precluding excessive fees that impede deployment.”²²¹ We find that the same reasoning should apply to other state and local government fees such as ROW access fees or fees for the use of government property within the ROW.²²²

75. We recognize that state and local governments incur a variety of direct and actual costs in connection with Small Wireless Facilities, such as the cost for staff to review the provider’s siting application, costs associated with a provider’s use of the ROW, and costs associated with maintaining the ROW itself or structures within the ROW to which Small Wireless Facilities are attached.²²³ We also recognize that direct and actual costs may vary by location, scope, and extent of providers’ planned deployments, such that different localities will have different fees under the interpretation set forth in this Declaratory Ruling.

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of Land, 441 U.S. 506, 513 (1979) (recognizing that alternative measure of compensation might be appropriate “with respect to public facilities such as roads or sewers”).

²¹⁸ See *supra* Parts III.A, B.

²¹⁹ See, e.g., *City of White Plains*, 305 F.3d at 78-79; *Guayanilla District Ct. Opinion*, 354 F. Supp. 2d at 114. We disagree with arguments that competition between municipalities, or competition from adjacent private landowners, would be sufficient to ensure reasonable pricing in the ROW. See e.g., Smart Communities Comments, Exh. 2, The Economics of Government Right of Way Fees, Declaration of Kevin Cahill, Ph.D at para. 15. We find this argument unpersuasive in view of the record evidence in this proceeding showing significant fees imposed on providers in localities across the country. See, e.g., AT&T Comments at 18; Verizon Comments at 6-7; see also BDAC Regulatory Barriers Report, Appendix. C, p. 2.

²²⁰ See, e.g., Smart Communities Comments Cahill 2A at 2-3 (noting that “...a common model is to charge a fee that covers the costs that a municipality incurs in conducting the inspections and proceedings required to allow entry, fees that cover ongoing costs associated with inspection or expansion of facilities ...”); Colorado Comm. and Utility All. *et al.* Comments at 19 (noting that “application fees are based upon recovery of costs incurred by localities.”); Draft BDAC Rates and Fees Report, p. 15-16.

²²¹ See also Draft BDAC Rates and Fees Report, p. 15-16. Although the BDAC Ad Hoc Rates and Fees Committee and municipal commenters only support a cost-based approach for one-time fees, we find no reason not to extend the same reasoning to ROW access fees or fees for the use of government property within the ROW, when all three types of fees are a legal requirement imposed by a government and pose an effective prohibition. The BDAC Rates and Fees Report did not provide a recommendation on fees for ROW access or fees for the use of government property within the ROW, and we disagree with suggestions that our ruling, which was consistent with the committee’s recommendation for one-time fees, circumvents the efforts of the Ad Hoc Rates and Fees Committee. See Georgia Municipal Association Sept. 17, 2018 *Ex Parte* Letter at 3.

²²² See *supra* para. 50.

²²³ See, e.g., Colorado Comm. and Utility All. *et al.* Comments at 18-19 (discussing range of costs that application fees cover).

76. Because we interpret fair and reasonable compensation as a *reasonable approximation* of costs, we do not suggest that localities must use any specific accounting method to document the costs they may incur when determining the fees they charge for Small Wireless Facilities within the ROW. Moreover, in order to simplify compliance, when a locality charges both types of recurring fees identified above (i.e., for access to the ROW and for use of or attachment to property in the ROW), we see no reason for concern with how it has allocated costs between those two types of fees. It is sufficient under the statute that the total of the two recurring fees reflects the total costs involved.²²⁴ Fees that cannot ultimately be shown by a state or locality to be a reasonable approximation of its costs, such as high fees designed to subsidize local government costs in another geographic area or accomplish some public policy objective beyond the providers' use of the ROW, are not "fair and reasonable compensation...for use of the public rights-of-way" under Section 253(c).²²⁵ Likewise, we agree with both industry and municipal commenters that excessive and arbitrary consulting fees or other costs should not be recoverable as "fair and reasonable compensation,"²²⁶ because they are not a function of the provider's "use" of the public ROW.

77. In addition to requiring that compensation be "fair and reasonable," Section 253(c) requires that it be "competitively neutral and nondiscriminatory." The Commission has previously interpreted this language to prohibit states and localities from charging fees on new entrants and not on incumbents.²²⁷ Courts have similarly found that states and localities may not impose a range of fees on one provider but not on another²²⁸ and even some municipal commenters acknowledge that governments should not discriminate as to the fees charged to different providers.²²⁹ The record reflects continuing concerns from providers, however, that they face discriminatory charges.²³⁰ We reiterate the Commission's previous determination that state and local governments may not impose fees on some providers that they do not impose on others. We would also be concerned about fees, whether one-time or recurring, related to Small Wireless Facilities, that exceed the fees for other wireless telecommunications infrastructure in similar situations, and to the extent that different fees are charged

²²⁴ See *supra* note 71 (identifying three categories of fees charged by states and localities).

²²⁵ 47 U.S.C. § 253(c) (emphasis added). Our interpretation is consistent with court decisions interpreting the "fair and reasonable" compensation language as requiring fees charged by municipalities relate to the degree of actual use of a public ROW. See, e.g., *Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 283 F. Supp. 2d 534, 543-44 (D.P.R. 2003); see also *Municipality of Guayanilla*, 450 F.3d at 21-24; *City of Maryland Heights*, 256 F. Supp. 2d at 984.

²²⁶ See Letter from Ashton J. Hayward III, Mayor, Pensacola, FL to the Hon. Brendan Carr, Commissioner, WT Docket No. 17-79 at 1 (filed June 8, 2018); see also, Illinois Municipal League Comments at 2 (noting that proposed small cell legislation in Illinois allows municipalities to recover "reasonable costs incurred by the municipality in reviewing the application.").

²²⁷ *TCI Cablevision of Oakland County*, 12 FCC Rcd. at 21443, para. 108 (1997).

²²⁸ *City of White Plains*, 305 F.3d 80.

²²⁹ City of Baltimore Reply at 15 ("The City does agree that rates to access the right of way by similar entities must be nondiscriminatory."). Other commenters argue that nothing in Section 253 can apply to property in the ROW. City of San Francisco Reply at 2-3, 19 (denying that San Francisco is discriminatory to different providers but also asserting that "[l]ocal government fees for use of their poles are simply beyond the purview of section 253(c)").

²³⁰ See, e.g., CFP Comments at 31-33 (noting that the City of Baltimore charges incumbent Verizon "less than \$.07 per linear foot for the space that it leases in the public right-of-way" while it charges other providers "\$3.33 per linear foot to lease space in the City's conduit). Some municipal commenters argue that wireless infrastructure occupies more space in the ROW. See Smart Communities Reply Comments at 82 ("wireless providers are placing many of those permanent facilities in the public rights-of-way, in ways that require much larger deployments. It is not discrimination to treat such different facilities differently, and to focus on their impacts"). We recognize that different uses of the ROW may warrant charging different fees, and we only find fees to be discriminatory and not competitively neutral when different amounts are charged for similar uses of the ROW.

for similar use of the public ROW.²³¹

78. *Fee Levels Likely to Comply with Section 253.* Our interpretation of Section 253(a) and “fair and reasonable compensation” under Section 253(c) provides guidance for local and state fees charged with respect to one-time fees generally, and recurring fees for deployments in the ROW. Following suggestions for the Commission to “establish a presumptively reasonable ‘safe harbor’ for certain ROW and use fees,”²³² and to facilitate the deployment of specific types of infrastructure critical to the rollout of 5G in coming years, we identify in this section three particular types of fee scenarios and supply specific guidance on amounts that presumptively are not prohibited by Section 253. Informed by our review of information from a range of sources, we conclude that fees at or below these amounts presumptively do not constitute an effective prohibition under Section 253(a) or Section 332(c)(7), and are presumed to be “fair and reasonable compensation” under Section 253(c).

79. Based on our review of the Commission’s pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, we presume that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) \$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (*i.e.*, not a collocation) intended to support one or more Small Wireless Facilities; and (b) \$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW.²³³

80. By presuming that fees at or below the levels above comply with Section 253, we assume

²³¹ Our interpretation is consistent with principles described by the BDAC’s Ad Hoc Committee on Rates and Fees. Draft BDAC Rates and Fees Report at 5 (Jul. 24, 2018) (listing “neutral treatment and access of all technologies and communication providers based upon extent/nature of ROW use” as principle to guide evaluation of rates and fees).

²³² BDAC Regulatory Barriers Report, Appendix C, p. 3.

²³³ These presumptive fee limits are based on a number of different sources of data. Many different state small cell bills, in particular, adopt similar fee limits despite their diversity of population densities and costs of living, and we expect that these presumptive fee limits will allow for recovery in excess of costs in many cases. 47 CFR § 1.1409; National Conference of State Legislatures, *Mobile 5G and Small Cell Legislation*, (May 7, 2018), <http://www.ncsl.org/research/telecommunications-and-information-technology/mobile-5g-and-small-cell-legislation.aspx> (providing description of state small cell legislation); Little Rock, Ark. Ordinance No. 21,423 (June 6, 2017); NCTA August 20, 2018 *Ex Parte* Letter, Attachment; *see also* H.R. 2365, 2018 Leg. 2d Reg. Sess. (Ariz. 2018) (\$100 per facility for first 5 small cells in application; \$50 annual utility attachment rate, \$50 ROW access fee); H.R. 189 149th Gen. Assemb. Reg. Sess. (Del. 2017) (\$100 per small wireless facility on application; fees not to exceed actual, direct and reasonable cost); S. 21320th Gen. Assemb. Reg. Sess. (Ind. 2017) (\$100 per small wireless facility); H.R. 1991, 99th Gen. Assemb. 2nd Reg. Sess. (Missouri, 2018) (\$100 for each facility collocated on authority pole; \$150 annual fee per pole); H.R. 38 2018 Leg. Assemb. 2d Reg. Sess. (N.M. 2018) (\$100 for each of first 5 small facilities in an application; \$20 per pole annually; \$250 per facility annually for access to ROW); S. 189, 2018 Leg. Gen. Sess. (Utah 2018) (\$100 per facility to collocate on existing or replacement utility pole; \$250 annual ROW fee per facility for certain attachments). *See also* Letter from Kara R. Graves, Director, Regulatory Affairs, CTIA, and D. Zachary Champ, Director, Government Affairs, WIA to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018) Attach. (listing fees in twenty state small cell legislations) (CTIA/WIA Aug. 10, 2018 *Ex Parte* Letter); Letter from Scott K. Bergmann, Sen. Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 4, 2018) at 3, Attach. (analyzing average and median recurring fee levels permitted under state legislation). These examples suggest that the fee levels we discuss above may be higher than what many states already allow and further support our finding that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253. We recognize that certain fees in a minority of state small cell bills are above the levels we presume to be allowed under Section 253. Any party may still charge fees above the levels we identify by demonstrating that the fee is a reasonable approximation of cost that itself is objectively reasonable.

that there would be almost no litigation by providers over fees set at or below these levels. Likewise, our review of the record, including the many state small cell bills passed to date, indicate that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253. In those limited circumstances, a locality could prevail in charging fees that are above this level by showing that such fees nonetheless comply with the limits imposed by Section 253—that is, that they are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory.²³⁴ Allowing localities to charge fees above these levels upon this showing recognizes local variances in costs.²³⁵

C. Other State and Local Requirements that Govern Small Facilities Deployment

81. There are also other types of state and local land-use or zoning requirements that may restrict Small Wireless Facility deployments to the degree that they have the effect of prohibiting service in violation of Sections 253 and 332. In this section, we discuss how those statutory provisions apply to requirements outside the fee context, both generally and with a particular focus on aesthetic and undergrounding requirements.

82. As discussed above, a state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”²³⁶ Our interpretation of that standard, as set forth above, applies equally to fees and to non-fee legal requirements. And as with fees, Section 253 contains certain safe harbors that permit some legal requirements that might otherwise be preempted by Section 253(a). Section 253(b) saves state “requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”²³⁷ And Section 253(c) preserves state and local authority to manage the public rights-of-way.²³⁸

83. Given the wide variety of possible legal requirements, we do not attempt here to determine which of every possible non-fee legal requirements are preempted for having the effect of prohibiting service, although our discussion of fees above should prove instructive in evaluating specific requirements. Instead, we focus on some specific types of requirements raised in the record and provide guidance on when those particular types of requirements are preempted by the statute.

84. *Aesthetics.* The *Wireless Infrastructure NPRM/NOI* sought comment on whether deployment restrictions based on aesthetic or similar factors are widespread and, if so, how Sections 253 and 332(c)(7) should be applied to them.²³⁹ Parties describe a wide range of such requirements that allegedly restrict deployment of Small Wireless Facilities. For example, many providers criticize

²³⁴ Several state and local commenters express concern about the presumptively reasonable fee levels we establish, including concerns about the effect of the fee levels on existing fee-related provisions included in state and local legislation. *See e.g.*, Letter from Kent Scarlett, Exec. Director, Ohio Municipal League to Marlene H. Dortch, Secretary, FCC at 1 (filed Sept. 18, 2018); Letter from Liz Kniss, Mayor, City of Palo Alto to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 at 1 (filed Sept. 17, 2018). As stated above, while the fee levels we establish reflect our presumption regarding the level of fees that would be permissible under Section 253 and 332(c)(7), state or local fees that exceed these levels may be permissible if the fees are based on a reasonable approximation of costs and the costs themselves are objectively reasonable.

²³⁵ We emphasize that localities may charge fees to recover their objectively reasonable costs and thus reject arguments that our approach requires localities to bear the costs of small cell deployment or applies a one-size-fits-all standard. *See, e.g.*, Letter from Mike Posey, Mayor, City of Huntington Beach, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Sept. 11, 2018) (Mike Posey Sept. 11, 2018 *Ex Parte* Letter).

²³⁶ *California Payphone*, 12 FCC Rcd at 14206, para. 31; *see supra* paras. 34-42.

²³⁷ 47 U.S.C. § 253(b).

²³⁸ 47 U.S.C. § 253(c).

²³⁹ *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3362-66, paras. 90-92, 95, 97-99.

burdensome requirements to deploy facilities using “stealth” designs or other means of camouflage,²⁴⁰ as well as unduly stringent mandates regarding the size of equipment, colors of paint, and other details.²⁴¹ Providers also assert that the procedures some localities use to evaluate the appearance of proposed facilities and to decide whether they comply with applicable land-use requirements are overly restrictive.²⁴² Many providers are particularly critical of the use of unduly vague or subjective criteria that may apply inconsistently to different providers or are only fully revealed after application, making it impossible for providers to take these requirements into account in their planning and adding to the time necessary to deploy facilities.²⁴³ At the same time, we have heard concerns in the record about carriers deploying unsightly facilities that are significantly out of step with similar, surrounding deployments.

85. State and local governments add that many of their aesthetic restrictions are justified by factors that the providers fail to mention. They assert that their zoning requirements and their review and enforcement procedures are properly designed to, among other things, (1) ensure that the design, appearance, and other features of buildings and structures are compatible with nearby land uses; (2) manage ROW so as to ensure traffic safety and coordinate various uses; and (3) protect the integrity of

²⁴⁰ See, e.g., CCIA Comments at 14-15 (discussing regulations enacted by Village of Skokie, Illinois); WIA Reply Comments (WT Docket No. 16-421) at 9-10 (discussing restrictions imposed by Town of Hempstead, New York); see also AT&T Comments at 14-17; PTA-FLA Comments at 19; Verizon Comments at 19-20; AT&T Aug. 6, 2018 *ex parte* at 3.

²⁴¹ See, e.g., CCIA Comments at 13-14 (describing regulations established by Skokie, Illinois that prescribe in detail the permissible colors of paint and their potential for reflecting light); AT&T Aug. 6, 2018 *ex parte* at 3 (“Some municipalities require carriers to paint small cell cabinets a particular color when like requirements were not imposed on similar equipment placed in the ROW by electric incumbents, competitive telephone companies, or cable companies,” and asserts that it often “is highly burdensome to maintain non-factory paint schemes over years or decades, including changes to the municipal paint scheme,” due to “technical constraints as well such as manufacture warranty or operating parameters, such as heat dissipation, corrosion resistance, that are inconsistent with changes in color, or finish.”); AT&T Comments at 16-17 (contending that some localities “allow for a single size and configuration for small cell equipment while requiring case-by-case approval of any non-conforming equipment, even if smaller and upgraded in design and performance,” and thus effectively compel “providers [to] incur the added expense of conforming their equipment designs to the approved size and configuration, even if newer equipment is smaller, to avoid the delays associated with the approval of an alternative equipment design and the risk of rejection of that design.”); *id.* at 17 (some local governments “prohibit the placement of wireless facilities in and around historic properties and districts, regardless of the size of the equipment or the presence of existing more visually intrusive construction near the property or district”).

²⁴² See, e.g., Crown Castle Comments at 14-15 (criticizing San Francisco’s aesthetic review procedures that discriminate against providers and criteria and referring to extended litigation); CTIA Reply Comments at 17 (“San Francisco imposes discretionary aesthetic review for wireless ROW facilities.”); T-Mobile Comments at 40; *but see* San Francisco Comments at 3-7 (describing aesthetic review procedures). See also AT&T Comments at 13-17; Extenet Comments at 37; CTIA Comments at 21-22; Sprint Comments at 38-40; T-Mobile Comments at 8-12; Verizon Comments at 5-8.

²⁴³ See, e.g., AT&T Comments at 13-17; Sprint Comments at 38-40; T-Mobile Comments at 8-12; Verizon Comments at 5-8. WIA cites allegations that an unnamed city in California recently declined to support approval of a proposed small wireless installation, claiming that the installations do not meet “Planning and Zoning Protected Location Compatibility Standards,” even though the same equipment has been deployed elsewhere in the city dozens of times, and even though the “Protected Location” standards should not apply because the proposals are not on “protected view” streets). WIA Reply Comments, WT Docket No. 16-421 at 9-10; *id.* at 8 (noting that one city changed its aesthetic standards after a proposal was filed); AT&T Comments at 17 (noting that a design approval took over a year); Virginia Joint Commenters, WT Docket No. 16-421 (state law providing discretion for zoning authority to deny application because of “aesthetics” concerns without additional guidance); Extenet Reply Comments at 13 (noting that some “local governments impose aesthetic requirements based entirely on subjective considerations that effectively give local governments latitude to block a deployment for virtually any aesthetically-based reason”).

their historic, cultural, and scenic resources and their citizens' quality of life.²⁴⁴

86. Given these differing perspectives and the significant impact of aesthetic requirements on the ability to deploy infrastructure and provide service, we provide guidance on whether and in what circumstances aesthetic requirements violate the Act. This will help localities develop and implement lawful rules, enable providers to comply with these requirements, and facilitate the resolution of disputes. We conclude that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.

87. Like fees, compliance with aesthetic requirements imposes costs on providers, and the impact on their ability to provide service is just the same as the impact of fees. We therefore draw on our analysis of fees to address aesthetic requirements. We have explained above that fees that merely require providers to bear the direct and reasonable costs that their deployments impose on states and localities should not be viewed as having the effect of prohibiting service and are permissible.²⁴⁵ Analogously, aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible. In assessing whether this standard has been met, aesthetic requirements that are more burdensome than those the state or locality applies to similar infrastructure deployments are not permissible, because such discriminatory application evidences that the requirements are not, in fact, reasonable and directed at remedying the impact of the wireless infrastructure deployment. For example, a minimum spacing requirement that has the effect of materially inhibiting wireless service would be considered an effective prohibition of service.

88. Finally, in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—*i.e.*, they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance.²⁴⁶ “Secret” rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers’ costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.²⁴⁷

²⁴⁴ See, e.g., NLC Comments, WT Docket No. 16-421 at 8-10; Smart Communities Comments, WT Docket No. 16-421 at 35-36; New York City Comments at 10-15; New Orleans Comments at 1-2, 5-8; San Francisco Comments at 3-12; CCUA Reply Comments at 5; Irvine (CA) Comments at 2; Oakland County (MI) Comments at 3-5; Florida Coalition of Local Gov’ts Reply Comments at 6-12 (justifications for undergrounding requirements); *id.* at 16-421 (justifications for municipal historic-preservation requirements); *id.* at 22-16 (justifications for aesthetics and design requirements).

²⁴⁵ See *supra* paras. 55-56.

²⁴⁶ Our decision to adopt this objective requirement is supported by the fact that many states have recently adopted limits on their localities’ aesthetic requirements that employ the term “objective.” See, e.g., Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 8 (filed Sept. 19, 2018) (noting requirements enacted in the states of Arizona, Delaware, Missouri, North Carolina, Ohio, and Oklahoma, that local siting requirements for small wireless facilities be “objective”); see also Letter from Kara R. Graves, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 8 (filed Sept. 4, 2018).

²⁴⁷ Some local governments argue that, because different aesthetic concerns may apply to different neighborhoods, particularly those considered historic districts, it is not feasible for them to publish local aesthetic requirements in advance. See, e.g., Letter from Mark J. Schwartz, County Manager, Arlington County, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018) (Arlington County Sept. 18 *Ex Parte* Letter); Letter from Allison Silberberg, Mayor, City of Alexandria, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018). We believe this concern is unfounded. As noted above, the fact that our approach here (including the publication requirement) is consistent with that already enacted in many state-level small cell bills supports the feasibility of our decision. Moreover, the aesthetic requirements to be published in advance need not

89. We appreciate that at least some localities will require some time to establish and publish aesthetics standards that are consistent with this Declaratory Ruling. Based on our review and evaluation of commenters' concerns, we anticipate that such publication should take no longer than 180 days after publication of this decision in the Federal Register.

90. *Undergrounding Requirements.* We understand that some local jurisdictions have adopted undergrounding provisions that require infrastructure to be deployed below ground based, at least in some circumstances, on the locality's aesthetic concerns. A number of providers have complained that these types of requirements amount to an effective prohibition.²⁴⁸ In addressing this issue, we first reiterate that, while undergrounding requirements may well be permissible under state law as a general matter, any local authority to impose undergrounding requirements under state law does not remove such requirements from the provisions of Section 253. In this regard, we believe that a requirement that *all* wireless facilities be deployed underground would amount to an effective prohibition given the propagation characteristics of wireless signals. In this sense, we agree with the U.S. Court of Appeals for the Ninth Circuit when it observed that, "[i]f an ordinance required, for instance, that all facilities be underground and the plaintiff introduced evidence that, to operate, wireless facilities must be above ground, the ordinance would effectively prohibit it from providing services."²⁴⁹ Further, a requirement that materially inhibits wireless service, even if it does not go so far as requiring that all wireless facilities be deployed underground, also would be considered an effective prohibition of service. Thus, the same criteria discussed above in the context of aesthetics generally would apply to state or local undergrounding requirements.

91. *Minimum Spacing Requirements.* Some parties complain of municipal requirements regarding the spacing of wireless installations—*i.e.*, mandating that facilities be sited at least 100, 500, or 1,000 feet, or some other minimum distance, away from other facilities, ostensibly to avoid excessive overhead "clutter" that would be visible from public areas.²⁵⁰ We acknowledge that while some such requirements may violate 253(a), others may be reasonable aesthetic requirements.²⁵¹ For example, under the principle that any such requirements be reasonable and publicly available in advance, it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use. Such a rule change with retroactive effect would

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 prescribe in detail every specification to be mandated for each type of structure in each individual neighborhood. Localities need only set forth the objective standards and criteria that will be applied in a principled manner at a sufficiently clear level of detail as to enable providers to design and propose their deployments in a manner that complies with those standards.

²⁴⁸ See, e.g., AT&T Comments at 14-15; Crown Castle Comments at 54-56; T-Mobile Comments at 38; Verizon Comments at 6-8; WIA Comments at 56; CTIA Reply at 16. *But see* Chicago Comments at 15; City of Claremont (CA) Comments at 1; City of Kenmore (WA) Comments at 1; City of Mukilteo (WA) Comments at 2; Florida Coalition of Local Gov'ts Comments at 6-12; Smart Communities Comments at 74.

²⁴⁹ *County of San Diego*, 543 F.3d at 580, *accord*, BDAC Model Municipal Code at 13, § 2.3.e (providing for municipal zoning authority to allow providers to deploy small wireless facilities on existing vertical structures where available in neighborhoods with undergrounding requirements, or if no technically feasible structures exist, to place vertical structures commensurate with other structures in the area).

²⁵⁰ See, e.g., Verizon Comments at 8 (describing requirements imposed by Buffalo Grove, Illinois); CCIA Comments at 14-15 ("These restrictions stifle technological innovation and unnecessarily burden the ability of a provider to use the best available technological to serve a particular area. For example, 5G technology will require higher band spectrum for greater network capacity, yet some millimeter wave spectrum simply cannot propagate long distances over a few thousand feet—let alone a few hundred. Therefore, a local requirement of, for example, a thousand-foot minimum separation distance between small cells would unnecessarily forestall any network provider seeking to use higher band spectrum with greater capacity when that provider needs to boost coverage in a specific area of a few hundred feet."). See also AT&T Comments at 15; CTIA Reply at 17.

²⁵¹ 47 U.S.C. § 253(a).

almost certainly have the effect of prohibiting service under the standards we articulate here. Therefore, such requirements should be evaluated under the same standards for aesthetic requirements as those discussed above.²⁵²

D. States and Localities Act in Their Regulatory Capacities When Authorizing and Setting Terms for Wireless Infrastructure Deployment in Public Rights of Way

92. We confirm that our interpretations today extend to state and local governments' terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within such ROW, such as new, existing and replacement light poles, traffic lights, utility poles, and similar property suitable for hosting Small Wireless Facilities.²⁵³ As explained below, for two alternative and independent reasons, we disagree with state and local government commenters who assert that, in providing or denying access to government-owned structures, these governmental entities function solely as "market participants" whose rights cannot be subject to federal preemption under Section 253(a) or Section 332(c)(7).²⁵⁴

93. First, this effort to differentiate between such governmental entities' "regulatory" and "proprietary" capacities in order to insulate the latter from preemption ignores a fundamental feature of the market participant doctrine.²⁵⁵ As the Ninth Circuit has observed, at its core, this doctrine is "a

²⁵² Another type of restriction that imposes substantial burdens on providers, but does not meaningfully advance any recognized public-interest objective, is an explicit or implicit *quid pro quo* in which a municipality makes clear that it will approve a proposed deployment only on condition that the provider supply an "in-kind" service or benefit to the municipality, such as installing a communications network dedicated to the municipality's exclusive use. See, e.g., Comcast Comments at 9-10 Verizon Comments at 7, Crown Castle Comments at 55-56. Such requirements impose costs, but rarely, if ever, yield benefits directly related to the deployment. Additionally, where such restrictions are not cost-based, they inherently have "the effect of prohibiting" service, and thus are preempted by Section 253(a). See also BDAC Regulatory Barriers Report, Appendix E at 1 (describing "conditions imposed that are unrelated to the project for which they were seeking ROW access" as "inordinately burdensome"); BDAC Model Municipal Code at 19, § 2.5a.(v)(F) (providing that municipal zoning authority "may not require an Applicant to perform services . . . or in-kind contributions [unrelated] to the Communications Facility or Support Structure for which approval is sought").

²⁵³ See *supra* paras. 50-91. Some have argued that Section 224 of the Communications Act's exception of state-owned and cooperative-owned utilities from the definition of "utility," "[a]s used in this section," suggests that Congress did not intend for any other portion of the Act to apply to poles or other facilities owned by such entities. City of Mukilteo, et. al. Ex Parte Comments on the Draft Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from James Bradford Ramsay, General Counsel, NARUC to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79 at 7 (filed Sept. 19, 2018). We see no basis for such a reading. Nothing in Section 253 suggests such a limited reading, nor does Section 224 indicate that other provisions of the Act do not apply. We conclude that our interpretation of effective prohibition extends to fees for all government-owned property in the ROW, including utility poles. Compare 47 U.S.C. § 224 with 47 U.S.C. § 253. We are not addressing here how our interpretations apply to access or attachments to government-owned property located outside the public ROW.

²⁵⁴ See, e.g., AASHTO Comments, Att. 1 (Del. DOT Comments) at 3-5; New York City Comments at 2-8; San Antonio *et al.* Comments at 14-15; Smart Communities Comments at 62-66; San Francisco Comments at 28-30; League of Arizona Cities *et al.* Comments, WT Docket No. 16-421 at 3-9; San Antonio *et al.* Comments, WT Docket No. 16-421 at 14-15. See also *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3364-65, para. 96 (seeking comment on this issue).

²⁵⁵ The market participant doctrine establishes that, unless otherwise specified by Congress, federal statutory provisions may be interpreted as preempting or superseding state and local governments' activities involving regulatory or public policy functions, but not their activities as "market participants" to serve their "purely proprietary interests," analogous to similar transactions of private parties. *Building & Construction Trades Council*

presumption about congressional intent,” which “may have a different scope under different federal statutes.”²⁵⁶ The Supreme Court has likewise made clear that the doctrine is applicable only “[i]n the absence of any express or implied indication by Congress.”²⁵⁷ In contrast, where state action conflicts with express or implied federal preemption, the market participant doctrine does not apply, whether or not the state or local government attempts to impose its authority over use of public rights-of-way by permit or by lease or contract.²⁵⁸ Here, both Sections 253(a) and Section 332(c)(7)(B)(i)(II) expressly address preemption, and neither carves out an exception for proprietary conduct.²⁵⁹

94. Specifically, Section 253(a) expressly preempts certain state and local “legal requirements” and makes no distinction between a state or locality’s regulatory and proprietary conduct. Indeed, as the Commission has long recognized, Section 253(a)’s sweeping reference to “State [and] local statute[s] [and] regulation[s]” and “other State [and] local legal requirement[s]” demonstrates Congress’s intent “to capture a broad range of state and local actions that prohibit or have the effect of prohibiting entities from providing telecommunications services.”²⁶⁰ Section 253(b) mentions “requirement[s],” a phrase that is even broader than that used in Section 253(a) but covers “universal service,” “public safety and welfare,” “continued quality of telecommunications,” and “safeguard[s] for the] rights of consumers.” The subsection does not recognize a distinction between regulatory and proprietary. Section 253(c), which expressly insulates from preemption certain state and local government activities, refers in relevant part to “manag[ing] the public rights-of-way” and “requir[ing] fair and reasonable compensation,” while eliding any distinction between regulatory and proprietary action in either context. The Commission has previously observed that Section 253(c) “makes explicit a local government’s continuing authority to issue construction permits regulating how and when construction is conducted on roads and other public

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v. Associated Builders & Contractors, 507 U.S. 218, 229, 231 (1993) (*Boston Harbor*); see also *Wisconsin Dept. of Industry, Labor, and Human Relations v. Gould, Inc.*, 475 U.S. 282, 289 (1986) (*Gould*).

²⁵⁶ See, e.g., *Engine Mfrs. Ass’n v. South Coast Air Quality Mgmt. Distr.*, 498 F.3d 1031, 1042 (9th Cir. 2007); *Johnson v. Rancho Santiago Comm. College*, 623 F.3d 1011, 1022 (9th Cir. 2010).

²⁵⁷ See *Boston Harbor*, 507 U.S. at 231.

²⁵⁸ See *American Trucking Ass’n v. City of Los Angeles*, 569 U.S. 641, 650 (2013) (*American Trucking*).

²⁵⁹ At a minimum, we conclude that Congress’s language has not unambiguously pointed to such a distinction. See Letter from Tamara Preiss, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Aug. 23, 2018) (Verizon Aug. 23, 2018 *Ex Parte* Letter). Furthermore, we contrast these statutes with those that do not expressly or impliedly preempt proprietary conduct. Compare, e.g., *American Trucking*, 569 U.S. 641 (finding that FAA Authorization Act of 1994’s provision that “State [or local government] may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property” expressly preempted the terms of a standard-form concession agreement drafted to govern the relationship between the Port of Los Angeles and any trucking company seeking to operate on the premises), and *Gould*, 475 U.S. at 289 (finding that NLRA preempted a state law barring state contracts with companies with disfavored labor practices because the state scheme was inconsistent with the federal scheme), with *Boston Harbor*, 507 U.S. at 224-32. In *Boston Harbor*, the Supreme Court observed that the NLRA contained no express preemption provision or implied preemption scheme and consequently held:

In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction.

Id. (internal citations omitted).

²⁶⁰ See *Minnesota Order*, 14 FCC Rcd at 21707, para. 18. We find these principles to be equally applicable to our interpretation of the meaning of “regulation[s]” referred to under Section 332(c)(7)(B) insofar as such actions impermissibly “prohibit or have the effect of prohibiting the provision of personal wireless services.” *Supra* paras. 34-42.

rights-of-way.”²⁶¹ We conclude here that, as a general matter, “manage[ment]” of the ROW includes any conduct that bears on access to and use of those ROW, notwithstanding any attempts to characterize such conduct as proprietary.²⁶² This reading, coupled with Section 253(c)’s narrow scope, suggests that Congress’s omission of a blanket proprietary exception to preemption was intentional, and thus, that such conduct can be preempted under Section 253(a). We therefore construe Section 253(c)’s requirements, including the requirement that compensation be “fair and reasonable,” as applying equally to charges imposed via contracts and other arrangements between a state or local government and a party engaged in wireless facility deployment.²⁶³ This interpretation is consistent with Section 253(a)’s reference to “State or local legal requirement[s],” which the Commission has consistently construed to include such agreements.²⁶⁴ In light of the foregoing, whatever the force of the market participant doctrine in other contexts,²⁶⁵ we believe the language, legislative history, and purpose of Sections 253(a) and (c) are incompatible with the application of this doctrine in this context. We observe once more that “[o]ur conclusion that Congress intended this language to be interpreted broadly is reinforced by the scope of section 253(d),” which “directs the Commission to preempt any statute, regulation, or legal requirement *permitted* or imposed by a state or local government if it contravenes sections 253(a) or (b). A more restrictive interpretation of the term ‘other legal requirements’ easily could permit state and local restrictions on competition to escape preemption based solely on the way in which [state] action was structured. We do not believe that Congress intended this result.”²⁶⁶

95. Similarly, and as discussed elsewhere,²⁶⁷ we interpret Section 332(c)(7)(B)(ii)’s references to “any request[s] for authorization to place, construct, or modify personal wireless service facilities” broadly, consistent with Congressional intent. As described below, we find that “any” is unqualifiedly broad, and that “request” encompasses anything required to secure all authorizations necessary for the deployment of personal wireless services infrastructure. In particular, we find that Section 332(c)(7) includes authorizations relating to access to a ROW, including but not limited to the

²⁶¹ See *Minnesota Order*, 14 FCC Rcd at 21728-29, para. 60, quoting H. R. Rep. No. 104-204, U.S. Congressional & Administrative News, March 1996, vol.1, Legislative History section at 41 (1996).

²⁶² Indeed, to permit otherwise could limit the utility of ROW access for telecommunications service providers and thus conflict with the overarching preemption scheme set up by Section 253(a), for which 253(b) and 253(c) are exceptions. By construing “manage[ment]” of a ROW to include some proprietary behaviors, we mean to suggest that conduct taken in a proprietary capacity is likewise subject to 253(c)’s general limitations, including the requirement that any compensation charged in such capacity be “fair and reasonable.”

²⁶³ Cf. *Minnesota Order*, 14 FCC Rcd at 21729-30, para. 61-62 (internal citations omitted) (“Moreover, Minnesota has not shown that the compensation required for access to the right-of-way is ‘fair and reasonable.’ The compensation appears to reflect the value of the exclusivity inherent in the Agreement [which provides the developer with exclusive physical access, for at least ten years, to longitudinal rights-of-way along Minnesota’s interstate freeway system] rather than fair and reasonable charges for access to the right-of-way. Nor has Minnesota shown that the Agreement provides for ‘use of public rights-of-way on a nondiscriminatory basis.’”)

²⁶⁴ Cf. Crown Castle June 7, 2018 *Ex Parte* Letter at 17 n.83 (“Section 253(c), which carves out ROW management, would hardly be necessary if all ROW decisions were proprietary and shielded from the statute’s sweep.”).

²⁶⁵ We acknowledge that the Commission previously concluded that “Section 6409(a) applies only to State and local governments acting in their role as land use regulators” and found that “this conclusion is consistent with judicial decisions holding that Sections 253 and 332(c)(7) of the Communications Act do not preempt ‘non regulatory decisions[.]’” See *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12964-65, paras. 237-240. To the extent necessary, we clarify here that the actions and analysis there were limited in scope given the different statutory scheme and record in that proceeding, which did not, at the time, suggest a need to “further elaborate as to how this principle should apply to any particular circumstance” (there, in connection with application of Section 6409(a)). Here, in contrast, as described herein, we find that further elucidation by the Commission is needed.

²⁶⁶ *Minnesota Order*, 14 FCC Rcd at 21707, para. 18 (internal citations omitted) (emphasis omitted).

²⁶⁷ See *infra* Part IV.C.1 (Authorizations Subject to the “Reasonable Period of Time” Provision of Section 332(c)(7)(B)(ii)).

“place[ment], construct[ion], or modif[ication]” of facilities on government-owned property, for the purpose of providing “personal wireless service.” We observe that this result, too, is consistent with Commission precedent such as the *Minnesota Order*, which involved a contract that provided exclusive access to a ROW. As but one example, to have limited that holding to exclude government-owned property within the ROW even if the carrier needed access to that property would have the effect of diluting or completely defeating the purpose of Section 332(c)(7).²⁶⁸

96. Second, and in the alternative, even if Section 253(a) and Section 332(c)(7) were to permit leeway for states and localities acting in their proprietary role, the examples in the record would be excepted because they involve states and localities fulfilling regulatory objectives.²⁶⁹ In the proprietary context, “a State acts as a ‘market participant with no interest in setting policy.’”²⁷⁰ We contrast state and local governments’ purely proprietary actions with states and localities acting with respect to managing or controlling access to property within public ROW, or to decisions about where facilities that will provide personal wireless service to the public may be sited. As several commenters point out, courts have recognized that states and localities “hold the public streets and sidewalks in trust for the public” and “manage public ROW in their regulatory capacities.”²⁷¹ These decisions could be based on a number of regulatory objectives, such as aesthetics or public safety and welfare, some of which, as we note elsewhere, would fall within the preemption scheme envisioned by Congress. In these situations, the state or locality’s role seems to us to be indistinguishable from its function and objectives as a regulator.²⁷² To

²⁶⁸ See also *infra* para. 134-36 and cases cited therein. Precedent that may appear to reach a different result can be distinguished in that it resolves disputes arising under Section 332 and/or 253(a) without analyzing the scope of Section 253(c). Furthermore, those situations did not involve government-owned property or structures within a public ROW. See, e.g., *Sprint Spectrum L.P. v. Mills*, 283 F.3d 404, 420-21 (2d Cir. 2002) (declining to find preemption under Section 332 applicable to terms of a school rooftop lease); *Omnipoint Commc’ns, Inc. v. City of Huntington Beach*, 738 F.3d 192, 195-96, 200-01 (9th Cir. 2013) (declining to find preemption under Section 332 applicable to restrictions on lease of parkland).

²⁶⁹ In this regard, also relevant to our interpretations here is courts’ admonition that government activities that are characterized as transactions but in reality are “tantamount to regulation” are subject to preemption, *Gould*, 475 U.S. at 289, and that government action disguised as private action may not be relied on as a pretext to advance regulatory objectives. See, e.g., *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d 425, 441-42 (E.D.N.Y. 2009) (finding that a restriction on advertising on newly-installed payphones was subject to section 253(a) where the advertising was a material factor in the provider’s ability to provide the payphone service itself).

²⁷⁰ See, e.g., *Chamber of Commerce of U.S. v. Brown*, 554 U.S. 60, 70 (2008).

²⁷¹ See Verizon Comments at 26-28 & n.85; T-Mobile Comments at 50 & n.210 and cases cited therein.

²⁷² Indeed, the Commission has long recognized that, in enacting Sections 253(c) and 332(c)(7), Congress affirmatively protected the ability of state and local governments to carry out their responsibilities for maintaining, managing, and regulating the use of ROW and structures therein for the benefit of the public. *TCI Cablevision Order*, 12 FCC Rcd at 21441, para. 103 (1997) (“We recognize that section 253(c) preserves the authority of state and local governments to manage public rights-of-way. Local governments must be allowed to perform the range of vital tasks necessary to preserve the physical integrity of streets and highways, to control the orderly flow of vehicles and pedestrians, to manage gas, water, cable (both electric and cable television), and telephone facilities that crisscross the streets and public rights-of-way.”); *Moratoria Declaratory Ruling*, FCC 18-111, para. 142 (same); *Classic Telephone, Inc. Petition for Preemption, Declaratory Ruling, and Injunctive Relief*, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13103, para. 39 (1996) (same). We find these situations to be distinguishable from those where a state or locality might be engaged in a discrete, *bona fide* transaction involving sales or purchases of services that do not otherwise violate the law or interfere with a preemption scheme. Compare, e.g., *Cardinal Towing & Auto Repair, Inc., v. City of Bedford*, 180 F.3d 686, 691, 693-94 (5th Cir. 1999) (declining to find that the FAA Authorization Act of 1994, as amended by the ICC Termination Act of 1995, preempted an ordinance and contract specifications that were designed only to procure services that a municipality itself needed, not to regulate the conduct of others), with *NextG Networks of N.Y., Inc. v. City of New York*, 2004 WL 2884308 (N.D.N.Y., Dec. 10, 2004) (crediting allegations that a city’s actions, such as issuing a request for proposal and implementing a general franchising scheme, were not of a purely proprietary nature, but rather, were taken in pursuit of a regulatory objective or policy). This action could include, for example, procurement of services for the state or locality, or a

the extent that there is some distinction, the temptation to blend the two roles for purposes of insulating conduct from federal preemption cannot be underestimated in light of the overarching statutory objective that telecommunications service and personal wireless services be deployed without material impediments.

97. Our interpretation of both provisions finds ample support in the record of this proceeding. Specifically, commenters explain that public ROW and government-owned structures within such ROW are frequently relied upon to supply services for the benefit of the public, and are often the best-situated locations for the deployment of wireless facilities.²⁷³ However, the record is also replete with examples of states and localities refusing to allow access to such ROW or structures, or imposing onerous terms and conditions for such access.²⁷⁴ These examples extend far beyond governments' treatment of single structures;²⁷⁵ indeed, in some cases it has been suggested that states or localities are using their proprietary roles to effectuate a general municipal policy disfavoring wireless deployment in public ROW.²⁷⁶ We believe that Section 253(c) is properly construed to suggest that Congress did not intend to permit states and localities to rely on their ownership of property within the ROW as a pretext to advance regulatory objectives that prohibit or have the effect of prohibiting the provision of covered services, and thus that such conduct is preempted.²⁷⁷ Our interpretations here are intended to facilitate the implementation of the scheme Congress intended and to provide greater regulatory certainty to states, municipalities, and regulated parties about what conduct is preempted under Section 253(a). Should factual questions arise about whether a state or locality is engaged in such behavior, Section 253(d) affords state and local governments and private parties an avenue for specific preemption challenges.

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contract for employment services between a state or locality and one of its employees. We do not intend to reach these scenarios with our interpretations today.

²⁷³ See, e.g., Verizon Aug. 23, 2018 *Ex Parte* Letter at 4-5.

²⁷⁴ See *supra* para. 25.

²⁷⁵ Cf. *Sprint Spectrum L.P. v. Mills*, 283 F.3d 404.

²⁷⁶ See *NextG Networks of N.Y., Inc. v. City of New York*, 2004 WL 2884308; *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d at 441-42.

²⁷⁷ We contrast this instance to others in which we either declined to act or responded to requests for action with respect to specific disputes. See, e.g., *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12964-65, paras. 237-240; *Continental Airlines Petition for Declaratory Ruling Regarding the Over-the-Air Reception Devices (OTARD) Rules*, Memorandum Opinion and Order, 21 FCC Rcd 13201, 13220, para. 43 (2006) (observing, in the context of a different statutory and regulatory scheme, that “[g]iven that the Commission intended to preempt restrictions [regarding restrictions on Continental's use of its Wi-Fi antenna] in private lease agreements, however, Massport would be preempted even if it is acting in a private capacity with regard to its lease agreement with Continental.”); *Sandwich Isles Section 253 Order*, 32 FCC Rcd at 5883, para. 14 (rejecting argument that argument that Section 253(a) is inapplicable where it would affect the state’s ability to “deal[] with its real estate interests . . . as it sees fit,” such as by granting access to “rights-of-way over land that it owns); *Minnesota Order*, 14 FCC Rcd at 21706-08, paras. 17-19; cf. *Amigo.Net Petition for Declaratory Ruling*, Memorandum Opinion and Order, 17 FCC Rcd 10964, 10967 (WCB 2002) (Section 253 did not apply to carrier’s provision of network capacity to government entities exclusively for such entities’ internal use); *T-Mobile West Corp. v. Crow*, 2009 WL 5128562 (D. Ariz., Dec. 17, 2009) (Section 332(c)(7) did not apply to contract for deployment of wireless facilities and services for use on state university campus). We clarify here that such prior instances are not to be construed as a concession that Congress did not make preemption available, or that the Commission lacked the authority to support parties’ attempts to avail themselves of relief offered under preemption schemes, when confronted with instances in which a state or locality is relying on its proprietary role to skirt federal regulatory reach. Indeed, these instances demonstrate the opposite—that preemption is available to effectuate Congressional intent—and merely illustrate application of this principle. Also, we do not find it necessary to await specific disputes in the form of Section 253(d) petitions to offer these interpretations. In the alternative and as an independent means to support the interpretations here, we clarify that we intend for our views to guide how preemption should apply in fact-specific scenarios.

E. Responses to Challenges to Our Interpretive Authority and Other Arguments

98. We reject claims that we lack authority to issue authoritative interpretations of Sections 253 and 332(c)(7) in this Declaratory Ruling. As explained above, we act here pursuant to our broad authority to interpret key provisions of the Communications Act, consistent with our exercise of that interpretive authority in the past.²⁷⁸ In this instance, we find that issuing a Declaratory Ruling is necessary to remove what the record reveals is substantial uncertainty and to reduce the number and complexity of legal controversies regarding certain fee and non-fee state and local legal requirements in connection with Small Wireless Facility infrastructure. We thus exercise our authority in this Declaratory Ruling to interpret Section 253 and Section 332(c)(7) and explain how those provisions apply in the specific scenarios at issue here.²⁷⁹

99. Nothing in Sections 253 or 332(c)(7) purports to limit the exercise of our general interpretive authority.²⁸⁰ Congress's inclusion of preemption provisions in Section 253(d) and Section 332(c)(7)(B)(v) does not limit the Commission's ability pursuant to other sections of the Act to construe and provide its authoritative interpretation as to the meaning of those provisions.²⁸¹ Any preemption under Section 253 and/or Section 332(c)(7)(B) that subsequently occurs will proceed in accordance with the enforcement mechanisms available in each context. But whatever enforcement mechanisms may be available to preempt specific state and local requirements, nothing in Section 253 or Section 332(c)(7) prevents the Commission from declaring that a category of state or local laws is inconsistent with Section 253(a) or Section 332(c)(7)(B)(i)(II) because it prohibits or has the effect of prohibiting the relevant covered service.²⁸²

²⁷⁸ See, e.g., *Moratoria Declaratory Ruling*, FCC 18-111, paras. 161-68; *2009 Declaratory Ruling*, 24 FCC Rcd at 14001, para. 23.

²⁷⁹ Targeted interpretations of the statute like those we adopt here fall far short of a “federal regulatory program dictating the scope and policies involved in local land use” that some commenters fear. League of Minnesota Cities Comments at 9.

²⁸⁰ We also reject claims that Section 601(c)(1) of the 1996 Act constrains our interpretation of these provisions. See, e.g., NARUC Reply at 3; Smart Communities Reply at 33, 35-36. That provision guards against implied preemption, while Section 253 and Section 332(c)(7)(B) both expressly restrict state and local activities. See, e.g., *Texas PUC Order*, 13 FCC Rcd at 3485-86, para. 51. Courts also have read that provision narrowly. See, e.g., *In re FCC 11-161*, 753 F.3d 1015, 1120 (10th Cir. 2014); *Qwest Corp. v. Minnesota Pub. Utilities Comm'n*, 684 F.3d 721, 730-31 (8th Cir. 2012); *Farina v. Nokia Inc.*, 625 F.3d 97, 131 (3d Cir. 2010). Although the Ninth Circuit in *County of San Diego* asserted that there is a presumption that express preemption provisions should be read narrowly, and that the presumption would apply to the interpretation of Section 253(a), *County of San Diego*, 543 F.3d at 548, the cited precedent applies that presumption where “the State regulates in an area where there is no history of significant federal presence.” *Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n*, 410 F.3d 492, 496 (9th Cir. 2005). Whatever the applicability of such a presumption more generally, there is a substantial history of federal involvement here, particularly insofar as interstate telecommunications services and wireless services are implicated. See, e.g., *Ting v. AT&T*, 319 F.3d 1126, 1136 (9th Cir. 2003); *Ivy Broadcasting Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 490-92 (2d Cir. 1968); 47 U.S.C., Title III.

²⁸¹ See, e.g., California PUC Comments at 11; Verizon Comments at 31-33; CTIA Reply at 22-23; WIA Reply at 16-18. We thus reject claims to the contrary. See, e.g., City of New York Comments at 8; Virginia Joint Commenters Comments, Exh. A at 41-44; City of New York Reply at 1-2; NATOA Reply at 9-10; Smart Communities Reply at 34. Indeed, the Fifth Circuit upheld just such an exercise of authority with respect to the interpretation of Section 332(c)(7) in the past. See generally *City of Arlington*, 668 F.3d at 249-54. While some commenters assert that the questions addressed by the Commission in the order underlying the Fifth Circuit's *City of Arlington* decision are somehow more straightforward than our interpretations here, they do not meaningfully explain why that is the case, instead seemingly contemplating that the Commission would address a wider, more general range of circumstances than we actually do here. See, e.g., Virginia Joint Commenters Comments, Exh. A at 44-45.

²⁸² Consequently, we reject claims that relying on our general interpretative authority to interpret Section 253 and Section 332(c)(7) would render any provisions of the Act mere surplusage, see, e.g., Smart Communities Reply at 34-35, or would somehow “usurp the role of the judiciary.” Washington State Cities Reply at 14. We likewise

100. Although some commenters contend in general terms that differences in judicial approaches to Section 253 are limited and thus there is little need for Commission guidance,²⁸³ the interpretations we offer in this Declaratory Ruling are intended to help address certain specific scenarios that have caused significant uncertainty and legal controversy, irrespective of the degree to which this uncertainty has been reflected in court decisions. We also reject claims that a Supreme Court brief joined by the Commission demonstrates that there is no need for the interpretations in this Declaratory Ruling.²⁸⁴ To the contrary, that brief observed that some potential interpretations of certain court decisions “would create a serious conflict with the Commission’s understanding of Section 253(a), and [] would undermine the federal competition policies that the provision seeks to advance.”²⁸⁵ The brief also noted that, if warranted, “the Commission can restore uniformity by issuing authoritative rulings on the application of Section 253(a) to particular types of state and local requirements.”²⁸⁶ Rather than cutting against the need for, or desirability of, the interpretations we offer in this Declaratory Ruling, the brief instead presaged them.²⁸⁷

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reject other arguments insofar as they purport to treat Section 253(d)’s provision for preemption as more specific than, or otherwise controlling over, other Communications Act provisions enabling the Commission to authoritatively interpret the Act. *See, e.g.,* Virginia Joint Commenters Comments, Exh. A at 43. To the contrary, “[t]he specific controls but only within its self-described scope.” *Nat’l Cable & Telecomm. Ass’n v. Gulf Power*, 534 U.S. 327, 336 (2002). In addition, concerns that the Commission might interpret Section 253(c) in a manner that would render it a nullity or in a manner divorced from relevant context—things we do not do here—bear on the reasonableness of a given interpretation and not on the existence of interpretive authority in the first instance, as some contend. *See, e.g.,* Virginia Joint Commenters Comments, Exh. A at 43-44.

²⁸³ *See, e.g.,* City of San Antonio *et al.* Comments, Exh. B at 26-27; Fairfax County Comments at 20; Smart Communities Comments at 61. Some commenters assert that there are reasonable, material reliance interests arising from past court interpretations that would counsel against our interpretations in this order because “localities and providers have adjusted to the tests within their circuits” and “reflected those standards in local law.” Smart Communities Comments, WT Docket No. 16-141 at 67 (filed Mar. 8, 2017) cited in City of Austin Comments at 2 n.3. Arguments such as these, however, merely underscore the regulatory patchwork that inhibits the development of a robust nationwide telecommunications and private wireless service as envisioned by Congress. By offering interpretations of the relevant statutes here, we intend, thereby, to eliminate potential regional regulatory disparities flowing from differing interpretations of those provisions. *See, e.g.,* WIA Reply at 19-20.

²⁸⁴ *See* City of San Antonio *et al.* Comments, Exh. B at 27 (citing Brief for the United States as Amicus Curiae, *Level 3 Commc’ns v. City of St. Louis*, Nos. 08-626, 08-759 at 9, 11 (filed May 28, 2009) (Amicus Brief)).

²⁸⁵ Amicus Brief at 12-13. The brief also identified other specific areas of concern with those cases. *See, e.g., id.* at 13 (“The court appears to have accorded inordinate significance to Level 3’s inability to ‘state with specificity what additional services it might have provided’ if it were not required to pay St. Louis’s license fee. That specific failure of proof—which the court of appeals seems to have regarded as emblematic of broader evidentiary deficiencies in Level 3’s case—is not central to a proper Section 253(a) inquiry.” (citation omitted)); *id.* at 14 (“Portions of the Ninth Circuit’s decision, moreover, could be read to suggest that a Section 253 plaintiff must show effective preclusion—rather than simply material interference—in order to prevail. As discussed above, limiting the preemptive reach of Section 253(a) to legal requirements that completely preclude entry would frustrate the policy of open competition that Section 253 was intended to promote.” (citation omitted)).

²⁸⁶ *Id.* at 18.

²⁸⁷ Contrary to some claims, the need for these clarifications also is not undercut by prior determinations that advanced telecommunications capability is being deployed in a reasonable and timely fashion to all Americans. *See, e.g.,* Letter from Nancy Werner, General Counsel, NATOA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 21, 2018) (NATOA June 21, 2018 *Ex Parte* Letter) (citing *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 33 FCC Rcd 1660, 1707-08, para. 94 (2018) (2018 *Broadband Deployment Report*)). These commenters do not explain why the distinct standard for evaluating deployment of advanced telecommunications capability, *see* 2018 *Broadband Deployment Report*, 33 FCC Rcd at 1663-76, paras. 9-39, should bear on the application of Section 253 or Section 332(c)(7). Further, as the Commission itself observed, “[a] finding that deployment of advanced

101. Our interpretations of Sections 253 and Section 332(c)(7) are likewise not at odds with the Tenth Amendment and constitutional precedent, as some commenters contend.²⁸⁸ In particular, our interpretations do not directly “compel the states to administer federal regulatory programs or pass legislation.”²⁸⁹ The outcome of violations of Section 253(a) or Section 332(c)(7)(B) of the Act are no more than a consequence of “the limits Congress already imposed on State and local governments” through its enactment of Section 332(c)(7).²⁹⁰

102. We also reject the suggestion that the limits Section 253 places on state and local ROW fees and management will unconstitutionally interfere with the relationship between a state and its political subdivisions.²⁹¹ As relevant to our interpretations here, it is not clear, at first blush, that such concerns would be implicated.²⁹² Because state and local legal requirements can be written and structured in myriad ways, and challenges to such state or local activities could be framed in broad or narrow terms, we decline to resolve such questions here, divorced from any specific context.

IV. THIRD REPORT AND ORDER

103. In this Third Report and Order, we address the application of shot clocks to state and local review of wireless infrastructure deployments. We do so by taking action in three main areas. First, we adopt a new set of shot clocks tailored to support the deployment Small Wireless Facilities. Second, we adopt a specific remedy that applies to violations of these new Small Wireless Facility shot clocks, which we expect will operate to significantly reduce the need for litigation over missed shot clocks. Third, we clarify a number of issues that are relevant to all of the FCC’s shot clocks, including the types of authorizations subject to these time periods.

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telecommunications capability is reasonable and timely in no way suggests that we should let up in our efforts to foster greater deployment.” *Id.* at 1664, para. 13.

²⁸⁸ See, e.g., City of San Antonio *et al.* Comments, Exh. A at 28; Smart Communities Comments at 77-78; Smart Communities Reply at 48-50; NATOA June 21, 2018 *Ex Parte* Letter at 3.

²⁸⁹ *Montgomery County*, 811 F.3d at 128; see *Printz v. United States*, 521 U.S. 898 (1997) (*Printz*); *New York v. United States*, 505 U.S. 144 (1992) (*New York*). These provisions preempting state law thus do not “compel the States to enact or administer a federal regulatory program,” *Printz*, 521 U.S. at 900, or “dictate what a state . . . may or may not do.” *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1478 (2018) (*Murphy*).

²⁹⁰ *2009 Declaratory Ruling*, 24 FCC Rcd at 14002, para. 25. The Communications Act establishes its own framework for oversight of wireless facility deployment—one that is largely deregulatory, see, e.g., *Wireless Infrastructure Second R&O*, FCC 18-30, at para. 63; *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1480-81, para. 182 (1994)—and it is reasonable to expect state and local governments electing to act in that area to do so only in a manner consistent with the Act’s framework. See, e.g., *Murphy*, 138 S. Ct. at 1470-71, 1480. Thus, the application of Section 253 and Section 332(c)(7)(B) is clearly distinguishable from the statute the Supreme Court struck down in *Murphy*, which did not involve a preemption scheme but nonetheless prohibited state authorization of sports gambling. *Id.* at 1481. The application here is also clearly distinguishable from the statute in *Printz*, which mandated states to run background checks on handgun purchases, *Printz*, 521 U.S. at 904-05, and the statute in *New York*, which required states to enact state laws that provide for the disposal of radioactive waste or else take title to such waste. *New York*, 505 U.S. at 151-52.

²⁹¹ See, e.g., City of New York Comments at 9-10; Smart Communities Comments at 78.; see also, e.g., *Nixon v. Mo. Mun. League*, 541 U.S. 125, 134 (2004) (identifying Tenth Amendment issues with the application of Section 253 where that application would implicate “state or local governmental self-regulation (or regulation of political inferiors)”).

²⁹² For example, where a state or local law or other legal requirement simply sets forth particular fees to be paid, or where the legal requirement at issue is simply an exercise of discretion that governing law grants the state or local government, it is not clear that preemption would unconstitutionally interfere with the relationship between a state and its political subdivisions.

A. New Shot Clocks for Small Wireless Facility Deployments

104. In 2009, the Commission concluded that we should use shot clocks to define a presumptive “reasonable period of time” beyond which state or local inaction on wireless infrastructure siting applications would constitute a “failure to act” within the meaning of Section 332.²⁹³ We adopted a 90-day clock for reviewing collocation applications and a 150-day clock for reviewing siting applications other than collocations. The record here suggests that our two existing Section 332 shot clocks have increased the efficiency of deploying wireless infrastructure. Many localities already process wireless siting applications in less time than required by those shot clocks, and a number of states have enacted laws requiring that collocation applications be processed in 60 days or less.²⁹⁴ Some siting agencies acknowledge that they have worked to gain efficiencies in processing siting applications and welcome the addition of new shot clocks tailored to the deployment of small scale facilities.²⁹⁵ Given siting agencies’ increased experience with existing shot clocks, the greater need for rapid siting of Small Wireless Facilities nationwide, and the lower burden siting of these facilities places on siting agencies in many cases, we take this opportunity to update our approach to speed the deployment of Small Wireless Facilities.²⁹⁶

1. Two New Section 332 Shot Clocks for Deployment of Small Wireless Facilities

105. In this section, using authority confirmed in *City of Arlington*, we adopt two new Section 332 shot clocks for Small Wireless Facilities—60 days for review of an application for collocation of Small Wireless Facilities using a preexisting structure and 90 days for review of an application for attachment of Small Wireless Facilities using a new structure. These new Section 332 shot clocks carefully balance the well-established authority that states and local authorities have over review of wireless siting applications with the requirements of Section 332(c)(7)(ii) to exercise that authority “within a reasonable period of time... taking into account the nature and scope of the request.”²⁹⁷ Further, our decision is consistent with the BDAC’s Model Code for Municipalities’ recommended timeframes, which utilize this same 60-day and 90-day framework for collocation of Small Wireless Facilities and new structures²⁹⁸ and are similar to shot clocks enacted in state level small cell bills and the real world

²⁹³ 2009 Declaratory Ruling, 24 FCC Rcd at 13994.

²⁹⁴ See *infra* para. 106.

²⁹⁵ Chicago Comments at 7 (“[T]he City has worked to achieve efficient processing times even for applications where no federal deadline exists.”); New Orleans Comments at 3 (“City supports the concept proposed by the Commission . . . to establish . . . more narrowly defined classes of deployments, with distinct reasonable time frames for action within each class.”).

²⁹⁶ See LaWana Mayfield July 31, 2018 *Ex Parte* Letter at 2 (“However, getting this infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources. The solution is to streamline relevant policies—allowing more modern rules for modern infrastructure.”); Letter from John Richard C. King, House of Representatives, South Carolina, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed Aug. 27, 2018) (“A patchwork system of town-to-town, state-to-state rules slows the approval of small cell installations and delays the deployment of 5G. We need a national framework with guardrails to streamline the path forward to our wireless future”); Letter from Andy Thompson, State Representative, Ohio House District 95, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 24, 2018) (“In order for 5G to arrive as quickly and as effectively as possible, relevant infrastructure regulations must be streamlined. It makes very little sense for rules designed for 100-foot cell towers to govern the path to deployment for modern equipment called small cells that can fit into a pizza box.”); Letter from Todd Nash, Wallowa County Board of Commissioners, Oregon, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 2 (filed Sept. 10, 2018) (FCC should streamline regulatory processes by, for example, tightening the deadlines for states and localities to approve new network facilities).

²⁹⁷ 47 U.S.C. § 332(c)(7)(ii).

²⁹⁸ The BDAC Model Municipal Code recommended, for certain types of facilities, shot clocks of 60 days for collocations and 90 days for new constructions on applications for siting Small Wireless Facilities. BDAC Model

experience of many municipalities which further supports the reasonableness of our approach.²⁹⁹ Our actions will modernize the framework for wireless facility siting by taking into consideration that states and localities should be able to address the siting of Small Wireless Facilities in a more expedited review period than needed for larger facilities.³⁰⁰

106. We find compelling reasons to establish a new presumptively reasonable Section 332 shot clock of 60 days for collocations of Small Wireless Facilities on existing structures. The record demonstrates the need for, and reasonableness of, expediting the siting review of these collocations.³⁰¹ Notwithstanding the implementation of the current shot clocks, more streamlined procedures are both reasonable and necessary to provide greater predictability for siting applications nationwide for the deployment of Small Wireless Facilities. The two current Section 332 shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the existing Section 332 shot clocks were adopted nine years ago. Since 2009, localities have gained significant experience processing wireless siting applications.³⁰² Indeed, many localities already process wireless siting applications in less than the required time³⁰³ and several

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Municipal Code at §§ 2.2, 2.3, 3.2a(i)(B). Our approach utilizes the same timeframes set forth in the Model Municipal Code, and we disagree with comments that it is inconsistent with or ignores the work of the BDAC. GMA September 17 *Ex Parte* Letter at 4-5.

²⁹⁹ For instance, while the City of Chicago opposes the shot clocks adopted here, we note that the City has also stated that, “[d]espite th[e] complex review process, involving many utilities and other entities, CDOT on average processed small cell applications last year in 55 days.” Letter from Edward N. Siskel, Corp. Counsel, Dept. of Law, City of Chicago, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 19, 2018).

³⁰⁰ Just like the shot clocks originally established in 2009—later affirmed by the Fifth Circuit and the Supreme Court—the shot clocks framework in this Third Report and Order are no more than an interpretation of “the limits Congress already imposed on State and local governments” through its enactment of Section 332(c)(7). *2009 Declaratory Ruling*, 24 FCC Rcd at 14002, para. 25. *See also City of Arlington*, 668 F.3d at 259. As explained in the *2009 Declaratory Ruling*, the shot clocks derived from Section 332(c)(7) “will not preempt State or local governments from reviewing applications for personal wireless service facilities placement, construction, or modification,” and they “will continue to decide the outcome of personal wireless service facility siting applications pursuant to the authority Congress reserved to them in Section 332(c)(7)(A).” *2009 Declaratory Ruling*, 24 FCC Rcd at 14002, para. 25.

³⁰¹ CTIA Comments, WT Docket No. 16-421, at 33 (filed Mar. 8, 2017); Letter from Juan Huizar, City Manager of the City of Pleasanton, TX, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed June 4, 2018) (describing the firsthand benefit of small cells and noting that communications infrastructure is a critical component of local growth); Letter from Sara Blackhurst, President, Action 22, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 2 (filed May 18, 2018) (Action 22 *Ex Parte*) (“While we understand the need for relevant federal rules and protections appropriate for larger wireless infrastructure, we feel these same rules are not well-suited for smaller wireless facilities and risk slowing deployment in communities that need connectivity now.”); Letter from Maurita Coley Flippin, President and CEO, MMTC, to the Hon. Ajit Pai, Chairman, FCC, WT Docket No. 17-79 at 2 (filed Sept. 5, 2018) (encourages the Commission to remove unnecessary barriers such as unreasonable delays so deployment can proceed expeditiously); Fred A. Lamphere Sept. 11, 2018 *Ex Parte* Letter at 1 (It is critical that the Commission continue to remove barriers to building new wireless infrastructure such as by setting reasonable timelines to review applications).

³⁰² T-Mobile Comments at 20; Crown Castle Reply at 5 (noting that the adoption of similar time frames by several states for small cell siting review confirms their reasonableness, and the Commission should apply these deadlines on a nationwide basis).

³⁰³ Alaska Dep’t of Natural Resources Comments at 2 (“[W]e are currently meeting or exceeding the proposed timeframe of the ‘Shot Clock.’”); *see also* CTIA Aug. 30, 2018 *Ex Parte* Letter at 5 (“Eleven states—Delaware, Florida, Indiana, Kansas, Missouri, North Carolina, Rhode Island, Tennessee, Texas, Utah, and Virginia—recently adopted small cell legislation that includes 45-day or 60-day shot clocks for small cell collocations.”); Jason R. Saine Sept. 14, 2018 *Ex Parte* Letter.

jurisdictions require by law that collocation applications be processed in 60 days or less.³⁰⁴ With the passage of time, siting agencies have become more efficient in processing siting applications.³⁰⁵ These facts demonstrate that a shorter, 60-day shot clock for processing collocation applications for Small Wireless Facilities is reasonable.³⁰⁶

107. As we found in 2009, collocation applications are generally easier to process than new construction because the community impact is likely to be smaller.³⁰⁷ In particular, the addition of an antenna to an existing tower or other structure is unlikely to have a significant visual impact on the community.³⁰⁸ The size of Small Wireless Facilities poses little or no risk of adverse effects on the environment or historic preservation.³⁰⁹ Indeed, many jurisdictions do not require public hearings for approval of such attachments, underscoring their belief that such attachments do not implicate complex issues requiring a more searching review.³¹⁰

108. Further, we find no reason to believe that applying a 60-day time frame for Small Wireless Facility collocations under Section 332 creates confusion with collocations that fall within the scope of “eligible facilities requests” under Section 6409 of the Spectrum Act, which are also subject to a 60-day review.³¹¹ The type of facilities at issue here are distinctly different and the definition of a Small Wireless Facility is clear. Further, siting authorities are required to process Section 6409 applications involving the swap out of certain equipment in 60 days, and we see no meaningful difference in processing these applications than processing Section 332 collocation applications in 60 days. There is

³⁰⁴ North Carolina requires its local governments to decide collocation applications within 45 days of submission of a complete application. N.C. Gen. Stat. Ann. § 153A-349.53(a2). The same 45-day shot clock applies to certain collocations in Florida. Fla. Stat. Ann. § 365.172(13)(a)(1), (d)(1). In New Hampshire, applications for collocation or modification of wireless facilities generally have to be decided within 45 days (subject to some exceptions under certain circumstances) or the application is deemed approved. N.H. Rev. Stat. Ann. § 12-K:10. Wisconsin requires local governments to decide within 45 days of receiving complete applications for collocation on existing support structure that does not involve substantial modification, or the application will be deemed approved, unless the local government and applicant agree to an extension. Wis. Stat. Ann. § 66.0404(3)(c). Local governments in Indiana have 45 days to decide complete collocation applications, unless an extension is allowed under the statute. Ind. Code Ann. § 8-1-32.3-22. Minnesota requires any zoning application, including both collocation and non-collocation applications, to be processed in 60 days. Minn. Stat. § 15.99, subd. 2(a). By not requiring hearings, collocation applications in these states can be processed in a timely manner.

³⁰⁵ Chicago Comments at 7 (“[T]he City has worked to achieve efficient processing times even for applications where no federal deadline exists.”); New Orleans Comments at 3 (“City supports the concept proposed by the Commission . . . to establish . . . more narrowly defined classes of deployments, with distinct reasonable times frames for action within each class.”); Action 22 *Ex Parte* at 2 (“While we understand the need for relevant federal rules and protections appropriate for larger wireless infrastructure, we feel these same rules are not well-suited for smaller wireless facilities and risk slowing deployment in communities that need connectivity now.”).

³⁰⁶ CCA Comments at 11-14; T-Mobile Comments at 20; Incompas Reply at 9; Sprint Comments at 45-47 (noting that Florida, Indiana, Kansas, Texas and Virginia all have passed small cell legislation that requires small cell application attachments to be acted upon in 60 days); T-Mobile Comments at 18 (arguing that the Commission should accelerate the Section 332 shot clocks for all sites to 60 days for collocations, including small cells).

³⁰⁷ 2009 *Declaratory Ruling*, 24 FCC Rcd at 14012, para. 40.

³⁰⁸ TIA Comments at 4.

³⁰⁹ *Wireless Infrastructure Second R&O*, FCC 18-30 at para. 42 (citing Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR Part 1, Appx. B, § VI (Collocation NPA)); *see also* 47 CFR § 1.1306(c)(1) (excluding certain wireless facilities from NEPA review).

³¹⁰ 2009 *Declaratory Ruling*, 24 FCC Rcd at 14012, para. 46.

³¹¹ DESHPO Comments at 2 (“opposes the application of separate time limits for review of facility deployments not covered by the Spectrum Act, as it would lead to confusion within the process for all parties involved (Applicants/Carrier, Consultants, SHPO)”).

no reason to apply different time periods (60 vs. 90 days) to what is essentially the same review: modification of an existing structure to accommodate new equipment.³¹² Finally, adopting a 60-day shot clock will encourage service providers to collocate rather than opting to build new siting structures which has numerous advantages.³¹³

109. Some municipalities argue that smaller facilities are neither objectively “small” nor less obtrusive than larger facilities.³¹⁴ Others contend that shorter shot clocks for a broad category of “smaller” facilities are too restrictive,³¹⁵ and would fail to take into account the varied and unique climate, historic architecture, infrastructure, and volume of siting applications that municipalities face.³¹⁶ We take those considerations into account by clearly defining the category of “Small Wireless Facility” in our rules and allowing siting agencies to rebut the presumptive reasonableness of the shot clocks based upon the actual circumstances they face. For similar reasons, we disagree that establishing shorter shot clocks for smaller facilities would impair states’ and localities’ authority to regulate local rights of way.³¹⁷

110. While some commenters argue that additional shot clock classifications would make the siting process needlessly more complex without any proven benefits,³¹⁸ any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process.³¹⁹ We

³¹² CTIA Aug. 30, 2018 *Ex Parte* Letter at 6.

³¹³ Letter from Richard Rossi, Senior Vice President, General Counsel, American Tower, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 3 (filed Aug. 10, 2018) (“The reason to encourage collocation is straightforward, it is faster, cheaper, more environmentally sound, and less disruptive than building new structures.”).

³¹⁴ League of Az Cities and Towns Comments at 13, 29 (arguing that many small cells or micro cells can be taller and more visually intrusive than macro cells).

³¹⁵ See, e.g., Letter from Geoffrey C. Beckwith, Executive Director & CEO, Mass. Municipal. Assoc., Boston, MA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, (filed Sept. 11, 2018) (Geoffrey C. Beckwith Sept. 11, 2018 *Ex Parte* Letter); Mike Posey Sept. 11, 2018 *Ex Parte* Letter; Letter from John A. Barbish, Mayor, City of Wickliffe, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 13, 2018); Letter from Pauline Russo Cutter, Mayor, City of San Leandro, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 12, 2018); Letter from Ed Waage, Mayor, City of Pismo Beach, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from Scott A. Hancock, Executive Director, MML, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Sept. 18, 2018); Letter from Leon Towarnicki, City Manager, Martinsville, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from Thomas Aujero Small, Mayor, City of Culver City, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018).

³¹⁶ Philadelphia Comments at 4-5 (arguing that shorter shot clocks should not be implemented because “cities are already resource constrained and any further attempt to further limit the current time periods for review of applications will seriously and adversely affect public safety as well as diminish the proper role, under our federalist system, of state and local governments in regulating local rights of way”); Smart Communities Comments, Docket 16-421, at 13 (filed Mar. 8, 2017) (included by reference by Austin’s Comments); Alaska Dept. of Trans. Comments at 2. See, e.g., TX Hist. Comm. Comments at 2 (current shot clocks are appropriate and that further shortening these shot clocks is not warranted); Arlington, TX Comments at 2; Letter from William Tomko, Mayor of Chagrin Falls, OH, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 1-2 (filed Sept. 17, 2018); Nina Beety Sept. 17, 2018 *Ex Parte* Letter; Georgia Municipal Association Sept. 17, 2018 *Ex Parte* Letter at 4.

³¹⁷ League of Az Cities and Towns *et al.* Comments at 26-27, 29-35; Cities of San Antonio *et. al* Comments at 8; Philadelphia Comments at 4.

³¹⁸ T-Mobile Comments at 22; Florida Coalition Comments at 9 (creating new shot clocks would result in “too many ‘shot clocks’ and both the industry and local governments would be confused as to which shot clock applied to what application”).

³¹⁹ While several parties proposed additional shot clock categories, we believe that the any benefit from a closer tailoring of categories to circumstances is not outweighed by the administrative burden on siting authorities and

also reject the assertion that revising the period of time to review siting decisions would amount to a nationwide land use code for wireless siting.³²⁰ Our approach is consistent with the Model Code for Municipalities that recognizes that the shot clocks that we are adopting for the review of Small Wireless Facility deployment applications correctly balance the needs of local siting agencies and wireless service providers.³²¹ Our balance of the relevant considerations is informed by our experience with the previously adopted shot clocks, the record in this proceeding, and our predictive judgment about the effectiveness of actions taken here to promote the provision of personal wireless services.

111. For similar reasons as set forth above, we also find it reasonable to establish a new 90 day Section 332 shot clock for new construction of Small Wireless Facilities. Ninety days is a presumptively reasonable period of time for localities to review such siting applications. Small Wireless Facilities have far less visual and other impact than the facilities we considered in 2009, and should accordingly require less time to review.³²² Indeed, some state and local governments have already adopted 60-day maximum reasonable periods of time for review of *all* small cell siting applications, and, even in the absence of such maximum requirements, several are already reviewing and approving small-cell siting applications within 60 days or less after filing.³²³ Numerous industry commenters advocated a 90-day shot clock for all non-collocation deployments.³²⁴ Based on this record, we find it reasonable to conclude that review of an application to deploy a Small Wireless Facility using a new structure warrants more review time than a mere collocation, but less than the construction of a macro tower.³²⁵ For the reasons explained below, we

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providers to manage these categories. *See* TX Hist. Comm. Comments at 2 (stating that it “could support a shorter review period for new structures less than fifty (50) feet tall, or where structures are located within or adjacent to existing utility rights-of-way (but not transportation rights-of-way) with existing utility structures taller than the proposed telecommunications structure”); Georgia Dept. of Trans. Comments at 2 (stating that time frames based on the zoning area are reasonable).

³²⁰ Cities of San Antonio *et. al* Comments, Exh. A at 17-18. In the same vein, the Florida Department of Transportation contends that “[p]ermit review times should comply with state statutes,” especially if the industry insists on being treated similarly as other utilities. AASHTO Comments, Attach. at 13 (Florida Dept. of Trans. Comments); *see also* Alaska Dept. of Trans. Comments at 2; TX Dept. of Trans. Comments at 2 (explaining that variations in topography, weather, government interests, and state and local political structure counsel against standardized nationwide shot clocks). The Maryland Department of Transportation is concerned about the shortened shot clocks proposed because they would conflict with a Maryland law that requires a 90-day comment period in considering wireless siting applications and because certain applications can be complex and necessitate longer review periods. AASHTO Comments, Attach. at 40 (MD Dept. of Trans. Comments).

³²¹ BDAC Model Municipal Code at § 3.2a(i)(B).

³²² CTIA Comments, Attach. 1 at 38.

³²³ T-Mobile Comments at 19-20 (stating that some states already have adopted more expedited time frames to lower siting barriers and speed deployment, which demonstrates the reasonableness of the proposed 60-day and 90-day revised shot clocks); Incompas Reply at 9 (stating that there is no basis for differing time-periods for similarly-situated small cell installation requests, and the lack of harmonization could discourage the use of a more efficient infrastructure); CCA Comments at 14 n.52 (citing CCA Streamlining Reply at 7-8 that in Houston, Texas, the review process for small cell deployments “usually takes 2 weeks, but no more than 30 days to process and complete the site review. In Kenton County, Kentucky, the maximum time permitted to act upon new facility siting requests is 60 days. Louisville, Kentucky generally processes small cell siting requests within 30 days, and Matthews, North Carolina generally processes wireless siting applications within 10 days”).

³²⁴ CTIA Reply at 3 (stating that the Commission should shorten the shot clocks to 90 days for new facilities); CTIA Comments at 11-12 (asserting that the existing 150-day review period for new wireless sites should be shortened to 90 days); Crown Castle Comments at 29 (stating that a 90-day shot clock for new facilities is appropriate for macro cells and small cells alike, to the extent such applications require review under Section 332 at all); ExteNet Comments at 8 (asserting that the Commission should accelerate the shot clock for all other non-collocation applications, including those for new DNS poles, from 150 days to 90 days); WIA Reply at 2.

³²⁵ CCUA argues that the new shot clocks would force siting authorities to deny applications when they find that applications are incomplete. Letter from Kenneth S. Fellman, Counsel, CCUA, to Marlene H. Dortch, Secretary,

also specify today a provision that will initially reset these two new shot clocks in the event that a locality receives a materially incomplete application.

112. Finally, we note that our 60- and 90-day approach is similar to that in pending legislation that has bipartisan congressional support, and is consistent with the Model Code for Municipalities. Specifically, the draft STREAMLINE Small Cell Deployment Act, would apply a 60-day shot clock to collocation of small personal wireless service facilities and a 90-day shot clock to any other action relating to small personal wireless service facilities.³²⁶ Further, the Model Code for Municipalities recommended by the FCC’s Broadband Deployment Advisory Committee also utilizes this same 60-day and 90-day framework for collocation of Small Wireless Facilities and new structures.³²⁷

2. Batched Applications for Small Wireless Facilities

113. Given the way in which Small Wireless Facilities are likely to be deployed, in large numbers as part of a system meant to cover a particular area, we anticipate that some applicants will submit “batched” applications: multiple separate applications filed at the same time, each for one or more sites *or* a single application covering multiple sites.³²⁸ In the *Wireless Infrastructure NPRM/NOI*, the Commission asked whether batched applications should be subject to either longer or shorter shot clocks than would apply if each component of the batch were submitted separately.³²⁹ Industry commenters contend that the shot clock applicable to a batch or a class of applications should be no longer than that applicable to an individual application of the same class.³³⁰ On the other hand, several commenters, contend that batched applications have often been proposed in historic districts and historic buildings (areas that require a more complex review process), and given the complexities associated with reviews of that type, they urge the Commission not to apply shorter shot clocks to batched applications.³³¹ Some localities also argue that a single, national shot clock for batched applications would fail to account for unique local circumstances.³³²

114. We see no reason why the shot clocks for batched applications to deploy Small Wireless Facilities should be longer than those that apply to individual applications because, in many cases, the batching of such applications has advantages in terms of administrative efficiency that could actually

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FCC, WT Docket No. 17-79 et al., at 3 (filed Sept. 18, 2018) (Kenneth S. Fellman Sept. 18, 2018 *Ex Parte* Letter). We disagree that this would be the outcome in such an instance because, as explained below, siting authorities can toll the shot clocks upon a finding of incompleteness.

³²⁶ STREAMLINE Small Cell Deployment Act, S. 3157, 115th Cong. (2018).

³²⁷ BDAC Model Municipal Code at § 3.2a(i)(B),

³²⁸ We define either scenario as “batching” for the purpose of our discussion here.

³²⁹ *Wireless Infrastructure NPRM/NOI*, 32 FCC Red at 3338, para. 18; *see also Mobilitie PN*, 31 FCC Red at 13371.

³³⁰ *See, e.g.*, Extenet Comments at 10-11 (“The Commission should not adopt a longer shot clock for batches of multiple DNS applications.”); Sprint Comments, Docket No. 16-421, at 43-44 (filed Mar. 8, 2017); CCA Comments at 16 (“The FCC also should ensure that batch applications are not saddled with a longer shot clock than those afforded to individual siting applications”); Verizon Comments at 42 (“The same 60-day shot clock should apply to applications proposing multiple facilities—so called ‘batch applications.’”); Crown Castle Comments at 30 (“Crown Castle also does not support altering the deadline for ‘batches’ of requests.”); T-Mobile Comments at 22-23 (“[A]n application that batches together similar numbers of small cells of like character and in proximity to one another should also be able to be reviewed within the same time frame”); CTIA Comments at 17 (“There is, however, no need for the Commission to establish different shot clocks for batch processing of similar facilities”).

³³¹ San Antonio Comments, Exh. A at 17, 19-20; *see also* Smart Communities Comments, Docket No. 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin’s Comments).

³³² Cities of San Antonio *et al.* Comments, Exh. A at 17, 19-20; *see also* Smart Communities Comments, Docket 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin’s Comments).

make review easier.³³³ Our decision flows from our current Section 332 shot clock policy. Under our two existing Section 332 shot clocks, if an applicant files multiple siting applications on the same day for the same type of facilities, each application is subject to the same number of review days by the siting agency.³³⁴ These multiple siting applications are equivalent to a batched application and therefore the shot clocks for batching should follow the same rules as if the applications were filed separately. Accordingly, when applications to deploy Small Wireless Facilities are filed in batches, the shot clock that applies to the batch is the same one that would apply had the applicant submitted individual applications. Should an applicant file a single application for a batch that includes both collocated and new construction of Small Wireless Facilities, the longer 90-day shot clock will apply, to ensure that the siting authority has adequate time to review the new construction sites.

115. We recognize the concerns raised by parties arguing for a longer time period for at least some batched applications, but conclude that a separate rule is not necessary to address these concerns. Under our approach, in extraordinary cases, a siting authority, as discussed below, can rebut the presumption of reasonableness of the applicable shot clock period where a batch application causes legitimate overload on the siting authority's resources.³³⁵ Thus, contrary to some localities' arguments,³³⁶ our approach provides for a certain degree of flexibility to account for exceptional circumstances. In addition, consistent with, and for the same reasons as our conclusion below that Section 332 does not permit states and localities to prohibit applicants from requesting multiple types of approvals simultaneously,³³⁷ we find that Section 332(c)(7)(B)(ii) similarly does not allow states and localities to refuse to accept batches of applications to deploy Small Wireless Facilities.

B. New Remedy for Violations of the Small Wireless Facilities Shot Clocks

116. In adopting these new shot clocks for Small Wireless Facility applications, we also provide an additional remedy that we expect will substantially reduce the likelihood that applicants will need to pursue additional and costly relief in court at the expiration of those time periods.

117. At the outset, and for the reasons the Commission articulated when it adopted the 2009 shot clocks, we determine that the failure of a state or local government to issue a decision on a Small Wireless Facility siting application within the presumptively reasonable time periods above will constitute a "failure to act" within the meaning of Section 332(c)(7)(B)(v). Therefore, a provider is, at a minimum, entitled to the same process and remedies available for a failure to act within the new Small Wireless Facility shot clocks as they have been under the FCC's 2009 shot clocks. But we also add an additional remedy for our new Small Wireless Facility shot clocks.

118. State or local inaction by the end of the Small Wireless Facility shot clock will function not only as a Section 332(c)(7)(B)(v) failure to act but also amount to a presumptive prohibition on the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II). Accordingly, we would expect the state or local government to issue all necessary permits without further delay. In cases where such action is not taken, we assume, for the reasons discussed below, that the applicant

³³³ See, e.g., Sprint Comments, Docket No. 16-421, at 43-44 (filed Mar. 8, 2017); Verizon Comments at 42; CTIA Comments at 17.

³³⁴ WIA Comments at 27 ("Merely bundling similar sites into a single batched application should not provide a locality with more time to review a single batched application than to process the same applications if submitted individually.").

³³⁵ See *infra* paras. 117, 119. See Letter from Nina Beety, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 17, 2018); Letter from Dave Ruller, City Manager, City of Kent, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Sept. 18, 2018).

³³⁶ Cities of San Antonio *et al.* Comments, Exh. A at 17, 19-20; see also Smart Communities Comments, Docket 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin's Comments).

³³⁷ See *infra* para. 144.

would have a straightforward case for obtaining expedited relief in court.³³⁸

119. As discussed in the Declaratory Ruling, a regulation under Section 332(c)(7)(B)(i)(II) constitutes an effective prohibition if it materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.³³⁹ Missing shot clock deadlines would thus presumptively have the effect of unlawfully prohibiting service in that such failure to act can be expected to materially limit or inhibit the introduction of new services or the improvement of existing services.³⁴⁰ Thus, when a siting authority misses the applicable shot clock deadline, the applicant may commence suit in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II), in addition to a violation of Section 332(c)(7)(B)(ii), as discussed above. The siting authority then will have an opportunity to rebut the presumption of effective prohibition by demonstrating that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services.

120. Given the seriousness of failure to act within a reasonable period of time, we expect, as noted above, siting authorities to issue without any further delay all necessary authorizations when notified by the applicant that they have missed the shot clock deadline, absent extraordinary circumstances. Where the siting authority nevertheless fails to issue all necessary authorizations and litigation is commenced based on violations of Sections 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii), we expect that applicants and other aggrieved parties will likely pursue equitable judicial remedies.³⁴¹ Given the relatively low burden on state and local authorities of simply acting—one way or the other—within the Small Wireless Facility shot clocks, we think that applicants would have a relatively low hurdle to clear in establishing a right to expedited judicial relief. Indeed, for violations of Section 332(c)(7)(B), courts commonly have based the decision whether to award preliminary and permanent injunctive relief on several factors. As courts have concluded, preliminary and permanent injunctions fulfill Congressional intent that action on applications be timely and that courts consider violations of Section 332(c)(7)(B) on an expedited basis.³⁴² In addition, courts have observed that “[a]lthough Congress in the Telecommunications Act left intact some of local zoning boards’ authority under state law,” they should not be owed deference on issues relating to Section 332(c)(7)(B)(ii), meaning that “in the majority of cases the proper remedy for a zoning board decision that violates the Act will be an order. . . instructing the board to authorize construction.”³⁴³ Such relief also is supported where few or no issues remain to be decided, and those that remain can be addressed by a court.³⁴⁴

121. Consistent with those sensible considerations reflected in prior precedent, we expect that

³³⁸ Where we discuss litigation here, we refer, for convenience, to “the applicant” or the like, since that is normally the party that pursues such litigation. But we reiterate that under the Act, “[a]ny person adversely affected by” the siting authority’s failure to act could pursue such litigation. 47 U.S.C. § 332(c)(7)(B)(v).

³³⁹ See *supra* paras. 34-42.

³⁴⁰ *Id.*

³⁴¹ See, e.g., *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12978, para. 284.

³⁴² See, e.g., *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 41 (1st Cir. 2014) (addressing claimed violation of Section 332(c)(7)(B)(i)(II) of the Act); *Nat’l Tower, LLC v. Plainville Zoning Bd. of Appeals*, 297 F.3d 14, 21-22 (1st Cir. 2002) (*Nat’l Tower*) (same); *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 497 (2d Cir. 1999) (addressing violation of Section 332(c)(7)(B)(v) of the Act); *AT&T Mobility Servs., LLC v. Vill. of Corrales*, 127 F. Supp. 3d 1169, 1175-76 (D.N.M. 2015) (addressing violation of Section 332(c)(7)(B)(i)(II)); *Bell Atl. Mobile of Rochester v. Town of Irondequoit*, 848 F. Supp. 2d 391, 403 (W.D.N.Y. 2012) (addressing violation of Section 332(c)(7)(B)(ii)); *New Cingular Wireless PCS, LLC v. City of Manchester*, 2014 WL 79932, *8 (D.N.H. Feb. 28, 2014) (addressing violation of Section 332(c)(7)(B)(i)(II)).

³⁴³ See, e.g., *Nat’l Tower*, 297 F.3d at 21-22; *AT&T Mobility*, 127 F. Supp. 3d at 1176.

³⁴⁴ See, e.g., *Green Mountain Realty*, 750 F.3d at 41-42; *Nat’l Tower*, 297 F.3d at 24-25; *Cellular Tel. Co.*, 166 F.3d at 497; *Bell Atl. Mobile*, 848 F. Supp. 2d at 403; *New Cingular Wireless PCS*, 2014 WL 79932, *8.

courts will typically find expedited and preliminary and permanent injunctive relief warranted for violations of Sections 332(c)(7)(B)(i)(II) and 332(c)(7)(B)(ii) of the Act when addressing the circumstances discussed in this Order. Prior findings that preliminary and permanent injunctive relief best advances Congress's intent in assuring speedy resolution of issues encompassed by Section 332(c)(7)(B) appear equally true in the case of deployments of Small Wireless Facilities covered by our interpretation of Section 332(c)(7)(B)(ii) in this Third Report and Order.³⁴⁵ Although some courts, in deciding whether an injunction is the appropriate form of relief, have considered whether a siting authority's delay resulted from bad faith or involved other abusive conduct,³⁴⁶ we do not read the trend in court precedent overall to treat such considerations as more than relevant (as opposed to indispensable) to an injunction. We believe that this approach is sensible because guarding against barriers to the deployment of personal wireless facilities not only advances the goal of Section 332(c)(7)(B) but also policies set out elsewhere in the Communications Act and 1996 Act, as the Commission recently has recognized in the case of Small Wireless Facilities.³⁴⁷ This is so whether or not these barriers stem from bad faith. Nor do we anticipate that there would be unresolved issues implicating the siting authority's expertise and therefore requiring remand in most instances.

122. In light of the more detailed interpretations that we adopt here regarding reasonable time frames for siting authority action on specific categories of requests—including guidance regarding circumstances in which longer time frames nonetheless can be reasonable—we expect that litigation generally will involve issues that can be resolved entirely by the relevant court. Thus, as the Commission has stated in the past, “in the case of a failure to act within the reasonable time frames set forth in our rules, and absent some compelling need for additional time to review the application, we believe that it would also be appropriate for the courts to treat such circumstances as significant factors weighing in favor of [injunctive] relief.”³⁴⁸ We therefore caution those involved in potential future disputes in this area against placing too much weight on the Commission's recognition that a siting authority's failure to act within the associated timeline might not always result in a preliminary or permanent injunction under the Section 332(c)(7)(B) framework while placing too little weight on the Commission's recognition that policies established by federal communications laws are advanced by streamlining the process for deploying wireless facilities.

123. We anticipate that the traditional requirements for awarding preliminary or permanent injunctive relief would likely be satisfied in most cases and in most jurisdictions where a violation of 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii) is found. Typically, courts require movants to establish the following elements of preliminary or permanent injunctive relief: (1) actual success on the merits for permanent injunctive relief and likelihood of success on the merits for preliminary injunctive relief, (2) continuing irreparable injury, (3) the absence of an adequate remedy at law, (4) the injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party, and (5) award of injunctive relief would not be adverse to the public interest.³⁴⁹ Actual success on the merits would be

³⁴⁵ See *Green Mountain Realty Corp.*, 750 F.3d at 41 (reasoning that remand to the siting authority “would not be in accordance with the text or spirit of the Telecommunications Act”); *Cellular Tel. Co.*, 166 F.3d at 497 (noting “that injunctive relief best serves the TCA's stated goal of expediting resolution” of cases brought under 47 U.S.C. § 332(c)(7)(B)(v)).

³⁴⁶ See, e.g., *Nat'l Tower*, 297 F.3d at 23; *Up State Tower Co. v. Town of Kiantone*, 718 Fed. Appx. 29, 32 (2d Cir. 2017) (Summary Order).

³⁴⁷ See, e.g., *Wireless Infrastructure Second R&O*, FCC 18-30 at para. 62; *Wireless Infrastructure NPRM/NOI*, 32 FCC Red at 3332, para. 5.

³⁴⁸ *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12978, para. 284.

³⁴⁹ *Pub. Serv. Tel. Co. v. Georgia Pub. Serv. Comm'n*, 755 F. Supp. 2d 1263, 1273 (N.D. Ga.), *aff'd*, 404 F. App'x 439 (11th Cir. 2010); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004); *Nat. Res. Def. Council v. Texaco Ref. & Mktg., Inc.*, 906 F.2d 934, 941 (3d Cir. 1990); *Randolph v. Rodgers*, 170 F.3d 850, 857 (8th Cir. 1999); *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007); *Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998); *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 914–15 (1st Cir. 1989).

demonstrated when an applicant prevails in its failure-to-act or effective prohibition case; likelihood of success would be demonstrated because, as discussed, missing the shot clocks, depending on the type of deployment, presumptively prohibits the provision of personal wireless services and/or violates Section 332(c)(7)(B)(ii)'s requirement to act within a reasonable period of time.³⁵⁰ Continuing irreparable injury likely would be found because remand to the siting authority "would serve no useful purpose" and would further delay the applicant's ability to provide personal wireless service to the public in the area where deployment is proposed, as some courts have previously determined.³⁵¹ There also would be no adequate remedy at law because applicants "have a federal statutory right to participate in a local [personal wireless services] market free from municipally-imposed barriers to entry," and money damages cannot directly substitute for this right.³⁵² The public interest and the balance of harms also would likely favor the award of a preliminary or permanent injunction because the purpose of Section 332(c)(7) is to encourage the rapid deployment of personal wireless facilities while preserving, within bounds, the authority of states and localities to regulate the deployment of such facilities, and the public would benefit if further delays in the deployment of such facilities—which a remand would certainly cause—are prevented.³⁵³ We also expect that the harm to the siting authority would be minimal because the only right of which it would be deprived by a preliminary or permanent injunction is the right to act on the siting application beyond a reasonable time period,³⁵⁴ a right that "is not legally cognizable, because under [Sections 332(c)(7)(B)(i)(II) and 332(c)(7)(B)(ii)], the [siting authority] has no right to exercise this power."³⁵⁵ Thus, in the context of Small Wireless Facilities, we expect that the most appropriate remedy in typical cases involving a violation of Sections 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii) is the award of injunctive relief in the form of an order to issue all necessary authorizations.³⁵⁶

124. Our approach advances Section 332(c)(7)(B)(v)'s provision that certain siting disputes, including those involving a siting authority's failure to act, shall be heard and decided by a court of competent jurisdiction on an expedited basis. The framework reflected in this Order will provide the courts with substantive guiding principles in adjudicating Section 332(c)(7)(B)(v) cases, but it will not dictate the result or the remedy appropriate for any particular case; the determination of those issues will remain within the courts' domain.³⁵⁷ This accords with the Fifth Circuit's recognition in *City of Arlington*

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Note that the standards for permanent injunctive relief differ in some respects among the circuits and the states. For example, "most courts do not consider the public interest element in deciding whether to issue a permanent injunction, though the Third Circuit has held otherwise." *Klay*, 376 F.3d at 1097. Courts in the Second Circuit consider only irreparable harm and success on the merits. *Omnipoint Commc'ns, Inc. v. Vill. of Tarrytown Planning Bd.*, 302 F. Supp. 2d 205, 225 (S.D.N.Y. 2004). The Third and Fifth Circuits have precedents holding that irreparable harm is not an essential element of a permanent injunction. *See Roe v. Operation Rescue*, 919 F.2d 857, 873 n. 8 (3d Cir. 1990); *Lewis v. S. S. Baune*, 534 F.2d 1115, 1123–24 (5th Cir. 1976). For the sake of completeness, our analysis discusses all of the elements that have been used in decided cases.

³⁵⁰ *See New Jersey Payphone*, 130 F. Supp. 2d at 640.

³⁵¹ *See Vill. of Tarrytown Planning Bd.*, 302 F. Supp. 2d at 225–26 (quoting *Nextel Partners, Inc. v. Town of Amherst, N.Y.*, 251 F. Supp. 2d 1187, 1201 (W.D.N.Y. 2003)); *see Upstate Cellular Network v. City of Auburn*, 257 F. Supp. 3d 309, 318 (N.D.N.Y. 2017).

³⁵² *New Jersey Payphone*, 130 F. Supp. 2d at 641.

³⁵³ *City of Arlington*, 668 F.3d at 234.

³⁵⁴ *Contra* 47 U.S.C. 332(c)(7)(B)(ii).

³⁵⁵ *New Jersey Payphone*, 130 F. Supp. 2d at 641.

³⁵⁶ *See Cellular Tel. Co.*, 166 F.3d at 496. While our discussion here focused on cases that apply the permanent injunction standard, we have the same view regarding relief under the preliminary injunction standard when a locality fails to act within the applicable shot clock periods. *See, e.g., Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (discussing the standard for preliminary injunctive relief).

³⁵⁷ Several commenters support this position, urging the Commission to reaffirm that adversely affected applicants must seek redress from the courts. *See, e.g., League of Ar Cities and Towns et al. Comments* at 14-21; Philadelphia

that the Act could be read “as establishing a framework in which a wireless service provider must seek a remedy for a state or local government’s unreasonable delay in ruling on a wireless siting application in a court of competent jurisdiction while simultaneously allowing the FCC to issue an interpretation of § 332(c)(7)(B)(ii) that would guide courts’ determinations of disputes under that provision.”³⁵⁸

125. The guidance provided here should reduce the need for, and complexity of, case-by-case litigation and reduce the likelihood of vastly different timing across various jurisdictions for the same type of deployment.³⁵⁹ This clarification, along with the other actions we take in this Third Report and Order, should streamline the courts’ decision-making process and reduce the possibility of inconsistent rulings. Consequently, we believe that our approach helps facilitate courts’ ability to “hear and decide such [lawsuits] on an expedited basis,” as the statute requires.³⁶⁰

126. Reducing the likelihood of litigation and expediting litigation where it cannot be avoided should significantly reduce the costs associated with wireless infrastructure deployment. For instance, WIA states that if one of its members were to challenge every shot clock violation it has encountered, it would be mired in lawsuits with forty-six localities.³⁶¹ And this issue is likely to be compounded given the expected densification of wireless networks. Estimates indicate that deployments of small cells could reach up to 150,000 in 2018 and nearly 800,000 by 2026.³⁶² If, for example, 30 percent (based on T-Mobile’s experience³⁶³) of these expected deployments are not acted upon within the applicable shot clock

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Comments at 2; Philadelphia Reply at 4-6; City of San Antonio *et al.* Comments, Exh. B at 14-15; San Francisco Comments at 16-17; Colorado Munis Comments at 7; CWA Reply at 5; Fairfax County Comments at 12-15; AASHTO Comments at 20-21, 23 (ID Dept. of Trans. Comments); NATOA Comments, Attach. 3 at 53-55; NLC Comments at 3-4; Smart Communities Comments at 39-43. Our interpretation thus preserves a meaningful role for courts under Section 332(c)(7)(B)(v), contrary to the concern some commenters expressed with particular focus on alternative proposals we do not adopt, such as a deemed granted remedy. *See, e.g.,* Colorado Comm. and Utility All. *et al.* Comments at 6-7; League of Az Cities and Towns *et al.* Comments at 14-23; Philadelphia Comments at 2; Baltimore Reply at 11; City of San Antonio *et al.* Reply at 2; San Francisco Reply at 6; League of Az Cities and Towns *et al.* Reply at 2-3. In addition, our interpretation of Section 332(c)(7)(B)(ii) does not result in a regime in which the Commission could be seen as implicitly issuing local land use permits, a concern that states and localities raised regarding an absolute deemed granted remedy, because applicants are still required to petition a court for relief, which may include an injunction directing siting authorities to grant the application. *See* Alexandria Comments at 2; Baltimore Reply at 10; Philadelphia Reply at 8; Smart Cities Coal Comments at ii, 4, 39.

³⁵⁸ *City of Arlington*, 668 F.3d at 250.

³⁵⁹ The likelihood of non-uniform or inconsistent rulings on what time frames are reasonable or what circumstances could rebut the presumptive reasonableness of the shot clock periods stems from the intrinsic ambiguity of the phrase “reasonable period of time,” which makes it susceptible of varying constructions. *See City of Arlington*, 668 F.3d at 255 (noting “that the phrase ‘a reasonable period of time,’ as it is used in § 332(c)(7)(B)(ii), is inherently ambiguous”); *Capital Network System, Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994) (“Because ‘just,’ ‘unjust,’ ‘reasonable,’ and ‘unreasonable’ are ambiguous statutory terms, this court owes substantial deference to the interpretation the Commission accords them.”). *See also* Lighttower Comments at 3 (“The lack of consistent guidance regarding statutory interpretation is creating uncertainty at the state and local level, with many local jurisdictions seeming to simply make it up as they go. Differences in the federal courts are only exacerbating the patchwork of interpretations at the state and local level.”).

³⁶⁰ 47 U.S.C. § 332(c)(7)(B)(v).

³⁶¹ WIA Comments at 16.

³⁶² *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, 31 FCC Rcd 13360, 13363-64 (2016) (citing S&P Global Market Intelligence, John Fletcher, Small Cell and Tower Projections through 2026, SNL Kagan Wireless Investor (Sept. 27, 2016)).

³⁶³ T-Mobile Comments at 8.

period, that would translate to 45,000 violations in 2018 and 240,000 violations in 2026.³⁶⁴ These sheer numbers would render it practically impossible to commence Section 332(c)(7)(B)(v) cases for all violations, and litigation costs for such cases likely would be prohibitive and could virtually bar providers from deploying wireless facilities.³⁶⁵

127. Our updated interpretation of Section 332(c)(7) for Small Wireless Facilities effectively balances the interest of wireless service providers to have siting applications granted in a timely and streamlined manner³⁶⁶ and the interest of localities to protect public safety and welfare and preserve their authority over the permitting process.³⁶⁷ Our specialized deployment categories, in conjunction with the acknowledgement that in rare instances, it may legitimately take longer to act, recognize that the siting process is complex and handled in many different ways under various states' and localities' long-established codes. Further, our approach tempers localities' concerns about the inflexibility of the *Wireless Infrastructure NPRM/NOI*'s deemed granted proposal because the new remedy we adopt here accounts for the breadth of potentially unforeseen circumstances that individual localities may face and the possibility that additional review time may be needed in truly exceptional circumstances.³⁶⁸ We further find that our interpretive framework will not be unduly burdensome on localities because a number of states have already adopted even more stringent deemed granted remedies.³⁶⁹

128. At the same time, there may be merit in the argument made by some commenters that the FCC has the authority to adopt a deemed granted remedy.³⁷⁰ Nonetheless, we do not find it necessary to decide that issue today, as we are confident that the rules and interpretations adopted here will provide substantial relief, effectively avert unnecessary litigation, allow for expeditious resolution of siting applications, and strike the appropriate balance between relevant policy considerations and statutory

³⁶⁴ These numbers would escalate under WIA's estimate that 70 percent of small cell deployment applications exceed the applicable shot clock. WIA Comments at 7.

³⁶⁵ See CTIA Comments at 9 (explaining that, "[p]articularly for small cells, the expense of litigation can rarely be justified"); WIA Comments at 16 (quoting and discussing Lighttower's Comments in 2016 Streamlining Public Notice); T-Mobile Comment, Attach. A at 8.

³⁶⁶ See, e.g., AT&T Comments at 26; CCA Comments at 7, 9, 11-12; CCA Reply at 5-6, 8; Cityscape Consultants Comments at 1; CompTIA Comments at 3; CIC Comments at 17-18; Crown Castle Comments at 23-28; Crown Castle Reply at 3; CTIA Comments at 7-9, Attach. 1 at 5, 39-43, Attach. 2 at 3, 23-24; GCI Comments at 5-9; Lighttower Comments at 7, 18-19; Samsung Comments at 6; T-Mobile Comments at 13, 16, Attach. A at 25; WIA Comments at 15-17.

³⁶⁷ See, e.g., Arizona Munis Comments at 23; Arizona Munis Reply at 8-9; Baltimore Reply at 10; Lansing Comments at 2; Philadelphia Reply at 9-12; Torrance Comments at 1-2; CPUC Comments at 14; CWA Reply at 5; Minnesota Munis Comments at 9; *but see* CTIA Reply at 9.

³⁶⁸ See, e.g., Chicago Comments at 2 (contending that wireless facilities siting entails fact-specific scenarios); AASHTO Comments, Attach. at 40 (MD Dept. of Trans. SHA Comments) (describing the complexity of reviewing proposed deployments on rights-of-way); AASHTO Comments, Attach. at 51 (Wyoming DOT Comments); Baltimore Reply at 11; Philadelphia Comments at 4; Alexandria Comments at 6; Mukilteo Comments at 1; Alaska Dept. of Trans. Comments at 2; Alaska SHPO Reply at 1.

³⁶⁹ See Fla. Stat. Ann. § 365.172(13)(d)(3.b); Ariz. Rev. Stat. Ann. § 9-594(C) (3); 53 Pa. Stat. Ann. § 11702.4; Cal. Gov't Code § 65964.1; Va. Code Ann. § 15.2-2232; Va. Code Ann. § 15.2-2316.4; Va. Code Ann. § 56-484.29; Va. Code Ann. § 56-484.28; Ky. Rev. Stat. Ann. § 100.987; N.H. Rev. Stat. Ann. § 12-K:10; Wis. Stat. Ann. § 66.0404; Kan. Stat. Ann. § 66-2019(h)(3); Del. Code Ann. tit. 17, § 1609; Iowa Code Ann. § 8C.7A(3)(c)(2); Iowa Code Ann. § 8C.4(4)(5); Iowa Code Ann. § 8C.5; Mich. Comp. Laws Ann. § 125.3514. See also CCA Reply at 9.

³⁷⁰ See, e.g., CTIA Comments at 10-11; T-Mobile Comments at 15-18, Verizon Comments at 37, 39-41, WIA Comments at 17-20.

objectives³⁷¹ guiding our analysis.³⁷²

129. We expect that our decision here will result in localities addressing applications within the applicable shot clocks in a far greater number of cases. Moreover, we expect that the limited instances in which a locality does not issue a decision within that time period will result in an increase in cases where the locality then issues all needed permits. In what we expect would then be only a few cases where litigation commences, our decision makes clear the burden that localities would need to clear in those circumstances.³⁷³ Our updated interpretation of Section 332 for Small Wireless Facilities will help courts to decide failure-to-act cases expeditiously and avoid delays in reaching final dispositions.³⁷⁴ Placing this burden on the siting authority should address the concerns raised by supporters of a deemed granted remedy—that filing suit in court to resolve a siting dispute is burdensome and expensive on applicants, the judicial system, and citizens—because our interpretations should expedite the courts’

³⁷¹ *City of Arlington*, 668 F.3d at 234 (noting that the purpose of Section 332(c)(7) is to balance the competing interests to preserve the traditional role of state and local governments in land use and zoning regulation and the rapid development of new telecommunications technologies).

³⁷² See *supra* paras. 119-20 (explaining how the remedy strikes the proper balance between competing interests). Because our approach to shot clocks involves our interpretation of Section 332(c)(7)(B)(ii) and the consequences that flow from that—and does not rely on Section 253 of the Act—we need not, and thus do not, resolve disputes about the potential use of Section 253 in this specific context, such as whether it could serve as authority for a deemed granted or similar remedy. See, e.g., San Francisco Comments at 9-10; CPUC Comments at 10; Smart Communities Comments at 4-11, 21; Smart Communities Reply at 78-79; League of Az Cities and Towns *et al.* Reply at 4; Alexandria Comments at 5; Irvine Comments at 5; Minnesota Cities Comments at 11-13; Philadelphia Reply at 2, 7; Fairfax County Comments at 17; Greenlining Reply at 4; NRUC Reply at 3-5; NATOA June 21, 2018 *Ex Parte* Letter. To the extent that commenters raise arguments regarding the proper interpretation of “prohibit or have the effect of prohibiting” under Section 253 or the scope of Section 253, these issues are discussed in the Declaratory Ruling, see *supra* paras. 34-42.

³⁷³ See App Association Comments at 9; CCI Comments at 6-8; Conterra Comments at 14-17; ExteNet Comments at 13; T-Mobile Comments at 17; Quintillion Reply at 6; Verizon Comments at 8-18; WIA Comments at 9-10. WIA contends that adoption of a deemed granted remedy is needed because various courts faced with shot clock claims have failed to provide meaningful remedies, citing as an example a case in which the court held that the town failed to act within the shot clock period but then declined to issue an injunction directing the siting agency to grant the application. WIA Comments at 16-17. However, a number of cases involving violations of the “reasonable period of time” requirement of Section 332(c)(7)(B)(ii)—decided either before or after the promulgation of the Commission’s Section 332(c)(7)(B)(ii) shot clocks—have concluded with an award of injunctive relief. See, e.g., *Upstate Cellular Network*, 257 F. Supp. 3d at 318 (concluding that the siting authority’s failure to act within the 150-day shot clock was unreasonable and awarding a permanent injunction in favor of the applicant); *Am. Towers, Inc. v. Wilson County*, No. 3:10-CV-1196, 2014 WL 28953, at *13-14 (M.D. Tenn. Jan. 2, 2014) (finding that the county failed to act within a reasonable period of time, as required under Section 332(c)(7)(B)(ii), and granting an injunction directing the county to approve the applications and issue all necessary authorizations for the applicant to build and operate the proposed tower); *Cincinnati Bell Wireless, LLC v. Brown County*, Ohio, No. 1:04-CV-733, 2005 WL 1629824, at *4-5 (S.D. Ohio July 6, 2005) (finding that the county failed to act within a reasonable period of time under Section 332(c)(7)(B)(ii) and awarding injunctive relief). But see *Up State Tower Co. v. Town of Kiantone*, 718 Fed. Appx. 29 (2d Cir. 2017) (declining to reverse district court’s refusal to issue injunction compelling immediate grant of application). Courts have also held “that injunctive relief best serves the TCA’s stated goal of expediting resolution of” cases brought under Section 332(c)(7)(B)(v). *Cellular Tel. Co.*, 166 F.3d at 497; *Brehmer v. Planning Bd. of Town of Wellfleet*, 238 F.3d 117, 121 (1st Cir. 2001). Under these circumstances, we do not agree with WIA that courts have failed to provide meaningful remedies to such an extent as would require the adoption of a deemed granted remedy.

³⁷⁴ *Zoning Bd. of Adjustment of the Borough of Paramus, N.J.*, 21 F. Supp. 3d at 383, 387 (more than four-and-a-half years for Sprint to prevail in court), *aff’d*, 606 F. App’x 669 (3d Cir. 2015); *Vill. of Corrales*, 127 F. Supp. 3d 1169 (nineteen months from complaint to grant of summary judgment); *Orange County–Poughkeepsie Ltd. P’ship v. Town of E. Fishkill*, 84 F. Supp. 3d 274, 293 (S.D.N.Y.), *aff’d sub nom.*, *Orange County–County Poughkeepsie Ltd. P’ship v. Town of E. Fishkill*, 632 F. App’x 1 (2d Cir. 2015) (seventeen months from complaint to grant of summary judgment).

decision-making process.

130. We find that the more specific deployment categories and shot clocks, which presumptively represent the reasonable period within which to act, will prevent the outcome proponents of a deemed granted remedy seek to avoid: that siting agencies would be forced to reject applications because they would be unable to review the applications within the prescribed shot clock period.³⁷⁵ Because the more specific deployment categories and shot clocks inherently account for the nature and scope of a variety of deployment applications, our new approach should ensure that siting agencies have adequate time to process and decide applications and will minimize the risk that localities will fail to act within the established shot clock periods. Further, in cases where a siting authority misses the deadline, the opportunity to demonstrate exceptional circumstances provides an effective and flexible way for siting agencies to justify their inaction if genuinely warranted. Our overall framework, therefore, should prevent situations in which a siting authority would feel compelled to summarily deny an application instead of evaluating its merits within the applicable shot clock period.³⁷⁶ We also note that if the approach we take in this Order proves insufficient in addressing the issues it is intended to resolve, we may again consider adopting a deemed granted remedy in the future.

131. Some commenters also recommend that the Commission issue a list of “Best Practices” or “Recommended Practices.”³⁷⁷ The joint comments filed by NATOA and other government associations suggest the “development of an informal dispute resolution process to remove parties from an adversarial relationship to a partnership process designed to bring about the best result for all involved” and the development of “a mediation program which could help facilitate negotiations for deployments for parties who seem to have reached a point of intractability.”³⁷⁸ Although we do not at this time adopt these proposals, we note that the steps taken in this order are intended to facilitate cooperation between parties to reach mutually agreed upon solutions. For example, as explained below, mutual agreement between the parties will toll the running of the shot clock period, thereby allowing parties to resolve disagreements in a collaborative, instead of an adversarial, setting.³⁷⁹

C. Clarification of Issues Related to All Section 332 Shot Clocks

1. Authorizations Subject to the “Reasonable Period of Time” Provision of Section 332(c)(7)(B)(ii)

132. As indicated above, Section 332(c)(7)(B)(ii) requires state and local governments to act “within a reasonable period of time” on “any request for authorization to place, construct, or modify personal wireless service facilities.”³⁸⁰ Neither the *2009 Declaratory Ruling* nor the *2014 Wireless Infrastructure Order* addressed the specific types of authorizations subject to this requirement. Industry commenters contend that the shot clocks should apply to all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment.³⁸¹ Local siting authorities, on the other hand, argue that a broad application of Section 332 will harm public safety and welfare by not

³⁷⁵ Baltimore Reply at 12; Mukilteo Comments at 1; Cities of San Antonio *et al.* Reply at 10; Washington Munis Comments, Attach. 1 at 8-9; *but see* CTIA Reply at 9.

³⁷⁶ We also note that a summary denial of a deployment application is not permitted under Section 332(c)(7)(B)(iii), which requires the siting authority to base denials on “substantial evidence contained in a written record.”

³⁷⁷ KS Rep. Sloan Comments at 2; Nokia Comments at 10.

³⁷⁸ NATOA *et al.* Comments at 16-17.

³⁷⁹ *See infra* paras. 145-46.

³⁸⁰ *See* 47 U.S.C. § 332(c)(7)(B)(ii).

³⁸¹ *See, e.g.,* CTIA Comments at 15; CTIA Reply at 10; Mobilitie Comments at 6-7; WIA Comments at 24; WIA Reply at 13; T-Mobile Comments at 21-22; CCA Reply at 9; Sprint June 18 *Ex Parte* at 3.

giving them enough time to evaluate whether a proposed deployment endangers the public.³⁸² They assert that building and encroachment permits should not be subsumed within the shot clocks because these permits incorporate essential health and safety reviews.³⁸³ After carefully considering these arguments, we find that “any request for authorization to place, construct, or modify personal wireless service facilities” under Section 332(c)(7)(B)(ii) means all authorizations necessary for the deployment of personal wireless services infrastructure. This interpretation finds support in the record and is consistent with the courts’ interpretation of this provision and the text and purpose of the Act.

133. The starting point for statutory interpretation is the text of the statute,³⁸⁴ and here, the statute is written broadly, applying to “any” request for authorization to place, construct, or modify personal wireless service facilities. The expansive modifier “any” typically has been interpreted to mean “one or some indiscriminately of whatever kind,” unless Congress “add[ed] any language limiting the breadth of that word.”³⁸⁵ The title of Section 332(c)(7) (“Preservation of local zoning authority”) does not restrict the applicability of this section to zoning permits in light of the clear text of Section 332(c)(7)(B)(ii).³⁸⁶ The text encompasses not only requests for authorization to *place* personal wireless service facilities, e.g., zoning requests, but also requests for authorization to *construct* or *modify* personal wireless service facilities. These activities typically require more than just zoning permits. For example, in many instances, localities require building permits, road closure permits, and the like to make construction or modification possible.³⁸⁷ Accordingly, the fact that the title standing alone could be read

³⁸² League of Az Cities and Towns *et al.* Reply at 21-22. *See also* Arlington County, Sept. 18 *Ex Parte* Letter at 1-2 (asserting that it is infeasible to have the shot clock encompass all steps related to the small cell siting process because there is no single application to get ROW access, public notice, lease negotiations, road closures, etc.; because these are separate processes involving different departments; and because the timeline in some instances will depend on the applicant, or the required information may interrelate in a manner that makes doing them all at once infeasible); Letter from Robert McBain, Mayor, Piedmont, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 *et al.*, at 3 (filed Sept. 18, 2018).

³⁸³ League of Az Cities and Towns *et al.* Reply at 21-22.

³⁸⁴ *Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 11233 (1996); *2002 Biennial Regulatory Review*, Report, 18 FCC Rcd 4726, 4731–32 (2003); *Perrin v. United States*, 444 U.S. 37, 42 (1979) (“A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”); *Communications Assistance for Law Enforcement Act & Broadband Access & Servs.*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 14989, 14992–93, para. 9 (2005) (interpreting an ambiguous statute by considering the “structure and history of the relevant provisions, including Congress’s stated purposes” in order to “faithfully implement[] Congress’s intent”); *Cohen v. JP Morgan Chase & Co.*, 498 F.3d 111, 116 (2d Cir. 2007) (using legislative history “to identify Congress’s clear intent”); *Arnold v. United Parcel Serv., Inc.*, 136 F.3d 854, 858 (1st Cir. 1998) (same).

³⁸⁵ *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster’s Third New International Dictionary 97 (1976)); *HUD v. Rucker*, 535 U.S. 125, 131 (2002).

³⁸⁶ *See Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528–29 (1947) (“[H]eadings and titles are not meant to take the place of the detailed provisions of the text.”). Our conclusion is also consistent with our interpretation that Sections 253 and 332(c)(7) apply to fees for all applications related to a Small Wireless Facility. *See supra* para. 50.

³⁸⁷ *See, e.g.*, Virginia Joint Commenters Comments at 21-22 (stating that deployment of personal wireless facilities generally requires excavation and building permits); San Francisco Comments at 4-7, 12, 20-22 (describing the permitting process in San Francisco, the layers of multi-departmental review involved, and the required authorizations before certain personal wireless facilities can be constructed); Smart Cities Coal. Comments at 33-34 (describing several authorizations necessary to deploy personal wireless facilities depending on the location, e.g., public rights-of-way and other public properties, of the proposed site and the size of the proposed facility).

to limit Section 332(c)(7) to zoning decisions does not overcome the specific language of Section 332(c)(7)(B)(ii), which explicitly applies to a variety of authorizations.³⁸⁸

134. The purpose of the statute also supports a broad interpretation. As noted above, the Supreme Court has stated that the 1996 Act was enacted “to promote competition and higher quality in American telecommunications services and to encourage the rapid deployment of new telecommunications technologies” by, *inter alia*, reducing “the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers.”³⁸⁹ A narrow reading of the scope of Section 332 would frustrate that purpose by allowing local governments to erect impediments to the deployment of personal wireless services facilities by using or creating other forms of authorizations outside of the scope of Section 332(c)(7)(B)(ii).³⁹⁰ This is especially true in jurisdictions requiring multi-departmental siting review or multiple authorizations.³⁹¹

135. In addition, our interpretation remains faithful to the purpose of Section 332(c)(7) to balance Congress’s competing desires to preserve the traditional role of state and local governments in regulating land use and zoning, while encouraging the rapid development of new telecommunications technologies.³⁹² Under our interpretation, states and localities retain their authority over personal wireless facilities deployment. At the same time, deployment will be kept on track by ensuring that the entire approval process necessary for deployment is completed within a reasonable period of time, as defined by the shot clocks addressed in this Third Report and Order.

136. A number of courts have either explicitly or implicitly adopted the same view, that all necessary permits are subject to Section 332. For example, in *Cox Communications PCS, L.P. v. San Marcos*, the court considered an excavation permit application as falling within the parameters of Section 332.³⁹³ In *USCOC of Greater Missouri, LLC v. County of Franklin*, the Eighth Circuit reasoned that “[t]he issuance of the requisite building permits” for the construction of a personal wireless services facility arises under Section 332(c)(7).³⁹⁴ In *Ogden Fire Co. No. 1 v. Upper Chichester Township*, the Third Circuit affirmed the district court’s order compelling the township to issue a building permit for the

³⁸⁸ See *Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528-29 (1947). If the title of Section 332(c)(7) were to control the interpretation of the text, it would render superfluous the provision of Section 332(c)(7)(B)(ii) that applies to “authorization to . . . construct, or modify personal wireless service facilities” and give effect only to the provision that applies to “authorization to place . . . personal wireless service facilities.” This result would “flout[] the rule that ‘a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous.’” *Clark v. Rameker*, 134 S. Ct. 2242, 2248 (2014) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)).

³⁸⁹ *City of Rancho Palos Verdes v. Abrams*, 544 U.S. at 115 (internal quotation marks and citations omitted).

³⁹⁰ For example, if we were to interpret Section 332(c)(7)(B)(ii) to cover only zoning permits, states and localities could delay their consideration of other permits (e.g., building, electrical, road closure or other permits) to thwart the proposed deployment.

³⁹¹ See, e.g., Virginia Joint Commenters Comments at 21-22; San Francisco Comments at 4-7, 12, 20-22; Smart Communities Comments at 33-34; CTIA Comments at 15 (stating that some jurisdictions “impose multiple, sequential stages of review”); WIA Comments at 24 (noting that “[m]any jurisdictions grant the application within the shot clock period only to stall on issuing the building permit”); Verizon Comments at 6 (stating that “[a] large Southwestern city requires applicants to obtain separate and sequential approvals from three different governmental bodies before it will consider issuing a temporary license agreement to access city rights-of-way”); Sprint June 18 *Ex Parte* at 3 (noting that “after a land-use permit or attachment permit is received, many localities still require electric permits, road closure permits, aesthetic approval, and other types of reviews that can extend the time required for final permission well beyond just the initial approval.”).

³⁹² *City of Arlington*, 668 F.3d at 234.

³⁹³ *Cox Commc’ns PCS, L.P. v. San Marcos*, 204 F. Supp. 2d 1272 (S.D. Cal. 2002).

³⁹⁴ *USCOC of Greater Mo., LLC v. County of Franklin*, 636 F.3d 927, 931-32 (8th Cir. 2011).

construction of a wireless facility after finding that the township had violated Section 332(c)(7).³⁹⁵ In *Upstate Cellular Network v. Auburn*, the court directed the city to approve the application, including site plan approval by the planning board, granting a variance by the zoning authority, and “any other municipal approval or permission required by the City of Auburn and its boards or officers, including but not limited to, a building permit.”³⁹⁶ And in *PI Telecom Infrastructure V, LLC v. Georgetown–Scott County Planning Commission*, the court ordered that the locality grant “any and all permits necessary for the construction of the proposed wireless facility.”³⁹⁷ Our interpretation is also consistent with judicial precedents involving challenges under Section 332(c)(7)(B) to denials by a wide variety of governmental entities, many of which involved variances,³⁹⁸ special use/conditional use permits,³⁹⁹ land disturbing activity and excavation permits,⁴⁰⁰ building permits,⁴⁰¹ and a state department of education permit to install an antenna at a high school.⁴⁰² Notably, a lot of cases have involved local agencies that are separate and distinct from the local zoning authority,⁴⁰³ confirming that Section 332(c)(7)(B) is not limited in application to decisions of zoning authorities. Our interpretation also reflects the examples in the record where providers are required to obtain other types of authorizations besides zoning permits before they can “place, construct, or modify personal wireless service facilities.”⁴⁰⁴

137. We reject the argument that this interpretation of Section 332 will harm the public because it would “mean that building and safety officials would have potentially only a few days to

³⁹⁵ *Ogden Fire Co. No. 1 v. Upper Chichester TP.*, 504 F.3d 370, 395-96 (3d Cir. 2007).

³⁹⁶ *Upstate Cellular Network*, 257 F. Supp. 3d at 319.

³⁹⁷ *PI Telecom Infrastructure V, LLC v. Georgetown–Scott County Planning Commission*, 234 F. Supp. 3d 856, 872 (E.D. Ky. 2017). *Accord T-Mobile Ne. LLC v. Lowell*, Civil Action No. 11–11551–NMG, 2012 WL 6681890, *6-7, *11 (D. Mass. Nov. 27, 2012) (directing the zoning board “to issue all permits and approvals necessary for the construction of the plaintiffs’ proposed telecommunications facility”); *New Par v. Franklin County Bd. of Zoning Appeals*, No. 2:09–cv–1048, 2010 WL 3603645, *4 (S.D. Ohio Sept. 10, 2010) (enjoining the zoning board to “grant the application and issue all permits required for the construction of the” proposed wireless facility).

³⁹⁸ See, e.g., *New Par v. City of Saginaw*, 161 F. Supp. 2d 759, 760 (E.D. Mich. 2001), *aff’d*, 301 F.3d 390 (6th Cir. 2002).

³⁹⁹ See, e.g., *Virginia Metronet, Inc. v. Bd. of Sup’rs of James City County*, 984 F. Supp. 966, 968 (E.D. Va. 1998); *Cellular Tel. Co.*, 166 F.3d at 491; *T-Mobile Cent., LLC v. Unified Gov’t of Wyandotte County*, 546 F.3d 1299, 1303 (10th Cir. 2008); *City of Anacortes*, 572 F.3d at 989; *Helcher*, 595 F.3d at 713-14; *AT&T Wireless Servs. of California LLC v. City of Carlsbad*, 308 F. Supp. 2d 1148, 1152 (S.D. Cal. 2003); *PrimeCo Pers. Commc’ns L.P. v. City of Mequon*, 242 F. Supp. 2d 567, 570 (E.D. Wis.), *aff’d*, 352 F.3d 1147 (7th Cir. 2003); *Preferred Sites, LLC v. Troup County*, 296 F.3d 1210, 1212 (11th Cir. 2002).

⁴⁰⁰ See, e.g., *Tennessee ex rel. Wireless Income Properties, LLC v. City of Chattanooga*, 403 F.3d 392, 394 (6th Cir. 2005); *Cox Commc’ns PCS, L.P. v. San Marcos*, 204 F. Supp. 2d 1272 (S.D. Cal. 2002).

⁴⁰¹ See, e.g., *Upstate Cellular Network*, 257 F. Supp. 3d at 319; *Ogden Fire Co. No. 1 v. Upper Chichester Twp.*, 504 F.3d 370, 395-96 (3rd Cir. 2007).

⁴⁰² *Sprint Spectrum, L.P. v. Mills*, 65 F. Supp. 2d 148, 150 (S.D.N.Y. 1999), *aff’d*, 283 F.3d 404 (2d Cir. 2002).

⁴⁰³ See, e.g., *Tennessee ex rel. Wireless Income Props., LLC v. City of Chattanooga*, 403 F.3d 392, 394 (6th Cir. 2005) (city public works department); *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 720 (9th Cir. 2009) (city public works director, city planning commission, and city council); *Sprint Spectrum, L.P. v. Mills*, 65 F. Supp. 2d at 150 (New York State Department of Education).

⁴⁰⁴ See, e.g., Virginia Joint Commenters Comments at 21-22 (stating that deployment of personal wireless facilities generally requires excavation and building permits); San Francisco Comments at 4-7, 12, 20-22 (describing the permitting process in San Francisco, the layers of multi-departmental review involved, and the required authorizations before certain personal wireless facilities can be constructed); Smart Communities Comments at 33-34 (describing several authorizations necessary to deploy personal wireless facilities depending on the location, e.g., public rights-of-way and other public properties, of the proposed site and the size of the proposed facility).

evaluate whether a proposed deployment endangers the public.”⁴⁰⁵ Building and safety officials will be subject to the same applicable shot clock as all other siting authorities involved in processing the siting application, with the amount of time allowed varying in the rare case where officials are unable to meet the shot clock because of exceptional circumstances.

2. Codification of Section 332 Shot Clocks

138. In addition to establishing two new Section 332 shot clocks for Small Wireless Facilities, we take this opportunity to codify our two existing Section 332 shot clocks for siting applications that do not involve Small Wireless Facilities. In the *2009 Declaratory Ruling*, the Commission found that 90 days is a reasonable time frame for processing collocation applications and 150 days is a reasonable time frame to process applications other than collocations.⁴⁰⁶ Since these Section 332 shot clocks were adopted as part of a declaratory ruling, they were not codified in our rules. In the *Wireless Infrastructure NPRM/NOI*, the Commission sought comment on whether to modify these shot clocks.⁴⁰⁷ We find no need to modify them here and will continue to use these shot clocks for processing Section 332 siting applications that do not involve Small Wireless Facilities.⁴⁰⁸ We do, though, codify these two existing shot clocks in our rules alongside the two newly-adopted shot clocks so that all interested parties can readily find the shot clock requirements in one place.⁴⁰⁹

139. While some commenters argue for a 60-day shot clock for all collocation categories,⁴¹⁰ we conclude that we should retain the existing 90-day shot clock for collocations not involving Small Wireless Facilities. Collocations that do not involve Small Wireless Facilities include deployments of

⁴⁰⁵ League of Az Cities and Towns *et al.* Reply at 21-22.

⁴⁰⁶ *2009 Declaratory Ruling*, 24 FCC Rcd at 14012-013, paras. 45, 48.

⁴⁰⁷ *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3332-33, 3334, 3337-38, paras. 6, 9, 17-19.

⁴⁰⁸ Chicago Comments at 2 (supporting maintaining existing shot clocks); Bellevue *et al.* Comments at 13-14 (supporting maintaining existing shot clocks).

⁴⁰⁹ We also adopt a non-substantive modification to our existing rules. We redesignate the rule adopted in 2014 to codify the Commission’s implementation of the 2012 Spectrum Act, formerly designated as section 1.40001, as section 1.6100, and we move the text of that rule from Part 1, Subpart CC, to the same Subpart as the new rules promulgated in this Third Report and Order (Part 1, Subpart U). This recognizes that both sets of requirements pertain to “State and local government regulation of the placement, construction, and modification of personal wireless service facilities” (the caption of new Subpart U). The reference in paragraph (a) of that preexisting rule to 47 U.S.C. § 1455 has been consolidated with new rule section 1.6001 to reflect that all rules in Subpart U, collectively, implement both § 332(c)(7) and § 1455. With those non-substantive exceptions, the text of the 2014 rule has not been changed in any way. Contrary to the suggestion submitted by the Washington Joint Counties, *see* Letter from W. Scott Snyder *et al.*, Counsel for the Washington Cities of Bremerton, Mountlake Terrace, Kirkland, Redmond, Issaquah, Lake Stevens, Richland, and Mukilteo, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 *et al.*, at 6-7 (filed June 19, 2018), this change is not substantive and does not require advance notice. We find that “we have good cause to reorganize and renumber our rules in this fashion without expressly seeking comment on this change, and we conclude that public comment is unnecessary because no substantive changes are being made. Moreover, the delay engendered by a round of comment would be contrary to the public interest.” *See 2017 Pole Replacement Order*, 32 FCC Rcd at 9770, para. 26; *see also* 5 U.S.C. § 553(b)(B) (notice not required “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”).

⁴¹⁰ CCIA Comments at 10; CCA Comments at 13-14; CCA Reply at 6 (arguing for 30-day shot clock for collocations and a 60-to-75-day shot clock for all other siting applications); WIA Reply at 21. *See also* Letter from Jill Canfield, NTCA Vice President Legal & Industry and Assistant General Counsel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 19, 2018) (stating that NTCA supports a revised interpretation of the phrase “reasonable period of time” as found in Section 332(c) (7)(B)(ii) of the Communications Act as applicable to small cell facilities and that sixty days for collocations and 90 days for all other small cell siting applications should provide local officials sufficient time for review of requests to install small cell facilities in public rights-of-way).

larger antennas and other equipment that may require additional time for localities to review and process.⁴¹¹ For similar reasons, we maintain the existing 150-day shot clock for new construction applications that are not for Small Wireless Facilities. While some industry commenters such as WIA, Samsung, and Crown Castle argue for a 90-day shot clock for macro cells and small cells alike, we agree with commenters such as the City of New Orleans that there is a significant difference between the review of applications for a single 175-foot tower versus the review of a Small Wireless Facility with much smaller dimensions.⁴¹²

3. Collocations on Structures Not Previously Zoned for Wireless Use

140. Wireless industry commenters assert that they should be able to take advantage of the Section 332 collocation shot clock even when collocating on structures that have not previously been approved for wireless use.⁴¹³ Siting agencies respond that the wireless industry is effectively seeking to have both the collocation definition and a reduced shot clock apply to sites that have never been approved by the local government as suitable for wireless facility deployment.⁴¹⁴ We take this opportunity to clarify that for purposes of the Section 332 shot clocks, attachment of facilities to existing structures constitutes collocation, regardless whether the structure or the location has previously been zoned for wireless facilities. As the Commission stated in the *2009 Declaratory Ruling*, “an application is a request for collocation if it does not involve a ‘substantial increase in the size of a tower’ as defined in the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas.”⁴¹⁵ The definition of “[c]ollocation” in the NPA provides for the “mounting or installation of an antenna on an existing tower, *building or structure* for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, *whether or not there is an existing antenna on the structure.*”⁴¹⁶ The NPA’s definition of collocation explicitly encompasses collocations on structures and buildings that have not yet been zoned for wireless use. To interpret the NPA any other way would be unduly narrow and there is no persuasive reason to accept a narrower interpretation. This is particularly true given that the NPA definition of collocation stands in direct contrast with the definition of collocation in the

⁴¹¹ *Wireless Infrastructure Second R&O*, FCC 18-30 at paras. 74-76.

⁴¹² New Orleans Comments at 2-3; Samsung Comments at 4-5 (arguing that the Commission should reduce the shot clock applicable to new construction from 150 days to 90 days); Crown Castle Comments at 29 (stating that a 90-day shot clock for new facilities is appropriate for macro cells and small cells alike, to the extent such applications require review under Section 332 at all); TX Hist. Comm. Comments at 2 (arguing that the reasonable periods of time that the FCC proposed in 2009, 90 days for collocation applications and 150 days for other applications appear to be appropriate); WIA Comments at 20-23; WIA Reply at 11 (arguing for a 90-day shot clock for applications involving substantial modifications, including tower extensions; and a 120-day shot clock for applications for all other facilities, including new macro sites); CTIA Reply at 3 (stating that the Commission should shorten the shot clocks to 90 days for new facilities).

⁴¹³ AT&T Comments at 10; AT&T Reply at 9; Verizon Reply at 32; WIA Comments at 22; ExteNet Comments at 9.

⁴¹⁴ Bellevue *et al.* Reply at 6-7 (arguing that the Commission has rejected this argument twice and instead determined that a collocation occurs when a wireless facility is attached to an existing infrastructure that houses wireless communications facilities; San Francisco Reply at 7-8 (arguing that under Commission definitions, a utility pole is neither an existing base station nor a tower; thus, the Commission simply cannot find that adding wireless facilities to utility pole that has not previously been used for wireless facilities is an eligible facilities request). *See, e.g.*, Letter from Bonnie Michael, City Council President, Worthington, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 *et al.*, at 2 (filed Sept. 18, 2018); Letter from Jill Boudreau, Mayor, Mount Vernon, WA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 *et al.*, at 2 (filed Sept. 18, 2018).

⁴¹⁵ *2009 Declaratory Ruling*, 24 FCC Rcd at 14012, para 46.

⁴¹⁶ 47 CFR Part 1, App. B, NPA, Subsection C, Definitions.

Spectrum Act, pursuant to which facilities only fall within the scope of an “eligible facilities request” if they are attached to towers or base stations that have already been zoned for wireless use.⁴¹⁷

4. When Shot Clocks Start and Incomplete Applications

141. In the *2014 Wireless Infrastructure Order*, the Commission clarified, among other things, that a shot clock begins to run when an application is first submitted, not when the application is deemed complete.⁴¹⁸ The clock can be paused, however, if the locality notifies the applicant within 30 days that the application is incomplete.⁴¹⁹ The locality may pause the clock again if it provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.⁴²⁰ In the *Wireless Infrastructure NPRM/NOI*, the Commission sought comment on these determinations.⁴²¹ Localities contend that the shot clock period should not begin until the application is deemed complete.⁴²² Industry commenters argue that the review period for incompleteness should be decreased from 30 days to 15 days.⁴²³

142. With the limited exception described in the next paragraph, we find no cause or basis in the record to alter the Commission’s prior determinations, and we now codify them in our rules. Codified rules, easily accessible to applicants and localities alike, should provide helpful clarity. The complaints by states and localities about the sufficiency of some of the applications they receive are adequately addressed by our current policy, particularly as amended below, which preserves the states’ and localities’ ability to pause review when they find an application to be incomplete.⁴²⁴ We do not find it necessary at this point to shorten our 30-day initial review period for completeness because, as was the case when this review period was adopted in the *2009 Declaratory Ruling*, it remains consistent with review periods for completeness under existing state wireless infrastructure deployment statutes⁴²⁵ and still “gives State and local governments sufficient time for reviewing applications for completeness, while protecting applicants

⁴¹⁷ See 47 CFR § 1.40001(b)(3), (4), (5) (definitions of eligible facilities request, eligible support structure, and existing). Each of these definitions refers to facilities that have already been approved under local zoning or siting processes.

⁴¹⁸ *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12970, at para. 258.

⁴¹⁹ *2009 Declaratory Ruling*, 24 FCC Rcd at 14014, paras. 52-53 (providing that the “timeframes do not include the time that applicants take to respond to State and local governments’ requests for additional information”).

⁴²⁰ *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12970, para. 259.

⁴²¹ *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3338, para. 20.

⁴²² See, e.g., Maine DOT Comments at 2-3; Philadelphia Comments at 6; League of Az Cities and Towns *et al.* at 4, 8-9; Letter from Barbara Coler, Chair, Marin Telecommunications Agency, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 4, 2018) (Barbara Coler Sept. 4, 2018 *Ex Parte* Letter); Letter from Sam Liccardo, Mayor, San Jose, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 5 (filed Sept. 18, 2018).

⁴²³ Verizon Comments at 43. See Sprint June 18 *Ex Parte* at 2 (asserting that the shot clocks should begin to run when the application is complete and that a siting authority should review the application for completeness within the first 15 days of receipt or it would waive the right to object on that basis).

⁴²⁴ See, e.g., Barbara Coler Sept. 4, 2018 *Ex Parte* Letter at 2 (the pace of installation may be affected by incomplete applications); Kenneth S. Fellman Sept. 18, 2018 *Ex Parte* Letter at 3 (not uncommon to find documents not properly prepared and not in compliance with relevant regulations).

⁴²⁵ Most states have a 30-day review period for incompleteness. See, e.g., Colo. Rev. Stat. Ann. § 29-27-403; Ga. Code Ann. § 36-66B-5; Iowa Code Ann. § 8C.4; Kan. Stat. Ann. § 66-2019; Minn. Stat. Ann. § 237.163(3c)(b); 53 Pa. Stat. Ann. § 11702.4(b)(1); Cal. Gov’t Code § 65943. A minority of states have adopted either a longer or shorter review period for incompleteness, ranging from 5 days to 45 days. See N.C. Gen. Stat. Ann. § 153A-349.53 (45 days); Wash. Rev. Code Ann. § 36.70B.070 (28 days); N.H. Rev. Stat. Ann. § 12-K:10 (15 days); Del. Code Ann. tit. 17, § 1609 (14 days); Va. Code Ann. §§ 15.2-2316.4; 56-484.28; 56-484.29 (10 days); Wis. Stat. Ann. § 66.0404(3) (5 days).

from a last minute decision that an application should be denied as incomplete.”⁴²⁶

143. However, for applications to deploy Small Wireless Facilities, we implement a modified tolling system designed to help ensure that providers are submitting complete applications on day one. This step accounts for the fact that the shot clocks applicable to such applications are shorter than those established in the *2009 Declaratory Ruling* and, because of which, there may instances where the prevailing tolling rules would further shorten the shot clocks to such an extent that it might be impossible for siting authorities to act on the application.⁴²⁷ For Small Wireless Facilities applications, the siting authority has 10 days from the submission of the application to determine whether the application is incomplete. The shot clock then resets once the applicant submits the supplemental information requested by the siting authority. Thus, for example, for an application to collocate Small Wireless Facilities, once the applicant submits the supplemental information in response to a siting authority’s timely request, the shot clock resets, effectively giving the siting authority an additional 60 days to act on the Small Wireless Facilities collocation application. For subsequent determinations of incompleteness, the tolling rules that apply to non-Small Wireless Facilities would apply—that is, the shot clock would toll if the siting authority provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.

144. As noted above, multiple authorizations may be required before a deployment is allowed to move forward. For instance, a locality may require a zoning permit, a building permit, an electrical permit, a road closure permit, and an architectural or engineering permit for an applicant to place, construct, or modify its proposed personal wireless service facilities.⁴²⁸ All of these permits are subject to Section 332’s requirement to act within a reasonable period of time, and thus all are subject to the shot clocks we adopt or codify here.

145. We also find that mandatory pre-application procedures and requirements do not toll the shot clocks.⁴²⁹ Industry commenters claim that some localities impose burdensome pre-application requirements before they will start the shot clock.⁴³⁰ Localities counter that in many instances, applicants submit applications that are incomplete in material respects, that pre-application interactions smooth the application process, and that many of their pre-application requirements go to important health and safety matters.⁴³¹ We conclude that the ability to toll a shot clock when an application is found incomplete or by

⁴²⁶ *2009 Declaratory Ruling*, 24 FCC Rcd at 14014-15, para. 53.

⁴²⁷ See, e.g., Geoffrey C. Beckwith Sept. 11, 2018 *Ex Parte* Letter at 1; Jessica DeWalt, Assistant Counsel, Illinois Municipal League, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al. at 1 (filed Sept. 14, 2018); Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter at 2.

⁴²⁸ See Sprint June 18 *Ex Parte* at 3; cf. Virginia Joint Commenters Comments at 21-22; San Francisco Comments at 4-7, 12, 20-22; CTIA Comments at 15 (“The Commission should declare that the shot clocks apply to the entire local review process.”).

⁴²⁹ *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3338, para. 20.

⁴³⁰ See, e.g., CCA Reply at 7 (noting also that some localities unreasonably request additional information after submission that is either already provided or of unreasonable scope); GCI Comments at 8-9; WIA Comments at 24; Crown Castle Comments at 21-22; CTIA Reply at 21; CIC Comments at 18; WIA Reply at 14; Conterra Comments at 2-3; Crown Castle Comments at 30-31; CTIA Comments at 15; ExteNet Comments at 4, 15-16; Mobilite Comments at 6; T-Mobile Comments at 21-22; Verizon Comment at 42-43; AT&T Comments at 26.

⁴³¹ See, e.g., Philadelphia Reply at 9 (arguing that shot clocks should not run until a complete application with a full set of engineering drawings showing the placement, size and weight of the equipment, and a fully detailed structural analysis is submitted, to assess the safety of proposed installations); Philadelphia Comments at 6; League of Az Cities and Towns *et al.* Comments at 4 (arguing that the shot clock should not begin until after an application has been “duly filed,” because “some applicants believe the shot clock commences to run no matter how they submit their request, or how inadequate their submittal may be”); Colorado Comm. and Utility All. *et al.* Comments at 14 (explaining that the pre-application meetings are intended “to give prospective applicants an opportunity to discuss code and regulatory provisions with local government staff, and gain a better understanding of the process that will be followed, in order to increase the probability that once an application is filed, it can proceed smoothly to final decision”); Smart

mutual agreement by the applicant and the siting authority should be adequate to address these concerns. Much like a requirement to file applications one after another, requiring pre-application review would allow for a complete circumvention of the shot clocks by significantly delaying their start date. An application is not ruled on within “a reasonable period of time after the request is duly filed” if the state or locality takes the full ordinary review period after having delayed the filing in the first instance due to required pre-application review. Indeed, requiring a pre-application review before an application may be filed is similar to imposing a moratorium, which the Commission has made clear does not stop the shot clocks from running.⁴³² Therefore, we conclude that if an applicant proffers an application, but a state or locality refuses to accept it until a pre-application review has been completed,⁴³³ the shot clock begins to run when the application is proffered. In other words, the request is “duly filed” at that time,⁴³⁴ notwithstanding the locality’s refusal to accept it.

146. That said, we encourage *voluntary* pre-application discussions, which may well be useful to both parties. The record indicates that such meetings can clarify key aspects of the application review process, especially with respect to large submissions or applicants new to a particular locality’s processes, and may speed the pace of review.⁴³⁵ To the extent that an applicant voluntarily engages in a pre-application review to smooth the way for its filing, the shot clock will begin when an application is filed, presumably after the pre-application review has concluded.

147. We also reiterate, consistent with the *2009 Declaratory Ruling*, that the remedies granted under Section 332(c)(7)(B)(v) are independent of, and in addition to, any remedies that may be available under state or local law.⁴³⁶ Thus, where a state or locality has established its own shot clocks, an applicant may pursue any remedies granted under state or local law in cases where the siting authority fails to act within those shot clocks.⁴³⁷ However, the applicant must wait until the Commission shot clock period has expired to bring suit for a “failure to act” under Section 332(c)(7)(B)(v).⁴³⁸

V. PROCEDURAL MATTERS

148. *Final Regulatory Flexibility Analysis.* With respect to this Third Report and Order, a Final Regulatory Flexibility Analysis (FRFA) is contained in Appendix C. As required by Section 603 of

(Continued from previous page)

Communities Comments at 15, 35 (pre-application procedures “may translate into faster consideration of individual applications over the longer term, as providers and communities alike, gain a better understanding of what is required of them, and providers submit applications that are tailored to community requirements”); UT Dept. of Trans. Comments at 5 (“The purpose of the pre-application access meeting is to help the entity or person with the application and provide information concerning the requirements contained in the rule.”); CCUA *et al.* Reply at 6 (“[Pre-application meetings] provide an opportunity for informal discussion between prospective applicants and the local jurisdiction. Pre-application meetings serve to educate, answer questions, clarify process issues, and ultimately result in a more efficient process from application filing to final action.”); AASHTO Comments, Attach. at 3 (GA Dept. of Trans. contending that pre-application procedures “should be encouraged and separated from an ‘official’ ‘application submittal’”); League of Az Cities and Towns *et al.* Comments at 5-7 (providing examples of incomplete applications).

⁴³² *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12971, at para. 265.

⁴³³ See, e.g., CCA Reply at 7; GCI Comments at 8-9; WIA Comments at 24; Crown Castle Comments at 21-22; CTIA Reply at 21; CIC Comments at 18; WIA Reply at 14; Conterra Comments at 2-3; Crown Castle Comments at 30-31; CTIA Comments at 15; ExteNet Comments at 4, 15-16; Mobilitie Comments at 6; T-Mobile Comments at 21-22; Verizon Comment at 42-43; AT&T Comments at 26.

⁴³⁴ 47 U.S.C. § 332(c)(7)(B)(ii).

⁴³⁵ See CCUA *et al.* Comments at 14; Smart Communities Comments at 15, 35; UT Dept. of Trans. Comments at 5; CCUA *et al.* Reply at 6; Mukilteo Reply, Docket No. WC 17-84, at 1 (filed July 10, 2017).

⁴³⁶ *2009 Declaratory Ruling*, 24 FCC Rcd at 14013-14, para. 50.

⁴³⁷ *2009 Declaratory Ruling*, 24 FCC Rcd at 14013-14, para. 50.

⁴³⁸ 47 U.S.C. § 332(c)(7)(B)(v).

the Regulatory Flexibility Act, the Commission has prepared a FRFA of the expected impact on small entities of the requirements adopted in this Third Report and Order. The Commission will send a copy of the Third Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

149. *Paperwork Reduction Act.* This Third Report and Order does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

150. *Congressional Review Act.* The Commission will send a copy of this Declaratory Ruling and Third Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. § 801(a)(1)(A).

VI. ORDERING CLAUSES

151. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i)-(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 157, 201, 253, 301, 303, 309, 319, 332, that this Declaratory Ruling and Third Report and Order in WT Docket No. 17-79 IS hereby ADOPTED.

152. IT IS FURTHER ORDERED that Part 1 of the Commission's Rules is AMENDED as set forth in Appendix A, and that these changes SHALL BE EFFECTIVE 90 days after publication in the Federal Register.

153. IT IS FURTHER ORDERED that this Third Report and Order SHALL BE effective 90 days after its publication in the Federal Register. The Declaratory Ruling and the obligations set forth therein ARE EFFECTIVE on the same day that this Third Report and Order becomes effective. It is our intention in adopting the foregoing Declaratory Ruling and these rule changes that, if any provision of the Declaratory Ruling or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such Declaratory Ruling and the rules not deemed unlawful, and the application of such Declaratory Ruling and the rules to other person or circumstances, shall remain in effect to the fullest extent permitted by law.

154. IT IS FURTHER ORDERED that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this Declaratory Ruling and Third Report and Order will commence on the date that a summary of this Declaratory Ruling and Third Report and Order is published in the Federal Register.

155. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Declaratory Ruling and Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

156. IT IS FURTHER ORDERED that this Declaratory Ruling and Third Report and Order SHALL BE sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules****Streamlining State and Local Review of Wireless Facility Siting Applications****Part 1—Practice and Procedure**

1. Add subpart U to Part 1 of Title 47 to read as follows:

Subpart U—State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities**§ 1.6001 Purpose.**

This subpart implements 47 U.S.C. 332(c)(7) and 1455.

§ 1.6002 Definitions.

Terms used in this subpart have the following meanings:

(a) *Action* or *to act* on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(b) *Antenna*, consistent with section 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this title.

(c) *Antenna equipment*, consistent with section 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) *Antenna facility* means an antenna and associated antenna equipment.

(e) *Applicant* means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) *Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) *Collocation*, consistent with section 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, Appendix B of this part, section I.B, means—

- (1) Mounting or installing an antenna facility on a pre-existing structure, and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (3) The definition of “collocation” in paragraph (b)(2) of section 1.6100 applies to the term as used in that section.

- (h) *Deployment* means placement, construction, or modification of a personal wireless service facility.
- (i) *Facility* or *personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
- (j) *Siting application* or *application* means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.
- (k) *Siting authority* means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.
- (l) *Small wireless facilities*, consistent with section 1.1312(e)(2), are facilities that meet each of the following conditions:
- (1) The facilities—
 - (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
 - (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
 - (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;
 - (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
 - (4) The facilities do not require antenna structure registration under part 17 of this chapter;
 - (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
 - (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).
- (m) *Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in Part 1 of Title 47 and the Communications Act of 1934, 47 U.S.C. 151 *et seq.*

§ 1.6003 Reasonable periods of time to act on siting applications

(a) *Timely action required.* A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) *Shot clock period.* The shot clock period for a siting application is the sum of—

(1) the number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section, plus

(2) the number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) *Presumptively reasonable periods of time.*

(1) The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth below:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) *Batching.*

(i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (c)(2)(ii).

(d) *Tolling period.* Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth below.

(1) *For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.*

(2) *For all other initial applications*, the tolling period shall be the number of days from –

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(2)(i) is effectuated on or before the 30th day after the date when the application was submitted; or

(3) *For resubmitted applications following a notice of deficiency*, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or paragraph (d)(2) of this section, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(3)(i) is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or paragraph (d)(2) of this section.

(e) *Shot clock date.* The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; *provided*, that if the date calculated in this manner is a "holiday" as defined in section 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term "business day" means any day as defined in section 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

3. Redesignate section 1.40001 as section 1.6100, and remove and reserve paragraph (a).

4. Remove subpart CC.

APPENDIX B**Comments and Reply Comments****Comments**

5G Americas
Aaron Rosenzweig
ACT | The App Association
Advisory Council on Historic Preservation
Advisors to the International EMF Scientist Appeal
African American Mayors Association
Agua Caliente Band of Cahuilla Indians Tribal Historic Preservation Office
Alaska Department of Transportation & Public Facilities
Alaska Native Health Board
Alaska Office of History and Archaeology
Alexandra Ansell
American Association of State Highway and Transportation Officials
American Bird Conservancy
American Cable Association
American Petroleum Institute
American Public Power Association
Angela Fox
Arctic Slope Regional Corporation
Arizona State Parks & Trails, State Historic Preservation Office
Arkansas SHPO
Arnold A. McMahon
Association of American Railroads
AT&T
B. Golomb
Bad River Band of Lake Superior Tribe of Chippewa Indians
Benjamin L. Yousef
BioInitiative Working Group
Blue Lake Rancheria
Board of County Road Commissioners of the County of Oakland
Bristol Bay Area Health Corporation
Cahuilla Band of Indians
California Office of Historic Preservation, Department of Parks and Recreation
California Public Utilities Commission
Cape Cod Bird Club, Inc.
Catawba Indian Nation Tribal Historic Preservation Office
Charter Communications, Inc.
Cheyenne River Sioux Tribe Cultural Preservation Office
Chickasaw Nation
Chippewa Cree Tribe
Choctaw Nation of Oklahoma
Chuck Matzker
Cindy Li
Cindy Russell
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee
Citizen Potawatomi Nation
Citizens Against Government Waste

City and County of San Francisco
City of Alexandria, Virginia; Arlington County, Virginia; and Henrico County, Virginia
City of Arlington, Texas
City of Austin, Texas
City of Bellevue, City of Bothell, City of Burien, City of Ellensburg, City of Gig Harbor, City of
Kirkland, City of Mountlake Terrace, City of Mukilteo, City of Normandy Park, City of Puyallup,
City of Redmond, and City of Walla Walla
City of Chicago
City of Claremont (Tony Ramos, City Manager)
City of Eden Prairie, MN
City of Houston
City of Irvine, California
City of Kenmore, Washington, and David Baker, Vice-Chair, National League of Cities Information
Technology and Communications Committee
City of Lansing, Michigan
City of Mukilteo
City of New Orleans, Louisiana
City of New York
City of Philadelphia
City of Springfield, Oregon
Cityscape Consultants, Inc.
Coalition for American Heritage, Society for American Archaeology, American Cultural Resources
Association, Society for Historical Archaeology, and American Anthropological Association
Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC),
City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey
Access Group (JAG), and Colorado Municipal League (CML)
Colorado River Indian Tribes
Colorado State Historic Preservation Office
Comcast Corporation
Commissioner Sal Pace, Pueblo Board of County Commissioners
Community Associations Institute
Competitive Carriers Association
CompTIA (The Computing Technology Industry Association)
Computer & Communications Industry Association (CCIA)
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Umatilla Indian Reservation Cultural Resources Protection Program
Consumer Technology Association
Conterra Broadband Services, Southern Light, LLC, and Uniti Group, Inc.
Critical Infrastructure Coalition
Crow Creek Sioux Tribe
Crown Castle
CTIA
CTIA and Wireless Infrastructure Association
David Roetman, Minnehaha County GOP Chairman
Defenders of Wildlife
Department of Arkansas Heritage (Arkansas Historic Preservation Program)
DuPage Mayors and Managers Conference
East Bay Municipal Utility District
Eastern Shawnee Tribe of Oklahoma
Edward Czelada
Elijah Mondy
Elizabeth Doonan

Ellen Marks
EMF Safety Network, Ecological Options Network
Environmental Health Trust
ExteNet Systems, Inc.
Fairfax County, Virginia
FibAire Communications, LLC d/b/a AireBeam
Florida Coalition of Local Governments
Fond du Lac Band of Lake Superior Chippewa
Forest County Potawatomi Community of Wisconsin
Fort Belknap Indian Community
Free State Foundation
General Communication, Inc.
Georgia Department of Transportation
Georgia Historic Preservation Division
Georgia Municipal Association, Inc.
Gila River Indian Community
Greywale Advisors
History Colorado (Colorado State Historic Preservation Office)
Hongwei Dong
Hualapai Department of Cultural Resources
Illinois Department of Transportation
Illinois Municipal League
INCOMPAS
Information Technology and Innovation Foundation
International Telecommunications Users Group
Jack Li
Jackie Cale
Jerry Day
Joel M. Moskowitz, Ph.D.
Jonathan Mirin
Joyce Barrett
Karen Li
Karen Spencer
Karon Gubbrud
Kate Kheel
Kaw Nation
Kevin Mottus
Keweenaw Bay Indian Community
Kialegee Tribal Town
League of Arizona Cities and Towns, League of California Cities, and League of Oregon Cities
League of Minnesota Cities
Leo Cashman
Lower Brule Sioux Tribe
Li Sun
Lighttower Fiber Networks
Lisbeth Britt
Lower Brule Sioux Tribe
Maine Department of Transportation
Marty Feffer
Mary Whisenand, Iowa Governor's Commission on Community Action Agencies
Mashantucket (Western) Pequot Tribe
Mashpee Wampanoag Tribe

Matthew Goulet
Mayor Patrick Furey, City of Torrance, California
McLean Citizens Association
Miami Tribe of Oklahoma
Missouri State Historic Preservation Office
Mobile Future
Mobilitie, LLC
Mohegan Tribe of Indians of Connecticut
Montana State Historic Preservation Office
Monte R. Lee and Company
Muckleshoot Indian Tribe
Muscogee (Creek) Nation
National Association of Tower Erectors (NATE)
National Association of Tribal Historic Preservation Officers
National Black Caucus of State Legislators
National Conference of State Historic Preservation Officers
National Congress of American Indians
National Congress of American Indians, National Association of Tribal Historic Preservation Officers,
and United South and Eastern Tribes Sovereignty Protection Fund
National Congress of American Indians and United South and Eastern Tribes Sovereignty Protection
Fund
National League of Cities
National League of Cities, United States Conference of Mayors, International Municipal Lawyers
Association, Government Finance Officers Association, National Association of Counties,
National Association of Regional Councils, National Association of Towns and Townships, and
National Association of Telecommunications Officers and Advisors
National Tribal Telecommunications Association
National Trust for Historic Preservation
Native Public Media
NATOA
Natural Resources Defense Council
Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission
Naveen Albert
NCTA—The Internet & Television Association
nepa solutions LLC
New Mexico Department of Cultural Affairs, Historic Preservation Division
Nez Perce Tribe
Nina Beety
Nokia
North Carolina State Historic Preservation Office
Northern Cheyenne Tribal Historic Preservation Office
NTCA—The Rural Broadband Association
Office of Historic Preservation for the Mashantucket Pequot Tribal Nation of Connecticut
Ohio State Historic Preservation Office
Oklahoma History Center State Historic Preservation Office
Olemara Peters
Omaha Tribe of Nebraska
ONE Media, LLC
Oregon State Historic Preservation Office
Osage Nation
Otoe-Missouria Tribe
Pala Band of Mission Indians

Patrick Wronkiewicz
Pechanga Band of Luiseno Indians
Pennsylvania State Historic Preservation Office
Prairie Island Indian Community
PTA-FLA, Inc.
Pueblo of Laguna
Pueblo of Pojoaque
Pueblo of Tesuque
Puerto Rico State Historic Preservation Office
Quad Cities Cable Communications Commission
Quapaw Tribe of Oklahoma
R Street Institute
Rebecca Carol Smith
Red Cliff Band of Lake Superior Chippewa
Representative Tom Sloan, State of Kansas House of Representatives
Representatives Anna G. Eshoo, Frank Pallone, Jr., and Raul Ruiz, U.S. House of Representatives
Rhode Island Historical Preservation and Heritage Commission
Rosebud Sioux Tribe Tribal Historic Preservation Cultural Resource Management Office
Ronald M. Powell, Ph.D.
S. Quick
Sacred Wind Communications, Inc.
Samsung Electronics America, Inc.
Santa Clara Pueblo
Sault Ste. Marie Tribe of Chippewa Indians
SCAN NATOA, Inc.
Seminole Nation of Oklahoma
Seminole Tribe of Florida
Senator Duane Ankney, Montana State Senate
Shawnee Tribe
Sisseton Wahpeton Oyate
Skokomish Indian Tribe Tribal Historic Preservation Office
Skull Valley Band of Goshute
Smart Communities and Special Districts Coalition
Soula Culver
Sprint
Standing Rock Sioux Tribe
Starry, Inc.
State of Washington Department of Archaeology & Historic Preservation
Sue Present
Swinomish Indian Tribal Community
Table Mountain Rancheria Tribal Government Office
Tanana Chiefs Conference
Telecommunications Industry Association
Texas Department of Transportation
Texas Historical Commission
Thlopthlocco Tribal Town
T-Mobile USA, Inc.
Tonkawa Tribe of Oklahoma
Triangle Communication System, Inc.
Twenty-Nine Palms Band of Mission Indians
United Keetoowah Band of Cherokee Indians In Oklahoma
Utah Department of Transportation

Ute Mountain Ute Tribe
Utilities Technology Council
Verizon
Wampanoag Tribe of Gay Head (Aquinnah)
WEC Energy Group, Inc.
Wei Shen
Wei-Ching Lee, MD, California Medical Association Delegate of Los Angeles County
Winnebago Tribe of Nebraska
Wireless Infrastructure Association
Wireless Internet Service Providers Association
Xcel Energy Services Inc.

Reply Comments

Alaska State Historic Preservation Office
American Cable Association
American Public Power Association
Association of American Railroads
California Public Utilities Commission
Catherine Kleiber
Chippewa Cree Tribe
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee
City of Baltimore, Maryland
City of New York
City of Philadelphia
Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC), City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey Access Group (JAG), and Colorado Municipal League (CML)
Comcast Corporation
Communications Workers of America
Competitive Carriers Association
Consumer Technology Association
Conterra Broadband Services, Southern Light, LLC, and Uniti Group Inc.
Critical Infrastructure Coalition
CTIA
Dan Kleiber
Enterprise Wireless Alliance
Environmental Health Trust
ExteNet Systems, Inc.
Florida Coalition of Local Governments
Confederated Tribes of Grand Ronde Community of Oregon Historic Preservation Department
INCOMPAS
Irregularators
League of Arizona Cities and Towns, League of California Cities, and League of Oregon Cities
National Association of Regulatory Utility Commissioners
National Association of Telecommunications Officers and Advisors, National League of Cities, National Association of Towns and Townships, National Association of Regional Councils, United States Conference of Mayors, and Government Finance Officers Association
National Congress of American Indians, United South and Eastern Tribes Sovereignty Protection Fund, and National Association of Tribal Historic Preservation Officers
National Organization of Black Elected Legislative (NOBEL) Women
National Rural Electric Cooperative Association

Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission
NCTA—The Internet & Television Association
Pueblo of Acoma
Puerto Rico Telephone Company, Inc., d/b/a Claro
Quintillion Networks, LLC, and Quintillion Subsea Operations, LLC
Rebecca Carol Smith
SDN Communications
Skyway Towers, LLC
SmallCellSite.Com
Smart Communities and Special Districts Coalition
Sue Present
The Greenlining Institute
T-Mobile USA, Inc.
Triangle Communication System, Inc.
United States Conference of Mayors
Verizon
Washington, D.C. Office of the Chief Technology Officer
Wireless Internet Service Providers Association
Xcel Energy Services Inc.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)*, released in April 2017.² The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are addressed below in Section B. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for and Objectives of the Rules

2. In the *Third Report and Order*, the Commission continues its efforts to promote the timely buildout of wireless infrastructure across the country by eliminating regulatory impediments that unnecessarily delay bringing personal wireless services to consumers. The record shows that lengthy delays in approving siting applications by siting agencies has been a persistent problem.⁴ With this in mind, the *Third Report and Order* establishes and codifies specific rules concerning the amount of time siting agencies may take to review and approve certain categories of wireless infrastructure siting applications. More specifically, the Commission addresses its Section 332 shot clock rules for infrastructure applications which will be presumed reasonable under the Communications Act. As an initial matter, the Commission establishes two new shot clocks for Small Wireless Facilities applications. For collocation of Small Wireless Facilities on preexisting structures, the Commission adopts a 60-day shot clock which applies to both individual and batched applications. For applications associated with Small Wireless Facilities new construction we adopt a 90-day shot clock for both individual and batched applications.⁵ The Commission also codifies two existing Section 332 shot clocks for all other Non-Small Wireless Facilities that were established in the *2009 Declaratory Ruling* without codification.⁶ These existing shot clocks require 90-days for processing of all other Non-Small Wireless Facilities collocation applications, and 150-days for processing of all other Non-Small Wireless Facilities applications other than collocations.

3. The *Third Report and Order* addresses other issues related to both the existing and new shot clocks. In particular we address the specific types of authorizations subject to the “Reasonable Period of Time” provisions of Section 332(c)(7)(B)(ii), finding that “any request for authorization to place, construct, or modify personal wireless service facilities” under Section 332(c)(7)(B)(ii) means all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment of personal wireless services infrastructure.⁷ The Commission also addresses collocation on structures not previously zoned for wireless use,⁸ when the four Section 332 shot clocks begin to run,⁹

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment*, Notice of Proposed Rulemaking, 32 FCC Rcd 3330 (2017).

³ See 5 U.S.C. § 604.

⁴ See *supra* paras. 23-9.

⁵ See *supra* paras. 111-12.

⁶ See *supra* paras. 138-39; *2009 Declaratory Ruling*.

⁷ See *supra* paras. 132-37.

⁸ See *supra* para. 140.

the impact of incomplete applications on our Section 332 shot clocks,¹⁰ and how state imposed shot clocks remedies effect the Commission's Section 332 shot clocks remedies.¹¹

4. The Commission discusses the appropriate judicial remedy that applicants may pursue in cases where a siting authority fails to act within the applicable shot clock period.¹² In those situations, applicants may commence an action in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II) and seek injunctive relief granting the application. Notwithstanding the availability of a judicial remedy if a shot clock deadline is missed, the Commission recognizes that the Section 332 time frames might not be met in exceptional circumstances and has refined its interpretation of the circumstances when a period of time longer than the relevant shot clock would nonetheless be a reasonable period of time for action by a siting agency.¹³ In addition, a siting authority that is subject to a court action for missing an applicable shot clock deadline has the opportunity to demonstrate that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services thereby rebutting the effective prohibition presumption.

5. The rules adopted in the *Third Report and Order* will accelerate the deployment of wireless infrastructure needed for the mobile wireless services of the future, while preserving the fundamental role of localities in this process. Under the Commission's new rules, localities will maintain control over the placement, construction and modification of personal wireless facilities, while at the same time the Commission's new process will streamline the review of wireless siting applications.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. Only one party—the Smart Communities and Special Districts Coalition—filed comments specifically addressing the rules and policies proposed in the IRFA. They argue that any shortening or alteration of the Commission's existing shot clocks or the adoption of a deemed granted remedy will adversely affect small local governments, special districts, property owners, small developers, and others by placing their siting applications behind wireless provider siting applications.¹⁴ Subsequently, NATOA filed comments concerning the draft FRFA.¹⁵ NATOA argues that the new shot clocks impose burdens on local governments and particularly those with limited resources. NATOA asserts that the new shot clocks will spur more deployment applications than localities currently process.

7. These arguments, however, fail to acknowledge that Section 332 shot clocks have been in place for years and reflect Congressional intent as seen in the statutory language of Section 332. The record in this proceeding demonstrates the need for, and reasonableness of, expediting the siting review of certain facility deployments.¹⁶ More streamlined procedures are both reasonable and necessary to provide greater predictability. The current shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the original shot clocks were adopted nine years ago. Localities have gained significant experience processing wireless siting applications and several jurisdictions already have in place laws that require

(Continued from previous page)

⁹ See *supra* paras. 141-46.

¹⁰ *Id.*

¹¹ See *supra* para. 147.

¹² See *supra* paras. **Error! Reference source not found.**-131.

¹³ See *supra* para. 127.

¹⁴ Smart Communities Comments at 81; see also Letter from Gerard Lavery Lederer, Counsel, Smart Communities, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, *Ex Parte* Submission at 33 (filed Sept. 19, 2018).

¹⁵ Letter from Nancy Werner, NATOA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 4-5 (filed Sept. 19, 2018).

¹⁶ See *supra* para. 106.

applications to be processed in less time than the Commission's new shot clocks. With the passage of time, siting agencies have become more efficient in processing siting applications and this, in turn, should reduce any economic burden the Commission's new shot clock provisions have on them.

8. The Commission has carefully considered the impact of its new shot clocks on siting authorities and has established shot clocks that take into consideration the nature and scope of siting requests by establishing shot clocks of different lengths of time that depend on the nature of the siting request at issue.¹⁷ The length of these shot clocks is based in part on the need to ensure that local governments have ample time to take any steps needed to protect public safety and welfare and to process other pending utility applications.¹⁸ Since local siting authorities have gained experience in processing siting requests in an expedited fashion, they should be able to comply with the Commission's new shot clocks.

9. The Commission has taken into consideration the concerns of the Smart Communities and Special Districts Coalition and NATOA. It has established shot clocks that will not favor wireless providers over other applicants with pending siting applications. Further, instead of adopting a deemed granted remedy that would grant a siting application when a shot clock lapses without a decision on the merits, the Commission provides guidance as to the appropriate judicial remedy that applicants may pursue and examples of exceptional circumstance where a siting authority may be justified in needing additional time to review a siting application then the applicable shot clock allows.¹⁹ Under this approach, the applicant may seek injunctive relief as long as several minimum requirements are met. The siting authority, however, can rebut the presumptive reasonableness of the applicable shot clock under certain circumstances. The circumstances under which a siting authority might have to do this will be rare. Under this carefully crafted approach, the interests of siting applicants, siting authorities, and citizens are protected.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

10. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.²⁰

11. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.²¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²³ A "small business

¹⁷ See *supra* paras. 105-112.

¹⁸ *Id.*

¹⁹ See *supra* paras. 116-131.

²⁰ 5 U.S.C. § 604(a)(3).

²¹ See 5 U.S.C. § 604(a)(3).

²² 5 U.S.C. § 601(6).

²³ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an

concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁴

13. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.²⁵ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.²⁶ These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 28.8 million businesses.²⁷

14. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”²⁸ Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).²⁹

15. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”³⁰ U.S. Census Bureau data from the 2012 Census of Governments³¹ indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.³² Of this number there were

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agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁴ 15 U.S.C. § 632.

²⁵ See 5 U.S.C. § 601(3)-(6).

²⁶ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1—What is a small business?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

²⁷ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

²⁸ 5 U.S.C. § 601(4).

²⁹ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html/tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

³⁰ 5 U.S.C. § 601(5).

³¹ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.CO G#>.

³² See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

37, 132 General purpose governments (county³³, municipal and town or township³⁴) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts³⁵ and special districts³⁶) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.³⁷ Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”³⁸

16. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.³⁹ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁴⁰ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁴¹ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁴² Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications

³³ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

³⁴ See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States—States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

³⁵ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

³⁶ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

³⁷ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States—States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

³⁸ *Id.*

³⁹ U.S. Census Bureau, 2012 NAICS Definitions, “517210 Wireless Telecommunications Carriers (Except Satellite),” See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&typib&id=ib.en/ECN.NAICS2012.517210>.

⁴⁰ 13 CFR § 121.201, NAICS Code 517210.

⁴¹ U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210.

⁴² *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

carriers (except satellite) are small entities.

17. The Commission's own data—available in its Universal Licensing System—indicate that, as of May 17, 2018, there are 264 Cellular licensees that will be affected by our actions.⁴³ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.⁴⁴ Of this total, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁴⁵ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

18. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio services include services operating in spectrum licensed under Part 95 of our rules.⁴⁶ These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service.⁴⁷ There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons.⁴⁸ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁴⁹ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁵⁰ Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. We note however that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by our actions in this proceeding.

19. *Public Safety Radio Licensees.* Public Safety Radio Pool licensees as a general matter, include police, fire, local government, forestry conservation, highway maintenance, and emergency

⁴³ See <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁴⁴ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁴⁵ See *id.*

⁴⁶ 47 CFR Part 90.

⁴⁷ The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of Part 95 of the Commission's rules. See generally 47 CFR Part 95.

⁴⁸ 13 CFR § 121.201, NAICS Code 517312.

⁴⁹ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210.

⁵⁰ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

medical services.⁵¹ Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵² For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁵³ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁵⁴ Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services.⁵⁵ There are 3,121 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of March 29, 2017.⁵⁶ We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

20. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications.⁵⁷ The appropriate size standard for this category under SBA rules is that such a business

⁵¹ See subparts A and B of Part 90 of the Commission's Rules, 47 CFR §§ 90.1-90.22. Police licensees serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees are comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include state, county, or municipal entities that use radio for official purposes. State departments of conservation and private forest organizations comprise forestry service licensees that set up communications networks among fire lookout towers and ground crews. State and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Additional licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

⁵² See 13 CFR § 121.201, NAICS Code 517210.

⁵³ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210*. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210.

⁵⁴ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁵⁵ This figure was derived from Commission licensing records as of June 27, 2008. Licensing numbers change daily. We do not expect this number to be significantly smaller as of the date of this order. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of public safety licensees that have less than 1,500 employees.

⁵⁶ Based on an FCC Universal Licensing System search of March 29, 2017. Search parameters: Radio Service = PA—Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

⁵⁷ U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Carriers (Except Satellite)," See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210> (last visited Mar. 6, 2018).

is small if it has 1,500 or fewer employees.⁵⁸ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁵⁹ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁶⁰ Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

21. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users.⁶¹ Of this number there are a total of 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz, which is the range affected by the *Third Report and Order*.⁶² The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

22. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define "small entity" for MAS licensees as an entity that has average annual gross revenues of less than \$15 million over the three previous calendar years.⁶³ A "Very small business" is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than \$3 million over the preceding three calendar years.⁶⁴ The SBA has approved these definitions.⁶⁵ The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications.

23. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS

⁵⁸ See 13 CFR § 121.201, NAICS Code 517210.

⁵⁹ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210*. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210.

⁶⁰ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁶¹ This figure was derived from Commission licensing records as of September 19, 2016. Licensing numbers change on a daily basis. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of PLMR licensees that have fewer than 1,500 employees.

⁶² This figure was derived from Commission licensing records as of August 16, 2013. Licensing numbers change daily. We do not expect this number to be significantly smaller as of the date of this order. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of licensees that have fewer than 1,500 employees.

⁶³ See *Amendment of the Commission's Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008 para. 123 (2000).

⁶⁴ *Id.*

⁶⁵ See Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (June 4, 1999).

licenses in 176 EAs was conducted.⁶⁶ Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

24. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The closest applicable definition of a small entity is the "Wireless Telecommunications Carriers (except Satellite)" definition under the SBA rules.⁶⁷ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁶⁸ For this category, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁶⁹ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁷⁰ Thus under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by our action can be considered small.

25. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high-speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁷¹

26. *BRS* - In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁷² The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent

⁶⁶ See *Multiple Address Systems Spectrum Auction Closes*, Public Notice, 16 FCC Rcd 21011 (2001).

⁶⁷ 13 CFR § 121.201, NAICS Code 517210.

⁶⁸ *Id.*

⁶⁹ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210.

⁷⁰ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁷¹ *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

⁷² 47 CFR § 21.961(b)(1).

BRS licensees do not meet the small business size standard).⁷³ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

27. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁷⁴ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁷⁵ Auction 86 concluded in 2009 with the sale of 61 licenses.⁷⁶ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

28. *EBS* - The Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.⁷⁷ The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees.⁷⁸ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.⁷⁹ Of this total, 3,083 operated with fewer than 1,000 employees.⁸⁰ Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census Bureau data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational

⁷³ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

⁷⁴ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

⁷⁵ *Id.* at 8296 para. 73.

⁷⁶ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

⁷⁷ U.S. Census Bureau, 2017 NAICS Definitions, "517311 Wired Telecommunications Carriers," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2017>.

⁷⁸ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁷⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517110.

⁸⁰ *Id.*

institutions and school districts, which are by statute defined as small businesses.⁸¹

29. *Location and Monitoring Service (LMS).* LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$15 million.⁸² A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$3 million.⁸³ These definitions have been approved by the SBA.⁸⁴ An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

30. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”⁸⁵ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.⁸⁶ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.⁸⁷ The 2012 Economic Census reports that 751 firms in this category operated in that year.⁸⁸ Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more.⁸⁹ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

31. The Commission has estimated the number of licensed commercial television stations to be 1,377.⁹⁰ Of this total, 1,258 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 384.⁹¹ Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how

⁸¹ The term “small entity” within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

⁸² *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182, 15192 para. 20 (1998); *see also* 47 CFR § 90.1103.

⁸³ *Id.*

⁸⁴ *See* Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Feb. 22, 1999).

⁸⁵ U.S. Census Bureau, 2017 NAICS Definitions, “515120 Television Broadcasting,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515120&search=2017+NAICS+Search&search=2017>.

⁸⁶ *Id.*

⁸⁷ 13 CFR § 121.201; 2012 NAICS Code 515120.

⁸⁸ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515120.

⁸⁹ *Id.*

⁹⁰ *Broadcast Station Totals as of June 30, 2018*, Press Release (MB, rel. Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals Press Release), <https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf>.

⁹¹ *Id.*

many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations.⁹² Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

32. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included.⁹³ Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

33. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”⁹⁴ The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts.⁹⁵ Economic Census data for 2012 show that 2,849 radio station firms operated during that year.⁹⁶ Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.⁹⁷ Therefore, based on the SBA’s size standard the majority of such entities are small entities.

34. According to Commission staff review of the BIA/Kelsey, LLC’s Publications, Inc. Media Access Pro Radio Database (BIA) as of January 2018, about 11,261 (or about 99.92 percent) of 11,270 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition.⁹⁸ The Commission has estimated the number of licensed commercial AM radio stations to be 4,633 stations and the number of commercial FM radio stations to be 6,738, for a total number of 11,371.⁹⁹ We note, that the Commission has also estimated the number of licensed NCE radio stations to be 4,128.¹⁰⁰ Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

⁹² *Id.*

⁹³ See 13 CFR § 21.103(a)(1) “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.”

⁹⁴ U.S. Census Bureau, 2017 NAICS Definitions, “515112 Radio Stations,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

⁹⁵ 13 CFR § 121.201, NAICS Code 515112.

⁹⁶ U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* NAICS Code 515112, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112.

⁹⁷ *Id.*

⁹⁸ BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

⁹⁹ Broadcast Station Totals as of June 30, 2018, Press Release (MB Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals), <https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf>.

¹⁰⁰ *Id.*

35. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.¹⁰¹ The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation.¹⁰² We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

36. *FM Translator Stations and Low Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations.¹⁰³ This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public.¹⁰⁴ Programming may originate in their own studio, from an affiliated network, or from external sources.¹⁰⁵ The SBA has established a small business size standard which consists of all radio stations whose annual receipts are \$38.5 million dollars or less.¹⁰⁶ U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year.¹⁰⁷ Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.¹⁰⁸ Therefore, based on the SBA's size standard, we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

37. *Multichannel Video Distribution and Data Service (MVDDS).* MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years.¹⁰⁹ These definitions were approved by the SBA.¹¹⁰ On January 27, 2004, the Commission

¹⁰¹ 13 CFR § 121.103(a)(1). "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both."

¹⁰² 13 CFR § 121.102(b).

¹⁰³ See, U.S. Census Bureau, 2017 NAICS Definitions, "515112 Radio Stations," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ 13 CFR § 121.201, NAICS code 515112.

¹⁰⁷ U.S. Census Bureau, 2012 *Economic Census of the United States*, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 515112*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112.

¹⁰⁸ *Id.*

¹⁰⁹ *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers,*

completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.¹¹¹ Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.¹¹²

38. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹¹³ Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.¹¹⁴ For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.¹¹⁵ Of this total, 299 firms had annual receipts of less than \$25 million.¹¹⁶ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

39. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹¹⁷ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.¹¹⁸ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.¹¹⁹ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.¹²⁰ For this category, U.S. Census data for 2012 show that there

(Continued from previous page) _____

Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

¹¹⁰ See Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 13, 2002).

¹¹¹ See “*Multichannel Video Distribution and Data Service Spectrum Auction Closes; Winning Bidders Announced*,” Public Notice, 19 FCC Rcd 1834 (2004).

¹¹² See “*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63*,” Public Notice, 20 FCC Rcd 19807 (2005).

¹¹³ U.S. Census Bureau, 2017 NAICS Definitions, “517410 Satellite Telecommunications,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

¹¹⁴ 13 CFR § 121.201, NAICS Code 517410.

¹¹⁵ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS Code 517410, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~517410.

¹¹⁶ *Id.*

¹¹⁷ See U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code “517919 All Other Telecommunications,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ 13 CFR § 121.201, NAICS Code 517919.

were 1,442 firms that operated for the entire year.¹²¹ Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million and 42 firms had annual receipts of \$25 million to \$49, 999,999.¹²² Thus, a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

40. *Fixed Microwave Services.* Microwave services include common carrier,¹²³ private-operational fixed,¹²⁴ and broadcast auxiliary radio services.¹²⁵ They also include the Local Multipoint Distribution Service (LMDS),¹²⁶ the Digital Electronic Message Service (DEMS),¹²⁷ the 39 GHz Service (39 GHz),¹²⁸ the 24 GHz Service,¹²⁹ and the Millimeter Wave Service¹³⁰ where licensees can choose between common carrier and non-common carrier status.¹³¹ At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services.¹³² The Commission has not yet defined a small business size standard for microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.¹³³ U.S. Census Bureau data for 2012, show that there were 967 firms in this category that operated for the entire year.¹³⁴ Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

41. The Commission notes that the number of firms does not necessarily track the number of

¹²¹ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS code 517919, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919.

¹²² *Id.*

¹²³ See 47 CFR Part 101, Subpart I.

¹²⁴ Persons eligible under parts 80 and 90 of the Commission’s rules can use Private-Operational Fixed Microwave services. See 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

¹²⁵ See 47 CFR Parts 74, 78 (governing Auxiliary Microwave Service) Available to licensees of broadcast stations, cable operators, and to broadcast and cable network entities. Auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes TV pickup and CARS pickup, which relay signals from a remote location back to the studio.

¹²⁶ See 47 CFR §§ 101, 1001-101, 1017.

¹²⁷ See 47 CFR §§ 101, 101.501-101.538.

¹²⁸ See 47 CFR Part 101, Subpart N (reserved for Competitive bidding procedures for the 38.6-40 GHz Band).

¹²⁹ See *id.*

¹³⁰ See 47 CFR §§ 101, 101.1501-101.1527.

¹³¹ See 47 CFR §§ 101.533, 101.1017.

¹³² These statistics are based on a review of the Universal Licensing System on September 22, 2015.

¹³³ 13 CFR § 121.201.

¹³⁴ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series, “Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

licensees. The Commission also notes that it does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. The Commission estimates however, that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

42. *Non-Licensee Owners of Towers and Other Infrastructure.* Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission's Antenna Structure Registration ("ASR") system and comply with applicable rules regarding review for impact on the environment and historic properties.

43. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a "Constructed" status and 13,987 registration records reflecting a "Granted, Not Constructed" status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.¹³⁵ Regarding towers that do not require ASR registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which we seek comment. Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, we are unable to determine the number of non-licensee tower owners that are small entities. We believe, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which we seek comment. We do not have any basis for estimating the number of such non-licensee owners that are small entities.

44. The closest applicable SBA category is All Other Telecommunications, and the appropriate size standard consists of all such firms with gross annual receipts of \$32.5 million or less.¹³⁶ For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year.¹³⁷ Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999.¹³⁸ Thus, under this SBA size standard a majority of the firms potentially affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

45. The *Third Report and Order* does not establish any reporting, recordkeeping, or other

¹³⁵ We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

¹³⁶ 13 CFR § 121.201, NAICS Code 517919.

¹³⁷ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS code 517919, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~517919.

¹³⁸ *Id.*

compliance requirements for companies involved in wireless infrastructure deployment.¹³⁹ In addition to not adopting any reporting, recordkeeping or other compliance requirements, the Commission takes significant steps to reduce regulatory impediments to infrastructure deployment and, therefore, to spur the growth of personal wireless services. Under the Commission's approach, small entities as well as large companies will be assured that their deployment requests will be acted upon within a reasonable period of time and, if their applications are not addressed within the established time frames, applicants may seek injunctive relief granting their siting applications. The Commission, therefore, has taken concrete steps to relieve companies of all sizes of uncertainty and has eliminated unnecessary delays.

46. The *Third Report and Order* also does not impose any reporting or recordkeeping requirements on state and local governments. While some commenters argue that additional shot clock classifications would make the siting process needlessly complex without any proven benefits, the Commission concludes that any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process.¹⁴⁰ The Commission's actions are consistent with the statutory language of Section 332 and therefore reflect Congressional intent. Further, siting agencies have become more efficient in processing siting applications and will be able to take advantage of these efficiencies in meeting the new shot clocks. As a result, the additional shot clocks that the Commission adopts will foster the deployment of the latest wireless technology and serve consumer interests.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹⁴¹

48. The steps taken by the Commission in the *Third Report and Order* eliminate regulatory burdens for small entities as well as large companies that are involved with the deployment of personal wireless services infrastructure. By establishing shot clocks and guidance on injunctive relief for personal wireless services infrastructure deployments, the Commission has standardized and streamlined the permitting process. These changes will significantly minimize the economic burden of the siting process on all entities, including small entities, involved in deploying personal wireless services infrastructure. The record shows that permitting delays imposes significant economic and financial burdens on companies with pending wireless infrastructure permits. Eliminating permitting delays will remove the associated cost burdens and enabling significant public interest benefits by speeding up the deployment of personal wireless services and infrastructure. In addition, siting agencies will be able to utilize the efficiencies that they have gained over the years processing siting applications to minimize financial impacts.

49. The Commission considered but did not adopt proposals by commenters to issue “Best Practices” or “Recommended Practices,”¹⁴² and to develop an informal dispute resolution process and

¹³⁹ See *supra* para. 144.

¹⁴⁰ See *supra* para. 110.

¹⁴¹ 5 U.S.C. § 603(c)(1)-(4).

¹⁴² KS Rep. Sloan Comments at 2; Nokia Comments at 10.

mediation program,¹⁴³ noting that the steps taken in the *Third Report and Order* address the concerns underlying these proposals to facilitate cooperation between parties to reach mutually agreed upon solutions.¹⁴⁴ The Commission anticipates that the changes it has made to the permitting process will provide significant efficiencies in the deployment of personal wireless services facilities and this in turn will benefit all companies, but particularly small entities, that may not have the resources and economies of scale of larger entities to navigate the permitting process. By adopting these changes, the Commission will continue to fulfill its statutory responsibilities, while reducing the burden on small entities by removing unnecessary impediments to the rapid deployment of personal wireless services facilities and infrastructure across the country.

Report to Congress

^{50.} The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹⁴⁵ In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Report and Order* and FRFA (or summaries thereof) also will be published in the *Federal Register*.¹⁴⁶

¹⁴³ NATOA *et al.* Comments at 16-17.

¹⁴⁴ *See supra* para. 131.

¹⁴⁵ 5 U.S.C. § 801(a)(1)(A).

¹⁴⁶ 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

Perhaps the defining characteristic of the communications sector over the past decade is that the world is going wireless. The smartphone's introduction in 2007 may have seemed an interesting novelty to some at the time, but it was a precursor of a transformative change in how consumers access and use the Internet. 4G LTE was a key driver in that change.

Today, a new transition is at hand as we enter the era of 5G. At the FCC, we're working hard to ensure that the United States leads the world in developing this next generation of wireless connectivity so that American consumers and our nation's economy enjoy the immense benefits that 5G will bring.

Spectrum policy of course features prominently in our 5G strategy. We're pushing a lot more spectrum into the commercial marketplace. On November 14, for example, our 28 GHz band spectrum auction will begin, and after it ends, our 24 GHz band spectrum auction will start. And in 2019, we plan to auction off three additional spectrum bands.

But all the spectrum in the world won't matter if we don't have the infrastructure needed to carry 5G traffic. New physical infrastructure is vital for success here. That's because 5G networks will depend less on a few large towers and more on numerous small cell deployments—deployments that for the most part don't exist today.

But installing small cells isn't easy, too often because of regulations. There are layers of (sometimes unnecessary and unreasonable) rules that can prevent widespread deployment. At the federal level, we acted earlier this year to modernize our regulations and make our own review process for wireless infrastructure 5G fast. And many states and localities have similarly taken positive steps to reform their own laws and increase the likelihood that their citizens will be able to benefit from 5G networks.

But as this *Order* makes clear, there are outliers that are unreasonably standing in the way of wireless infrastructure deployment. So today, we address regulatory barriers at the local level that are inconsistent with federal law. For instance, big-city taxes on 5G slow down deployment there and also jeopardize the construction of 5G networks in suburbs and rural America. So today, we find that all fees must be non-discriminatory and cost-based. And when a municipality fails to act promptly on applications, it can slow down deployment in many other localities. So we mandate shot clocks for local government review of small wireless infrastructure deployments.

I commend Commissioner Carr for his leadership in developing this *Order*. He worked closely with many state and local officials to understand their needs and to study the policies that have worked at the state and local level. It should therefore come as no surprise that this *Order* has won significant support from mayors, local officials, and state legislators.

To be sure, there are some local governments that don't like this *Order*. They would like to continue extracting as much money as possible in fees from the private sector and forcing companies to navigate a maze of regulatory hurdles in order to deploy wireless infrastructure. But these actions are not only unlawful, they're also short-sighted. They slow the construction of 5G networks and will delay if not prevent the benefits of 5G from reaching American consumers. And let's also be clear about one thing: When you raise the cost of deploying wireless infrastructure, it is those who live in areas where the

investment case is the most marginal—rural areas or lower-income urban areas—who are most at risk of losing out. And I don’t want 5G to widen the digital divide; I want 5G to help close that divide.

In conclusion, I’d like to again thank Commissioner Carr for leading this effort and his staff for their diligent work. And I’m grateful to the hardworking staff across the agency who have put many hours into this *Order*. In particular, thanks to Jonathan Campbell, Stacy Ferraro, Garnet Hanly, Leon Jackler, Eli Johnson, Jonathan Lechter, Kate Mataves, Betsy McIntyre, Darrel Pae, Jennifer Salhus, Dana Shaffer, Jiaming Shang, David Sieradzki, Michael Smith, Don Stockdale, Cecilia Sulhoff, Patrick Sun, Suzanne Tetreault, and Joseph Wyer from the Wireless Telecommunications Bureau; Matt Collins, Adam Copeland, Dan Kahn, Deborah Salons, and John Visclosky from the Wireline Competition Bureau; Chana Wilkerson from the Office of Communications Business Opportunities; and Ashley Boizelle, David Horowitz, Tom Johnson, Marcus Maher, Bill Richardson, and Anjali Singh from the Office of General Counsel.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

I enthusiastically support the intent of today's item and the vast majority of its content, as it will lower the barriers that some localities place to infrastructure siting. By tackling exorbitant fees, ridiculous practices, and prolonged delays, we are taking the necessary steps to expedite deployment and make it more cost efficient. Collectively, these provisions will help facilitate the deployment of 5G and enable providers to expand services throughout our nation, with ultimate beneficiaries being the American people.

While this is a tremendous step in the right direction, there are some things that could have been done to improve the situation further. For instance, the agreement reached by all parties in the 1996 Telecommunications Act was that states and localities would have no role over radio frequency emission issues, could not regulate based on the aesthetics of towers and antennas, and were prohibited from imposing any moratoriums on processing wireless siting applications. State and localities did not honor this agreement and the courts have sadly enabled their efforts via harmful and wrongly decided cases. Accordingly, I would have preferred that the aesthetics related provisions in the item be deleted, but I will have to swallow it recognizing that I can't get the rest without it. At the very least, I do appreciate that, at my request, it was clarified that the aesthetic requirements, which must be published in advance, must be objective.

I am also concerned that by setting application and recurring fees that are presumed to be reasonable, the Commission is inviting localities to adopt these rates, even if they are not cost based. Providers should be explicitly provided the right to challenge these rates if they believe they are not cost based. Even if not stated, I hope that providers will challenge unreasonable rates. I thank my colleagues for agreeing to my edits that the application fee presumption applies to all non-recurring costs, not just the application fee.

Further, I think there should be a process and standards in place if a locality decides that it needs more time to review batched applications. Objective criteria are needed regarding what are considered "exceptional circumstances" or "exceptional cases" warranting a longer review period for batch processing, when localities need to inform the applicant that they need more time, how this notification will occur, and how much time they will get. For instance, the item appears to excuse a locality that does not act within the shot clocks for any application if there are "extraordinary circumstances," but there are no parameters on what circumstances we are envisioning. Is a lack of adequate staff or having processing rules or policies in place a sufficient excuse? Such things should be determined upfront, as opposed to allowing courts to decide such matters. Without further clarity, I fear that we may be creating unnecessary loopholes, resulting in further delay.

Finally, I would have liked today's item to be broader and cover the remaining infrastructure issues in the record. First, the Commission's new interpretation of sections 253 and 332 applies beyond small cells. While our focus has been on these newer technologies, there needs to be a recognition that macro towers will continue to play a crucial role in wireless networks. One tower provider states that "[m]acro cell sites will continue to be a central component of wireless infrastructure . . .," because 80 [percent] of the population lives in suburban or rural areas where "macro sites are the most efficient way

to transmit wireless signals.”¹ Further, many of the interpretations in today’s item apply not only to these macro towers, but also to other telecommunications services, including those provided by traditional wireline carriers and potentially cable companies.

Second, the Commission needs to close loopholes in section 6409 that some localities have been exploiting. While these rules pertaining to the modification of existing structures are clear, some localities are trying to undermine Congress’s intent and our actions. For instance, localities are refusing ancillary permissions, such as building or highway permits, to slow down or prevent siting; using the localities’ concealment and aesthetic additions to increase the size of the facility or requiring that poles be replaced with stealth infrastructure for the purpose of excluding facilities from section 6409; placing improper conditions on permits; and forcing providers to sign agreements that waive their rights under section 6409. And, I have been told that some are claiming that section 6409 does not apply to their siting processes. This must stop. I appreciate the Chairman’s firm commitment to my request for an additional item to address such matters, and I expect that it will be coming in the very near future.

Third, there is a need to harmonize our rules regarding compound expansion. Currently, an entity seeking to replace a structure is allowed to expand the facility’s footprint by 30 feet, but if the same entity seeks to expand the tower area to hold new equipment associated with a collocation, a new review is needed. It doesn’t make sense that these situations are treated differently. And while we are at it, the Commission should also harmonize its shot clocks and remedies. These issues should also be added to any future item.

Lastly, the Commission also must finish its review of the comments filed in response to the twilight towers notice, make the revisions to the program comment, and submit it to Advisory Council on Historic Preservation for their review and vote. These towers are eligible, yet not permitted, to hold an estimated 6,500 collocations that will be needed for next-generation services and FirstNet. It is time to bring this embarrassment, which started in 2001, to an end.

Not only do I thank the Chairman for agreeing to additional infrastructure items, but I also thank the Chairman and Commissioner Carr for implementing several of my edits to the item today. Besides those already mentioned, they include applying the aesthetic criteria, including that any requirements must be reasonable, objective, and published in advance, to undergrounding; stating that undergrounding requirements that apply to some, but not all facilities, will be considered an effective prohibition if they materially inhibit wireless service; and adding similar language to the minimum spacing section of the item. Further, the minimum spacing requirements will not apply to replacement facilities or prevent collocations on existing structures. Additionally, localities claiming that an application is incomplete will need to specifically state what rule requires the submission of the missing information.

With this, I approve.

¹ American Tower Ex Parte Letter, WT Docket No. 17-79, n.6 (Aug. 10, 2018).

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

The United States is on the cusp of a major upgrade in wireless technology to 5G. The WALL STREET JOURNAL has called it transformative from a technological and economic perspective. And they're right. Winning the global race to 5G—seeing this new platform deployed in the U.S. first—is about economic leadership for the next decade. Those are the stakes, and here's how we know it.

Think back ten years ago when we were on the cusp of upgrading from 3G to 4G. Think about the largest stocks and some of the biggest drivers of our economy. It was big banks and big oil. Fast forward to today: U.S.-based technology companies, from FAANG (Facebook, Apple, Amazon, Netflix, and Google) down to the latest startup, have transformed our economy and our lives.

Think about your own life. A decade ago, catching a ride across town involved calling a phone number, waiting 20 minutes for a cab to arrive, and paying rates that were inaccessible to many people. Today, we have Lyft, Uber, Via, and other options.

A decade ago, sending money meant going to a brick-and-mortar bank, standing in that rope line, getting frustrated when that pen leashed to the table was out of ink (again!), and ultimately conducting your transaction with a teller. Now, with Square, Venmo, and other apps you can send money or deposit checks from anywhere, 24 hours a day.

A decade ago, taking a road trip across the country meant walking into your local AAA office, telling them the stops along your way, and waiting for them to print out a TripTik booklet filled with maps that you would unfold as you drove down the highway. Now, with Google Maps and other apps you get real-time updates and directions right on your smartphone.

American companies led the way in developing these 4G innovations. But it's not by chance or luck that the United States is the world's tech and innovation hub. We have the strongest wireless economy in the world because we won the race to 4G. No country had faster 4G deployment and more intense investment than we did. Winning the race to 4G added \$100 billion to our GDP. It led to \$125 billion in revenue for U.S. companies that could have gone abroad. It grew wireless jobs in the U.S. by 84 percent. And our world-leading 4G networks now support today's \$950 billion app economy. That history should remind policymakers at all levels of government exactly what is at stake. 5G is about our leadership for the next decade.

And being first matters. It determines whether capital will flow here, whether innovators will start their new businesses here, and whether the economy that benefits is the one here. Or as Deloitte put it: "First-adopter countries . . . could sustain more than a decade of competitive advantage."

We're not the only country that wants to be first to 5G. One of our biggest competitors is China. They view 5G as a chance to flip the script. They want to lead the tech sector for the next decade. And they are moving aggressively to deploy the infrastructure needed for 5G.

Since 2015, China has deployed 350,000 cell sites. We've built fewer than 30,000. Right now, China is deploying 460 cell sites a day. That is twelve times our pace. We have to be honest about this infrastructure challenge. The time for empty statements about carrots and sticks is over. We need a concrete plan to close the gap with China and win the race to 5G.

We take this challenge seriously at the FCC. And we are getting the government out of the way, so that the private sector can invest and compete.

In March, we held that small cells should be treated differently than large, 200-foot towers. And we're already seeing results. That decision cut \$1.5 billion in red tape, and one provider reports that it is now clearing small cells for construction at six times the pace as before.

So we're making progress in closing the infrastructure gap with China. But hurdles remain. We've heard from dozens of mayors, local officials, and state lawmakers who get what 5G means—they understand the economic opportunity that comes with it. But they worry that the billions in investment needed to deploy these networks will be consumed by the high fees and long delays imposed by big, “must-serve” cities. They worry that, without federal action, they may not see 5G. I'd like to read from a few of the many comments I've received over the last few months.

Duane Ankney is a retired coal miner from Montana with a handlebar mustache that would be the envy of nearly any hipster today. But more relevantly, he's a Member of the Montana State Legislature and chairs its Energy and Telecommunications Committee. He writes: “Where I see the problem is, that most of investment capital is spent in the larger urban areas. This is primarily due to the high regulatory cost and the cost recovery [that] can be made in those areas. This leaves the rural areas out.”

Mary Whisenand, an Iowa commissioner, writes: “With 99 counties in Iowa, we understand the need to streamline the network buildout process so it's not just the big cities that get 5G but also our small towns. If companies are tied up with delays and high fees, it's going to take that much longer for each and every Iowan to see the next generation of connectivity.”

Ashton Hayward, the Mayor of Pensacola, Florida, writes: “[E]xcessive and arbitrary fees . . . result[] in nothing more than telecom providers being required to spend limited investment dollars on fees as opposed to spending those limited resources on the type of high-speed infrastructure that is so important in our community.”

And the entire board of commissioners from a more rural area in Michigan writes: “Smaller communities such as those located in St. Clair County would benefit by having the [FCC] reduce the costly and unnecessary fees that some larger communities place on small cells as a condition of deployment. These fees, wholly disproportionate to any cost, put communities like ours at an unfair disadvantage. By making small cell deployment less expensive, the FCC will send a clear message that all communities, regardless of size, should share in the benefits of this crucial new technology.”

They're right. When I think about success—when I think about winning the race to 5G—the finish line is not the moment we see next-gen deployments in New York or San Francisco. Success can only be achieved when all Americans, no matter where they live, have a fair shot at fast, affordable broadband.

So today, we build on the smart infrastructure policies championed by state and local leaders. We ensure that no city is subsidizing 5G. We prevent excessive fees that would threaten 5G deployment. And we update our shot clocks to account for new small cell deployments. I want to thank Commissioner Rosenworcel for improving the new shot clocks with edits that protect municipalities from providers that submit incomplete applications and provide localities with more time to adjust their operations. Her ideas improved this portion of the order.

More broadly, our decision today has benefited from the diverse views expressed by a range of stakeholders. On the local government side, I met with mayors, city planners, and other officials in their home communities and learned from their perspectives. They pushed back on the proposed “deemed

granted” remedy, on regulating rents on their property outside of rights-of-way, and on limits to reasonable aesthetic reviews. They reminded me that they’re the ones that get pulled aside at the grocery store when an unsightly small cell goes up. Their views carried the day on all of those points. And our approach respects the compromises reached in state legislatures around the country by not preempting nearly any of the provisions in the 20 state level small cells bills.

This is a balanced approach that will help speed the deployment of 5G. Right now, there is a cottage industry of consultants spurring lawsuits and disputes in courtrooms and city halls around the country over the scope of Sections 253 and 332. With this decision, we provide clear and updated guidance, which will eliminate the uncertainty inspiring much of that litigation.

Some have also argued that we unduly limit local aesthetic reviews. But allowing reasonable aesthetic reviews—and thus only preventing unreasonable ones—does not strike me as a claim worth lodging.

And some have asked whether this reform will make a real difference in speeding 5G deployment and closing the digital divide. The answer is yes. It will cut \$2 billion in red tape. That’s about \$8,000 in savings per small cell. Cutting these costs changes the prospects for communities that might otherwise get left behind. It will stimulate \$2.4 billion in new small cell deployments. That will cover 1.8 million more homes and businesses—97% of which are in rural and suburban communities. That is more broadband for more Americans.

* * *

In closing, I want to thank my colleagues for working to put these ideas in place. I want to thank Chairman Pai for his leadership in removing these regulatory barriers. And I want to recognize the exceptionally hard-working team at the FCC that helped lead this effort, including, in the Wireless Telecommunications Bureau, Donald Stockdale, Suzanne Tetrault, Garnet Hanly, Jonathan Campbell, Stacy Ferraro, Leon Jackler, Eli Johnson, Jonathan Lechter, Marcus Maher, Betsy McIntyre, Darrel Pae, Jennifer Salhus, Jiaming Shang, and David Sieradzki. I also want to thank the team in the Office of General Counsel, including Tom Johnson, Ashley Boizelle, Bill Richardson, and Anjali Singh.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
APPROVING IN PART, DISSENTING IN PART**

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

A few years ago, in a speech at a University of Colorado event, I called on the Federal Communications Commission to start a proceeding on wireless infrastructure reform. I suggested that if we want broad economic growth and widespread mobile opportunity, we need to avoid unnecessary delays in the state and local approval process. That's because they can slow deployment.

I believed that then. I still believe it now.

So when the FCC kicked off a rulemaking on wireless infrastructure last year, I had hopes. I hoped we could provide a way to encourage streamlined service deployment nationwide. I hoped we could acknowledge that we have a long tradition of local control in this country but also recognize more uniform policies across the country will help us in the global race to build the next generation of wireless service, known as 5G. Above all, I hoped we could speed infrastructure deployment by recognizing the best way to do so is to treat cities and states as our partners.

In one respect, today's order is consistent with that vision. We shorten the time frames permitted under the law for state and local review of the deployment of small cells—an essential part of 5G networks. I think this is the right thing to do because the shot clocks we have now were designed in an earlier era for much bigger wireless facilities. At the same time, we retain the right of state and local authorities to pursue court remedies under Section 332 of the Communications Act. This strikes an appropriate balance. I appreciate that my colleagues were willing to work with me to ensure that localities have time to update their processes to accommodate these new deadlines and that they are not unfairly prejudiced by incomplete applications. I support this aspect of today's order.

But in the remainder of this decision, my hopes did not pan out. Instead of working with our state and local partners to speed the way to 5G deployment, we cut them out. We tell them that going forward Washington will make choices for them—about which fees are permissible and which are not, about what aesthetic choices are viable and which are not, with complete disregard for the fact that these infrastructure decisions do not work the same in New York, New York and New York, Iowa. So it comes down to this: three unelected officials on this dais are telling state and local leaders all across the country what they can and cannot do in their own backyards. This is extraordinary federal overreach.

I do not believe the law permits Washington to run roughshod over state and local authority like this and I worry the litigation that follows will only slow our 5G future. For starters, the Tenth Amendment reserves powers to the states that are not expressly granted to the federal government. In other words, the constitution sets up a system of dual sovereignty that informs all of our laws. To this end, Section 253 balances the interests of state and local authorities with this agency's responsibility to expand the reach of communications service. While Section 253(a) is concerned with state and local requirements that may prohibit or effectively prohibit service, Section 253(d) permits preemption only on a case-by-case basis after notice and comment. We do not do that here. Moreover, the assertion that fees above cost or local aesthetic requirements in a single city are tantamount to a service prohibition elsewhere stretches the statute beyond what Congress intended and legal precedent affords.

In addition, this decision irresponsibly interferes with existing agreements and ongoing deployment across the country. There are thousands of cities and towns with agreements for infrastructure deployment—including 5G wireless facilities—that were negotiated in good faith. So

many of them could be torn apart by our actions here. If we want to encourage investment, upending commitments made in binding contracts is a curious way to go.

Take San Jose, California. Earlier this year it entered into agreements with three providers for the largest small cell-driven broadband deployment of any city in the United States. These partnerships would lead to 4,000 small cells on city-owned light poles and more than \$500 million of private sector investment. Or take Little Rock, Arkansas, where local reforms to the permitting process have put it on course to become one of the first cities to benefit from 5G service. Or take Troy, Ohio. This town of under 26,000 spent time and energy to develop streamlined procedures to govern the placement, installation, and maintenance of small cell facilities in the community. Or take Austin, Texas. It has been experimenting with smart city initiatives to improve transportation and housing availability. As part of this broader effort, it started a pilot project to deploy small cells and has secured agreements with multiple providers.

This declaratory ruling has the power to undermine these agreements—and countless more just like them. In fact, too many municipalities to count—from Omaha to Overland Park, Cincinnati to Chicago and Los Angeles to Louisville—have called on the FCC to halt this federal invasion of local authority. The National Governors Association and National Conference of State Legislatures have asked us to stop before doing this damage. This sentiment is shared by the United States Conference of Mayors, National League of Cities, National Association of Counties, and Government Finance Officers Association. In other words, every major state and municipal organization has expressed concern about how Washington is seeking to assert national control over local infrastructure choices and stripping local elected officials and the citizens they represent of a voice in the process.

Yet cities and states are told to not worry because with these national policies wireless providers will save as much as \$2 billion in costs which will spur deployment in rural areas. But comb through the text of this decision. You will not find a single commitment made to providing more service in remote communities. Look for any statements made to Wall Street. Not one wireless carrier has said that this action will result in a change in its capital expenditures in rural areas. As Ronald Reagan famously said, “trust but verify.” You can try to find it here, but there is no verification. That’s because the hard economics of rural deployment do not change with this decision. Moreover, the asserted \$2 billion in cost savings represents no more than 1 percent of investment needed for next-generation networks.

It didn’t have to be this way. So let me offer three ideas to consider going forward.

First, we need to acknowledge we have a history of local control in this country but also recognize that more uniform policies can help us be first to the future. Here’s an idea: Let’s flip the script and build a new framework. We can start with developing model codes for small cell and 5G deployment—but we need to make sure they are supported by a wide range of industry and state and local officials. Then we need to review every policy and program—from universal service to grants and low-cost loans at the Department of Commerce, Department of Agriculture, and Department of Transportation and build in incentives to use these models. In the process, we can create a more common set of practices nationwide. But to do so, we would use carrots instead of sticks.

Second, this agency needs to own up to the impact of our trade policies on 5G deployment. In this decision we go on at length about the cost of local review but are eerily silent when it comes to the consequences of new national tariffs on network deployment. As a result of our escalating trade war with China, by the end of this year we will have a 25 percent duty on antennas, switches, and routers—the essential network facilities needed for 5G deployment. That’s a real cost and there is no doubt it will diminish our ability to lead the world in the deployment of 5G.

Finally, in this decision the FCC treats the challenge of small cell deployment with a bias toward more regulation from Washington rather than more creative marketplace solutions. But what if instead we focused our efforts on correcting the market failure at issue? What if instead of micromanaging costs we fostered competition? One innovative way to do this involves dusting off our 20-year old over-the-air-reception-device rules, or OTARD rules.

Let me explain. The FCC's OTARD rules were designed to protect homeowners and renters from laws that restricted their ability to set up television and broadcast antennas on private property. In most cases they accomplished this by providing a right to install equipment on property you control—and this equipment for video reception was roughly the size of a pizza box.

Today OTARD rules do not contemplate 5G deployment and small cells. But we could change that by clarifying our rules. If we did, a lot of benefits would follow. By creating more siting options for small cells, we would put competitive pressure on public rights-of-way, which could bring down fees through competition instead of the government ratemaking my colleagues offer here. Moreover, this approach would create more opportunities for rural deployment by giving providers more siting and backhaul options and creating new use cases for signal boosters. Add this up and you get more competitive, more ubiquitous, and less costly 5G deployment.

We don't explore these market-based alternatives in today's decision. We don't say a thing about the real costs that tariffs impose on our efforts at 5G leadership. And we don't consider creative incentive-based systems to foster deployment, especially in rural areas.

But above all we neglect the opportunity to recognize what is fundamental: if we want to speed the way for 5G service we need to work with cities and states across the country because they are our partners. For this reason, in critical part, I dissent.

ORDINANCE O-17-2023

AN ORDINANCE ADOPTING THE CITY OF COLLEYVILLE DESIGN MANUAL FOR THE INSTALLATION OF NODES AND NODE SUPPORT POLES IN THE CITY RIGHTS-OF-WAY, PURSUANT TO TEXAS LOCAL GOVERNMENT CODE CHAPTER 284; AND DESIGNATING DESIGN DISTRICTS FOR THE INSTALLATION OF NODES AND NODES SUPPORT POLES, TO BE DESIGNATED THEREIN; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Chapter 284 of the Local Government Code, effective September 1, 2017, provides a regulatory framework governing the installation of Nodes and Node Support Poles in the City's Right-of-Way; and

WHEREAS, pursuant to Chapter 284, Network Providers installing wireless equipment in the City's Right-of-Way must comply with the Design Manual adopted by the City for that purpose; and

WHEREAS, Chapter 284 authorizes the City to designate Design Districts and Historic Districts, wherein heightened aesthetic requirements may be applied to such equipment; and

WHEREAS, the City of Colleyville has determined that certain areas of the city which should be designated as design districts, for purposes of Chapter 284, in order to preserve the character and aesthetic qualities of these areas;

WHEREAS, the City Council, in the exercise of its legislative discretion, has concluded that the attached Design Manual should be approved;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS, THAT:

Sec. 1. THAT the following areas of the City of Colleyville are hereby designated as Historic Districts and Design Districts for the installation of network nodes and node support poles, pursuant to Chapter 284 of the Local Government Code:

1. Tax Increment Finance Districts #1 and #1A
2. Precinct Line Road within the City limits
3. The Bidault House and property located at 1416 Glade Road

- Sec. 2. THAT the Colleyville Design Manual for the Installation of Network Nodes and Node Support Poles, attached hereto as Exhibit "A", is hereby adopted. All Network Providers seeking to install wireless equipment in the right-of-way of the City of Colleyville pursuant to Chapter 284 of the Local Government Code must comply with this Design Manual.
- Sec. 3. THAT all provisions of the ordinances of the City of Colleyville in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Colleyville not in conflict with the provisions of this Ordinance shall remain in full force and effect.
- Sec. 4. THAT if any section, paragraph, subdivision, clause, phrase or provision of this Ordinance shall be judged to be invalid or unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of this Ordinance as a whole or any portion thereof other than the portion so decided to be invalid or unconstitutional.
- Sec. 5. THAT this Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

AND IT IS SO ORDERED.

The first reading and public hearing being conducted on the 1st day of August 2017.

The second reading and public hearing being conducted on the 15th day of August 2017.

PASSED AND APPROVED BY A VOTE OF 6 AYES, 0 NAYS, AND 0 ABSTENTIONS ON THIS THE 15TH DAY OF AUGUST 2017.

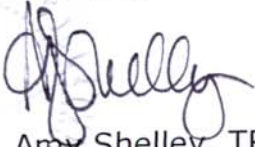
Mayor Richard Newton
Place 1, Tammy Nakamura
Place 4, George Dodson
Place 6, Mike Taylor

aye
aye
aye
aye

Mayor Pro Tem Bobby Lindamood
Place 3, Kathy Wheat
Place 5, Nancy Coplen

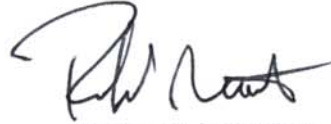
aye
aye
aye

ATTEST:

A handwritten signature in black ink, appearing to read "A. Shelley".

Amy Shelley, TRMC
City Secretary

CITY OF COLLEYVILLE

A handwritten signature in black ink, appearing to read "Richard Newton".

Richard Newton
Mayor

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read "Whitt L. Wyatt".

Whitt L. Wyatt
City Attorney



Design Manual

for the

Installation of Network Nodes and Node Support Poles

pursuant to Tex. Loc. Gov. Code, Chapter 284.

Table of Contents

SECTION 1. PURPOSE AND APPLICABILITY.....	3
SECTION 2. DEFINITIONS.....	3
SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.	8
SECTION 4. GUIDELINES ON PLACEMENT.	11
SECTION 5. GENERAL AESTHETIC REQUIREMENTS.....	15
SECTION 6. ELECTRICAL SUPPLY.....	16
SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.....	16
SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR.....	16
SECTION 9. INSTALLATION AND INSPECTIONS.....	18
SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.	19
SECTION 11. GENERAL PROVISIONS.	19
SECTION 12. ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION.....	21
SECTION 13-19 RESERVED	21
SECTION 20. DESIGN MANUAL - UPDATES.....	21

SECTION 1. PURPOSE AND APPLICABILITY.

The City of Colleyville (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.

Purpose: Loc. Gov. Code, Chapter 284 allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 as “Micro Network Nodes”, “Network Nodes”, and “Node Support Poles”.

As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301¹, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

Applicability: This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

City Rights-of-Way Management Ordinance: A Network Provider shall comply with the City’s Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

SECTION 2. DEFINITIONS.

The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.²

Abandon and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes means:

- (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of Colleyville, Texas or its lawful successor.

City Manager shall mean City Manager or designee

Chapter 284 means Tex. Loc. Gov. Code, Chapter 284.

Collocate and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Concealment or Camouflaged means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Disaster emergency or *disaster* or *emergency* means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city state or federal governmental authorities.

Distributed Antenna System or DAS shall be included as a type of "Network Node."

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City approved and lawfully permitted location for the Network Node.

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

Mayor means the Mayor for the City.

Micro network node means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

Municipally owned utility pole means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

MUTCD means Manual of Uniform Traffic Control Devices.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower.

Network provider means:

- (A) a wireless service provider; or
- (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
 - (i) network nodes; or
 - (ii) node support poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a network node.

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, municipally owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as “Network Provider.”

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

Public right-of-way management ordinance means an ordinance that complies with Chapter 284, Subchapter C.

Service pole means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Small cell shall be included as a type of “Network Node.”

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-

way may include sidewalks and utility easements, a “Street” does not. A “street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

SWPPP shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Underground Requirement Area shall mean means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless service to the public.

Wireless facilities mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284.

SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

A. Prohibited or Restricted Areas for Certain Wireless facilities, except with Separate City Agreement or Subject to Concealment Conditions.

1. ***Municipal Parks and Residential Areas.*** In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:

(1) not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

(2) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1. In accordance with Chapter 284, Sec. 284.104 (b), a Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

2. ***Historic District and Design Districts.*** In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City shall require reasonable design or Concealment measures for the Network Nodes or Node Support Poles. Therefore, any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

2.2. The City request that a Network Provider explore the feasibility of using Camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts or in an Historic District.

2.3. Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

2.4. Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

3. **Historic Landmarks.** A Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, state or federal government (*see, for example, and not limited to* §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit. It is recommended that each permit application disclose if it is within 300 feet of such a structure.

4. **Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

B. Least preferable locations.

1. **Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

2. **Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design Districts or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

C. Most preferable locations

1. *Industrial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

2. *Highway Rights-of-Way* areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

3. *Retail and Commercial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

D. Designated Areas.

1. The City Council may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

2. Currently designated *Historic Districts* are:

(a) Historic District Number 1 is the area referred to as the Bidault House. Its boundaries are: the property at 1416 Glade Road.

3. Currently designated *Design District* areas are:

(a) Design District Number 1 is the area referred to as Tax Increment Finance Districts #1 and #1A. Its boundaries are: as shown on the City's official Tax Increment Finance map.

(b) Design District Number 2 is the area referred to as Precinct Line Road. Its boundaries are: the limits of Precinct Line Road within the city limits of the City of Colleyville.

4. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

5. While not required under Chapter 284 to designate Underground Compliance Areas to prohibit above ground Wireless facilities, the City may also, from time to time, also designate Underground Compliance Areas.

Currently designated *Underground Compliance Areas* are:

(a) Underground Compliance Area Number 1 is the area referred to as _____. Its boundaries are: _____.

E. Exceptions

The City by its discretionary consent and agreement may grant exception to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.

1. *Existing telephone or electrical lines between existing utility poles*. Micro Network Nodes shall only be lashed on existing telephone or electrical lines between existing utility poles

(electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.

2. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.

3. *Municipal Service Poles*:

a. *Non-decorative street lights* with a height of more than 20 feet.

b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

c. *Street signage* shall be a low priority use for attachment of a Network Node.

d. *Other municipal Service pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

5. *Ground Equipment*. Ground equipment should be minimal and the least intrusive.

SECTION 4. GUIDELINES ON PLACEMENT.

A. Generally.

In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
2. obstruct the legal use of a public right-of-way by other utility providers;
3. violate nondiscriminatory applicable codes;
4. violate or conflict with the municipality's publicly disclosed public right-of-way management ordinance or this Design Manual.
5. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

B. General Requirements and Information:

1. *Size Limits*. Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro

Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.³

2. *State and Federal Rights-of-way permit.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. *Confirmation of non-interference with City Safety Communication Networks.*

a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304.

b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City's public safety radio infrastructure.

4. *Improperly Located Network Node facilities, Node Support Poles and related ground equipment:*

a. Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the City Manager and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall promptly remove the Network Node facilities, Node Support Poles or ground equipment.

b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days' notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of \$500 per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

C. Underground Requirement Areas.

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning

regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider's permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

D. Network Node facilities placement:

1. *Right-of-Way:* Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way.

2. *Height above ground.* Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

3. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. *Limit on number of Network Nodes per Site.* There shall be no more than one Network Node on any one Pole.

E. New Node Support Poles.

1. *New Node Support Poles Spacing.* New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

2. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

- (1) 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- (2) 55 feet above ground level.

F. Ground Equipment.

1. *Ground Equipment near street corners and intersections:* Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

2. *Ground Equipment near Municipal Parks.* For the safety of Municipal park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install Ground Equipment in a Right-of-Way that is within a Park or within 250 feet of the boundary line of a Park, unless approved by the City Manager and Parks Director in writing.

3. *Minimize Ground equipment density:* In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of xxx [25?] sq. ft. or more.

G. Municipal Service Poles:

1. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. *Required industry standard pole load analysis:* Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108.

3. *Height of attachments:* All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

4. *Installations on Traffic Signals:* Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:

- i. Be encased in a separate conduit than the traffic light electronics;
- ii. Have a separate electric power connection than the traffic signal structure; and
- iii. Have a separate access point than the traffic signal structure.

5. *Installations on Street signage:* Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public. Installation of Network Node facilities on any street signage structures that has electrics shall:

- i. Be encased in a separate conduit than any City signage electronics;
 - ii. Have a separate electric power connection than the signage structure;
- and
- iii. Have a separate access point than the signage structure.

SECTION 5. GENERAL AESTHETIC REQUIREMENTS

A. Concealment.

1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.

2. It is also the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

3. The Network Node facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

B. New Node Support Pole Spacing.

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

C. Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.

D. Allowed Colors.

Colors in Historic Districts and Design Districts must be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

Colors in Historic Districts and Design Districts must be approved by the City Manager from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or

shall match the background of any structure the facilities are located upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.

SECTION 6. ELECTRICAL SUPPLY

A. Provider Responsible for Electricity. Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.

B. Generators Prohibited. Network Provider shall not allow or install generators or back-up generators in the Right-of-Way in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.

1. Insurance, bonding and security deposits shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov't Code.

SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR

A. Removal or Relocation by Network Provider.

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than 10 business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.

3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

B. Removal or Relocation Required for City Project.

1. Removal and Relocation of Network Provider's Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

2. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way

3. Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and feral law, including the common-law.

4. Network Provider shall, at the City Manager's direction, remove or relocate the same at Network Provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Manager reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street ort public rights-of-way to enhance the traveling publics use for travel and transportation.

5. If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Manager within 90 days of Network Provider 's receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider.

6. Network Provider shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

C. Removal Required by City for Safety and Imminent Danger Reasons.

1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider

fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense.

4. The City Manager shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

5. Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

SECTION 9. INSTALLATION AND INSPECTIONS

A. Installation.

Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the City Manager. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

B. Inspections.

The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way as the City Manager deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Manager shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being Abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or Abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Manager and City Manager in writing of such removal or Abandonment and shall file with the City Manager and City Manager the location and description of each Micro Network Node, Network Node, Node Support Pole and related ground equipment removed or Abandoned. The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

SECTION 11. GENERAL PROVISIONS.

1. As Built Maps and Records. Network Provider's as built maps and records shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

2. Courtesy and Proper Performance. Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

3. Drug Policy. Drug policy of Network provider's personnel, and contractors in the rights-of-way shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City rights-of-way is prohibited.

4. Allocation of Funds for Removal and Storage. The City has appropriated \$0 to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under this Article, and no other funds are allocated.

5. Ownership. No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the City Manager prior to any work in the Right-of-Way.

6. Tree Maintenance. Network Provider, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the City Manager, Network Provider shall trim under the supervision and direction of the Parks Director. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

7. Signage. Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the City Manager.

Except as required by Laws or by the Utility Pole owner, Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

8. Graffiti Abatement. As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

9. Restoration. Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from

Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 calendar days following the date of such removal or relocation, at Network Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

10. Network provider's responsibility. Network Provider shall be responsible and liable for the acts and omissions of Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

SECTION 13-19 RESERVED

SECTION 20. DESIGN MANUAL - UPDATES

Placement or Modification of Micro Network Node, Network Node, Node Support Pole and related ground equipment shall comply with the City's Design Manual at the time the Permit for installation or Modification is approved and as amended from time to time.

¹ Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

² The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "Collocate" and "collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

(5) "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

(6) "Historic district" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "Macro tower" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(9) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

(10) "Municipally owned utility pole" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

(11) "Municipal park" means an area that is zoned or otherwise designated by municipal

code as a public park for the purpose of recreational activity.

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower.

(13) "Network provider" means:

(A) a wireless service provider; or

(B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:

- (i) network nodes; or
- (ii) node support poles or any other structure that supports or is capable of supporting a network node.

(14) "Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.

(15) "Permit" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

(18) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

(21) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and

(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

(22) "Transport facility" means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

(23) "Utility pole" means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or

(B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

(24) "Wireless service" means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

(25) "Wireless service provider" means a person that provides wireless service to the public.

³ Sec. 284.002. DEFINITIONS (8) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

(1) each antenna that does not have exposed elements and is attached to an existing structure or pole:

(A) must be located inside an enclosure of not more than six cubic feet in volume;

(B) may not exceed a height of three feet above the existing structure or pole; and

(C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:

(A) must fit within an imaginary enclosure of not more than six cubic feet;

(B) may not exceed a height of three feet above the existing structure or pole; and

(C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:

(A) be more than 28 cubic feet in volume; or

(B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;

(4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and

(5) pole-mounted enclosures may not be taller than five feet.

(b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):

-
- (1) electric meters;
 - (2) concealment elements;
 - (3) telecommunications demarcation boxes;
 - (4) grounding equipment;
 - (5) power transfer switches;
 - (6) cut-off switches; and
 - (7) vertical cable runs for the connection of power and other services.
- (c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.
- (d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number WS-4

Agenda Date 11/20/2018

Type Worksession

Department City Secretary

Title

Discussion of the November 20, 2018, City Council regular agenda items



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 1

Agenda Date 11/20/2018

Type Executive Session

Department City Secretary

Title

Section 551.071 - Legal - Consultation with attorney on legal issues raised by items on the agenda

Section 551.071 - Legal - Consultation with attorney regarding contemplated and/or pending litigation, including:

- Glade Road eminent domain cases for Parcels 150 and 159

Section 551.072 - Real Estate - Deliberate the purchase, exchange, lease, or value of real property for City facilities, including:

- Glade Road Project Phases 1B and 2
- Acquisition of real property along SH26

Section 551.074 - Personnel - Deliberate the appointment, employment, evaluations, and duties of the Fire Chief

Section 551.087 - Economic Development - Discuss or deliberate regarding commercial or financial information that the City has received from business prospects that the City seeks to have locate, stay, or expand in the City and with which the City is conducting economic development negotiations; deliberate the offer of a financial or other incentive to a business prospect

Attachments

RESOLUTION R-18-4325

**A RESOLUTION APPROVING COUNCIL ACTION
REGARDING EXECUTIVE SESSION ITEMS AT THE REGULAR
CITY COUNCIL MEETING OF NOVEMBER 20, 2018**

WHEREAS, following discussion in Executive Session, and in full accordance with the requirements of the Open Meetings Act, the City Council determines that the following action is in the best interests of the health, safety and welfare of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

Sec. 1. THAT

AND IT IS SO RESOLVED.

APPROVED BY A VOTE OF _ AYES, _ NAYS AND _ ABSTENTIONS ON THIS THE 20TH DAY OF NOVEMBER 2018.

Mayor Richard Newton	_____	Mayor Pro Tem Bobby Lindamood	_____
Place 1, Tammy Nakamura	_____	Place 3, Kathy Wheat	_____
Place 4, George Dodson	_____	Place 5, Chuck Kelley	_____
Place 6, Callie Rigney	_____		

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
City Secretary

Richard Newton
Mayor



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 3

Agenda Date 11/20/2018

Type Announcements, Proclamations, and Presentations

Department City Manager

Title

Expression of appreciation to Colleyville City Council - Peace Together Walk
Organizer Howard Rosenthal

In recognition of the Featured Business of the Month - Westlake Ace Hardware,
4701 Colleyville Boulevard, Suite 100 - Mayor Richard Newton and Assistant City
Manager Mark Wood

Attachments

RESOLUTION R-18-4326

**A RESOLUTION APPROVING CITY COUNCIL ACTION UNDER CONSENT
ITEMS AT THE REGULAR CITY COUNCIL MEETING OF
NOVEMBER 20, 2018**

WHEREAS, City Council has taken action on certain items on the agenda under Consent Items.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF COLLEYVILLE, TEXAS:**

- Sec. 1. THAT the agenda decisions approved by City Council action under Consent Items as follows are hereby adopted:
- a. Approval of the minutes of the regular City Council meeting of November 5, 2018
 - b. Approval of a professional services agreement with Dunaway Associates, L.P., in an amount not to exceed \$144,508 for the design of the Bransford Road Elevated Storage Tank Site Rehabilitation and Overland Trail Ground Storage Tank Site Demolition Project, and authorizing the City Manager to execute the agreement

AND IT IS SO RESOLVED.

APPROVED BY A VOTE OF _ AYES, _ NAYS ON THIS THE 20TH DAY OF NOVEMBER 2018.

Mayor Richard Newton	_____	Mayor Pro Tem Bobby Lindamood	_____
Place 1, Tammy Nakamura	_____	Place 3, Kathy Wheat	_____
Place 4, George Dodson	_____	Place 5, Chuck Kelley	_____
Place 6, Callie Rigney	_____		

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
City Secretary

Richard Newton
Mayor



City of Colleyville City Council MINUTES - DRAFT

City Hall
100 Main Street
Colleyville, Texas 76034
817.503.1000
www.colleyville.com

Monday, November 5, 2018

Mayor Richard Newton called the Colleyville City Council Worksession to order on Monday, November 5, 2018, at 5:30 p.m.

ROLL CALL: Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

ABSENT: Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

ALSO PRESENT: City Manager Jerry Ducay, Assistant City Manager Mark Wood, Assistant City Manager Adrienne Lothery, Police Chief Michael Miller, Interim Fire Chief Mark Cantrell, Community Development Director Ben Bryner, Public Works Director Ray Silva-Reyes, Community Relations Specialist Erin Spicer, City Attorney Nicole Corr, and City Secretary Christine Loven.

WS-1 Follow-up discussion regarding SH26 medians and right-of-way design

Assistant City Manager Adrienne Lothery provided a brief history of the project, how it has been organized and stated the goal of this discussion is for City Council to select lighting. Manager Lothery then introduced Mesa staff Stan Cowan, David Newman, and Jason Cooper, who presented design drafts and schedules.

There was discussion regarding style, lighting, banners, and pricing. The City Council agreed the design and schedule was going in the right direction and selected a basic lighting design. Mesa will present photometrics and some pricing in early January.

WS-2 Discussion of the November 5, 2018, City Council regular agenda items

Mayor Newton stated item 7a, Ordinance O-18-2056 will remain tabled and he will make a motion to table to a date certain of December 4, 2018. He added Resolution R-18-4294 will remain tabled.

Mayor Newton adjourned the worksession at 6:09 p.m.

Mayor Newton called the Executive Session to order at 6:10 p.m. and called the roll.

ROLL CALL: Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

ABSENT: Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

1. EXECUTIVE SESSION - In accordance with Texas Government Code, Chapter 551, Subchapter D

Section 551.071 - Legal - Consultation with attorney on legal issues raised by items on the agenda

Section 551.071 - Legal - Consultation with attorney regarding contemplated and/or pending litigation, including:

- Glade Road eminent domain cases for Parcels 150 and 159

Section 551.072 - Real Estate - Deliberate the purchase, exchange, lease, or value of real property for City facilities, including:

- Glade Road Project Phases 1B and 2
- Acquisition of real property along SH26

Section 551.074 – Personnel – Deliberate the appointment, employment, evaluations, and duties of the Fire Chief

Section 551.087 – Economic Development - Discuss or deliberate regarding commercial or financial information that the City has received from business prospects that the City seeks to have locate, stay, or expand in the City and with which the City is conducting economic development negotiations; deliberate the offer of a financial or other incentive to a business prospect

Mayor Newton explained the Executive Session had been called in accordance with the Texas Government Code, Chapter 551, Subchapter D, Section 551.071, Legal, Section 551.072, Real Estate, Section 551.074 – Personnel, and Section 551.087, Economic Development. He further explained there would be no decisions made or action taken during this time. Executive Session was adjourned at 7:22 p.m.

The regular meeting of the Colleyville City Council was called to order by Mayor Newton at 7:33 p.m.

ROLL CALL: Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

ABSENT: Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

Mayor Newton explained Mayor Pro Tem Bobby Lindamood was out of the country and Councilmember Chuck Kelley had a death in his family and neither could be present this evening.

INVOCATION: Pastor Jay Franks, Compass Christian Church**PLEDGE OF ALLEGIANCE: City Attorney Nicole Corr****2. EXECUTIVE SESSION READING AND PUBLIC HEARING: CONSIDER AND TAKE ANY ACTION(S) NECESSARY RELATIVE TO ITEMS DISCUSSED IN EXECUTIVE SESSION - RESOLUTION R-18-4320**

Mayor Newton stated this item would be addressed following item 5a, Ordinance O-18-2063, but is recorded in order for the minutes.

Mayor Newton read Resolution R-18-4320 in its entirety.

Assistant City Manager Mark Wood stated as businesses sell or redevelop, it is the City's strategy to assist business owners along the SH26 corridor to enhance their buildings by providing grants to assist with the upgrades. This resolution allows a \$35,000 grant to Joe Hudson's Garage, to assist with upgrades which will cost \$130,000. Manager Wood noted the City asked for a monument sign instead of a sign on the roof and the owner has agreed.

Mayor Newton opened the public hearing at 8:19 p.m. There was no one present wishing to speak and Mayor Newton closed the public hearing at 8:20 p.m.

Councilmember Dodson made a motion to approve Resolution R-18-4320, and Councilmember Wheat seconded the motion.

The motion to approve carried with the following vote:

Aye: 5 – Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

Absent: 2 - Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

3. ANNOUNCEMENTS, PROCLAMATIONS, AND PRESENTATIONS

Announcements of civic and charitable events

Presentation of calendar events and updates

Announcements of awards and recognition

The Mayor and City Councilmembers made the following announcements:

Advising in Austin: Mayor Newton and Manager Ducay traveled to Austin to participate in a discussion regarding property taxes and Robin Hood with the Governor's staff. It was an honor to represent our great City in this complex discussion.

Mayor for a Day - Colleyville residents in grades 2-7 are encouraged to enter the 2018 Mayor for a Day Contest. The winner will serve as honorary mayor on one of the City Council meeting dates in January. He or she will spend part of the day meeting with city leaders and touring city facilities. That evening, they will attend the City Council worksession to review City business and co-preside over the City Council meeting that follows. During the Executive Session portion of the meeting, the Mayor for a Day will have a pizza party with up to 10 friends. (The Mayor for a Day winner's schedule will be subject to approval by his/her parents and school.) Applicants are required to submit a 1-2 paper outlining how they would make Colleyville the best city in Texas. Information on how to apply will be available on Colleyville.com.

- Essays are due by December 7.
- The contest is only open to Colleyville residents.
- The winning essay will be announced the week of Dec. 17.
- Essays may be dropped off at the City Manager's Office on the third floor of City Hall or sent by mail or email to: Mayor for a Day Contest, Colleyville City Hall, 100 Main Street, Colleyville, TX 76034, or email: colleyville@colleyville.com

TEXRail – Mayor Newton advised all citizens that on December 31 the TEXRail train will offer inaugural rides and will start full customer service January 5, 2019. At full schedule, 72 trains a day (every 30 minutes) will pass through Colleyville. These trains are very quiet and will be traveling 70 mph. The trains will not be required to blow their horns at the three Colleyville street crossings (Bransford, Pleasant Run, and John McCain) because Colleyville has quad gates at these intersections. Mayor Newton stressed that for safety reasons we all need to be careful to stay off the tracks and when driving be sure to stop at the traffic stop line a safe distance away from the tracks when traffic queues up across the railroad crossings, and to avoid getting near the tracks when walking along the Cotton Belt Trail. He also encouraged everyone to share this information with their friends and neighbors to help educate the community to the safety aspects of having the train come through our community. Please be cognizant of your surroundings and watch for the train – it is very quiet, moving very fast and will not blow its whistle.

Upcoming Events:

- City/Chamber Mixer Event:** November 13; 5 – 6:30 PM; in the City Hall Lobby.
- Movies in the Village: Polar Express, Monday, November 19, 6 p.m., City Hall Plaza, 100 Main St.** Join us for another fun movie under

the stars! We'll be showing Polar Express on the south lawn with free popcorn and lemonade.

- c. **Christmas Tree Lighting** – Friday November 30 from 5-9 PM. Everyone is encourage to come out for the fun.

Police Department Fundraising For Charity: The Colleyville Police Officers may look a bit unkempt as they participate in a departmental fundraising initiative to raise money for cancer research. The “no shave November” initiative allows officers to go unshaven for the month to raise funds for charity. If you would like to contribute to the cause, go to <https://no-shave.org/org/ColleyvillePD> and select “Make a Donation” on the left side of the page. Select the Organization radio button (should be the default) when making the donation and Colleyville Police Department will get the credit. Thank you all for supporting our participation in this national campaign. We hope our facial hair will provoke conversations and raise cancer awareness while our dollars go to support research and eradication. With the holiday season upon us, it is important to remember #ColleyvilleGives.

Oncor Tree Trimming: As utility-related tree trimming continues within the City, residents may be concerned about aggressive trimming of specific trees. Those with questions or concerns are encouraged to contact the City Manager’s office at 817-503-1111 or Public Works at 817-503-1360. On a case-by-case basis, Oncor is willing to meet on site with their arborist to address concerns.

Peace Together Walk: On Saturday, November 3, local churches and residents participated in a 3-mile walk to “build relationships one step at a time” between our various places of worship. All were welcome to attend and the event attendees enjoyed a beautiful day of love and sharing. The event began at the Colleyville Masjid mosque and ended at the Beth Israel synagogue.

Police Department Promotion: Lt. Hillary Wreay to Assistant Chief of Police. Chief Wreay started her career in law enforcement in 1993 and has worked for CPD in every Division of the agency over the last 25 years – including serving as the Acting Assistant Chief and Acting Chief of Police. A promotion ceremony for Chief Wreay will be conducted Friday, November 9 at 3 p.m. at the Police Department.

Member recognition of service to a City Board, Commission, or Committee

Mayor Newton recognized Raymond Allee, for his service to the Zoning Board of Adjustment and Planning and Zoning Commission by presenting him a Colleyville Then and Now history book with a bookplate recognizing his service.

Mayor Newton also recognized those who were not in attendance: Wayne Maynard, Walt Mills, Seanna Billinger, Marilyn Keith, Scott McCombs, and Kelly Tookey.

Proclamation in recognition of Arbor Day - Mayor Richard Newton and Parks and Recreation Director Lisa Escobedo

This year is Colleyville's 20th year as a "Tree City USA". Mayor Newton presented Parks Director Lisa Escobedo with a proclamation declaring Arbor Day in Colleyville and Director Escobedo presented the Mayor with the City's Tree City USA plaque, flag, and ball cap.

In recognition of the Featured Business of the Month - Furniture Consignment Gallery, 6000 Colleyville Boulevard, Suite 120, Robin Vander Stoep, owner - Mayor Richard Newton and Assistant City Manager Mark Wood

Mayor Newton stated Ms. Stoep could not be in attendance, but encouraged everyone to visit the Consignment Gallery.

4. CONSENT: READING AND PUBLIC HEARING- RESOLUTION R-18-4321

- 4a** Approval of the minutes of the regular City Council meeting of October 16, 2018
- 4b** Approval of the minutes of the City Council Worksession of October 25, 2018
- 4c** Approval of a professional services agreement with Baird, Hampton, & Brown, in an amount not to exceed \$68,360 for the design of the Pleasant Run Waterline from John McCain Road north to the north City limit line at Bear Creek, and authorizing the City Manager to execute the agreement

Mayor Newton read Resolution R-18-4321 in its entirety.

Public Works Director Ray Silva-Reyes presented item 4c, and provided anticipated timelines.

Mayor Newton opened the public hearing at 8:02 p.m. There was no one present wishing to speak and Mayor Newton closed the public hearing at 8:02 p.m.

Councilmember Wheat made a motion to approve Resolution R-18-4321, and Councilmember Dodson seconded the motion.

The motion to approve carried with the following vote:

Aye: 5 – Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

Absent: 2 - Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

5. ORDINANCE(S): SECOND READING AND PUBLIC HEARING

5a Ordinance O-18-2063

Consideration of a Special Use Permit for an Automotive Repair Shop on Lot 1A, Block 1, of the Highway 26 Industrial, located at 6804 Colleyville Boulevard, Case ZC18-020

Mayor Newton read the caption of Ordinance O-18-2063.

Community Development Director Ben Bryner presented this item explaining this is the same use this site has been operating under, but the change in ownership triggered the need for a new special use permit. Director Bryner described numerous property improvements the new owner will make to the property to accommodate the City's initiative to improve older properties. Director Bryner also noted that an Executive Session Resolution for an economic development grant to cost share with these improvements will follow this item if approved.

Mayor Newton stated the applicant is willing to construct a monument sign instead of the roof top sign shown in the SUP illustration and the ordinance exhibit will be amended to reflect same.

Mayor Newton opened the public hearing at 8:12 p.m. Kenneth FiField, 2489 County Road 3308, Greenville, president and owner of Joe Hudson's Auto Repair advised the City Council he is available if there are questions.

There were no others wishing to speak and Mayor Newton closed the public hearing at 8:12 p.m.

Councilmember Nakamura made a motion to approve Ordinance O-18-2063 as amended requiring the construction of a monument sign, and Councilmember Dodson seconded the motion.

The motion to approve carried with the following vote:

Aye: 5 – Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

Absent: 2 - Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

5b Ordinance O-18-2064

Consideration of a zoning change from AG Agricultural district to R-30 Single Family Residential district on Tracts 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey, located at 1309 Glade Road, Case ZC18-023

Community Development Director Ben Bryner presented this item and reviewed the proposed fencing, number of homes, and traffic access changes and noted a plat approval for this property is on tonight's agenda.

Councilmember Dodson asked staff why a cedar fence is proposed as he believes the neighbors want an iron fence on the east so they may see into the lots. Director Bryner stated he is aware there was conversation, but was not clear if there was a final decision regarding fencing along the eastern boundary. He also noted the Land Development Code does not have a minimum standard for fencing, and in fact it does not require any fencing at all. Councilmember Wheat stated she thought a masonry fence was requested. Director Bryner stated he believes a masonry fence was requested, but believes there were communications between the applicant and neighbors, that as the lots develop, perhaps they could minimally require a cedar fence.

Councilmember Dodson stated there is one other issue, which is the width of the street, this cul-de-sac is not compliant with our Code. He then asked Director Bryner if that is correct. Director Bryner replied that is correct, today, it is not in compliance with the Land Development Code, however, the existing PUD Ordinance authorized 31-feet of pavement for the street. Councilmember Dodson stated he understands, but this is not the PUD, this is R-30. Director Bryner stated even today, the street is longer than 600 feet, but the PUD ordinance incorporated the regulation to allow for the 31-feet of pavement. He continued, stating perhaps adding lots changes that, and he is aware of the concerns. Councilmember Dodson stated it does because he is concerned about parking, and that there are five more houses being added. He stated he believes he will not accept it.

Councilmember Nakamura asked Director Bryner what the street size is supposed to be. Councilmember Dodson replied 36-feet and Director Bryner concurred and stated the Land Development Code requirements.

Mayor Newton stated there is now open space access to the lots and asked what provides the right of the new homes to access the lots. Director Bryner replied the

zoning ordinance did not address access, but on the plat which was approved by the City and filed with the County, the open spaces were designated as mutual access easements and that easement is what authorizes its use of access.

Mayor Newton asked if in the original Carmel Place PUD, does the HOA own the open space. Director Bryner concurred. Mayor Newton stated this is unique because the new lot owner will not own the property, but will be allowed to build a driveway across the property. Director Bryner again concurred.

Mayor Newton asked the applicant to come forward to answer questions. Bryan Klein, Managing Director, Ion Design Group, 4061 N. Central Expressway #205, Dallas, representing the applicant, and Rome Barnes, 1800 Valley View Lane, #300, Farmers Branch, applicant, came forward to answer questions of the City Council.

Mayor Newton asked if there is going to be a common HOA. Mr. Barnes stated he was involved with the original Carmel, all those lots have been sold, and he does not have any involvement with that HOA what-so-ever. He continued, there will be a new HOA, set up separately, but he still owns the mutual access easement, which is established under the company name CADG, Carmel Place LLC, not the HOA, therefore crossing the easement is not a problem. Mr. Barnes stated he has no issue with dedicating the easement as right of way.

Mayor Newton stated it would be best to have the easement converted to right of way, so many of the questions get answered and the question regarding ownership is eliminated.

Mayor Newton stated for the City Council's sake, I'm putting out the fact, we have a situation which has evolved on us, decisions have been made, certain things have been done, and we have no control over those, all we can do is manage what we have. The original PUD has been approved and that approval required a 14.6 percent open space, which included this strip of land. Now it makes sense, from my perspective that this land be allowed to be developed, even though this is not an ideal situation. So for me, having the land dedicated as right of way, I think is the best way to go.

Mayor Newton stated he did not feel like Council had enough information to move forward and there are three issues for Council to address:

1. The access and/or dedication of the land
2. Changing the access of the two homes closest to Glade Road to have access from Carmel Place – not Glade Road, causes concern with the number of homes on a cul-de-sac
3. Width of the street

There was discussion regarding if the street could be widened and the cost. Mr. Barnes stated he will not widen the street because there is more to the cost than what has been discussed. He stated concrete depth would need to be extensive and there are street lights, sidewalk, and a water line.

Councilmember Wheat asked if would be possible to require no parking on one side of the street.

City Manager Jerry Ducay stated a 31-foot street allows for parking on both sides of the street and access for an emergency vehicle to pass. Also, the cul-de-sac does allow for a turning radius of the proper emergency vehicles. Mr. Klein then read the letter from the Fire Marshal which states he believes the 31-foot street does not create any additional hazard to life-safety compared to the 36-foot.

There was discussion regarding the possibility of requiring no parking on one side of the street.

Mayor Newton stated he feels they cannot move forward until the questions regarding the HOA and access ownership are answered.

Councilmember Nakamura, Councilmember Dodson, and Mayor Newton addressed the applicant, thanking them for the time they have put into this request and explaining each of them have a concern and want to be thorough before making a decision.

Mayor Newton opened the public hearing at 8:51 p.m. There was no one present wishing to speak and Mayor Newton closed the public hearing at 8:52 p.m.

Councilmember Wheat made a motion to table Ordinance O-18-2064, and Councilmember Nakamura seconded the motion.

The motion to table carried with the following vote:

Aye: 5 – Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

Absent: 2 - Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

6. ORDINANCE(S): FIRST READING AND PUBLIC HEARING

6a Ordinance O-18-2065

Consideration of a zoning change from R-40 Single Family Residential district to PUD-C Planned Unit Development – Commercial district on Tract 1, Abstract 1154, in the R H McEwing Survey and Tract 1G, Abstract

A1182, in the Less Homesite Survey, located at 8060 Precinct Line Road,
Case ZC18-028

Mayor Newton read the caption of Ordinance O-18-2065.

Community Development Director Ben Bryner presented this item and answered questions of the City Council.

Rick Jones, 2221 Lakeside Parkway, #1260, Richardson, applicant, also presented this item and answered questions of the City Council.

There was discussion regarding a security gate to the north, the type and length of fencing, allowance for owner allowing a van rental service, monument sign, and landscaping. The drainage and sewer plans were also discussed.

Councilmember Dodson asked Director Bryner what the significant differences to this proposal are compared to the original request which was for a storage building only and did not include businesses to the front.

City Manager Jerry Ducay responded one of the concerns of the previous proposal was the storage building to the back set the tone of the whole development and the out lots on Precinct Line would then come later with some different standard or architecture and you would have a combination or various architectures and the first building in would limit the architecture. One of the things we wanted to do was look at this site holistically and try to provide architecture of a quality that should be applied to the entire site, even though the only development currently coming forward is the back building. We discussed this with the applicant and property owners and developed a consistent architecture example of what we can expect as a minimum today, and did so with the idea the storage building at the back would set the high standard and only be improved upon as sites are developed to the front. Manager Ducay stated the applicant really worked with the City, did a good job regarding the architecture, and he was very appreciative of the effort.

Mayor Newton opened the public hearing at 9:44 p.m. Billye Fowler, 1303 Briar Ridge Drive, Keller, representing the property owner, spoke in support of this item.

There were no others wishing to speak and Mayor Newton closed the public hearing at 9:46 p.m.

This was a first reading, therefore, City Council did not take any action.

7. TABLED: ORDINANCE(S) READING AND PUBLIC HEARING**7a Ordinance O-18-2056**

Consideration of a zoning change from the R-40 Single Family Residential zoning district and AG Agricultural zoning district to the PUD-R Planned Unit Development-Residential zoning district on Lot 1R1 and 1R2, Block 1, of the Bear Creek Plantation, located at 1312 John McCain Road and 7309 Holly Lane N, Case ZC18-019

Mayor Newton stated this item currently requires a super majority vote of the Council. It will remain tabled until December 4th as Mayor Pro Tem Lindamood and Councilmember Kelley are absent tonight and Councilmember Rigney will be absent at the November 20, 2018 meeting.

Mayor Newton made a motion to remove the item from the table and immediately retable Ordinance O-18-2056 to a date certain of December 4, 2018 and Councilmember Dodson seconded the motion.

The motion to table to a date certain of December 4, 2018 carried with the following vote:

Aye: 5 – Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

Absent: 2 - Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

7b Ordinance O-18-2062

Consideration of a zoning change from ML Light Manufacturing district to PUD-C Planned Unit Development - Commercial district on Lot 1, Block 1, of the Chandler Addition, located at 1701 John McCain Road, Case ZC18-025

Councilmember Wheat made a motion to remove Ordinance O-18-2062 from the table, and Councilmember Nakamura seconded the motion.

The motion carried with the following vote:

Aye: 5 – Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

Absent: 2 - Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

Mayor Newton read the caption of Ordinance O-18-2062.

Community Development Director Ben Bryner and applicant Debra Perryman presented this item and answered questions of the City Council.

There was discussion regarding the uses and both Councilmember Dodson and Mayor Newton discussed their concerns regarding exterminators, nurseries/greenhouses, vet clinics, and scientific instrument assembly.

The applicant agreed to the following changes:

Changing locksmiths to a special use

Removal of the manufacturing aspects of future uses

Complete removal of:

- Equipment Rental/Leasing (no outside inventory/rental equipment storage)
- Purchasing and/or resale of precious metals including jewelry, gemstones, gold, silver, etc. (not licensed as a Pawn Shop by state of Texas)
- Plumbing/HVAC/Elec Trade Shop without outdoor materials storage
- Building Material Sales without outdoor materials storage
- Exterminator Shop without outdoor materials storage
- Nurseries/Greenhouse with outside display

Mayor Newton opened the public hearing at 10:11 p.m. There was no one present wishing to speak and Mayor Newton closed the public hearing at 10:11 p.m.

Councilmember Dodson made a motion to approve Ordinance O-18-2062 as amended and Councilmember Rigney seconded the motion.

The motion to approve carried with the following vote:

Aye: 5 – Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

Absent: 2 - Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

Mayor Newton recessed the meeting at 10:20 p.m. and reconvened at 10:28 p.m. The meeting was again recessed at 10:33 p.m. due to a technical sound disturbance and reconvened at 10:36 p.m.

8. RESOLUTION(S): READING AND PUBLIC HEARING

8a Resolution R-18-4322

Consideration of a Preliminary Plat for the Oak Creek Addition, located at 7209 & 7215 John McCain Road, Case PC18-005

Mayor Newton read Resolution R-18-4322 in its entirety.

Community Development Director Ben Bryner presented this item.

There was discussion regarding the timing of the zoning of the lots, the 30-foot buffer, and tree preservation.

Mayor Newton stated the R-40 zoning was changed to R-20 zoning by Ordinance O-79-343 in 1979 and he wanted to make it clear, this Council did not change the R-40 zoning, but what we did do was trade an approximately equal area AG for R-20 and R-20 for AG.

Mayor Newton stated the 30-foot tree preservation buffer along the north and west property lines previously agreed to is still in place and on the plat for approval tonight. Director Bryner concurred.

Mayor Newton asked applicant Wesley Dawson, 406 Pecan Drive, Irving, to come forward to answer questions.

Mayor Newton stated he has received a question regarding compliance with the tree preservation ordinance and asked Mr. Dawson if he had removed or moved any trees. Mr. Dawson responded he is cleaning up, but there has been no removal of live trees.

City Manager Jerry Ducay stated the City removed two trees in the area of John McCain Road.

Mr. Dawson stated he has a complete tree survey and he is working with the City to be in compliance.

Mayor Newton pointed out that this plat contains large (over two acre) lots and asked Mr. Dawson if he was going to apply for RE zoning in the near future. Mr. Dawson stated he is planning on rezoning in the future, but hasn't yet decided if he will request RE or R-40 zoning. It depends on his ability to sell the large two acre lots.

Mayor Newton opened the public hearing at 10:53 p.m. There was no one present wishing to speak and Mayor Newton closed the public hearing at 10:53 p.m.

Councilmember Wheat made a motion to approve Resolution R-18-4322, and Councilmember Rigney seconded the motion.

The motion to approve carried with the following vote:

Aye: 5 – Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

Absent: 2 - Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

8b Resolution R-18-4323

Consideration of a combination Preliminary/Final Plat for Carmel Place Estates East on Tracts 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey, located at 1309 Glade Road, Case PC18-012

Councilmember Dodson made a motion to table Resolution R-18-4323 and Councilmember Wheat seconded the motion.

The motion to table carried with the following vote:

Aye: 5 – Mayor Richard Newton, and Councilmembers Tammy Nakamura, Kathy Wheat, George Dodson, and Callie Rigney.

Absent: 2 - Mayor Pro Tem Bobby Lindamood and Councilmember Chuck Kelley.

9. TABLED: RESOLUTION(S) READING AND PUBLIC HEARING

9a Resolution R-18-4294

Consideration of a final plat for Lots 1, 2, and 3X, Block 1, Old Grove Addition, Phase II, located at 105 and 103 John McCain Road and 7189 Cast Iron Forest Trail, Case PC17-004

This item remained tabled.

10. CITIZEN COMMENTS/PRESENTATIONS REGARDING ITEMS NOT ON THE AGENDA

There was no one present wishing to speak.

11. REPORTS

Library Board Minutes - August 13, 2018

There was no action regarding this item.

12. ACTION/RESOLUTION: DISCUSSION AND CONSIDERATION OF A RESOLUTION RATIFYING COUNCIL AGENDA ACTION FOR MONDAY, NOVEMBER 5, 2018 - READING AND PUBLIC HEARING - RESOLUTION R-18-4324

This resolution was no needed.

13. ADJOURNMENT

There being no further business before the City Council, Mayor Newton adjourned the City Council meeting at 10:56 p.m.

APPROVED BY A VOTE OF _ AYES, _ NAYS, AND _ ABSTENTIONS ON THIS THE 20TH DAY OF NOVEMBER 2018.

Minutes taken and prepared by:

*Christine Loven, TRMC
City Secretary*



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 4b

Agenda Date 11/20/2018

Number Resolution R-18-4326

Type Resolution

Department Public Works

Title

Approval of a professional services agreement with Dunaway Associates, L.P., in an amount not to exceed \$144,508 for the design of the Bransford Road Elevated Storage Tank Site Rehabilitation and Overland Trail Ground Storage Tank Site Demolition Project, and authorizing the City Manager to execute the agreement

Strategic Plan

3.2 Ensure regular repair and replacement of water and wastewater facilities

Explanation

Reading and Public Hearing

Approval of a professional services agreement with Dunaway Associates, L.P., in an amount not to exceed \$144,508 for the design of the Bransford Road Elevated Storage Tank Site Rehabilitation and Overland Trail Ground Storage Tank Site Demolition Project, and authorizing the city manager to execute the agreement

In September of 2018, City Council approved the 2019 - 2023 Capital Improvement Program by Resolution R-18-4305, which included the design of the Bransford Road Elevated Storage Tank Site Rehabilitation and Overland Trail Ground Storage Tank Site Demolition Project. The construction of the improvements are anticipated for Fiscal Year 2020.

The City recently completed a Request for Qualifications process for professional engineering services. This process resulted in a total of 53 submittals from various Professional Engineering Firms. Based on a review of the 53 submitted Statements of Qualifications, as well as an interview with the firm, staff is recommending the use of Dunaway Associates, L.P., for this project.

Financial Impact

Funding for the professional services agreement for the Elevated Storage Tank Site Rehabilitation and Overland Trail Ground Storage Tank Site Demolition Project is available in the Utility Capital Project Fund.

Form 1295 - Acknowledged by City

Recommendation

Approve

Attachments

1. Dunaway PSA
2. Dunaway 1295
3. Dunaway CIQ
4. Resolution R-18-4305 CIP

**PROFESSIONAL SERVICES AGREEMENT
BRANSFORD ROAD ELEVATED STORAGE TANK SITE REHABILITATION AND
OVERLAND TRAIL GROUND STORAGE TANK SITE DEMOLITION**

This Professional Services Agreement (“Agreement”) is made by and between the City of Colleyville (“City”), and Dunaway Associates, L.P. (“Professional”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

RECITALS

WHEREAS, City desires Professional to perform certain work and services set forth in Section 1, Scope of Services and

WHEREAS, Professional has expressed a willingness to perform said work and services, hereinafter referred to only as "services", specified in said Scope of Services, and enumerated under Section 1, of this Agreement;

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, City and Professional agree as follows:

Section 1. Scope of Services

Upon issuance of a written Notice to Proceed by City, Professional agrees to provide to City the professional engineering services for the Bransford Road Elevated Storage Tank Site Rehabilitation, and Overland Trail Ground Storage Tank Site Demolition (“Project”) as set forth in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference (“the Scope of Services”).

Section 2. Term of Agreement

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and shall continue until Professional completes the services required herein to the satisfaction of City, unless sooner terminated as provided in Section 8, below.

Section 3. Professional Obligations

A. Professional shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement with the duty and care applicable to Professional’s qualification and experience. Should City require additional services not included under this Agreement, Professional shall make reasonable effort to provide such additional services in accordance with the fee schedules set forth in Exhibit “A”, attached hereto and incorporated herein by reference, and within the time schedule prescribed by City; and without decreasing the effectiveness of the performance of services required under this Agreement.

B. To the extent reasonably necessary for Professional to perform the services under this Agreement, Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that Professional may deem proper to aid or assist in the performance of the services under this Agreement with the prior written approval of City. The cost of such personnel and assistance shall be a reimbursable expense to Professional only if authorized in writing in advance by City.

C. Professional shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all services set forth in the Scope of Services.

Section 4. Payment

A. City agrees to pay Professional for all services authorized in writing and properly performed by Professional in general conformance with the payment schedules set forth in Exhibit "A," attached hereto and incorporated herein by reference, subject to additions or deletions for changes or extras agreed upon in writing. All fees paid to Professional, by City, shall be based on invoices submitted by Professional for work performed monthly by City, less any previous payments, and shall be paid within 30 days of receipt of invoice and approval by City. The payment terms in this Section 4 shall control in the event of a conflict between this Section 4 and Exhibit A.

B. City reserves the right to delay, without penalty, any partial payment when, in the opinion of City, Professional has not made satisfactory progress on the design of this Project based on the Scope of Services.

C. The total compensation to Professional shall be in general conformance with payment schedules set forth in Exhibit "A", which shall not exceed One Hundred Forty Four Thousand Five Hundred and Eight Dollars (\$144,508.00) without prior written consent of the City for additional services mutually agreed upon by the parties. City may deduct from any amounts due or to become due to Professional any sum or sums owing by Professional to City. In the event of any breach by Professional of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against City, or City's premises, arising out of Professional's performance of this Agreement, City shall have the right to retain out of any payments due or to become due to Professional an amount sufficient to completely protect City from any and all loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by Professional.

Section 5. Responsibilities

A. Professional shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, plans and other services furnished by Professional under this Agreement. Professional shall, without additional compensation, correct or revise any errors or deficiencies in the design, drawings, specifications, plans and other services.

B. Neither City's review, approval or acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Professional shall be and remain liable to City in accordance with applicable law for all damages to City caused by Professional's negligent performance of any of the services furnished under this Agreement.

C. The rights and remedies of City under this Agreement are as provided by law.

Section 6. Time for Performance

A. Professional shall perform all services as provided for under this Agreement in a proper, efficient, timely, and professional manner in accordance with City's requirements.

B. In the event Professional's performance of this Agreement is delayed or interfered with by acts of the City or others, Professional may request an extension of time for the performance of same as hereinafter provided but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.

C. No allowance of any extension of time, for any cause whatever, shall be claimed or made to Professional, unless Professional shall have made written request upon City for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless City and Professional have agreed in writing upon the allowance of additional time to be made.

Section 7. Documents

A. All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by Professional and its consultants, subcontractors, agents, representatives, and/or employees in connection with this Agreement ("Project Documents") are intended for the use and benefit of City. Professional and its consultants, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the Project Documents. Notwithstanding, upon payment by City as required by this Agreement, City shall own, have, keep and retain all rights, title and interest in and to all Project Documents, including all ownership, common law, statutory, and other reserved rights, including copyrights (except copyrights held by the Professional) in and to all Project Documents, whether in draft form or final form, which are produced at City's request and in furtherance of this Agreement. City shall have full authority to authorize contractor(s), subcontractors, sub-subcontractors, City consultants, and material or equipment suppliers to reproduce applicable portions of the Project Documents to and for use in their execution of the work or for any other purpose. All materials and reports prepared by Professional in connection with this Agreement are "works for hire" and shall be the property of City upon payment of Professional as provided in this Agreement. City shall have the right to publish, disclose, distribute and otherwise use Project Documents in accordance with the Engineering Practice Act of the State of Texas (Texas Occupation Code, Chapter 1001, as amended) and/or Texas Occupations Code, Chapter 1051, as amended. Professional shall, upon completion of the services and full payment for Professional's services by the City, or earlier termination and appropriate compensation as provided by this Agreement, provide City with reproductions of all materials, reports, and exhibits prepared by Professional pursuant to this Agreement in a TIFF, JPEG or PDF format, and a DXF format in current version of AutoCAD with NAD-83 coordinate format of all such instruments of service to the City.

B. All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer programs, computer code, software, estimates, surveys, other data or work items, etc.) prepared under this Agreement shall be submitted for approval of City. All instruments of service shall be professionally sealed as may be required by law or by City.

C. Acceptance and approval of the Project Documents by City shall not constitute nor be deemed a release of the responsibility and liability of Professional, its employees, associates, agents and consultants for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by City for any defect in the designs, working drawings and specifications, or other documents prepared by Professional, its employees, contractor, agents and consultants.

Section 8. Termination

A. City may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to Professional. In the event suspension or termination is without cause, payment to Professional, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by City to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to City.

B. Should City require a modification of this Agreement with Professional, and in the event City and Professional fail to agree upon a modification to this Agreement, City shall have the option of terminating this Agreement and Professional's services hereunder at no additional cost other than the payment to Professional, in accordance with the terms of this Agreement, for the services reasonably determined by City to be properly performed by Professional prior to such termination date.

C. Termination for Force Majeure. To the extent either Party of this agreement shall be wholly or partially prevented from the performance of the term specified, or of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, or other specific cause reasonably beyond the parties control and not attributable to its malfeasance, neglect or nonfeasance. In such event, the time for performance of such obligation or duty shall be suspended until such disability to perform is removed.

Section 9. Insurance

A. Professional shall during the term hereof maintain in full force and effect the following insurance:

- (i) A commercial general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage;
- (ii) An automobile liability insurance policy covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage;
- (iii) Statutory Worker's Compensation Insurance at the statutory limits and Employers' Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and
- (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00 per claim and \$1,000,000.00 in the aggregate.

B. All insurance and certificate(s) of insurance shall contain the following provisions:

- (i) Name the City, its officers, and employees as additional insureds as to all applicable coverage (not including the Workers Compensation Insurance and Professional Liability);

- (ii) Provide for at least thirty (30) days prior written notice to the City for cancellation or non-renewal of the insurance or reduction in coverage limits; and
- (iii) Provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance (not including the Professional Liability Insurance).

C. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

D. A certificate of insurance evidencing the required insurance and all endorsements shall be delivered to City prior to commencement of services.

Section 12. Indemnification.

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY INDEMNITEES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY INDEMNITEES. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF A CITY INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY THE CITY INDEMNITEE ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Section 13. Assignment

Professional shall not assign or sublet this Agreement, or any part thereof, without the prior written consent of City.

Section 14. Applicable Laws

Professional shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes relating or applicable to services to be performed under this Agreement. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of Tarrant County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court

Section 15. Default of Professional

In the event, Professional fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within ten (10) days after written notice by City to Professional, City may, at its sole discretion without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to Professional except for all work determined by City to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of Professional to and from meetings called by City at which Professional is required to attend, but shall not include any loss of profit of Professional. In the event of such termination, City may proceed to complete the services in any manner deemed proper by City, either by the use of its own forces or by re-subletting to others.

B. City may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of Professional.

Section 16. Adjustments in Services

No claims for extra services, additional services or changes in the services will be made by Professional without a written agreement with City prior to the performance of such services.

Section 17. Execution becomes Effective

This Agreement will be effective on the date when signed by authorized representatives of Professional and City ("the Effective Date").

Section 18. Agreement Amendments

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the Parties except as may be otherwise provided therein.

Section 19. Severability

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 20. Independent Contractor.

It is understood and agreed by and between the Parties that Professional in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with Professional's actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third party beneficiary to this Agreement.

Section 21. Right-Of-Access.

City will obtain and/or furnish right-of-access on any project site for Professional to perform any required studies, surveys, tests or other necessary investigations in relation to the Scope of Services. Professional will take reasonable precautions to minimize damage to the personal or real property in the performance of such surveys, tests, studies and investigations.

Section 22. Notice.

Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If to City: Jerry Ducay, City Manager
City of Colleyville
1000 Colleyville Road
Colleyville, Texas 75077

With copy to: Whitt L. Wyatt
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard, Suite 1800
Dallas, Texas 75201

If to Professional: Ron King, P.E., Civil Line of Business Manager
Dunaway Associates, L.P.
550 Bailey Ave #400
Fort Worth, TX 76107

Section 23. Counterparts.

This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties.

Section 24. Exhibits.

The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

Section 25. Survival of Obligations.

Any of the representations and obligations of the Parties, as well as any rights and benefits of the Parties pertaining to a period of time following the termination of this Agreement shall survive termination.

Section 26. Authorization.

Each Party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement.

Section 27. Successors and Assigns.

Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

Section 28. Recitals.

The recitals to this Agreement are incorporated herein.

Section 29. Audits and Records.

Professional agrees that during the term hereof the City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of Professional's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by the City or date of termination if sooner.

Section 30. Conflicts of Interests.

Professional represents that no official or employee of the City has any direct or indirect pecuniary interest in this Agreement.

Section 31. Hazardous Materials.

Professional shall report the presence and location of any hazardous materials it notices or which an engineer of similar skill and experience should have noticed to the City.

(Signature page to follow)

EXECUTED in duplicate originals this the ____ day of _____, 20__.

CITY OF COLLEYVILLE, TEXAS

By: _____
Jerry Ducay, Ph.D., City Manager

APPROVED AS TO FORM:

By: _____
Whitt L. Wyatt, City Attorney
(WLW:11.14.2018:104386)

EXECUTED in duplicate originals this the ____ day of _____, 20__.

DUNAWAY ASSOCIATES, L.P.

By: _____

Name: Chris Wilde, P.E.

Title: Executive Vice President

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Dunaway Associates, LP
Fort Worth, TX United States

Certificate Number:
2018-423059

Date Filed:
11/06/2018

Date Acknowledged:
11/14/2018

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Colleyville

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

P004932.001
Bransford Road EST Site Rehabilitation and Overland Trail GST Site Demolition

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Galbreath, Tom	Fort Worth, TX United States	X	
	Wilde, Chris	Fort Worth, TX United States	X	
	Williamson, Jason	Fort Worth, TX United States	X	
	Eubanks, Ross	Austin, TX United States	X	

5 Check only if there is NO Interested Party.

☐**6 UNSWORN DECLARATION**

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Dunaway Associates, LP
Fort Worth, TX United States

Certificate Number:
2018-423059

Date Filed:
11/06/2018

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Colleyville

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

P004932.001
Bransford Road EST Site Rehabilitation and Overland Trail GST Site Demolition

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Galbreath, Tom	Fort Worth, TX United States	X	
	Wilde, Chris	Fort Worth, TX United States	X	
	Williamson, Jason	Fort Worth, TX United States	X	
	Eubanks, Ross	Austin, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

11/14/2018

1 Name of vendor who has a business relationship with local governmental entity.

Dunaway Associates, LP

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

None

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☒ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

N/A

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 
Signature of vendor doing business with the governmental entity

10/16/18

Date

RESOLUTION R-18-4305
A RESOLUTION APPROVING CITY COUNCIL ACTION UNDER CONSENT
ITEMS AT THE REGULAR CITY COUNCIL MEETING OF
SEPTEMBER 18, 2018

WHEREAS, City Council has taken action on certain items on the agenda under Consent Items.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

- Sec. 1. THAT the agenda decisions approved by City Council action under Consent Items as follows are hereby adopted:
- a. Approval of the minutes of the regular City Council meeting of September 4, 2018
 - b. Approval of the minutes of the City Council Worksession of September 6, 2018
 - c. Approval of the minutes of the City Council Worksession of August 28, 2018
 - d. Approval of authorized broker/dealers for investment purchases
 - e. Approval of an Interlocal Agreement and funding for the Metroport Teen Court Program
 - f. Approval to use the Voluntary Library Fund in Fiscal Year 2019, for the purchase of library materials, collection processing supplies, and library programs, in an amount not to exceed \$167,000
 - g. Adoption of the Fiscal Year 2019 to 2023 Capital Improvement Program (CIP)
 - h. Approval of the Grounds Maintenance Mowing Contract with Whitmore and Sons, Inc., in an amount not to exceed \$214,784.73, and authorize the city manager to execute same, and any associated change orders, in an amount not to exceed 25 percent of the contract price

- i. Approval of a Local Project Advance Funding Agreement for the Highway Safety Improvement Program (HSIP) for the reconstruction of Cheek-Sparger Road (San Bar Lane to Oak Briar Lane), and authorizing the city manager to execute the agreement

AND IT IS SO RESOLVED.

APPROVED BY A VOTE OF 7 AYES, 0 NAYS AND 0 ABSTENTIONS ON THIS THE 18TH DAY OF SEPTEMBER 2018.

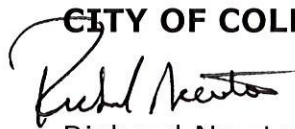
Mayor Richard Newton	<u>Aye</u>	Mayor Pro Tem Bobby Lindamood	<u>Aye</u>
Place 1, Tammy Nakamura	<u>Aye</u>	Place 3, Kathy Wheat	<u>Aye</u>
Place 4, George Dodson	<u>Aye</u>	Place 5, Chuck Kelley	<u>Aye</u>
Place 6, Callie Rigney	<u>Aye</u>		

ATTEST:



Christine Loven, TRMC
City Secretary

CITY OF COLLEYVILLE



Richard Newton
Mayor

Project Year	Title	Total Project Cost	Capital Projects Fund	CEDC Fund	County Funding	Crime Control District	Drainage Fund	FHA/TxDOT	Area II Impact Fees (West of 26)	TIF	Utility Capital Fund	Wastewater Impact Fees	Water Impact Fees
2018	Library Renovations	\$300,000.00	\$0.00	\$300,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Kimzey Park Pond Dredging	\$388,520.00	\$0.00	\$388,520.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Webb House Repairs	\$10,000.00	\$0.00	\$10,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	WW Project 3 (Manning)	\$412,242.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$412,242.00	\$0.00	\$0.00
	Street Maintenance Program - Stafford, Manning, etc.	\$335,000.00	\$335,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Glade Rd (Phase 2 Manning to Pool) ROW Acquisition	\$110,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$110,000.00	\$0.00	\$0.00	\$0.00
	Glade Rd (Phase 2-SH26 to Pool) Design	\$10,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$10,000.00	\$0.00	\$0.00	\$0.00
	L. D. Lockett Rehabilitation (Precinct Line Road to Pleasant Run) - resurfacing	\$430,000.00	\$430,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	John McCain Rehabilitation (Pleasant Run to Maranatha Court) - resurfacing	\$508,147.02	\$508,147.02	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	McDonwell School Road and Westcoat Drive Roundabout - DESIGN	\$40,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$40,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	Sum Of Total Project Cost:	\$2,543,909.02	\$1,273,147.02	\$698,520.00	\$0.00	\$0.00	\$0.00	\$0.00	\$40,000.00	\$120,000.00	\$412,242.00	\$0.00	\$0.00
	Estimated 9/30/18 Available Balances		\$7,957,458.98	\$0.00		\$0.00	\$0.00		\$2,011,832.00	\$21,460,372.00	\$5,083,588.00	\$928,492.00	\$3,114,746.00
2019	(+) Year-end surplus contributions		\$500,000.00	\$0.00		\$0.00	\$0.00		\$0.00	\$0.00	\$500,000.00	\$0.00	\$0.00
	(+) FY19 Budgeted Contribution		\$1,500,000.00	\$860,516.00		\$0.00	\$500,000.00		\$0.00	\$5,400,000.00	\$200,000.00	\$60,000.00	\$192,000.00
	Estimated 10/1/18 Available Balances		\$9,957,458.98	\$860,516.00	N/A	\$0.00	\$500,000.00	N/A	\$2,011,832.00	\$26,860,372.00	\$5,783,588.00	\$988,492.00	\$3,306,746.00
	Bransford Rehabilitation (Glade to Westcoat)	\$416,000.00	\$249,600.00	\$0.00	\$166,400.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Bransford Water Tank Rehabilitation - Design	\$80,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$80,000.00	\$0.00	\$0.00
	Central Fire Station Repairs	\$147,322.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$147,322.00	\$0.00	\$0.00	\$0.00
	Cheek-Sparger Road (San Bar to Brown Trail) - Design	\$320,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$320,000.00	\$0.00	\$0.00	\$0.00
	Cheek-Sparger Road (San Bar to Brown Trail) - Construction	\$2,085,395.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,660,395.00	\$0.00	\$425,000.00	\$0.00	\$0.00	\$0.00
	Cheek-Sparger Road Rehabilitation (Bedford to Heritage)	\$324,000.00	\$194,400.00	\$0.00	\$129,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	City Hall - Backup Generator	\$181,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$181,000.00	\$0.00	\$0.00	\$0.00
	City Hall/Library - HVAC Replacement	\$327,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$327,600.00	\$0.00	\$0.00	\$0.00
	Fire Station 2 Repairs	\$67,300.00	\$67,300.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Frontier Court Rehabilitation	\$600,000.00	\$600,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Glade Rd (Phase 2-SH26 to Pool) Design (Multi-year project)	\$150,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$150,000.00	\$0.00	\$0.00	\$0.00
	Glade Rd (Phase 2 Manning to Pool) ROW Acquisition (Multi-year project)	\$170,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$170,000.00	\$0.00	\$0.00	\$0.00
	Install Backup Generator for Emergency Power at L.D. Lockett Pump Station	\$140,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$140,000.00	\$0.00	\$0.00
	L.D. Lockett Road Right Turn Ln - Design	\$25,000.00	\$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Library Renovations	\$315,516.00	\$0.00	\$315,516.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	McDonwell School Road Rehabilitation	\$247,500.00	\$148,500.00	\$0.00	\$99,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	McDonwell School Road Right Turn Ln - Design	\$25,000.00	\$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	McDonwell School Road and Westcoat Drive Roundabout - DESIGN (Multi-year project)	\$60,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$60,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	McDonwell School Road Westcoat Drive Roundabout - ROW Acquisition	\$250,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$250,000.00	\$0.00	\$0.00	\$0.00
	Plaza at City Hall	\$1,750,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,750,000.00	\$0.00	\$0.00	\$0.00
	Pleasant Run Waterline (John McCain North to Bear Creek) - Design	\$105,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$105,000.00	\$0.00	\$0.00
	Replacement of Palladium Windows & Patio	\$280,000.00	\$0.00	\$280,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Roberts Road (Glade to Grapevine City Limits) - DESIGN	\$354,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$354,000.00	\$0.00	\$0.00	\$0.00
	Roberts Road (Glade to Grapevine City Limits) - ROW Acquisition	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$500,000.00	\$0.00	\$0.00	\$0.00
	SH-26 Lighting	\$3,000,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,000,000.00	\$0.00	\$0.00	\$0.00
	SH26 Medians & ROW	\$4,000,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,000,000.00	\$0.00	\$0.00	\$0.00
	Stormwater Master Plan	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Street Maintenance Program	\$685,614.00	\$617,214.00	\$0.00	\$68,400.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Water Project 7: Demolish Overland Trail Pump Station	\$130,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$130,000.00	\$0.00	\$0.00
	Water Project 8: Install Pressure Relief and Flow Control Valves	\$348,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$348,000.00	\$0.00	\$0.00
	Water Project 10: Apple Valley Subdivision/Rustic Oaks Subdivisions/ Bills Lane Water Lines - DESI	\$70,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$70,000.00	\$0.00	\$0.00
	Webb House Repairs	\$265,000.00	\$0.00	\$265,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Sum Of Total Project Cost:	\$17,919,247.00	\$1,927,014.00	\$860,516.00	\$463,400.00	\$0.00	\$500,000.00	\$1,660,395.00	\$60,000.00	\$11,574,922.00	\$873,000.00	\$0.00	\$0.00
	Estimated 9/30/19 Available Balances		\$8,030,444.98	\$0.00		\$0.00	\$0.00		\$1,951,832.00	\$15,285,450.00	\$4,910,588.00	\$988,492.00	\$3,306,746.00
	(+) Year-end surplus contributions		\$500,000.00	\$0.00		\$0.00	\$0.00		\$0.00	\$0.00	\$500,000.00	\$0.00	\$0.00
	(+) FY20 Budgeted Contribution		\$1,500,000.00	\$0.00		\$167,200.00	\$425,000.00		\$0.00	\$5,400,000.00	\$250,000.00	\$60,000.00	\$192,000.00
	Estimated 10/1/19 Available Balances		\$10,030,444.98	\$0.00	N/A	\$167,200.00	\$425,000.00	N/A	\$1,951,832.00	\$20,685,450.00	\$5,660,588.00	\$1,048,492.00	\$3,498,746.00

Project Year	Title	Total Project Cost	Capital Projects Fund	CEDC Fund	County Funding	Crime Control District	Drainage Fund	FHA/TxDOT	Area II Impact Fees (West of 26)	TIF	Utility Capital Fund	Wastewater Impact Fees	Water Impact Fees
2020	Bransford Water Tank Rehabilitation - Construction	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$500,000.00	\$0.00	\$0.00
	County Project (TBD) - Construction	\$800,000.00	\$400,000.00	\$0.00	\$400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Flood Gates Upgrade	\$425,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$425,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Glade Road (Phase 1 - SH26 to Manning) - Construction	\$2,000,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,000,000.00	\$0.00	\$0.00	\$0.00
	Glade Road (Phase 2 - Manning to Pool) - Construction	\$2,000,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,000,000.00	\$0.00	\$0.00	\$0.00
	John McCain Road and Westcoat Drive Roundabout - Design	\$175,000.00	\$175,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Justice Center - Metal Roof Coating	\$167,200.00	\$0.00	\$0.00	\$0.00	\$167,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	L.D. Lockett Road Right Turn Ln - Construction	\$150,000.00	\$150,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	McDonwell School Road Right Turn Ln - Construction	\$150,000.00	\$150,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	McDonwell School Road and Westcoat Drive Roundabout - Construction	\$1,400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,400,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	Pleasant Run Waterline (John McCain North to Bear Creek) - Construction	\$900,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$900,000.00	\$0.00	\$0.00
	Roberts Road - Construction	\$2,100,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,100,000.00	\$0.00	\$0.00	\$0.00
	Street Maintenance Program	\$500,000.00	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Supervisory Control and Data Acquisition (SCADA) Replacement	\$350,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$350,000.00	\$0.00	\$0.00
	Water Project 10: Apple Valley/Rustic Oaks/Bills Lane Water Lines and Road Rehabilitation on Blauvelt Road	\$935,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$935,000.00	\$0.00	\$0.00
	Water Project 5: Upsize and Replace Water Lines in Brighton Oaks Subdivision and Rehabilitate Streets	\$145,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$145,000.00	\$0.00	\$0.00
	Water Project 11: Tinker Road Water Lines - Design	\$123,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$123,000.00	\$0.00	\$0.00
	Sum Of Total Project Cost:	\$12,820,200.00	\$1,375,000.00	\$0.00	\$400,000.00	\$167,200.00	\$425,000.00	\$0.00	\$1,400,000.00	\$6,100,000.00	\$2,953,000.00	\$0.00	\$0.00
	Estimated 9/30/20 Available Balances		\$8,655,444.98	\$0.00		\$0.00	\$0.00		\$551,832.00	\$14,585,450.00	\$2,707,588.00	\$1,048,492.00	\$3,498,746.00
	(+) Year-end surplus contributions		\$500,000.00	\$0.00		\$0.00	\$0.00		\$0.00	\$0.00	\$500,000.00	\$0.00	\$0.00
	(+) FY21 Budgeted Contribution		\$1,500,000.00	\$0.00		\$325,052.00	\$1,200,000.00		\$0.00	\$5,400,000.00	\$400,000.00	\$60,000.00	\$192,000.00
	Estimated 10/1/20 Available Balances		\$10,655,444.98	\$0.00	N/A	\$325,052.00	\$1,200,000.00	N/A	\$551,832.00	\$19,985,450.00	\$3,607,588.00	\$1,108,492.00	\$3,690,746.00
2021	City Hall - Flooring Rehab	\$87,808.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$87,808.00	\$0.00	\$0.00	\$0.00
	County Project (TBD) - Construction	\$800,000.00	\$400,000.00	\$0.00	\$400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Glade Road (Phase 2 - Manning to Pool) - Construction	\$2,000,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,000,000.00	\$0.00	\$0.00	\$0.00
	John McCain Road and Westcoat Drive Roundabout - Construction	\$1,400,000.00	\$1,400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Justice Center - Carpet and VCT Tile	\$88,052.00	\$0.00	\$0.00	\$0.00	\$88,052.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Justice Center - HVAC Replacement	\$237,000.00	\$0.00	\$0.00	\$0.00	\$237,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Pleasant Run Road Bridge at Big Bear (White Chapel Bridge) - Construction	\$1,200,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,200,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Street Maintenance Program	\$500,000.00	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Streetlighting for Pedestrian Crosswalks - Construction	\$50,000.00	\$50,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Water Project 11: (Partial) Tinker Road Water Lines - Construction	\$1,110,000.00	\$450,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$660,000.00	\$0.00	\$0.00
	Water Project 12: (Partial) Woodbriar Estate Water Lines Replacement - Design	\$70,020.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$70,020.00	\$0.00	\$0.00
	Water Project 5: Upsize and Replace Water Lines in Brighton Oaks Subdivision and Rehabilitate Streets	\$2,550,000.00	\$650,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,900,000.00
	Water Project 6: Upsize and Replace Water Lines in Woodbriar Estates and Quail Crest Subdivision	\$145,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$145,000.00	\$0.00	\$0.00
	WW Project 1: Replace Sewer Lines in Woodbriar Estates and Quail Crest Subdivisions - Design	\$361,700.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$361,700.00	\$0.00	\$0.00
	Sum Of Total Project Cost:	\$10,599,580.00	\$3,450,000.00	\$0.00	\$400,000.00	\$325,052.00	\$1,200,000.00	\$0.00	\$0.00	\$2,087,808.00	\$1,236,720.00	\$0.00	\$1,900,000.00
	Estimated 9/30/21 Available Balances		\$7,205,444.98	\$0.00		\$0.00	\$0.00		\$551,832.00	\$17,897,642.00	\$2,370,868.00	\$1,108,492.00	\$1,790,746.00
	(+) Year-end surplus contributions		\$500,000.00	\$0.00		\$0.00	\$0.00		\$0.00	\$0.00	\$500,000.00	\$0.00	\$0.00
	(+) FY22 Budgeted Contribution		\$1,500,000.00	\$0.00		\$0.00	\$0.00		\$0.00	\$5,400,000.00	\$500,000.00	\$60,000.00	\$192,000.00
	Estimated 10/1/21 Available Balances		\$9,205,444.98	\$0.00	N/A	\$0.00	\$0.00	N/A	\$551,832.00	\$23,297,642.00	\$3,370,868.00	\$1,168,492.00	\$1,982,746.00
2022	County Project (TBD) - Construction	\$800,000.00	\$400,000.00	\$0.00	\$400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Library - Flooring Rehab	\$95,210.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$95,210.00	\$0.00	\$0.00	\$0.00
	Street Maintenance Program	\$500,000.00	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Water Projec 12: Partial Woodbriar Estate Water Lines Replacement - Construction	\$433,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$433,000.00	\$0.00	\$0.00
	Water Project 3: New Elevated Water Storage Tank and Associated Distribution Lines - Design	\$545,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$545,000.00
	Water Project 6: Upsize and Replace Water Lines in Woodbriar Estates and Quail Crest Subdivision	\$745,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$745,000.00	\$0.00	\$0.00
	WW Project 1: Replace Sewer Lines in Woodbriar Estates and Quail Crest Subdivisions - Constructi	\$1,900,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,900,000.00	\$0.00	\$0.00
	WW Project 5: Quails Path and Chestnut Bend Sewer Line Replacement - Design	\$91,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$91,000.00	\$0.00	\$0.00
	Sum Of Total Project Cost:	\$5,109,210.00	\$900,000.00	\$0.00	\$400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$95,210.00	\$3,169,000.00	\$0.00	\$545,000.00
	Estimated 9/30/22 Available Balances		\$8,305,444.98	\$0.00		\$0.00	\$0.00		\$551,832.00	\$23,202,432.00	\$201,868.00	\$1,168,492.00	\$1,437,746.00
	(+) Year-end surplus contributions		\$500,000.00	\$0.00		\$0.00	\$0.00		\$0.00	\$0.00	\$500,000.00	\$0.00	\$0.00
	(+) FY23 Budgeted Contribution		\$1,500,000.00	\$0.00		\$0.00	\$0.00		\$0.00	\$5,400,000.00	\$600,000.00	\$60,000.00	\$192,000.00
	Estimated 10/1/22 Available Balances		\$10,305,444.98	\$0.00	N/A	\$0.00	\$0.00	N/A	\$551,832.00	\$28,602,432.00	\$1,301,868.00	\$1,228,492.00	\$1,629,746.00

Project Year	Title	Total Project Cost	Capital Projects Fund	CEDC Fund	County Funding	Crime Control District	Drainage Fund	FHA/TxDOT	Area II Impact Fees (West of 26)	TIF	Utility Capital Fund	Wastewater Impact Fees	Water Impact Fees
2023	City Hall - Boiler Replacement	\$99,600.00	\$99,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	County Project (TBD) - Construction	\$800,000.00	\$400,000.00	\$0.00	\$400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Street Maintenance Program	\$500,000.00	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Water Project 3: New Elevated Water Storage Tank and Associated Distribution Lines - Constructic	\$4,500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,500,000.00	\$0.00	\$0.00	\$0.00
	Woodbriar, Quail Crest Estates Rehabilitation (Companion Project to Water Projects #6 and 12/Po	\$2,768,000.00	\$2,768,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	WW Project 5: Quails Path and Chestnut Bend Sewer Line Replacement and Road Rehabilitation -	\$829,000.00	\$110,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$719,000.00	\$0.00	\$0.00
	Sum Of Total Project Cost:	\$9,496,600.00	\$3,877,600.00	\$0.00	\$400,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,500,000.00	\$719,000.00	\$0.00	\$0.00
	Estimated 9/30/23 Available Balances		\$6,427,844.98	\$0.00		\$0.00	\$0.00		\$551,832.00	\$24,102,432.00	\$582,868.00	\$1,228,492.00	\$1,629,746.00
	(+) Year-end surplus contributions		\$500,000.00	\$0.00		\$0.00	\$0.00		\$0.00	\$0.00	\$500,000.00	\$0.00	\$0.00
	(+) FY24 Budgeted Contribution		\$1,500,000.00	\$0.00		\$0.00	\$0.00		\$0.00	\$5,400,000.00	\$700,000.00	\$60,000.00	\$192,000.00
	Estimated 10/1/23 Available Balances		\$8,427,844.98	\$0.00	N/A	\$0.00	\$0.00	N/A	\$551,832.00	\$29,502,432.00	\$1,782,868.00	\$1,288,492.00	\$1,821,746.00



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number
Type Report
Department Finance

Agenda Date 11/20/2018

Number

Title

Monthly Financial Report - October 30, 2018

Explanation

General Fund

As of October 30, 2018, the General fund earned \$206,923 in revenues and incurred \$1,652,393 in expenditures.

Most of the revenues collected in October were recorded in Fiscal Year 2018, in which they were earned. That includes \$302,986 in Sales tax revenue earned in August 2018. The majority of the Ad Valorem taxes collections takes place between December and February.

Utility Fund

As of October 30, 2018, the utility fund earned \$1,108,605 in revenues and incurred \$1,132,562 in expenditures. The water volumetric rate revenue is down 41% compared to the same month last year due to the excessive rain fall we experienced this year.

	FY19 Budget	YTD Revenues
Water - Base Rate	\$1,692,467	\$ 147,536
Water - Volumetric Rate	1,281,578	104,104
Wastewater - Base Rate	9,794,756	555,531
Wastewater - Volumetric Rate	3,299,803	269,000

Debt Service Fund

As of October 30, 2018, the Debt service fund paid the annual fire engines' lease payments. The Ambulance lease payment is due in June. Debt payments usually occur in August and February. Most of the Ad Valorem taxes collections takes place between December and February.

Drainage Fees Fund

As of October 30, 2018, the Drainage fees fund spent \$38,934 out of its \$771,136 expense budget and earned \$85,188 in revenues which is 8.76% of the budgeted revenue of \$972,448.

City of Colleyville
General Fund Monthly Financial Report
As of 10/31/2018 - End of 8.33% of the Fiscal Year

GENERAL FUND		ACTIVITY FY 2019 YTD AS OF 10/31/2018	PERCENT OF BUDGET USED
SUMMARY	FY 2019 BUDGET		
Revenues	24,110,961	206,923	0.86%
Expenditures	24,044,488	1,652,393	6.87%
Revenues over expenditures	\$66,473	(\$1,445,470)	

GENERAL FUND		RECEIVED FY 2019 YTD AS OF 10/31/2018	PERCENT OF BUDGET RECEIVED	AVERAGE ACTUAL YTD BALANCE AS A PERCENT OF YEAR END BAL	RECEIVED FY 2018 YTD AS OF 10/31/2017	PERCENT CHANGE OVER PRIOR YEAR
REVENUE SOURCE	FY 2019 BUDGET					
Current Taxes	14,242,575	-	0.00%	0.00%	-	0.00%
Delinquent Taxes	25,000	-	0.00%	0.00%	-	0.00%
Penalty & Interest	55,000	-	0.00%	0.00%	-	0.00%
TOTAL AD VALOREM TAXES	14,322,575	-	0.00%	0.00%	-	0.00%
Oncor Electric	890,000	-	0.00%	0.00%	-	0.00%
Tri-County Electric	105,000	-	0.00%	0.00%	-	0.00%
Atmos Gas	350,000	-	0.00%	0.00%	-	0.00%
AT&T	60,000	-	0.00%	0.00%	-	0.00%
Verizon/Others	65,000	410	0.63%	1.00%	1,054	-61.14%
Refuse/Recycling	160,000	-	0.00%	0.00%	-	0.00%
Cable TV	475,000	-	0.00%	0.00%	-	0.00%
TOTAL FRANCHISE TAXES	2,105,000	410	0.02%	0.05%	1,054	-61.14%
Sales Tax	3,903,292	-	0.00%	0.00%	-	0.00%
Mixed Beverage Tax	105,000	-	0.00%	0.00%	-	0.00%
TOTAL SALES TAXES	4,008,292	-	0.00%	0.00%	-	0.00%
Building	625,000	59,523	9.52%	12.00%	82,989	-28.28%
Plumbing	57,600	5,009	8.70%	10.00%	6,081	-17.64%
Mechanical	48,000	3,208	6.68%	8.00%	4,200	-23.62%
Electrical	57,600	5,224	9.07%	7.00%	7,024	-25.62%
City License	46,000	4,200	9.13%	6.00%	3,100	35.48%
Building Plan Review Fee	88,000	15,240	17.32%	10.50%	8,716	74.85%
New Business	7,200	800	11.11%	6.00%	600	33.33%
Sign Permit	8,000	450	5.63%	11.52%	325	38.46%
Fence Permit	15,000	1,425	9.50%	9.00%	750	90.00%
Fire Permits	8,000	1,310	16.38%	6.00%	150	773.33%
Irrigation Permit	15,000	750	5.00%	10.00%	996	-24.70%
TOTAL LICENSES & PERMITS	975,400	97,139	9.96%	8.12%	114,931	-15.48%

GENERAL FUND - CONTINUED		RECEIVED		AVERAGE ACTUAL	RECEIVED	
	FY 2019	FY 2019 YTD	PERCENT	YTD BALANCE	FY 2018 YTD	PERCENT
REVENUE SOURCE	BUDGET	AS OF	OF BUDGET	AS A PERCENT OF	AS OF	CHANGE OVER
		10/31/2018	RECEIVED	YEAR END BAL	10/31/2017	PRIOR YEAR
Court Fines	750,000	39,771	5.30%	7.00%	\$49,537	-19.71%
Alarm Fees	55,000	-	0.00%	0.00%	-	0.00%
Library Fines	17,604	1,049	5.96%	7.00%	1,633	-35.78%
TOTAL FINES	822,604	40,820	4.96%	6.68%	51,170	-20.23%
Plat Fee/Site Plan/Landscaping Plan Fee	10,500	-	0.00%	7.00%	1,000	-100.00%
Re-zoning	11,000	-	0.00%	5.00%	-	0.00%
Board of Adjustment	2,000	-	0.00%	9.00%	175	-100.00%
Sale of Material	100	-	0.00%	0.00%	-	0.00%
Weed Mowing	6,000	510	8.50%	6.00%	-	0.00%
Ambulance	345,000	23,947	6.94%	8.00%	21,109	13.44%
Recreation Program	195,000	8,780	4.50%	5.00%	29,066	-69.79%
Credit Card Fee Revenue	16,000	1,357	8.48%			0.00%
Transfers from Other Funds	-	-	0.00%	0.00%	-	0.00%
Engineering & Inspection	15,000	-	0.00%	8.00%	-	0.00%
Material Testing	8,000	-	0.00%	0.00%	-	0.00%
Lot Drainage Insp Fee	17,000	1,500	8.82%	10.00%	2,500	-40.00%
Field Use Charge	21,500	-	0.00%	19.00%	6,760	-100.00%
Colleyville Center Rental	230,000	13,512	5.87%	6.00%	13,524	-0.09%
Non-Resident Fee Parks	40,000	-	0.00%	15.00%	12,980	-100.00%
Transfer from Utility Fund	226,117	-	0.00%	0.00%	-	0.00%
Transfer from TIF	159,390	-	0.00%	0.00%	-	0.00%
TOTAL CHARGES FOR SERVICE	1,302,607	49,606	3.81%	4.00%	87,114	-43.06%
Keller Court	260,538	-	0.00%	0.00%	-	0.00%
SRO Officer Reimb	103,945	-	0.00%	0.00%	-	0.00%
TOTAL INTERGOVERNMENTAL	364,483	-	0.00%	0.00%	-	0.00%
Sale of Surplus Property	5,000	-	0.00%	0.00%	-	0.00%
Interest Income	55,000	8,869	16.13%	11.12%	9,536	-6.99%
Miscellaneous	60,000	4,956	8.26%	10.10%	5,189	-4.48%
Antenna Lease	90,000	5,123	5.69%	5.21%	5,070	1.05%
TOTAL MISCELLANEOUS	210,000	18,949	9.02%	5.00%	19,795	-4.28%
TOTAL GENERAL FUND REVENUES	24,110,961	206,923	0.86%	1.14%	274,064	-24.50%

	FY 2019	THROUGH	THROUGH	TOTAL	PERCENT
	BUDGET	10/31/2018	10/31/2017	INCREASE	INCREASE
				(DECREASE)	(DECREASE)
RESIDENTIAL BLDG PERMITS	115	10	20	(10)	-50.00%
COMMERCIAL BLDG PERMITS	7	2	2	0	0.00%

GENERAL FUND EXPENDITURES		EXPENDED	PERCENT	PERCENT OF	BUDGET	EXPENDED
	FY 2019	THROUGH	OF BUDGET	FISCAL YEAR	REMAINING	FY 2018 YTD
	BUDGET	10/31/2018	EXPENDED	COMPLETE		AS OF
						10/31/2017
Personnel services	15,336,809	1,224,187	7.98%	8.33%	14,112,622	1,020,669
Contractual Services	5,379,345	370,083	6.88%	8.33%	5,009,262	418,260
Supplies	1,299,628	58,123	4.47%	8.33%	1,241,505	23,945
Capital Outlay	14,000	-	0.00%	8.33%	14,000	-
Transfer to other fund	2,014,706	-	0.00%	8.33%	2,014,706	-
TOTAL EXPENDITURES	24,044,488	1,652,393	6.87%	8.33%	22,392,095	1,462,874

City of Colleyville
Utility Fund Monthly Financial Report
As of 10/31/2018 - End of 8.33% of the Fiscal Year

UTILITY FUND		ACTIVITY	
	FY 2019	FY 2017 YTD	PERCENT
SUMMARY	BUDGET	AS OF	OF BUDGET
		10/31/2018	USED
Revenues	16,405,604	1,108,605	6.76%
Expenditures	16,405,604	1,132,562	6.90%
Revenues over expenditures	-	(23,957)	

UTILITY FUND		RECEIVED	PERCENT	AVERAGE ACTUAL	RECEIVED	EXPENDED
	FY 2019	AS OF	OF BUDGET	YTD BALANCE	AS OF	CHANGE OVER
REVENUE SOURCE	BUDGET	10/31/2018	RECEIVED	AS A PERCENT OF	10/31/2017	PRIOR YEAR
				YEAR END BAL		
Water - Base Rate	1,692,467	147,536	8.72%	8.33%	149,055	-1.02%
Sewer - Base Rate	1,281,578	104,104	8.12%	8.33%	107,210	-2.90%
Water - Volumetric Rate	9,794,756	555,531	5.67%	9.87%	956,315	-41.91%
Sewer - Volumetric Rate	3,299,803	269,000	8.15%	8.01%	215,169	25.02%
Water - TRA True-up	-	-	0.00%	0.00%	-	0.00%
Sewer - TRA True-up	-	-	0.00%	0.00%	-	0.00%
Sewer Installation	15,000	1,000	6.67%	9.21%	1,900	-47.37%
Water Installation	42,000	5,900	14.05%	10.15%	4,390	34.40%
Engineering & Development Charges	5,000	-	0.00%	0.00%	-	0.00%
Penalties	200,000	17,836	8.92%	14.40%	27,119	-34.23%
Sale of Material	-	932	0.00%	0.00%	-	0.00%
Miscellaneous	15,000	1,406	9.37%	8.59%	3,510	-59.94%
TOTAL OPERATING INCOME	16,345,604	1,103,245	6.75%	11.70%	1,464,668	-24.68%
Sale of Surplus Property	-	-	0.00%	0.00%	-	0.00%
Interest Income	60,000	5,359	8.93%	5.50%	1,807	196.58%
TOTAL NON-OPERATING INCOME	60,000	5,359	8.93%	3.01%	1,807	196.58%
TOTAL INCOME	16,405,604	1,108,605	6.76%	8.94%	1,466,475	-24.40%

	THROUGH	THROUGH	TOTAL	PERCENT
	10/31/2018	10/31/2017	INCREASE	INCREASE
			(DECREASE)	(DECREASE)
GALLONS OF WATER SOLD	143,652,800	235,839,900	(92,187,100)	-39.09%
NUMBER OF WATER CUSTOMERS	10,149	10,010	139	1.39%

UTILITY FUND EXPENSES		EXPENDED	PERCENT	PERCENT OF	BUDGET	EXPENDED
	FY 2019	THROUGH	OF BUDGET	FISCAL YEAR	REMAINING	FY 2018 YTD
	BUDGET	10/31/2018	EXPENDED	COMPLETE		AS OF
						10/31/2017
Personnel Services	2,041,194	134,153	6.57%	8.33%	1,907,041	120,072
Contractual services *	13,667,521	994,522	7.28%	8.33%	12,672,999	1,119,219
Supplies	245,386	3,887	1.58%	8.33%	241,499	3,884
Capital Outlay	100,000	-	0.00%	8.33%	100,000	897
Transfers to other funds	351,503	-	0.00%	8.33%	351,503	-
Debt Service	-	-	0.00%	8.33%	-	1,138
TOTAL EXPENSES	16,405,604	1,132,562	6.90%	8.33%	15,273,042	1,245,211

City of Colleyville
Debt Service Fund Monthly Financial Report
As of 10/31/2018 - End of 8.33% of the Fiscal Year

DEBT SERVICE FUND		ACTIVITY	
	FY 2019	FY 2017 YTD	PERCENT
SUMMARY	BUDGET	AS OF	OF BUDGET
		10/31/2018	USED
Revenues	1,859,940	-	0.00%
Expenditures	1,859,940	165,324	8.89%
Revenues over expenditures	-	(165,324)	

DEBT SERVICE FUND		RECEIVED		AVERAGE ACTUAL	RECEIVED	
	FY 2019	FY 2019 YTD	PERCENT	YTD BALANCE	FY 2018 YTD	PERCENT
REVENUE SOURCE	BUDGET	AS OF	OF BUDGET	AS A PERCENT OF	AS OF	CHANGE OVER
		10/31/2018	RECEIVED	YEAR END BAL	10/31/2017	PRIOR YEAR
Current taxes	682,115	-	0.00%	0.00%	-	0.00%
Delinquent taxes	5,000	-	0.00%	0.00%	-	0.00%
Penalty & interest	5,000	-	0.00%	0.00%	-	0.00%
Interest Income	5,000	-	0.00%	0.00%	-	0.00%
TOTAL AD VALOREM TAX & INTEREST	697,115	-	0.00%	0.00%	-	0.00%
Transfer from CCPD	509,100	-	0.00%	0.00%	-	0.00%
Transfer from TIF	653,725	-	0.00%	0.00%	-	0.00%
TOTAL TRANSFERS	1,162,825	-	0.00%	0.00%	-	0.00%
Use of Fund Balance	-	-	0.00%	100.00%	-	0.00%
Bond proceeds & Premium	-	-	0.00%	100.00%	-	0.00%
TOTAL REVENUE & USE OF FUND BAL	1,859,940	-	0.00%	0.00%	-	0.00%

DEBT SERVICE FUND		EXPENDED	PERCENT	PERCENT OF	BUDGET	EXPENDED
	FY 2019	THROUGH	OF BUDGET	FISCAL YEAR	REMAINING	FY 2017 YTD
	BUDGET	10/31/2018	EXPENDED	COMPLETE		AS OF
						10/31/2017
Bond & Interest Payments	1,644,628	-	0.00%	8.33%	1,644,628	-
Leases (Fire Engine & Ambulance)	215,312	165,324	76.78%	8.33%	49,988	165,324
TOTAL EXPENSES	1,859,940	165,324	8.89%	8.33%	1,694,616	165,324

City of Colleyville
Drainage Fee Fund Monthly Financial Report
As of 10/31/2018 - End of 8.33% of the Fiscal Year

DRAINAGE FEE FUND		ACTIVITY	
	FY 2018	FY 2018 YTD	PERCENT
SUMMARY	BUDGET	AS OF	OF BUDGET
		10/31/2018	USED
Revenues	972,448	85,188	8.76%
Expenditures	771,136	38,934	5.05%
Revenues over expenditures	201,312	46,254	

DRAINAGE FEE FUND		RECEIVED	PERCENT	AVERAGE ACTUAL	RECEIVED	PERCENT
	FY 2019	FY 2019 YTD	OF BUDGET	YTD BALANCE	FY 2018 YTD	CHANGE OVER
REVENUE SOURCE	BUDGET	AS OF	RECEIVED	AS A PERCENT OF	AS OF	PRIOR YEAR
		10/31/2018		YEAR END BAL	10/31/2017	
Drainage Revenues	956,760	82,769	8.65%	8.27%	81,357	1.74%
Other revenues (Interest, penalty,...)	15,688	2,419	15.42%	5.00%	1,629	48.47%
TOTAL REVENUES	972,448	85,188	8.76%	9.98%	82,986	2.65%

DRAINAGE FEE FUND		EXPENDED	PERCENT	PERCENT OF	BUDGET	EXPENDED
	FY 2019	THROUGH	OF BUDGET	FISCAL YEAR	REMAINING	FY 2017 YTD
	BUDGET	10/31/2018	EXPENDED	COMPLETE		AS OF
						10/31/2017
Personnel Services	462,669	32,731	7.07%	8.33%	429,938	30,181
Contractual Services	134,840	2,247	1.67%	8.33%	132,593	6,863
Supplies	47,957	2,373	4.95%	8.33%	45,584	3,267
Debt Service	125,670	1,583	1.26%	8.33%	124,087	1,374
TOTAL EXPENSES	771,136	38,934	5.05%	8.33%	732,202	41,685



Agenda Item - Items not for council action

Monthly Financial Report October 2018

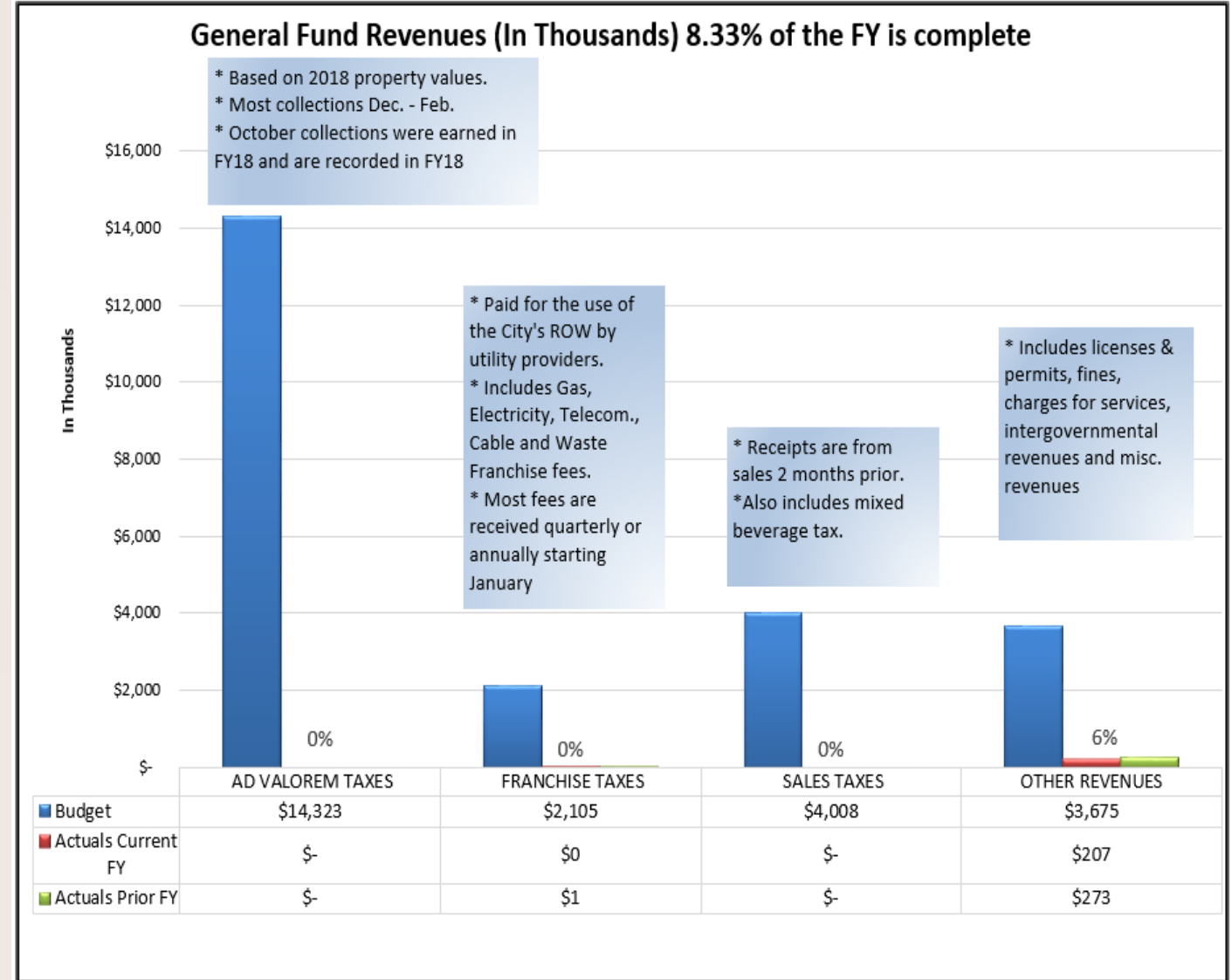
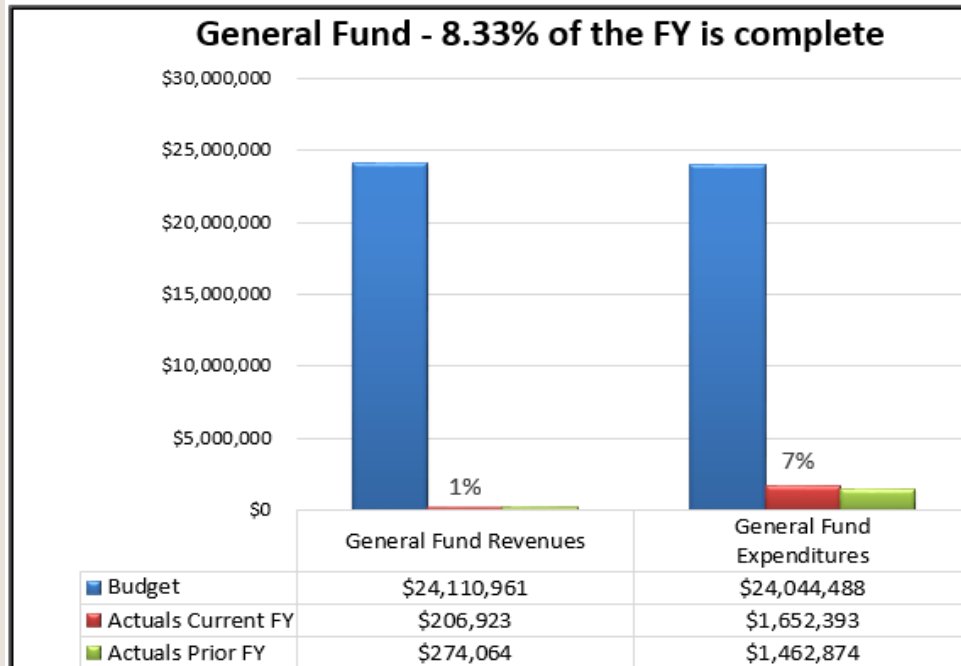
City Council Meeting
November 20, 2018

General Fund



Highlights:

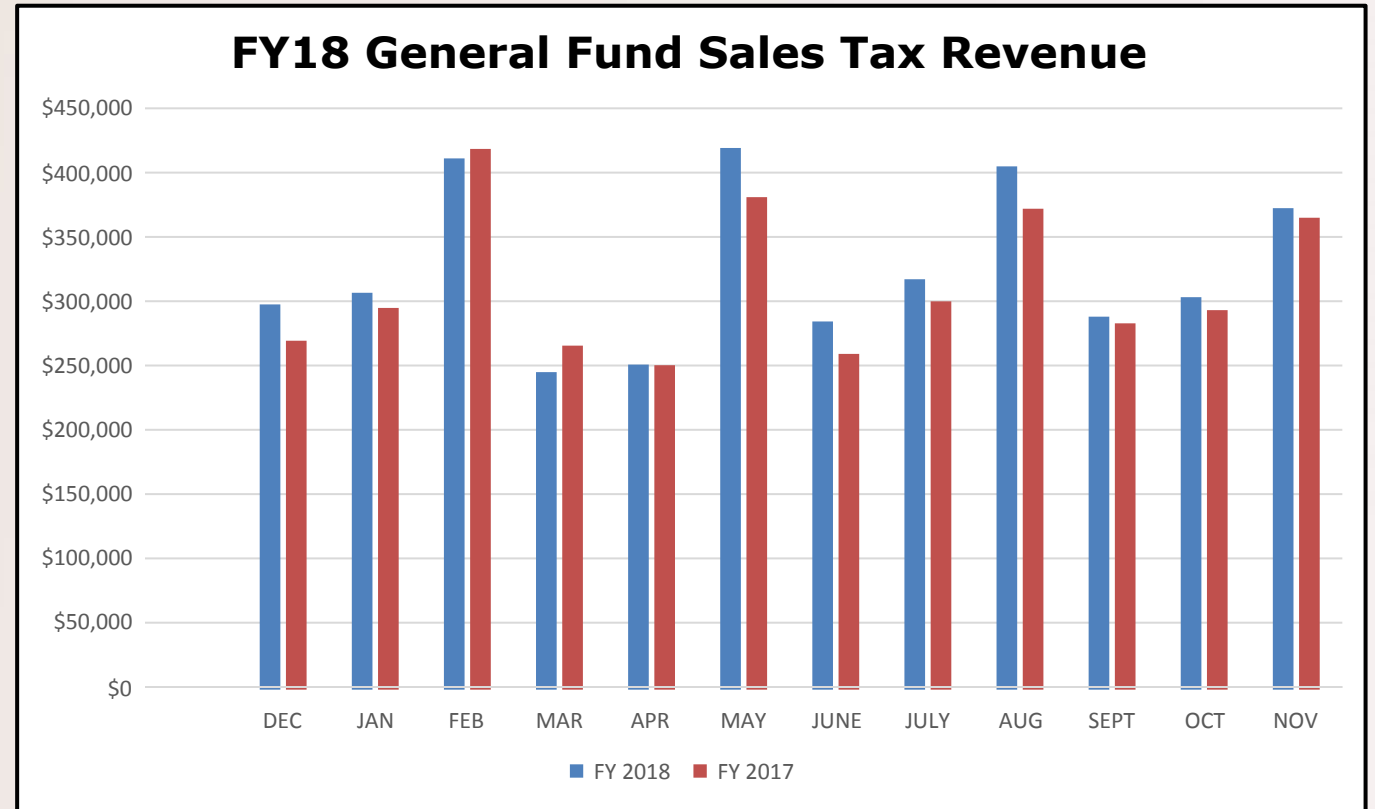
- **1 cent sales tax:** October collections of \$303K was earned in August & recorded in FY18
- **Property Taxes:** October collections of \$5,250 was earned & recorded in FY18
- **Franchise Fees:** Major activity starts January through annual and quarterly payments.
- **Ambulance Revenue:** Up 13.44%
- **Expenditures:** On track with budget



General Fund – Sales Tax



- FY18 4% above FY17 (\$148K)
- FY18 \$200K over budget
- 8 consecutive months of positive sales tax growth
- Quarterly Promotion Programs began in February

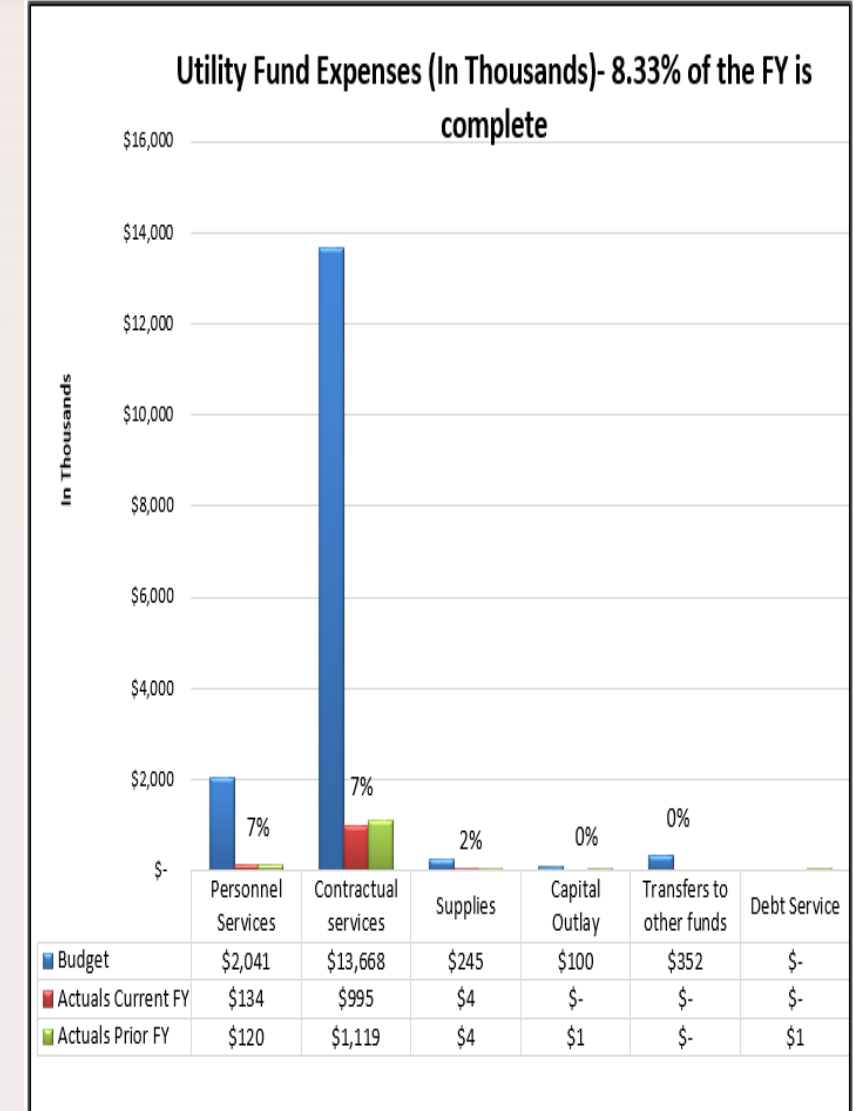
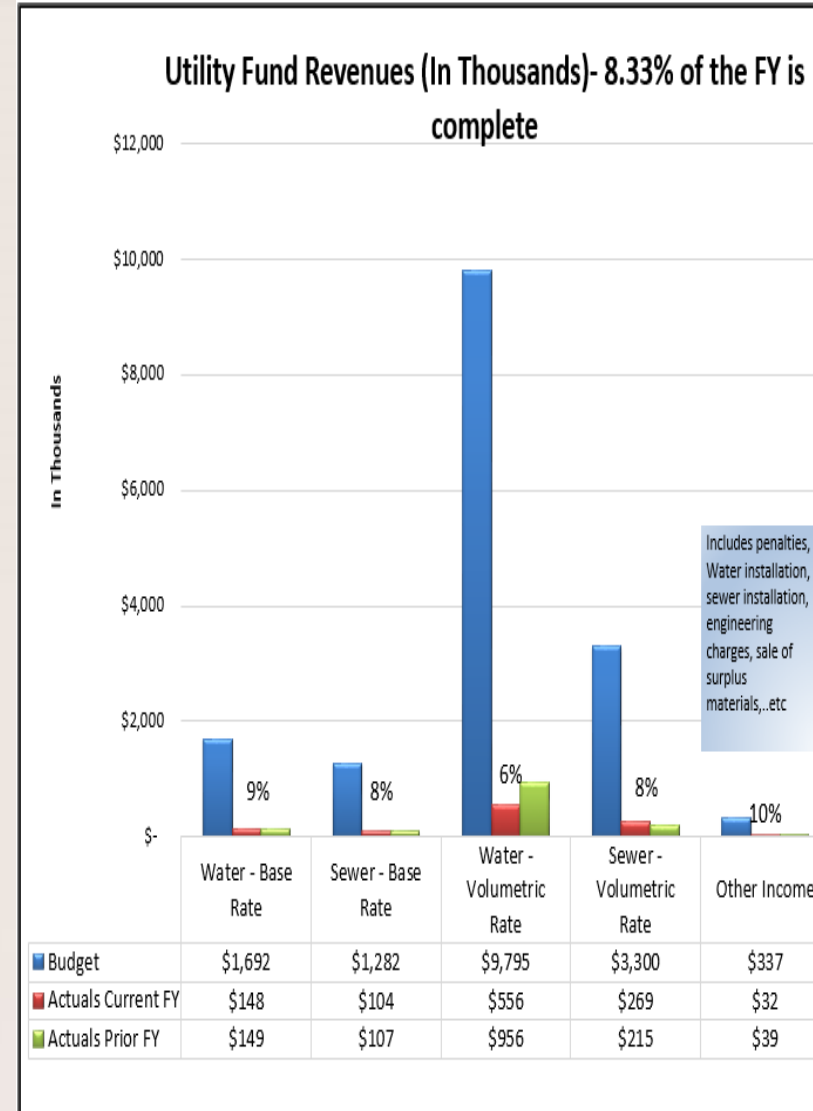
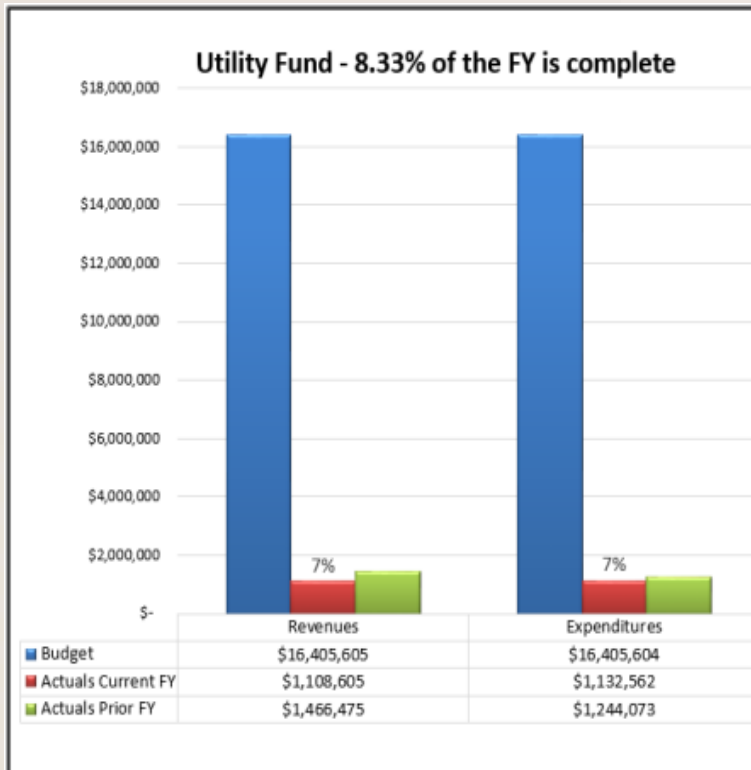


Utility Fund



Highlights:

- Total revenues: down 24% due to the decline in consumption
- Water Usage: Down 39% due to the increase in rain fall
- Number of customers: Up 1.39%

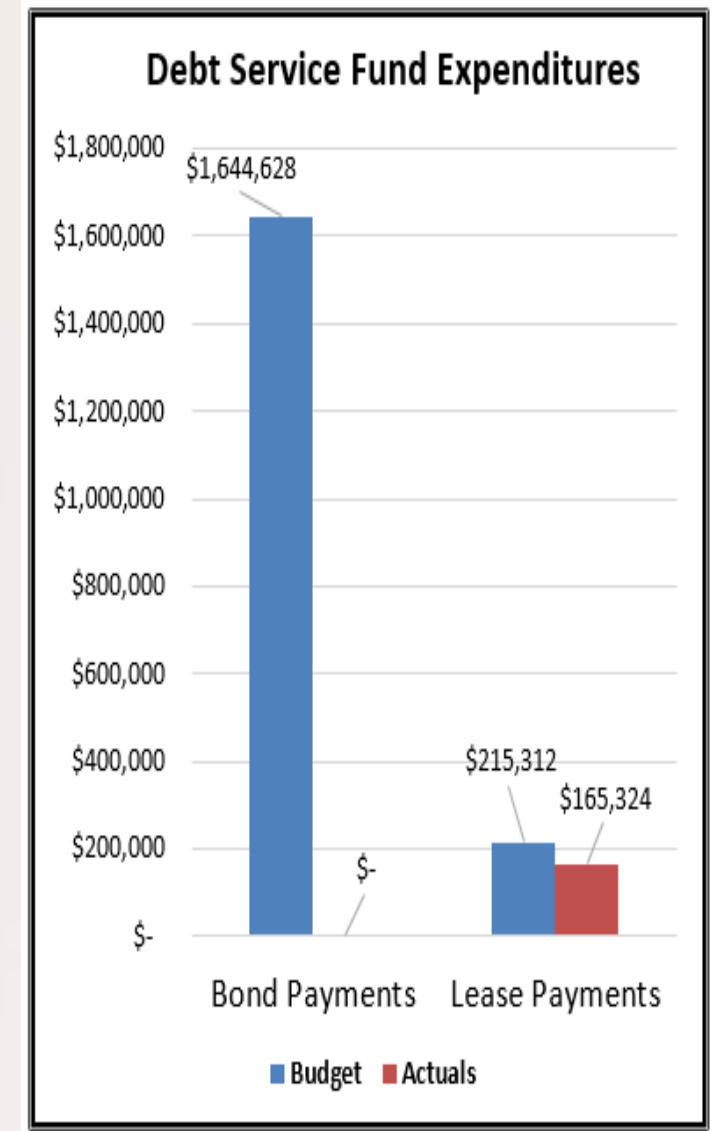
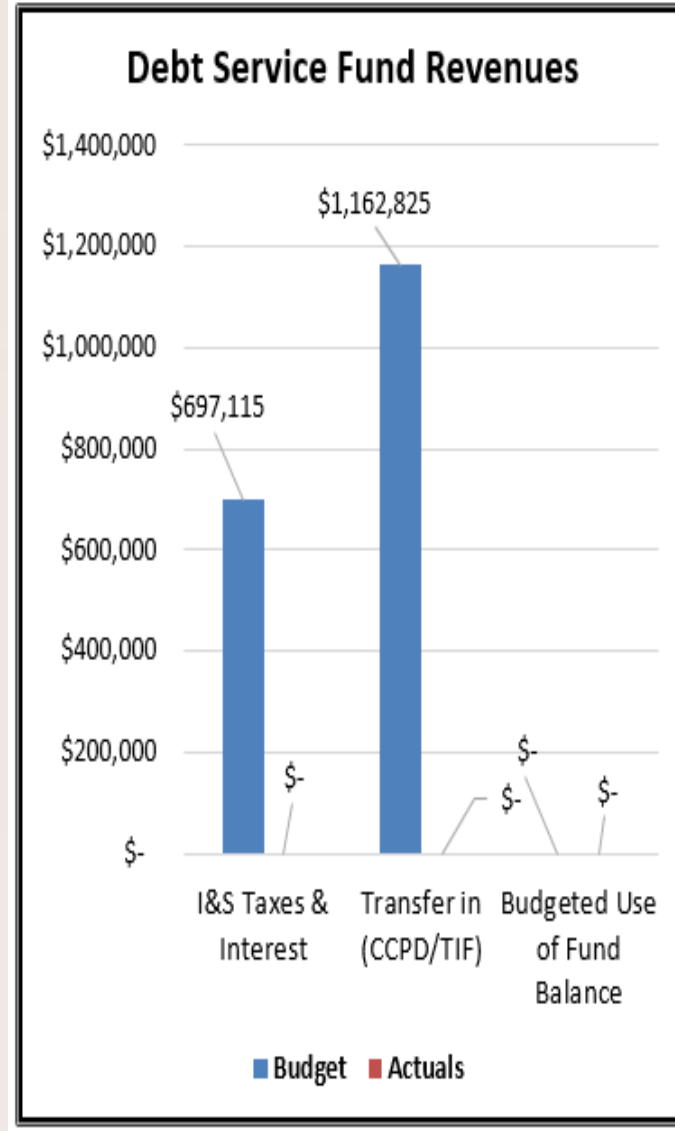
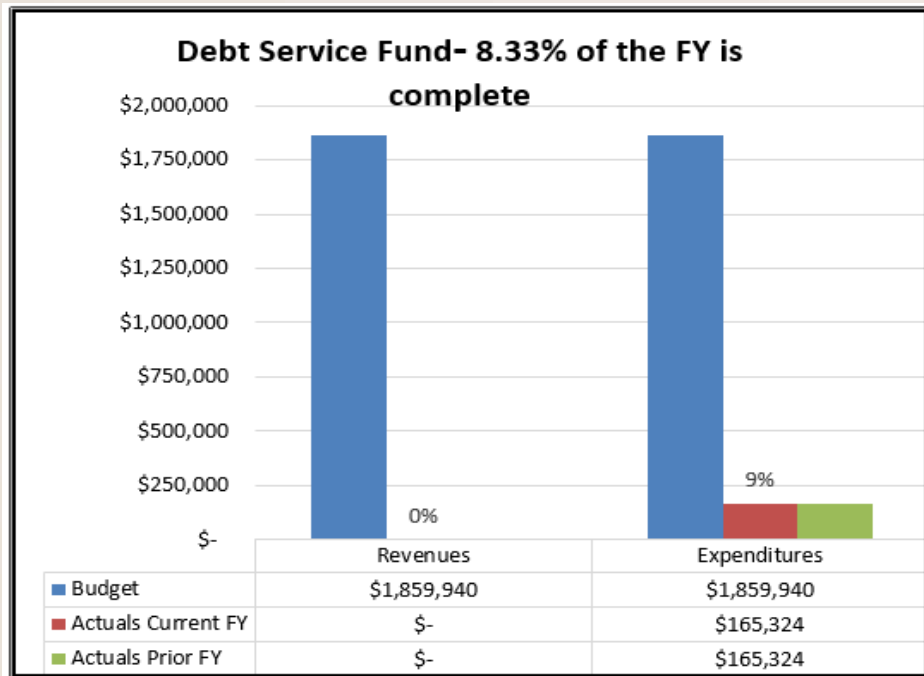


Debt Service Fund



Highlights:

- **Property Taxes:** October collections earned & recorded in FY18
- **Bond payments:**
 - February principal & interest payment
 - August interest payment
- **Lease-purchase payments:**
 - Fire engine payments made
 - Ambulance payment due in June

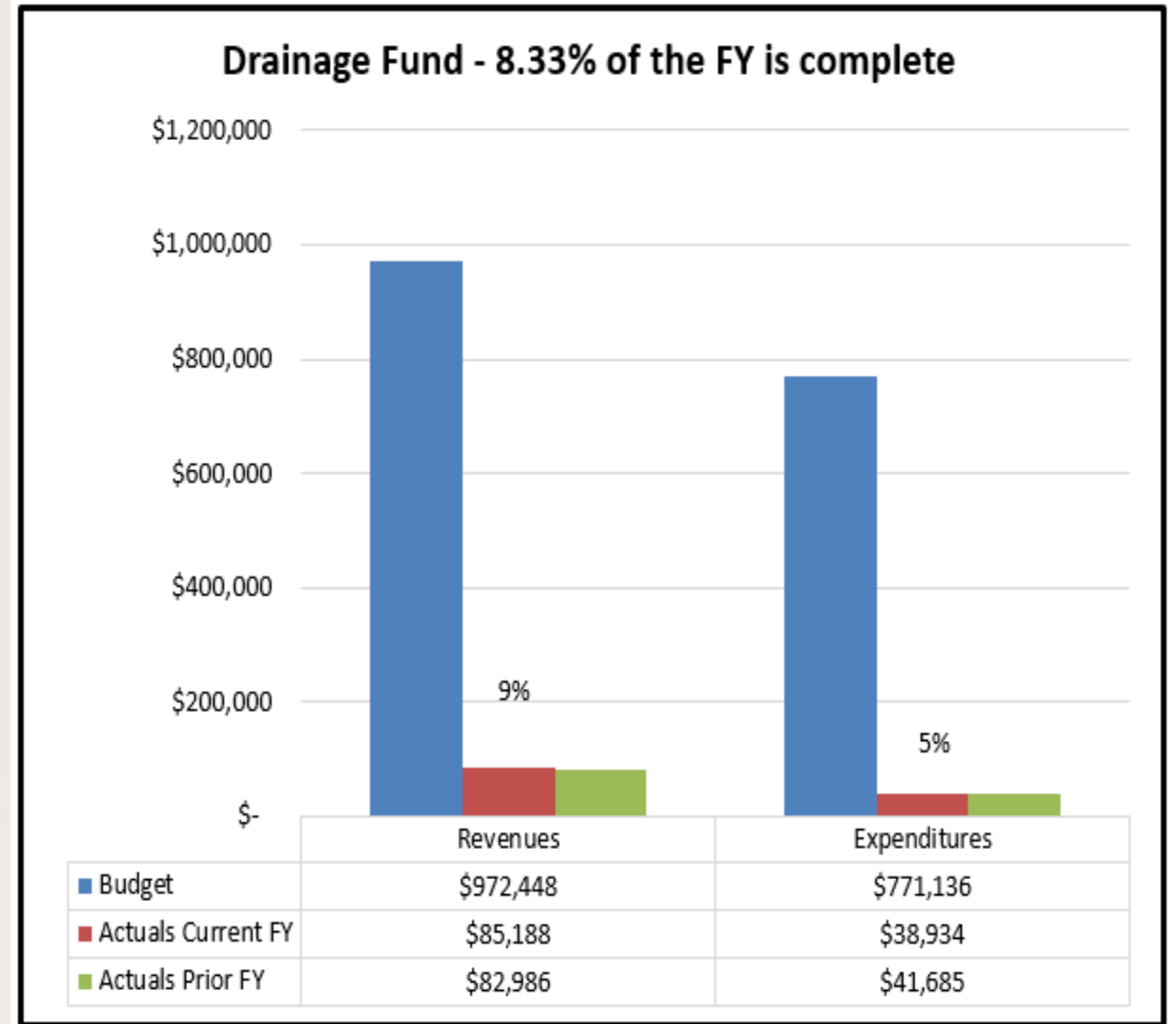
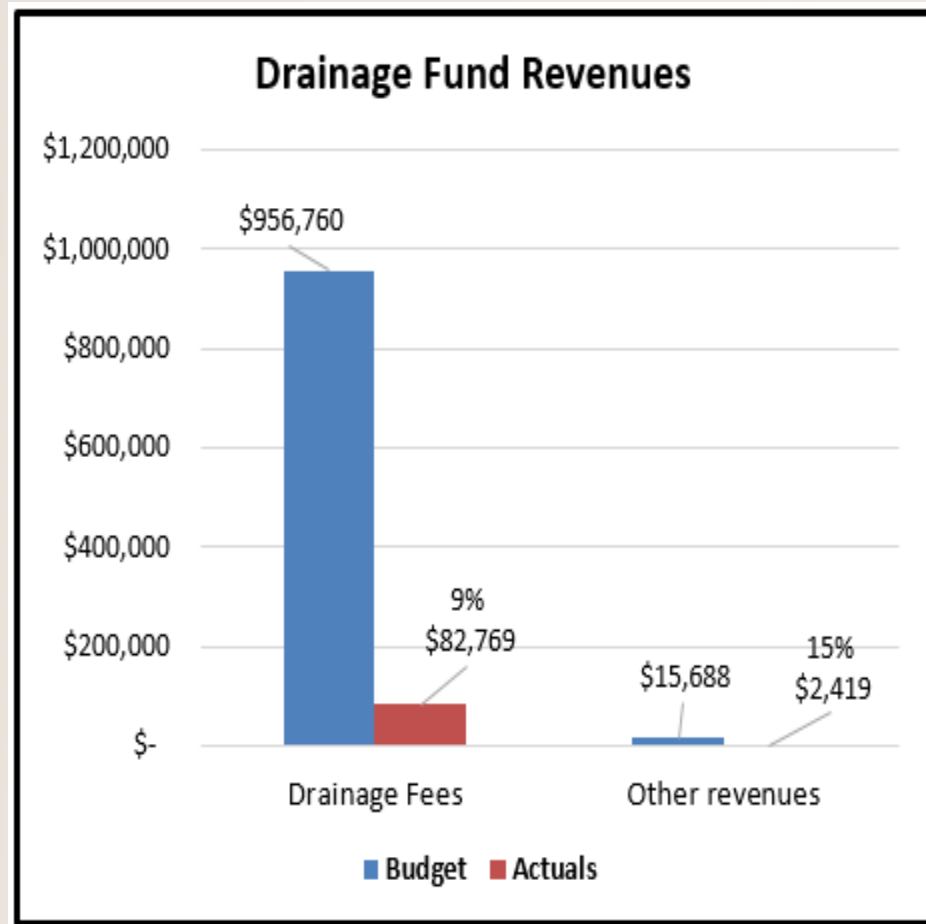


Drainage Fund



Highlights:

- **Drainage fee revenues:** Up 2.65%
- **Expenditures:** On track with budget





City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 6a

Agenda Date 11/20/2018

Number Ordinance O-18-2065

Type Ordinance

Department Community Development

Title

Consideration of a zoning change from R-40 Single Family Residential district to PUD-C Planned Unit Development – Commercial district on Tract 1, Abstract 1154, in the R H McEwing Survey and Tract 1G, Abstract A1182, in the Less Homesite Survey, located at 8060 Precinct Line Road, Case ZC18-028

Strategic Plan

4.2 Encourage compatible commercial growth

Explanation

Second Reading and Public Hearing

There were no speakers regarding this request at the November 5, 2018 City Council Meeting.

First Reading and Public Hearing

Rick Jones, the applicant, has submitted a request to rezone the property located at 8060 Precinct Line Road. The purpose is to rezone from the R-40 Single Family Residential district to the PUD-C Planned Unit Development-Commercial district in order to allow for the development and operation of a self-storage facility on the rear (eastern) portion of the property and creation of three (3) pad sites for retail/restaurant uses along the front (western) portion of the property.

Existing Conditions/Background: The subject property is currently un-platted and is Tract 1, Abstract 1154, in the R H McEwing Survey. The applicant proposes to develop the property into self-storage facilities and potential retail/restaurant for the property located along Precinct Line Road. The current zoning allows for single-family residential uses.

Proposed Zoning Change:

Request – The request is to rezone from the R-40 Single Family Residential (40,000 sq/ft min. lot size) to the Planned Unit Development - Commercial (PUD-C) district. The request is to construct an 86,675 SF self-storage warehouse with three (3) pad sites for approximately 12,850 SF of retail and restaurant.

Purpose: The purpose of a Planned Unit Development (PUD) is to provide for greater flexibility and discretion in the approval of residential, non-residential and mixed use developments by encouraging creative, efficient and aesthetically desirable residential and commercial projects that are superior to what could be accomplished in other zoning districts through the use of increased open spaces, greenbelts, or by providing enhanced amenities or features within the development that will be of special benefit to the property owners or to the community.

Analysis – The subject property meets all of the minimum physical requirements described for the requested PUD-C designation. This request also fits into a recent trend of commercial development along Precinct Line Road. The self-storage facilities have been identified in the Land Development Code for use only with Special Use Permits in our Light Manufacturing (ML) district and therefore approval of this PUD would mean an approval of the self-storage use.

Staff has worked with the applicant to communicate the desire for high quality architectural standards in the development. By approving a PUD-C for the entire property at once, it ensures that the architectural quality of the buildings fronting Precinct Line Road will be of equally high standards and that the entire property develops in a cohesive manner.

Surrounding Development: Property immediately to the north has CC-2 and PUD-C zoning and has developed with commercial and office uses. A new office building is currently under construction to the rear of the existing building along Precinct Line Road. Property to the south has PUD-C zoning but remains undeveloped. Property across Precinct Line Road to the west has developed primarily as residential and falls outside of Colleyville's city boundaries. Property to the east has R-40 and R-20 Single-Family Residential zoning and has mostly developed with single-family residential uses. The property to the southeast is zoned PUD-R and developed with single family residential uses.

Comprehensive Plan: The City's comprehensive plan, *Destination Colleyville*, designates the subject property and most of the property along Precinct Line Road for future commercial use. The Land Development Code only allows the proposed self-storage warehouse use with a Special Use Permit in the Light Manufacturing (ML) zoning district. The addition of retail/restaurant pad sites meets the intent of the comprehensive plan. The proposed rezoning request does comply with the commercial land use designation stated in the comprehensive plan.

Fees: This proposed project would require Park Land Dedication fees in the amount of \$2,876 based on a rate of \$800 per acre. Park Land Dedication fees are due prior to filing the plat for record. Impact Fees are also required per Chapter 13 (Impact Fees) of the Land Development Code and are due prior to the issuance of a Building Permit, if applicable.

Tree Preservation: There exists a protected tree on the self-storage tract and the applicant is requesting to remove the tree due to its location. This request is reflected in the proposed PUD conditions. As the retail/restaurant pad sites develop they must comply with Chapter 5 (Tree Preservation) of the Land Development Code. Where any tree is slated for removal, no site grading, dirt disturbance or new construction may occur on the property until a Tree Removal Permit has been issued that is associated with an approved Tree Preservation Plan.

In addition to the requirements for submittal of a Tree Removal Permit and Tree Preservation Plan, future development on the site must maintain the minimum existing protected tree canopy coverage as required in Chapter 5 or the development could request a waiver to the requirements.

Public Notification: Staff mailed notices to all property owners within 500 feet as well as any Homeowners Associations within 500 feet of the subject property. Staff notified Keller ISD per state law, which serves the subject property. Notice was published in the *Fort Worth Star-Telegram* as required by State law and the Land Development Code. To date, staff has not received any correspondence for this item.

Staff Recommendation: Staff recommends approval of the zoning change request based on the following findings:

- The proposed would conform to the Future Land Use Plan and stated goals described in the *Destination Colleyville* Plan due to the identification and inclusion of a retail/restaurant concept to the Planned Unit Development.
- The proposed use does conform to recent development trends in the surrounding properties and along Precinct Line Road.

Planning & Zoning Commission Recommendation: The Planning & Zoning Commission recommended approval at their October 8, 2018 meeting by a vote of 6-0 with the following conditions: 1) No outdoor storage for RV's, boats, materials, etc.; 2) No commercial truck rentals be permitted; 3) Vehicles associated with the self-storage use shall be parked inside that facility; and 4) The landscaping along the Precinct Line Road frontage shall be required with the self-storage use or the 1st project developed.

Financial Impact

There is no financial impact to the City.

Recommendation

Approve

Attachments

1. Aerial Map
2. Zoning Map
3. Future Land Use Map

4. Statement of Planning Objectives
5. Conceptual Site Plan
6. Existing Site Exhibit
7. Site Plan
8. Existing Tree Exhibit
9. Landscape Plan
10. Proposed Landscape Compromise per P&Z (12 Oct 2018)
11. Building Elevations
12. Drainage Exhibit
13. Drainage Plan
14. Storm Sewer Plan
15. Water and Sanitary Sewer Plan
16. Notification Map
17. Notification List
18. Property Owner Notification
19. Adjacent Property Owner Responses
20. Ordinance O-18-2065

Aerial Map

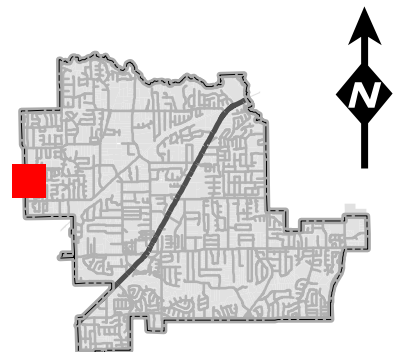


ZC18-028

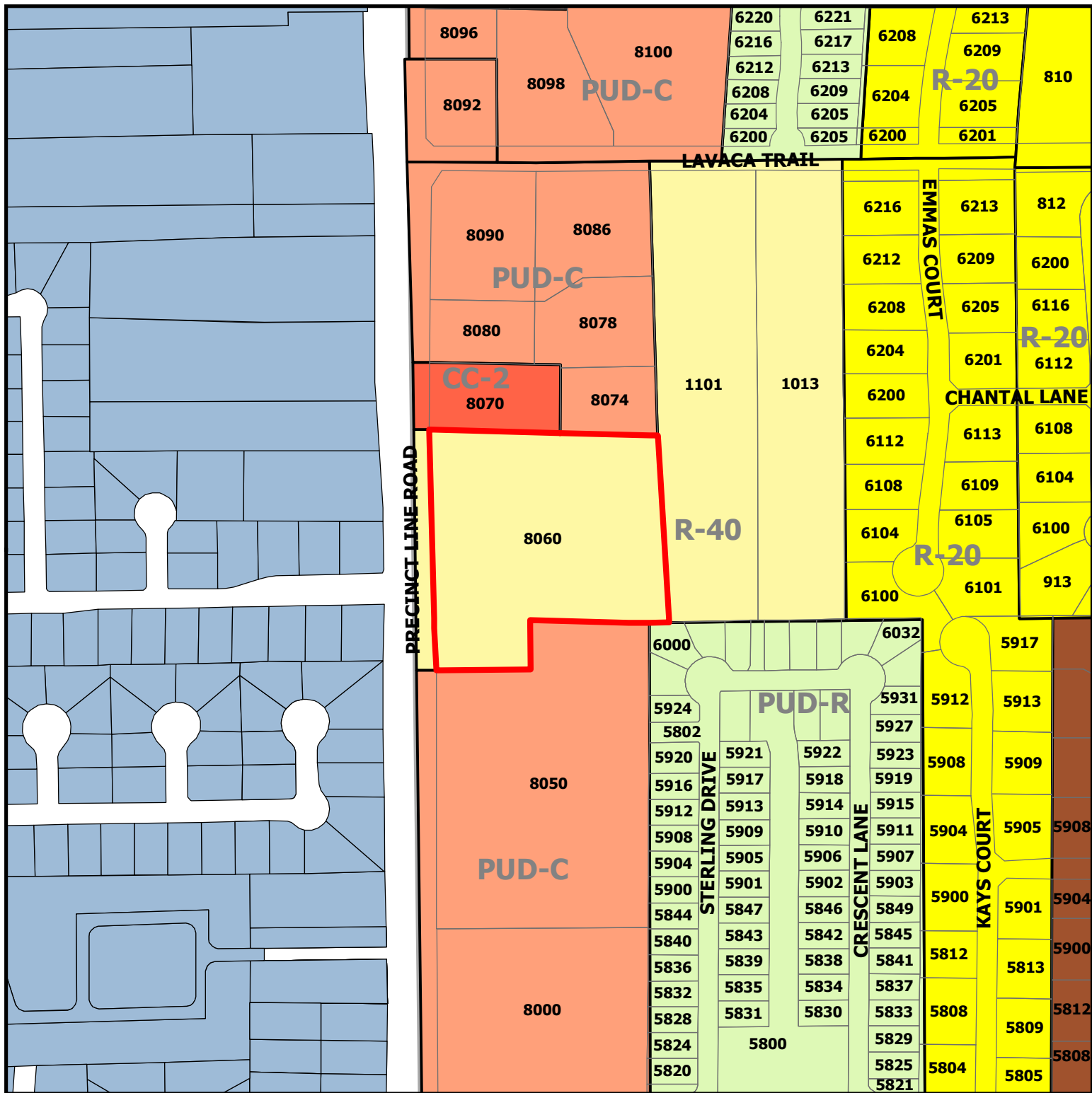
8060 Precinct Line Road

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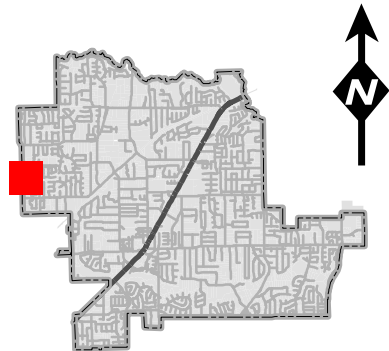
- Subject Property
- Properties Outside the City Limit



Zoning Map

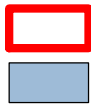


ZC18-028
8060 Precinct Line Road



DISCLAIMER:

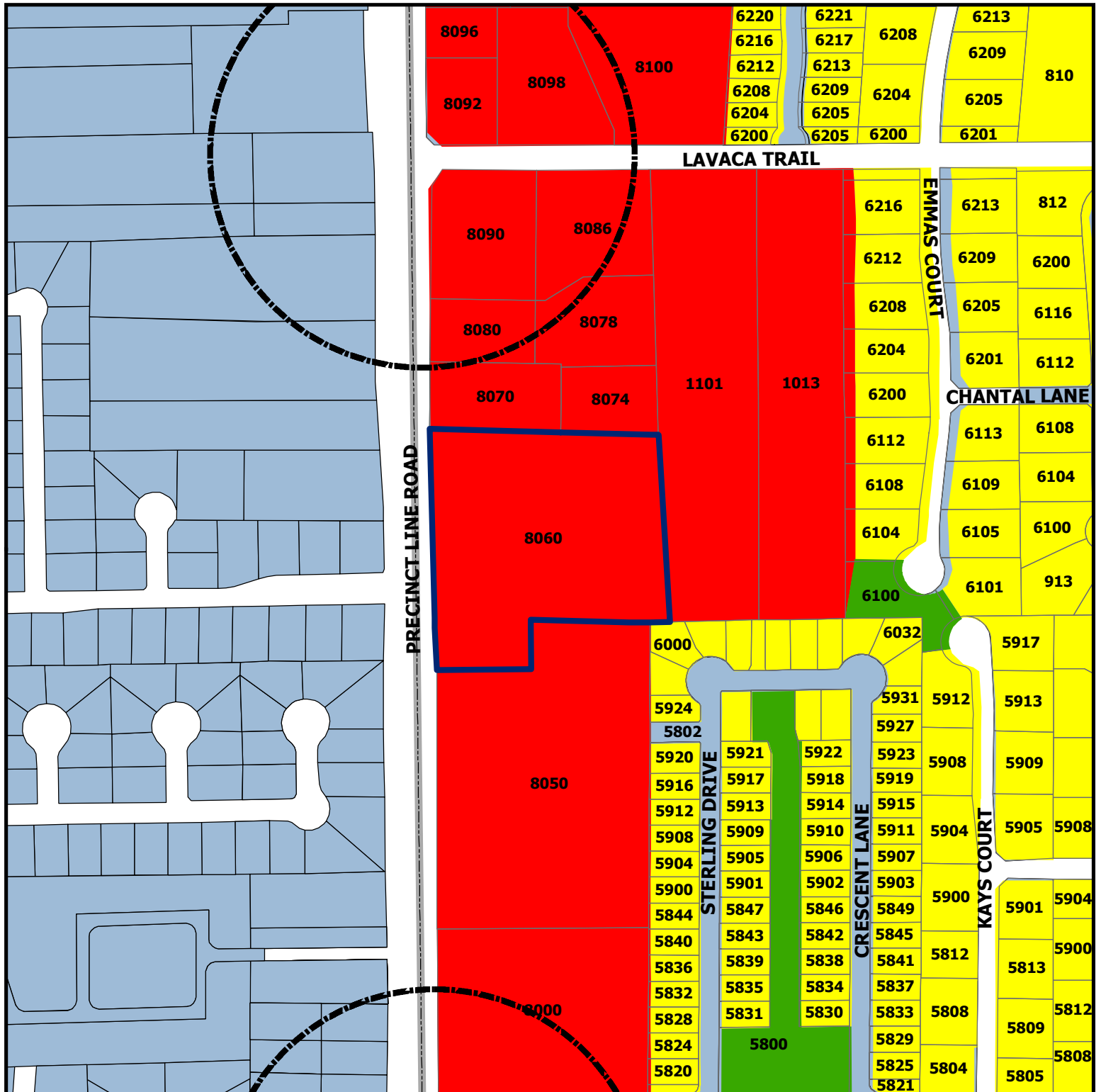
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Subject Property

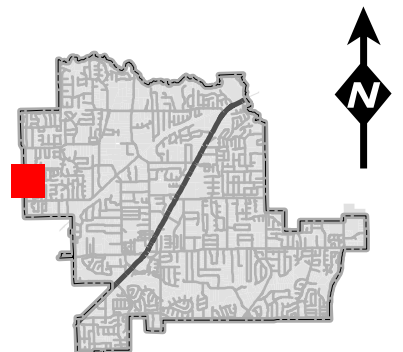
Properties Outside the City Limit

Future Land Use Map



ZC18-028 8060 Precinct Line Road

- Subject Property
- Sales Tax Preferred Intersection
- Residential
- Commercial
- Open Space; Parks
- Properties Outside the City Limit



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Statement of Planning Objectives

Advantage Storage
2600 Eldorado Parkway, Suite 110
McKinney, Texas 75070
972-547-0236
rjones@AdvantageStorage.net



7 September 2018

Mr. Ben Bryner, AICP
Director of Community Development
City of Colleyville
100 Main Street
Colleyville, Texas 76034

Re: Zoning Application
Proposed Self Storage Development
8060 North Precinct Line Road

Dear Mr. Bryner,

Please accept this letter in fulfillment of the zoning application provision for Statement of Planning Objectives, Development Schedule, Proposed Ownership and Economic Information.

STATEMENT OF PLANNING OBJECTIVES:

The project consists of 6.378 acres located along North Precinct Line Road and is configured in two tracts. Tract One contains 148,047 square feet (3.399 acres) and Tract Two contains 129,781 square feet (2.979 acres).

TRACT ONE:

The planning objective for Tract One is to develop a high quality self-storage facility. Storage facilities have changed significantly over the past 20 years reflecting the evolution of the asset type from a low-quality light industrial use to very high-quality retail service business. Whereas many early self-storage customers used storage for short term, transitory reasons, the majority of contemporary storage customers secure storage space for ongoing, space making reasons. These customers as well as others desire well located facilities near where they work and live. Storage use is much higher per capita today than twenty years ago. Storage development has changed to meet this market demand by providing higher quality facilities with architecture compatible with the high-end retail locations in which they reside. Advantage has since 1996 been on the leading edge of this evolution, developing state-of-the-art facilities in very high profile, retail locations.

The characteristics of the storage project are proposed to be:

- The project will be situated on a 3.399 acre site with 38' of North Precinct Line Road frontage.
- The project consists of two, two-story building and four single story buildings containing approximately 87,225 gross SF configured to provide approximately 71,175 net rentable square feet of storage consisting of approximately 625 individual storage units containing between 25 and 300 square feet.
- Approximately 65% of the net rentable area will be climate controlled, appealing to the higher household income in which the project resides.

Statement of Planning Objectives

- The buildings fronting North Precinct Line Road will be two-story with maximum 29.5' height. This allows the architecture of the building to replicate typical retail scale and incorporate interesting architectural features.
- All remaining buildings will be single story and will be oriented toward interior drives and will not exceed 15' in height. Drive visibility from North Precinct Line Road will be minimal, and no door openings will be oriented toward the perimeter of the project.
- The rental office for the facility will be in the front building.
- There will be no resident manager living on site
- The project will include state-of-the-art security features including CCV cameras and tenant only access via digital gate and building controls.
- Project signage will be a combination of masonry monument sign and building signage conforming to ordinance.
- Landscaping will conform to or exceed ordinance requirements, and will be concentrated on the project perimeters, most visible to the neighboring properties and the public.
- Adequate space has been provided for engineered storm water detention and public utility extensions as may be required.

TRACT TWO:

Tract Two contains 2.979 acres and will be zoned to provide for CC-2 Shopping Center uses. The tract is approximately 250' deep which is ideal for small commercial and retail users. Although the actual users have not yet been identified and therefore the precise building layout cannot be determined, the Conceptual Development Plan depicts the likely configuration of three pad sites for retail and restaurant users. The planning objective for Tract Two is to provide ideal lot depth to promote retail development and to provide an access and utility plan to fully develop the tract. Additionally, the planning objective is to provide construction standards to insure uniform, high quality development. Standards include the following:

- Requirement for increased use of natural stone in building facades.
- Enhanced requirement for landscape buffer along North Precinct Line Road.
- Enhanced requirement for landscaping adjacent to retail buildings.
- Enhanced requirement for landscaping in parking areas.
- Enhanced requirement for uniform monument signs.

DEVELOPMENT SCHEDULE:

- Platting and Site Plan Approval will commence immediately upon zoning approval.
- Storage building permit will occur approximately 120 days following zoning approval.
- Storage completion will occur approximately 14 months following zoning approval.
- Market demand will determine retail pad site development.

PROPOSED OWNERSHIP:

The storage project will be owned by a single asset limited liability company managed and controlled by Advantage Self Storage Advisors, LLC, a Texas limited liability company owned by Rick Jones and Davis Deadman.

ECONOMIC INFORMATION:

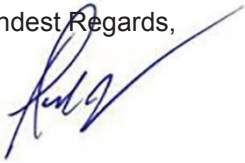
The proposed project will provide the following positive economic impact:

- Property tax valuation will likely increase from the current level of \$357,550 to approximately \$7,500,000 upon completion of the facility. The increase in property value will provide approximately \$167,000 in additional tax revenue, most of which stays in the local community via the city, school system and county.

Statement of Planning Objectives

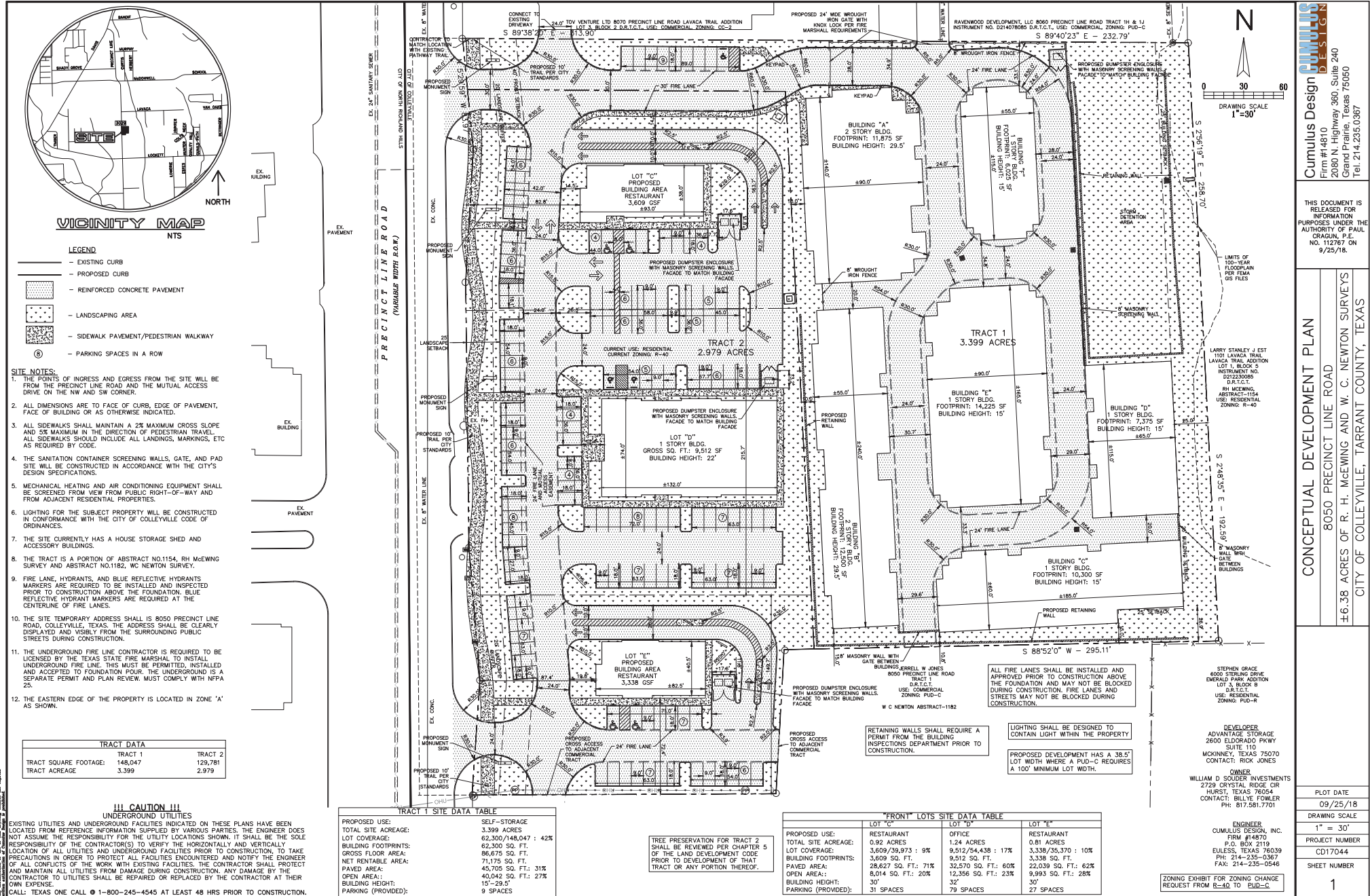
- The configuration of the proposed site is strategically conceived to promote retail and commercial development on the pad-depth property remaining in front of the facility. The current 6-acre parcel of which the storage facility is a portion is 545' deep. This is a size and depth that is awkward for small to mid-size business who would typically locate on this mid-block commercial corridor and does not promote development. The site plan provides remaining retail parcels with +/- 250' depth, near ideal for small business and pad-site development. The property owner is understandably very hesitant to sell front parcels currently because of the limited use and marketability of the back portion of the land. With the storage development taking mainly the back portion, front parcels will likely be quickly developed placing the entire six acres into economic production.
- The storage facility will provide limited sales tax revenue via the sale of packing and moving supplies.
- The storage facility will have approximately 2-3 employees.

Kindest Regards,

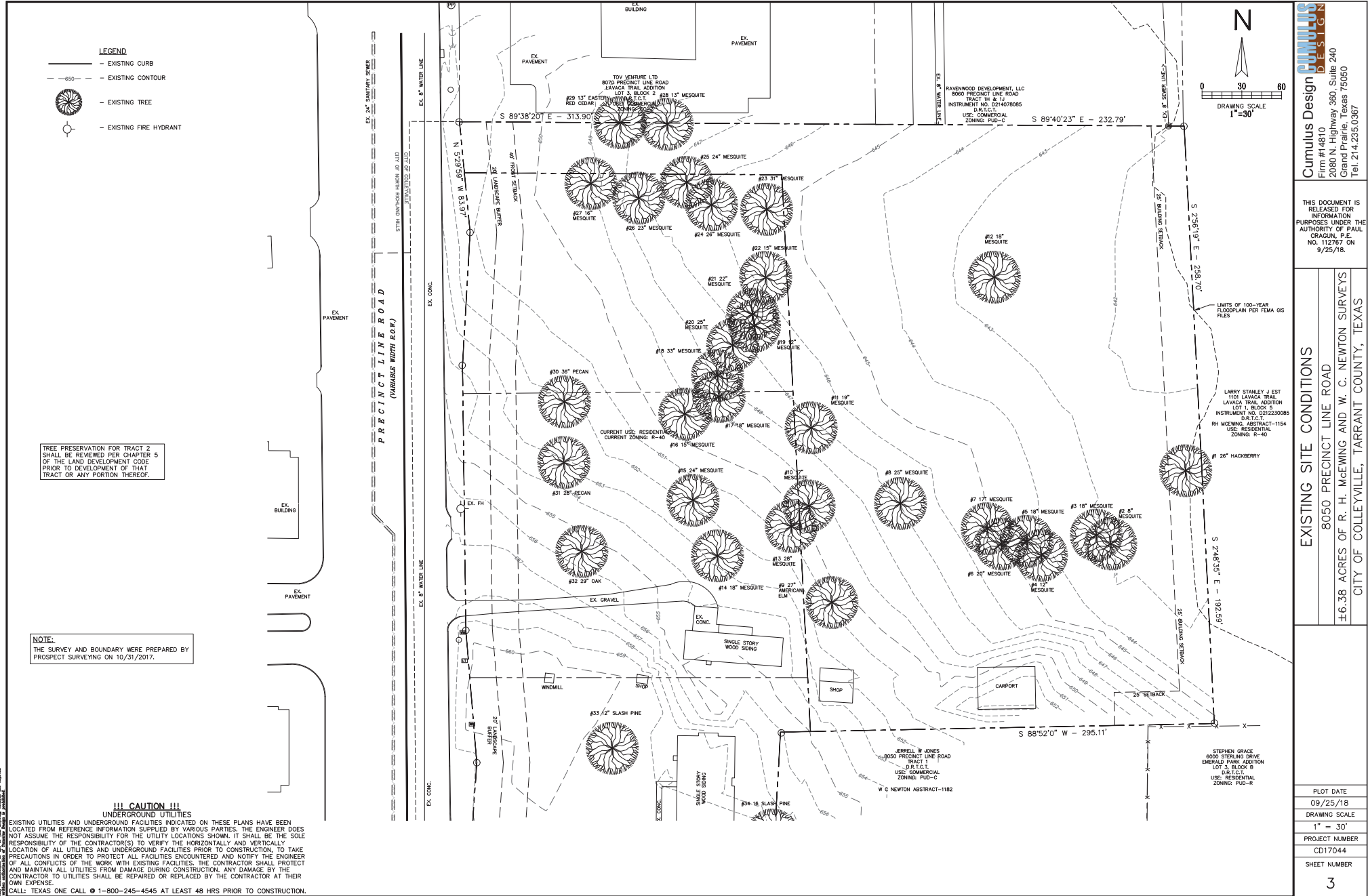


Rick Jones

Conceptual Site Plan



Existing Site Exhibit



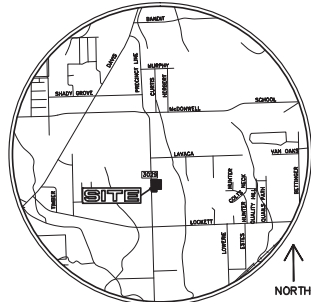
Cumulus Design
Firm #14810
2080 N. Highway 360, Suite 240
Grand Prairie, Texas 75050
Tel. 214.235.0367

THIS DOCUMENT IS
RELEASED FOR
INFORMATION
PURPOSES UNDER THE
AUTHORITY OF PAUL
CRAGG, P.E.
NO. 112767 ON
9/25/18.

EXISTING SITE CONDITIONS
8050 PRECINCT LINE ROAD
±6.38 ACRES OF R. H. McWING AND W. C. NEWTON SURVEY'S
CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS

PLOT DATE
09/25/18
DRAWING SCALE
1" = 30'
PROJECT NUMBER
CD17044
SHEET NUMBER
3

Site Plan



VICINITY MAP
NTS

- LEGEND**
-  - EXISTING CURB
 -  - PROPOSED CURB
 -  - REINFORCED CONCRETE PAVEMENT
 -  - LANDSCAPING AREA
 -  - SIDEWALK PAVEMENT/PEDESTRIAN WALKWAY
 -  - PARKING SPACES IN A ROW

SITE NOTES:

1. THE ~~ENTIRE~~ ENTIRE OF INGRESS AND EGRESS FROM THE SITE WILL BE FROM THE PRECINCT LINE ROAD AND THE MUTUAL ACCESS DRIVE ON THE SW CORNER.
2. ALL DIMENSIONS ARE TO FACE OF CURB, EDGE OF PAVEMENT, FACE OF BUILDING OR AS OTHERWISE INDICATED.
3. ALL SIDEWALKS SHALL MAINTAIN A 2% MAXIMUM CROSS SLOPE AND 5% MAXIMUM IN THE DIRECTION OF PEDESTRIAN TRAVEL. ALL SIDEWALKS SHOULD INCLUDE ALL LANDINGS, MARKINGS, ETC AS REQUIRED BY CODE.
4. THE SANITATION CONTAINER SCREENING WALLS, GATE, AND PAD SIDE WILL BE CONSTRUCTED IN ACCORDANCE WITH THE CITY'S DESIGN SPECIFICATIONS.
5. MECHANICAL HEATING AND AIR CONDITIONING EQUIPMENT SHALL BE LOCATED IN THE REAR OF THE FACILITY, OUT-OF-WAY AND FROM ADJACENT RESIDENTIAL PROPERTIES.
6. LIGHTING FOR THE SUBJECT PROPERTY WILL BE CONSTRUCTED IN CONFORMANCE WITH THE CITY OF COLLEVILLE CODE OF ORDINANCES.
7. THE SITE CURRENTLY HAS A STORAGE SHED AND ACCESSORY BUILDING.
8. THE TRACT IS A PORTION OF ABSTRACT NO.1154, RM McWENY SURVEY AND ABSTRACT NO.1182, MC WENY SURVEY.
9. THERE ARE SIX PROPOSED BUILDINGS ON SITE.
10. FIRE LANE, HYDRANTS, AND BLUE REFLECTIVE HIGHWAY MARKERS ARE REQUIRED TO BE INSTALLED AND INSPECTED PRIOR TO CONSTRUCTION ABOVE THE FOUNDATION. BLUE REFLECTIVE HYDRANT MARKERS ARE REQUIRED AT THE CENTERLINE OF FIRE LANES.
11. THE SITE TEMPORARY ADDRESS SHALL BE 8050 PRECINCT LINE ROAD, COLLEVILLE, TEXAS. THE ADDRESS SHALL BE CLEARLY MARKED AND VISIBLE FROM THE SURROUNDING PUBLIC STREETS DURING CONSTRUCTION.
12. THE UNDERGROUND FIRE LINE CONTRACTOR IS REQUIRED TO BE LICENSED BY THE TEXAS STATE FIRE MARSHAL TO INSTALL UNDERGROUND FIRE LINES. THIS MUST BE PERMITTED, INSTALLED AND ACCEPTED TO FURNISH FOUR. THE UNDERGROUND IS A SEPARATE PERMIT AND PLAN REVIEW. MUST COMPLY WITH NFPA 22.
13. THE EASTERN EDGE OF THE PROPERTY IS LOCATED IN ZONE "A" AS SHOWN.

!!! CAUTION !!!
UNDERGROUND UTILITIES

HOSTING UTILITIES AND UNDERGROUND FACILITIES INDICATED ON THESE PLANS HAVE BEEN LOCATED FROM REFERENCE INFORMATION SUPPLIED BY VARIOUS PARTIES. THE ENGINEER DOES NOT ASSUME THE RESPONSIBILITY FOR THE UTILITY LOCATIONS SHOWN. IT SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE LOCATION OF ALL UTILITIES AND UNDERGROUND FACILITIES PRIOR TO CONSTRUCTION, TO TAKE PRECAUTIONS IN ORDER TO PROTECT ALL FACILITIES ENCOUNTERED AND NOTIFY THE ENGINEER OF ANY DISCREPANCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTAIN ALL UTILITIES FROM DAMAGE DURING CONSTRUCTION. ANY DAMAGE BY THE CONTRACTOR SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR AT THEIR OWN EXPENSE. ONE CALL ☎ 1-800-245-4545 AT LEAST 48 HRS PRIOR TO CONSTRUCTION. CAN 1 TEXAS

LIGHTING SHALL BE DESIGNED TO
CONTAIN LIGHT WITHIN THE PROPERTY

PROPOSED DEVELOPMENT HAS A 38.5' LOT WIDTH WHERE A PUD-C REQUIRES A 100' MINIMUM LOT WIDTH.

ALL FIRE LANES SHALL BE INSTALLED AND APPROVED PRIOR TO CONSTRUCTION ABOVE THE FOUNDATION AND MAY NOT BE BLOCKED DURING CONSTRUCTION. FIRE LANES AND STREETS MAY NOT BE BLOCKED DURING CONSTRUCTION.

RETAINING WALLS SHALL REQUIRE A PERMIT FROM THE BUILDING INSPECTIONS DEPARTMENT PRIOR TO CONSTRUCTION.

SITE DATA TABLE	
PROPOSED USE:	SELF-STORAGE
TOTAL SITE ACREAGE:	3.399 ACRES
LOT COVERAGE:	62,300/148,047 : 42%
BUILDING FOOTPRINTS:	62,300 SQ. FT.
GROSS FLOOR AREA:	86,675 SQ. FT.
NET RENTABLE AREA:	71,175 SQ. FT.
PAVED AREA:	45,705 SQ. FT.: 31%
OPEN AREA:	40,042 SQ. FT.: 27%
BUILDING HEIGHT:	15'-29'5"
PARKING (PROVIDED):	9 SPACES

ZONING EXHIBIT FOR ZONING CHANGE
REQUEST FROM R-40 TO PUD-C

STEPHEN GRACE
6000 STERLING DRIVE
EMERALD PARK ADDITION
LOT 3, BLOCK 8
D.R.T.C.T.
USE: RESIDENTIAL
ZONING: PUD-R

DEVELOPER
ADVANTAGE STORAGE
2600 ELDORADO PKWY
SUITE 110
MCKINNEY, TEXAS 75070
CONTACT: RICK JONES

OWNER
WILLIAM D SOUDER INVESTMENTS
2729 CRYSTAL RIDGE CIR
FURST, TEXAS 76054
CONTACT: BILLIE FOWLER
PH: 817.581.7701

ENGINEER
CUMULUS DESIGN, INC.
FIRM #14870
P.O. BOX 2119
EULESS, TEXAS 76039
PH: 214-235-0367
FAX: 214-235-0546

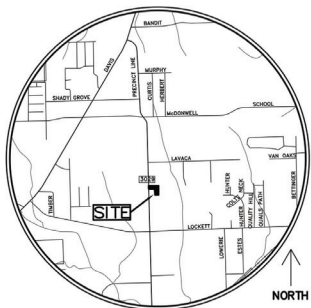
Cumulus Design **DESIGN**
Firm #14810
2080 N. Highway 360, Suite 240
Grand Prairie, Texas 75050
Tel. 214.235.0367

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CRAGUN, P.E.
NO. 112767 ON
9/25/18.

SITE PLAN
8050 PRECINCT LINE ROAD
18 ACRES OF R. H. McEWING AND W. C. NEWTON SURVEYS
CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS

PROJECT NUMBER CD17044 PLOT DATE 09/25/18 DRAWING SCALE 1" = 30' SHEET NUMBER
--

Landscape Plan



VICINITY MAP
NTS

Tree Preservation for Tract 2 shall be reviewed per Chapter 5 of the Land Development Code prior to development of that tract or any portion thereof.

OWNER:
WILLIAM D SOLDER INVESTMENTS
2729 CRYSTAL RIDGE CIR
HURST, TEXAS 76054
CONTACT: BILLYE FOWLER
PH: 817-581-7701

DEVELOPER:
ADVANTAGE STORAGE
2600 ELIZABETH PKWY
SUITE 110
MCINNEY, TEXAS 75070
CONTACT: RICK JONES

ENGINEER:
CUMULUS DESIGN, INC.
FIRM #14570
P.O. BOX 2119
EULESS, TEXAS 76039
PH: 214-235-0367
FAX: 214-235-0546

III CAUTION III
UNDERGROUND UTILITIES

EXISTING UTILITIES AND UNDERGROUND FACILITIES INDICATED ON THESE PLANS HAVE BEEN LOCATED FROM REFERENCE INFORMATION SUPPLIED BY VARIOUS PARTIES. THE ENGINEER DOES NOT ASSUME THE RESPONSIBILITY FOR THE UTILITY LOCATIONS SHOWN. IT SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR(S) TO VERIFY THE HORIZONTAL AND VERTICAL LOCATION OF ALL UTILITIES AND UNDERGROUND FACILITIES PRIOR TO CONSTRUCTION. TO TAKE PRECAUTIONS IN ORDER TO PROTECT ALL FACILITIES ENCOUNTERED AND NOTIFY THE ENGINEER OF ALL CONFLICTS OF THE WORK WITH EXISTING FACILITIES. THE CONTRACTOR SHALL PROTECT AND MAINTAIN ALL UTILITIES FROM DAMAGE DURING CONSTRUCTION. ANY DAMAGE BY THE CONTRACTOR TO UTILITIES SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR AT THEIR OWN EXPENSE.

CALL: TEXAS ONE CALL 1-800-245-4545 AT LEAST 48 HRS PRIOR TO CONSTRUCTION.

PRECINCT LINE ROAD
(VARIABLE WIDTH ROAD)

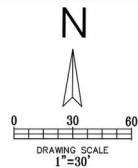


LEGEND

--

NOTE: THIS LANDSCAPE PLAN IS CONCEPTUAL IN NATURE AND IS NOT INTENDED TO DEPICT THE FINAL LANDSCAPE DESIGN OR INSTALLATION. IT IS OFFERED TO DEMONSTRATE THE STORAGE DEVELOPER'S INTENT IN TERMS OF NUMBERS OF TREES AND SHRUBS AND OVERALL LANDSCAPE DENSITY. FINAL LANDSCAPE PLANS FOR THE STORAGE SITE WILL BE SUBMITTED AT TIME OF SITE PLAN APPROVAL AND WILL CLOSELY FOLLOW THIS CONCEPT PLAN.

ACTUAL PAD SITE USERS ON TRACT TWO ARE YET TO BE DETERMINED AND FINAL PLANS WILL BE SUBMITTED AT THE TIME SUCH USERS SUBMIT PLANS FOR SITE PLAN APPROVAL. THE LANDSCAPE CONCEPT PLAN IS OFFERED TO DEPICT THE NUMBERS OF TREES AND OVERALL INTENSITY OF LANDSCAPE. FINAL PLANS WILL VARY.



CONCEPTUAL LANDSCAPE PLAN
8060 PRECINCT LINE ROAD
±6.38 ACRES OF R. H. McEWING AND W. C. NEWTON SURVEYS
CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS

PLOT DATE
09/08/18
DRAWING SCALE
1" = 30'
PROJECT NUMBER
SHEET NUMBER

ZONING EXHIBIT FOR ZONING CHANGE
REQUEST FROM B-42 TO BUD-G

[illegible]

300'

262' Precinct Line

271'

LOT "D" PROPOSED BUILDING AREA RESTAURANT 3,309 GSF

TRACT 2 2.979 ACRES

LOT "E" PROPOSED BUILDING AREA RESTAURANT 3,309 GSF

TRACT 1 3.399 ACRES

BUILDING "A" 1 STORY BLDG. FOOTPRINT: 11,870 SF BUILDING HEIGHT: 29.5'

BUILDING "B" 1 STORY BLDG. FOOTPRINT: 14,225 SF BUILDING HEIGHT: 15'

BUILDING "C" 1 STORY BLDG. FOOTPRINT: 10,300 SF BUILDING HEIGHT: 15'

BUILDING "D" 1 STORY BLDG. FOOTPRINT: 7,770 SF BUILDING HEIGHT: 15'

BUILDING "E" 1 STORY BLDG. FOOTPRINT: 14,225 SF BUILDING HEIGHT: 15'

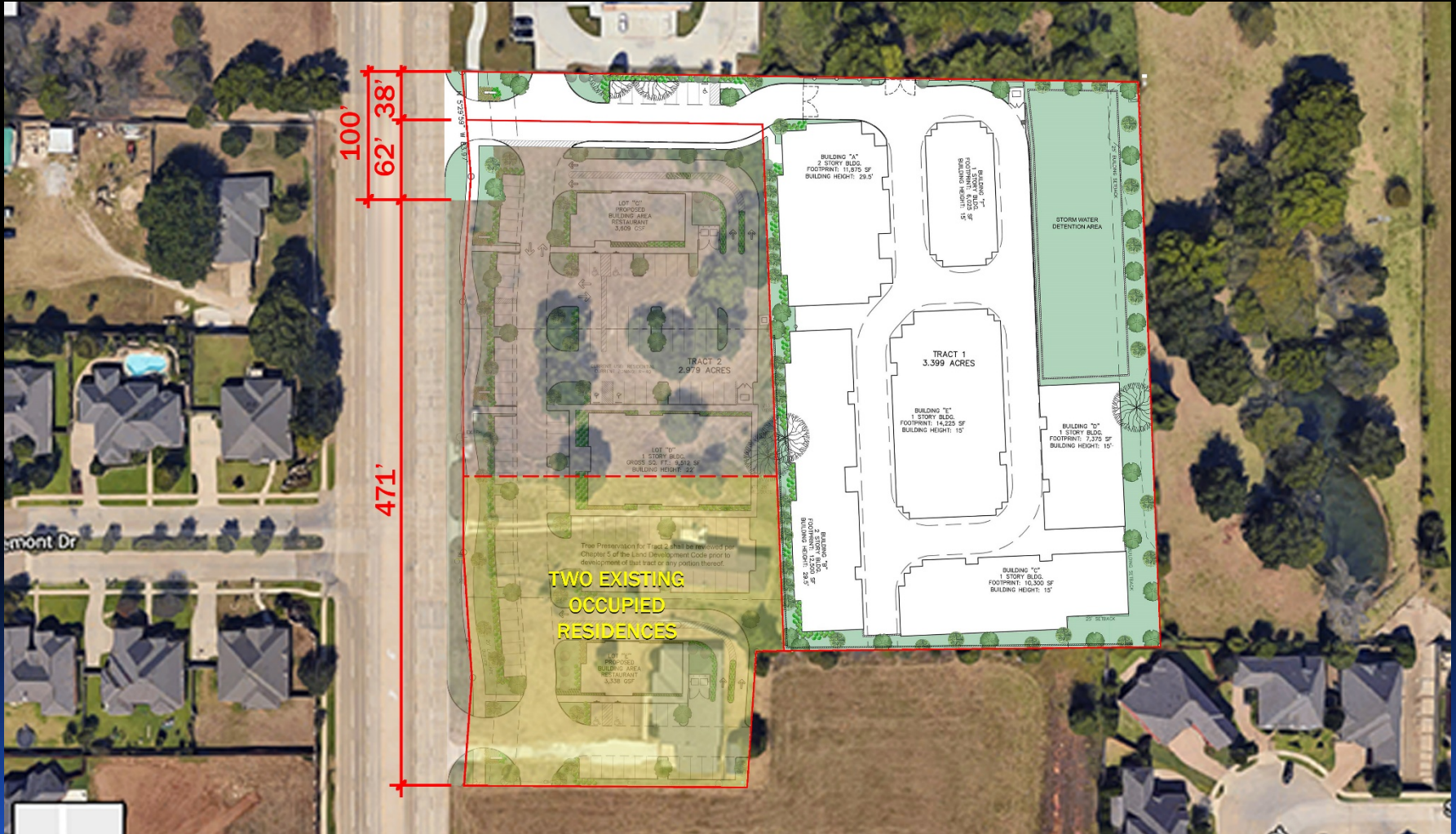
BUILDING "F" 1 STORY BLDG. FOOTPRINT: 10,300 SF BUILDING HEIGHT: 15'

STORM WATER DETENTION AREA

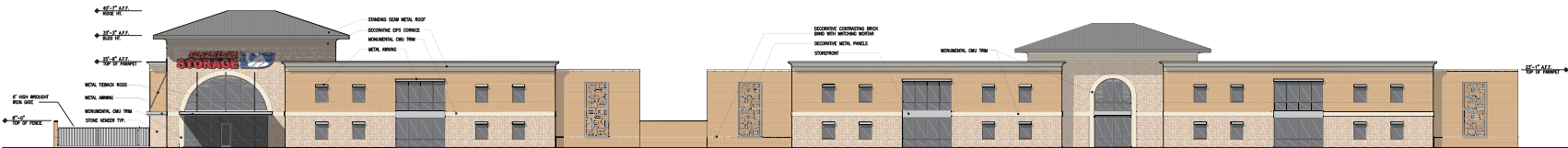
TWO EXISTING OCCUPIED RESIDENCES

\$30,000

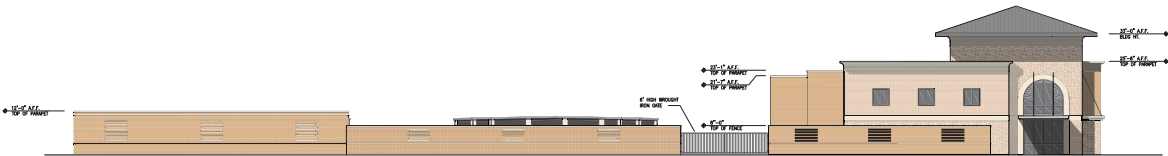
REQUEST REDUCED STREET LANDSCAPE



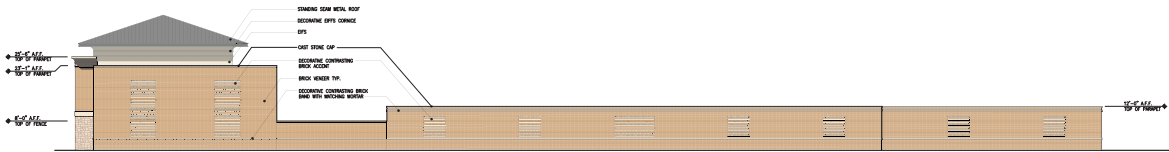
Building Elevations



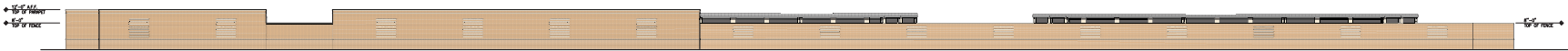
WEST (PRECINCT LINE ROAD) ELEVATION
SCALE: 1/16" = 1'-0"



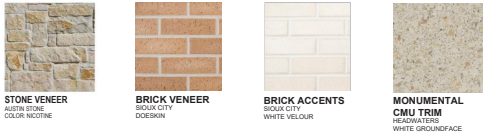
NORTH ELEVATION
SCALE: 1/16" = 1'-0"



SOUTH ELEVATION
SCALE: 1/16" = 1'-0"



EAST (BACK) ELEVATION
SCALE: 1/16" = 1'-0"



COLLEYVILLE SITE MONUMENT SIGN
- Materials to match building
- Sign comprised of reinforced dark bronze face, letters and images are cut in relief with white lexan laminated behind. Backlit with LED.



100 NORTH TRAVIS STREET
SUITE 100.500A
SHERMAN, TEXAS 75090
903.893.5800
www.davidbacastudio.com

SCHEMATIC
DESIGN
REVIEW
NOT FOR REGULATORY
APPROVAL, PERMITTING, OR
CONSTRUCTION

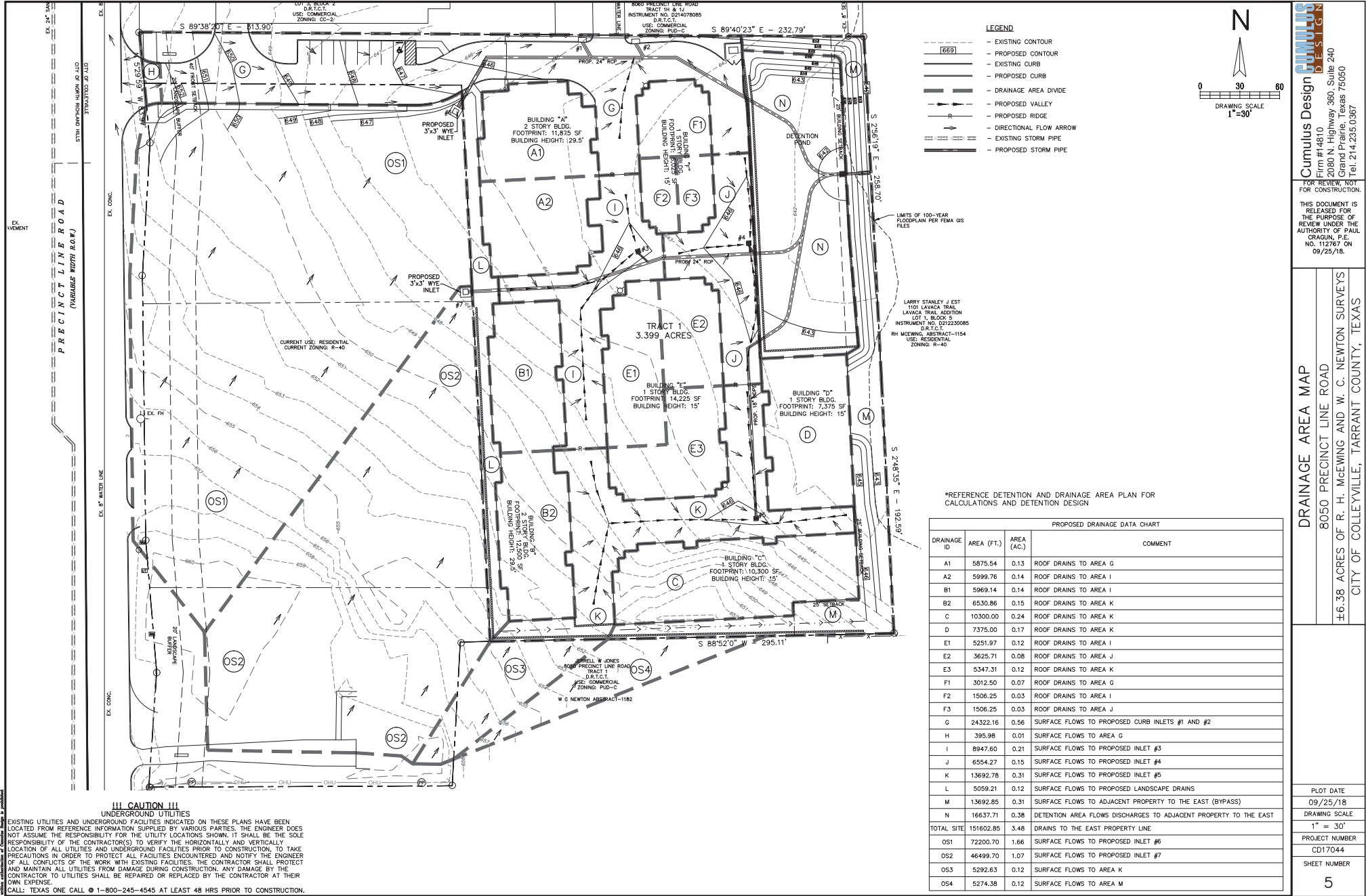
NO.	DATE	DESCRIPTION
1	11.10.2018	BUILDING FOOTPRINT CHANGES

Advantage Storage - Colleyville

PROJECT NUMBER
1735
DATE
11.20.17
SHEET NUMBER
SUP-1

exterior elevations; REVISED 09.25.18

Drainage Exhibit



Cumulus Design
Firm #14810
2080 N. Highway 360, Suite 240
Grand Prairie, Texas 75050
Tel. 214.235.0357

FOR REVIEW, NOT FOR CONSTRUCTION.
THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF REVIEW UNDER THE AUTHORITY OF PAUL CRAIGAN, P.E. NO. 112767 ON 09/25/18.

DRAINAGE AREA MAP
8050 PRECINCT LINE ROAD
±6.38 ACRES OF R. H. McEWING AND W. C. NEWTON SURVEY'S
CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS

PLOT DATE
09/25/18
DRAWING SCALE
1" = 30'
PROJECT NUMBER
CD17044
SHEET NUMBER
5

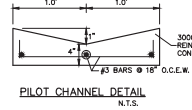
Drainage Plan

LEGEND

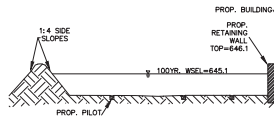
- EXISTING CURB
- PROPOSED CURB
- PROPOSED STORM PIPE
- 669 — EXISTING CONTOUR
- 669 — PROPOSED CONTOUR

DRAINAGE NOTES:

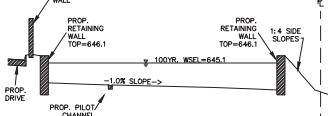
1. ALL MATERIALS AND CONSTRUCTION SHALL CONFORM TO THE CITY'S STANDARD CONSTRUCTION DETAILS AND SPECIFICATIONS EXCEPT AS NOTED HEREIN OR APPROVED BY THE CITY.
2. DURING THE CONSTRUCTION OF THE STORM AND DETENTION POND IMPROVEMENTS, ANY INTERPRETATION OF THE CITY'S STANDARD DETAILS AND SPECIFICATIONS MUST BE APPROVED BY THE DIRECTOR OF PUBLIC WORKS OR THEIR DESIGNEE. BEFORE ANY CONSTRUCTION INVOLVING THAT DECISION COMMENCES, ASSUMPTIONS ABOUT WHAT THESE DECISIONS MIGHT BE WHICH ARE MADE DURING THE BIDDING PHASE WILL HAVE NO BEARING ON THE DECISION.



NOTE:
CITY DESIGN STANDARDS/NOTES
SHALL BE USED FOR THE
CONSTRUCTION OF THIS PROJECT



POND SECTION B-B

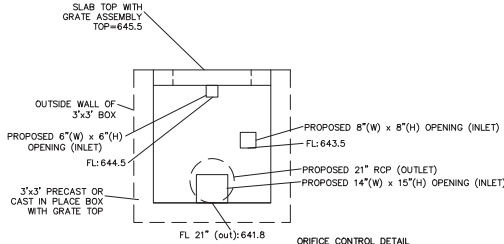


POND SECTION A-A

DETENTION POND DATA

STORM EVENT (YEAR)	EXISTING RUNOFF TO THE EAST (INCLUDING OFFSITE) (CFS)	PROPOSED SITE RUNOFF TO THE EAST (CFS)	DETENTION POND WATER SURFACE ELEVATION (FT)	RELEASE FROM 14"(W) x 15"(H) ORIFICE (CFS)	MAX RELEASE FROM 8"(W) x 8"(H) ORIFICE (CFS)	MAX RELEASE FROM 6"(W) x 6"(H) ORIFICE (CFS)	MAX RELEASE RATE FROM DETENTION (CFS)	BYPASS FLOW FROM THE SITE TO THE EAST (CFS)	TOTAL RELEASE FROM THE SITE TO THE EAST (CFS)	DETENTION VOLUME (CF)
100	17.9	50.6	645.1	11.4	2.4	0.7	14.4	3.5	17.9	35625
50	16.2	46.0	644.8	10.7	2.0	0.2	12.9	3.1	16.0	31088
25	14.6	41.4	644.5	10.0	1.7	0.0	11.7	2.8	14.5	27094
10	12.6	35.7	644.1	9.1	1.1	0.0	10.2	2.4	12.6	22047
5	11.1	31.5	643.9	8.4	0.5	0.0	8.9	2.1	11.0	18629
2	9.1	25.8	643.5	7.1	0.0	0.0	7.1	1.8	8.9	13160

THE DETENTION POND IS DESIGNED TO HANDLE THE ENTIRE DEVELOPMENT OF 8060 PRECINCT LINE, AND NOT ONLY THE SELF-STORAGE DEVELOPMENT.



NOTE:
ORIFICE EQUATION $Q = C \cdot A \cdot (2 \cdot g \cdot H)^{0.5}$ (0.5)
WAS USED FOR THE DETENTION POND CALCULATIONS WITH A C VALUE OF 0.6.

THE PRIMARY INLET FOR THE DETENTION POND ARE 3 ORIFICES AT VARIOUS ELEVATIONS. THE BOTTOM ORIFICE IS 14" WIDE BY 15" TALL. THE MIDDLE ORIFICE IS 8" WIDE BY 8" TALL AND THE TOP ORIFICE IS 6" WIDE BY 6" TALL OPENING (OUT OR Poured IN PLACE) INTO THE SIDE OF THE 3'x3' CONCRETE BOX. THE OUTLET FOR THE DETENTION POND IS AN 21" RCP LOCATED IN THE 3'x3' PRECAST BOX.

EXISTING DRAINAGE DATA CHART

DRAINAGE ID	AREA (FT.)	AREA (AC.)	C	I ₂ (in/hr)	I ₅ (in/hr)	I ₁₀ (in/hr)	I ₂₅ (in/hr)	I ₅₀ (in/hr)	I ₁₀₀ (in/hr)	Q ₂ (cfs)	Q ₅ (cfs)	Q ₁₀ (cfs)	Q ₂₅ (cfs)	Q ₅₀ (cfs)	Q ₁₀₀ (cfs)	COMMENT
SITE	151602.85	3.48	0.30	4.71	5.74	6.51	7.55	8.40	9.24	4.9	6.0	6.8	7.9	8.8	9.6	DRAINS TO THE EAST PROPERTY LINE
TOTAL SITE	151602.85	3.48								4.9	6.0	6.8	7.9	8.8	9.6	DRAINS TO THE EAST PROPERTY LINE
OS	129287.41	2.97	0.30	4.71	5.74	6.51	7.55	8.40	9.24	4.2	5.1	5.8	6.7	7.5	8.2	DRAINS TO THE SITE

CAUTION

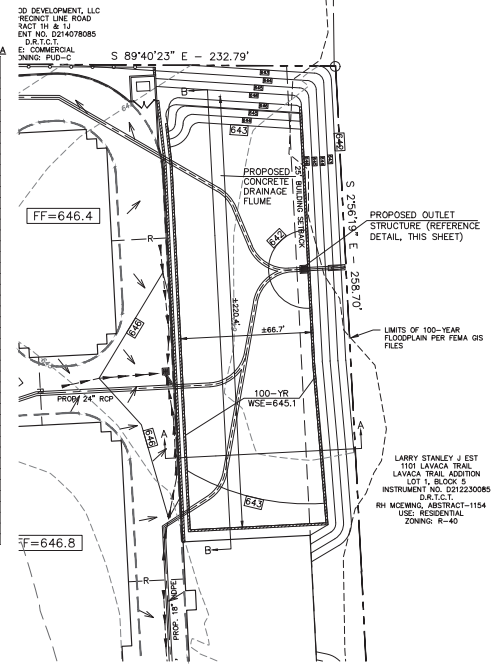
UNDERGROUND UTILITIES

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CALL: TEXAS ONE CALL @ 1-800-245-4545 AT LEAST 48 HRS PRIOR TO CONSTRUCTION.

GENERAL DETENTION POND DATA

Elevation (feet)	Surface (sq-ft)	Storage (cubic-feet)
641.8	7	0
641.9	157	5
642.0	628	40
642.1	1,406	141
642.2	2,493	333
642.3	3,889	650
642.4	5,594	1,121
642.5	7,609	1,779
642.6	8,536	2,586
642.7	9,515	3,485
642.8	10,548	4,491
642.9	11,635	5,599
643.0	12,774	6,829
643.1	12,913	8,104
643.2	13,052	9,402
643.3	13,192	10,714
643.4	13,333	12,040
643.5	13,475	13,381
643.6	13,618	14,735
643.7	13,761	16,104
643.8	13,905	17,488
643.9	14,050	18,885
644.0	14,195	20,298
644.1	14,235	21,719
644.2	14,286	23,149
644.3	14,286	24,570
644.4	14,317	26,000
644.5	14,347	27,433
644.6	14,378	28,869
644.7	14,408	30,309
644.8	14,439	31,751
644.9	14,469	33,196
645.0	14,500	34,645
645.1	14,531	36,096
645.2	14,562	37,551
645.3	14,593	39,009
645.4	14,624	40,470
645.5	14,655	41,933
645.6	14,686	43,400
645.7	14,717	44,871
645.8	14,748	46,344
645.9	14,779	47,820
646.0	14,810	49,300



PROPOSED DRAINAGE DATA CHART																COMMENT
DRAINAGE ID	AREA (FT.)	AREA (AC.)	C	I ₂ (in/hr)	I ₅ (in/hr)	I ₁₀ (in/hr)	I ₂₅ (in/hr)	I ₅₀ (in/hr)	I ₁₀₀ (in/hr)	Q ₂ (cfs)	Q ₅ (cfs)	Q ₁₀ (cfs)	Q ₂₅ (cfs)	Q ₅₀ (cfs)	Q ₁₀₀ (cfs)	
A1	5875.54	0.13	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.5	0.7	0.7	0.9	1.0	1.1	ROOF DRAINS TO AREA G
A2	5999.76	0.14	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.6	0.7	0.8	0.9	1.0	1.1	ROOF DRAINS TO AREA I
B1	5969.14	0.14	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.5	0.7	0.8	0.9	1.0	1.1	ROOF DRAINS TO AREA I
B2	6530.86	0.15	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.6	0.7	0.8	1.0	1.1	1.2	ROOF DRAINS TO AREA K
C	10300.00	0.24	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.9	1.2	1.3	1.5	1.7	1.9	ROOF DRAINS TO AREA K
D	7375.00	0.17	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.7	0.8	0.9	1.1	1.2	1.3	ROOF DRAINS TO AREA K
E1	5251.97	0.12	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.5	0.6	0.7	0.8	0.9	0.9	ROOF DRAINS TO AREA I
E2	3625.71	0.08	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.3	0.4	0.5	0.5	0.6	0.7	ROOF DRAINS TO AREA J
E3	5347.31	0.12	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.5	0.6	0.7	0.8	0.9	1.0	ROOF DRAINS TO AREA K
F1	3012.50	0.07	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.3	0.3	0.4	0.4	0.5	0.5	ROOF DRAINS TO AREA G
F2	1506.25	0.03	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.1	0.2	0.2	0.2	0.2	0.3	ROOF DRAINS TO AREA I
F3	1506.25	0.03	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.1	0.2	0.2	0.2	0.2	0.3	ROOF DRAINS TO AREA J
G	24322.16	0.56	0.85	4.71	5.74	6.51	7.55	8.40	9.24	2.2	2.7	3.1	3.6	4.0	4.4	SURFACE FLOWS TO PROPOSED CURB INLETS #1 AND #2
H	395.98	0.01	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.0	0.0	0.1	0.1	0.1	0.1	SURFACE FLOWS TO AREA G
I	8947.60	0.21	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.8	1.0	1.1	1.3	1.5	1.6	SURFACE FLOWS TO PROPOSED INLET #3
J	6554.27	0.15	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.6	0.7	0.8	1.0	1.1	1.2	SURFACE FLOWS TO PROPOSED INLET #4
K	13692.78	0.31	0.85	4.71	5.74	6.51	7.55	8.40	9.24	1.3	1.5	1.7	2.0	2.2	2.5	SURFACE FLOWS TO PROPOSED INLET #5
L	5059.21	0.12	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.5	0.6	0.6	0.7	0.8	0.9	SURFACE FLOWS TO PROPOSED LANDSCAPE DRAINS
M	13692.85	0.31	0.85	4.71	5.74	6.51	7.55	8.40	9.24	1.3	1.5	1.7	2.0	2.2	2.5	SURFACE FLOWS TO ADJACENT PROPERTY TO THE EAST (BYPASS)
N	16637.71	0.38	0.85	4.71	5.74	6.51	7.55	8.40	9.24	1.5	1.9	2.1	2.5	2.7	3.0	DETENTION AREA FLOWS DISCHARGES TO ADJACENT PROPERTY TO THE EAST
TOTAL SITE	151602.8500	3.48								0.5	0.7	0.7	0.9	1.0	1.1	DRAINS TO THE EAST PROPERTY LINE
OS1	72200.70	1.66	0.85	4.71	5.74	6.51	7.55	8.40	9.24	6.6	8.1	9.2	10.6	11.8	13.0	SURFACE FLOWS TO PROPOSED INLET #6
OS2	46499.70	1.07	0.85	4.71	5.74	6.51	7.55	8.40	9.24	4.3	5.2	5.9	6.9	7.6	8.4	SURFACE FLOWS TO PROPOSED INLET #7
OS3	5292.63	0.12	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.5	0.6	0.7	0.8	0.9	1.0	SURFACE FLOWS TO AREA K
OS4	5274.38	0.12	0.85	4.71	5.74	6.51	7.55	8.40	9.24	0.5	0.6	0.7	0.8	0.9	1.0	SURFACE FLOWS TO AREA M

DETENTION AND DRAINAGE PLAN

8050 PRECINCT LINE ROAD
±6.38 ACRES OF R. H. McWING AND W. C. NEWTON SURVEY'S
CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS

Cumulus Design
Firm #14810

2080 N. Highway 360, Suite 240
Grand Prairie, Texas 75050
Tel. 214.235.0357

THIS DOCUMENT IS
RELEASED FOR THE
PURPOSE OF
REVIEW UNDER THE
AUTHORITY OF PAUL
CRAIG, P.E.
NO. 112767 ON
09/25/18.

FOR REVIEW, NOT
FOR CONSTRUCTION.

DETENTION AND DRAINAGE PLAN

8050 PRECINCT LINE ROAD
±6.38 ACRES OF R. H. McWING AND W. C. NEWTON SURVEY'S
CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS

PLOT DATE

09/25/18

DRAWING SCALE

1" = 30'

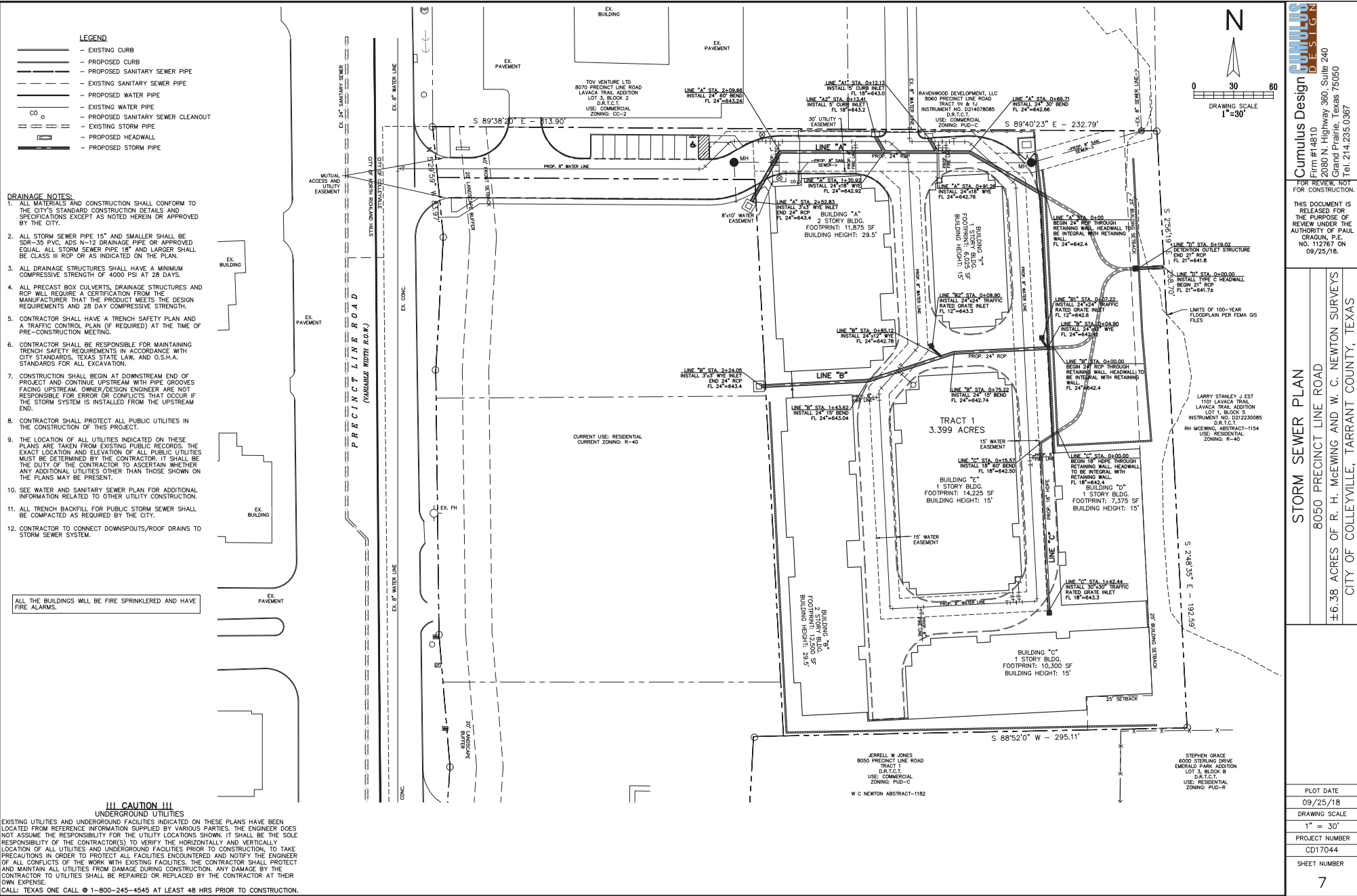
PROJECT NUMBER

CD17044

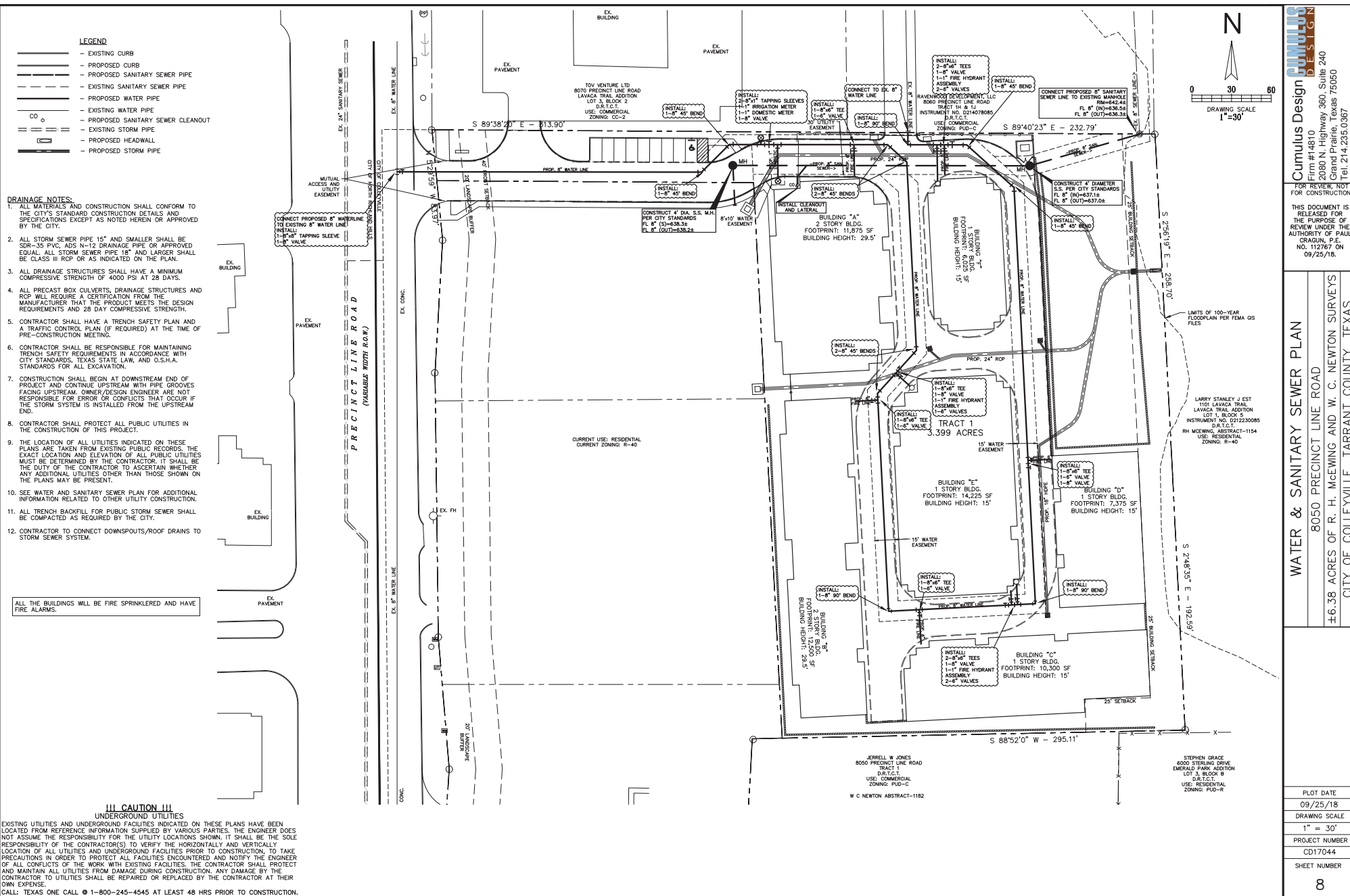
SHEET NUMBER

6

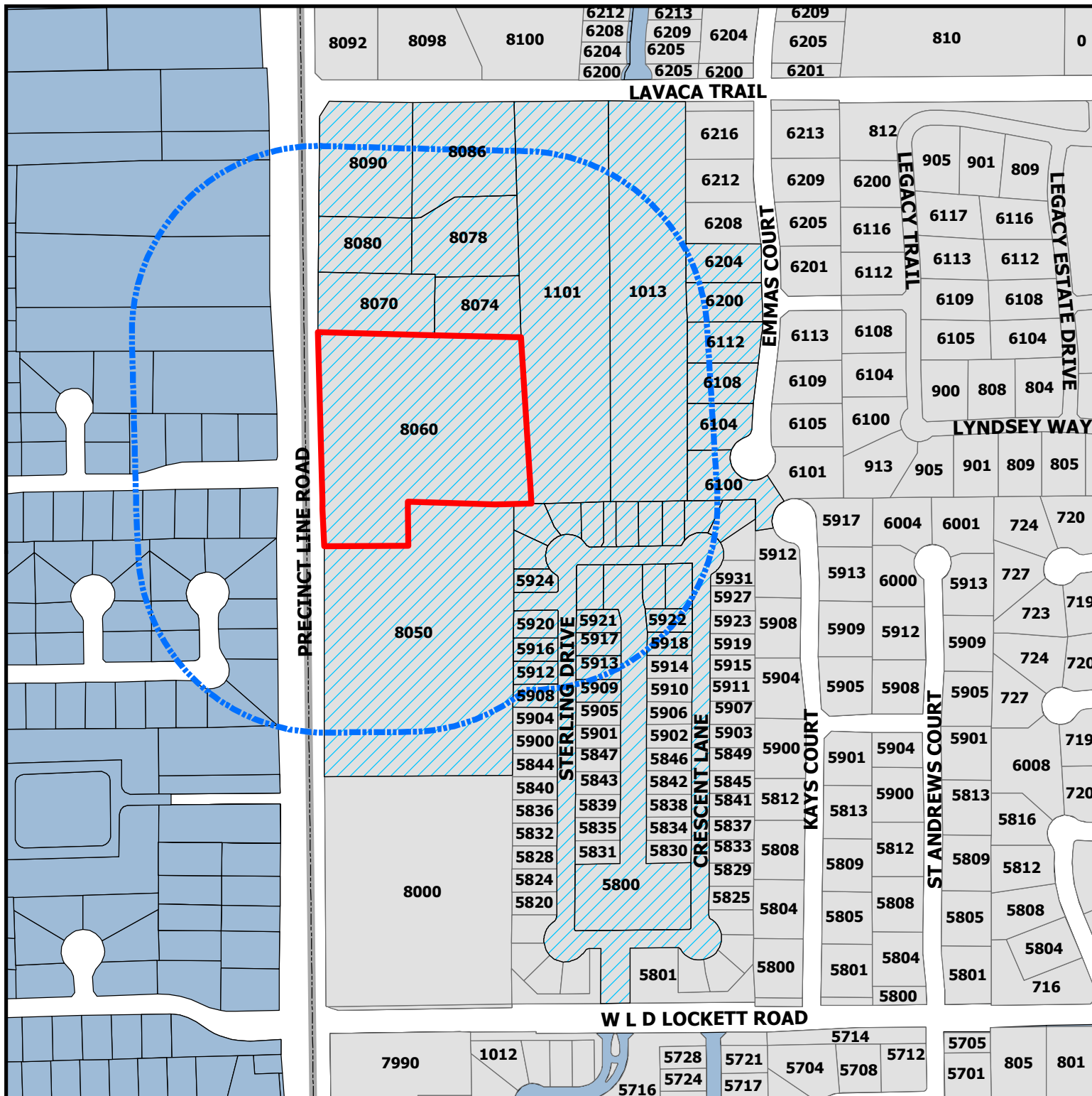
Storm Sewer Plan



Water and Sanitary Sewer Plan



Notification Map



ZC18-028

8060 Precinct Line Road



Subject Property



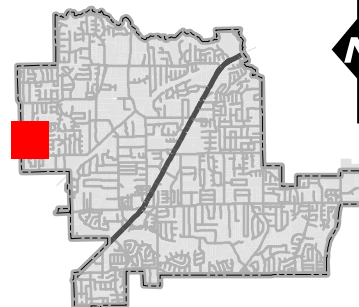
500ft Buffer



Properties within 500ft



Properties Outside the City Limit



DISCLAIMER:

This map and information contained in it were developed exclusively for use by the City of Colleyville. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Colleyville, its officials or employees for any discrepancies, errors, or variances which may exist.

Notification List

Owner Name	Owner Address	Owner City	Owner Zip	Situs Address
CARRINGTON, WADE	6004 STERLING DR	COLLEYVILLE, TX	76034	6004 STERLING DR
TISSERA, SHIMAL A	5921 STERLING DR	COLLEYVILLE, TX	76034	5921 STERLING DR
BRICE, TONY J	6021 STERLING DR	COLLEYVILLE, TX	76034	6021 STERLING DR
TOV VENTURE LTD	16950 DALLAS PKWY STE 120	DALLAS, TX	75248	8070 PRECINCT LINE RD
GRACE, STEPHEN	6000 STERLING DR	COLLEYVILLE, TX	76034	6000 STERLING DR
SMITH, FERMAN P	5918 CRESCENT LN	COLLEYVILLE, TX	76034	5918 CRESCENT LN
EISENBARTH, JENNIFER	6032 STERLING DR	COLLEYVILLE, TX	76034	6032 STERLING DR
MILLS, ANDREW E	6008 STERLING DR	COLLEYVILLE, TX	76034	6008 STERLING DR
PIETROBON, JOHN	5916 STERLING DR	COLLEYVILLE, TX	76034	5916 STERLING DR
OLIPHANT, NEKESHA	5909 STERLING DR	COLLEYVILLE, TX	76034	5909 STERLING DR
PANCHAL, PRINCE H	6024 STERLING DR	COLLEYVILLE, TX	76034	6024 STERLING DR
NEILSON, HOWARD	5922 CRESCENT LN	COLLEYVILLE, TX	76034	5922 CRESCENT LN
EMERALD PARK H A INC	400 COUNTRY PL	COLLEYVILLE, TX	76034	6012 STERLING DR
VUJ, DON C	5908 STERLING DR	COLLEYVILLE, TX	76034	5908 STERLING DR
SINGLES, BRANDON S	5912 STERLING DR	COLLEYVILLE, TX	76034	5912 STERLING DR
SAKURAI, KAORU	5917 STERLING DR	COLLEYVILLE, TX	76034	5917 STERLING DR
DUDDING, MICHAEL	6025 STERLING DR	COLLEYVILLE, TX	76034	6025 STERLING DR
SL2 SALON SUITES LLC	7600 QUARTERING	NORTH RICHLAND HILLS, TX	76182	8080 PRECINCT LINE RD
SPRING, AYESHANILL	5913 STERLING DR	COLLEYVILLE, TX	76034	5913 STERLING DR
SIMMONS, DAVID	5924 STERLING DR	COLLEYVILLE, TX	76034	5924 STERLING DR
GRASSI, KAREN	6005 STERLING DR	COLLEYVILLE, TX	76034	6005 STERLING DR
ROTHROCK, ANGEL	5920 STERLING DR	COLLEYVILLE, TX	76034	5920 STERLING DR
CROWE, DANIEL L	6028 STERLING DR	COLLEYVILLE, TX	76034	6028 STERLING DR
EMERALD PARK H A INC	400 COUNTRY PL	COLLEYVILLE, TX	76034	5800 CRESCENT LN
LARSEN, SCOTT R	6016 STERLING DR	COLLEYVILLE, TX	76034	6016 STERLING DR
JONES, JERRELL W	11111 ABBEYWOOD	OKLAHOMA CITY, OK	73170	8050 PRECINCT LINE RD
KWUN, SUN T	5928 STERLING DR	COLLEYVILLE, TX	76034	5928 STERLING DR
EMERALD PARK H A INC	400 COUNTRY PL	COLLEYVILLE, TX	76034	5802 CRESCENT LN
WILLIAM D SOUDER INVESTMENTS	2729 CRYSTAL RIDGE CIR	HURST, TX	76054	8060 PRECINCT LINE RD
CAREY, DEVIN J	6020 STERLING DR	COLLEYVILLE, TX	76034	6020 STERLING DR
JAETZOLD, CORY B	6204 EMMAS CT	COLLEYVILLE, TX	76034	6204 EMMAS CT
THE BIG EASY BLUES AND CARE FR	6112 EMMAS CT	COLLEYVILLE, TX	76034	6112 EMMAS CT
L T ESTATES HOA INC	215 W COLLEGE ST	GRAPEVINE, TX	76051	6100 EMMAS CT
WARRICK, DAVID	6104 EMMAS CT	COLLEYVILLE, TX	76034	6104 EMMAS CT
PATEL, SHAILESH	6108 EMMAS CT	COLLEYVILLE, TX	76034	6108 EMMAS CT
PAL, ROHAN	6200 EMMAS CT	COLLEYVILLE, TX	76034	6200 EMMAS CT
STANLEY, LARRY J EST	1101 LAVACA TR	COLLEYVILLE, TX	76034	1101 LAVACA TR
RAVENWOOD DEVELOPMENT LLC	131 QUEST CT	KELLER, TX	76248	8078 PRECINCT LINE RD
FEAGAN, DENNIS J	1303 BELLEFONTE LN	COLLEYVILLE, TX	76034	1013 LAVACA TR
LINLES PROPERTIES LTD	2601 HIGHLAND MEADOW DR	COLLEYVILLE, TX	76034	8090 PRECINCT LINE RD
RAVENWOOD DEVELOPMENT LLC	131 QUEST CT	KELLER, TX	76248	8086 PRECINCT LINE RD
RAVENWOOD DEVELOPMENT LLC	131 QUEST CT	KELLER, TX	76248	8074 PRECINCT LINE RD
EMERALD PARK ADDITION -COLLEY	5837 CRESCENT	COLLEYVILLE, TX	76034	COURTESY NOTICE
LAVACA TRAIL ESTATES		COLLEYVILLE, TX	76034	COURTESY NOTICE
VILLAS OF COLLEYVILLE	9001 AIRPORT FREEWAY SUITE 450	NORTH RICHLAND HILLS, TX	76180	COURTESY NOTICE
KELLER ISD	350 KELLER PKWY	KELLER, TX	76248	STATE REQUIRED
JONES, RICK	2600 ELDORADO PARKWAY, SUITE 110	MCKINNEY, TX	75070	APPLICANT

Public hearing notices were mailed September 21, 2018 by Araceli Botello



NOTICE OF PUBLIC HEARING

Zoning Case Number: ZC18-028
Applicant: Rick Jones
Owner: Billye Fowler
Location: 8060 Precinct Line Road
Property Description: Tract 1, Abstract 1154, in the R H McEwing Survey and Tract 1G, Abstract A1182, in the Less Homesite Survey
Present Zoning: R-40 Single Family Residential
Request: Consideration of a zoning change from R-40 Single Family Residential district to PUD-C Planned Unit Development – Commercial district. The purpose is to allow for the development of a self-storage facility on the eastern portion of the property and potentially 3 retail/restaurant buildings on the western portion of the property

The City of Colleyville has scheduled public hearings concerning the above referenced request on the following dates and location:

Planning and Zoning Commission Meeting: Monday, October 8, 2018 at 7:00 p.m.
City Council Meetings: Tuesday, November 5, 2018 & Tuesday, November 20, 2018 at 7:30 p.m.
3rd floor of City Hall, 100 Main Street, Colleyville, Texas

This notice has been sent to all owners of real property within 500 feet of the request as such ownership appears on the last approved tax roll and all homeowners associations within 1000 feet. Approval by the Planning and Zoning Commission serves as a recommendation to the City Council and is not a final action on the request. Denial of the proposal by the Commission is final, unless the applicant submits a written notice of appeal within 10 days from the date of action by the Commission. If appealed, the request will be placed on the next available City Council agenda as listed above. Rezoning requests, zoning amendments and conditions recommended by the Commission for approval by the City Council may be more restrictive than those described in this notice.

All interested persons are encouraged to attend the public hearing and express their opinions on the zoning change request. If you are unable to attend, but wish to have your opinions made a part of the public record, please submit written comments prior to the public hearing, to the address below:

**Community Development Department
City of Colleyville
100 Main Street
Colleyville, TX 76034**

If the property owners of 20% or more of the land within the 200 foot notification area file a written protest prior to the public hearing, State law provides that the approval of the zoning change request shall require the approval of a super majority vote by City Council.

The application is on file for public examination in the Community Development Department at 100 Main Street, Colleyville, Texas. A brief project description can be found online on the Active Development Case map: <https://www.colleyville.com/government/departments-a-l/community-development/active-development-cases>. For additional information, please contact the Community Development Department at 817.503.1056. Please reference the zoning case number when requesting information.

Jacquelyn Reyff
Principal Planner
jreyff@colleyville.com

Advantage Storage
2600 Eldorado Parkway, Suite 110
McKinney, Texas 75070
972-547-0236
rjones@AdvantageStorage.net



26 September 2018

Mr. Ben Bryner, AICP
Director of Community Development
City of Colleyville
100 Main Street
Colleyville, Texas 76034

Re: PUD-C Planned Unit Development-Commercial Zoning Request
8060 Precinct Line Road, Colleyville
Billie Fowler, owner
Advantage Storage, applicant

To Whom it May Concern,

I am the owner of the property listed below. I have reviewed materials supplied by the applicant, Advantage Storage, and have no objections to their request for PUD-C Planned Unit Development-Commercial zoning.

Sincerely,

Jerrell W. Jones

JERRELL W. JONES

Name

October 1, 2018

Date

TRACT 1, ABSTRACT #11B2 in the
W.C. NEWTON SURVEY
8050 PRECINCT LINE ROAD

Address

jwjones48@att.net

Email address (optional)

H) (405) 692-9010 / CELL (405) 760-3829

Phone (optional)

Advantage Storage
2600 Eldorado Parkway, Suite 110
McKinney, Texas 75070
972-547-0236
rjones@AdvantageStorage.net



26 September 2018

Mr. Ben Bryner, AICP
Director of Community Development
City of Colleyville
100 Main Street
Colleyville, Texas 76034

Re: PUD-C Planned Unit Development-Commercial Zoning Request
8060 Precinct Line Road, Colleyville
Billye Fowler, owner
Advantage Storage, applicant

To Whom it May Concern,

I am the owner of the property listed below. I have reviewed materials supplied by the applicant, Advantage Storage, and have no objections to their request for PUD-C Planned Unit Development-Commercial zoning.

Sincerely,

CHARLES A. LEE 

Name

10/1/18

Date

8080 PRECINCT LINE RD
COLLEYVILLE TX 76034

Address

CHARLIE.LEE@SL2SUITES.COM

Email address (optional)

817-637-9830

Phone (optional)



ADVANTAGE
STORAGE

Phone (optional)

Ben Bryner

To: Souder, Billye
Subject: RE: Advantage Colleyville - 8060 N Precinct Line Road

From: Souder, Billye []
Sent: Friday, October 26, 2018 9:16 AM
To: Rick Jones <>; Ben Bryner <BBryner@colleyville.com>
Subject: RE: Advantage Colleyville - 8060 N Precinct Line Road
Importance: High

Ben

I would like to add my thoughts to the email below that was sent by Rick Jones. I appreciate Rick asking for a compromise regarding the landscaping but would like to input my concerns regarding this requirement and to voice my desire that this requirement be totally waived for several reasons:

1. I am curious as to why the Chair Person felt it necessary to make such a requirement. She did not give a reason on the night the P & Z met. I am not sure what she is concerned about. This land has always been well maintained and to my knowledge the land has never been a nuisance to the City of Colleyville. Just because the back portion of the property would be built out (if the council approves) I am not sure what the concern is for the front portion to be developed with landscaping. In fact I will be even more vigilant since it is my priority to sell the front property as soon as possible to a retail buyer. Keeping it well maintained is to Seller's benefit. In fact I have already reached out to a company that will remove the fencing and some of the mesquite trees to give it a more aesthetic appearance.
2. In my 30 plus years as a real estate attorney representing owners of property holding it for investment and not development I have never known a City to make development requirements on property being listed for sale and not developed by the owner. This property was purchased for investment purposes only and not for to be developed by the owner.
3. There are other undeveloped properties for sale along Precinct Line Road in Colleyville and I do not see where they have been required to add landscaping while they are trying to sell their property. Why is our property being required to do that? Respectfully, I believe this is unfair and discriminatory.
4. I do not see the logic in adding landscaping to property that is going to be sold to a buyer or buyers that may have building requirements that would require removal of what was planted. Seller has no idea if a company will purchase one pad or 2 or all 3. What landscaping that is put in may in all likelihood be pulled up as it will not be appropriate for the plans of the buyer. That is a waste of funds when you have no idea of the future plans.
5. I have been advised by Rick that the cost of the landscaping, depending upon the amount required, could be between \$29,000.00 - \$70,000.00. There is no way my mother has readily available funds in her bank accounts to pay such amount. It would have to come from the proceeds of sale that, as I explain in 6 below, is to be invested for her current and future medical and living expenses.
6. My greatest objection is due to the burden this will create for my mother who is the current owner of the property. The proceeds of the sale from the back 3 acres (if approved) will be placed in an investment account for the benefit of my mother who requires 24/7 care. She may live for at least another 5-8 years and funds must be available to pay for her continued 24/7 care and at some point she may have to be placed in a care facility which is quite expensive. In addition, we need to be prepared for any hospitalization costs if she were to become

hospitalized for a period of time due to her declining health issues. She has limited monthly income (SS and a small retirement). To require her to pay for landscaping which is quite expensive, would take away from the source of funds for her care and living expenses. Additionally because the proceeds will be in an investment account (in order to draw interest) the limited income she has will not begin to cover the maintenance for the upkeep of the landscaping. Because we are having the property replatted she is also losing the benefit of AG exemption which will be an added cost we have to take into account and pay from the proceeds of sale that are invested.

Ben you are welcome to share my comments with the City Staff and council members.

Kind Regards,

Billye Souder Fowler



Billye G. Souder
In-House Attorney
4908 Colleyville Blvd., Ste 306
Colleyville, Tx 76034
O: (817) 581-7701 | F: (817) 581-7206
Cell: 817-994-3523
bsouder@trinitytitletx.com
www.trinitytitletx.com

Trinity Title of Texas thanks you for the opportunity to be in partnership with your business community. We are committed to serving you both professionally and personally!

9 CONVENIENT LOCATIONS in DALLAS/FT WORTH AREA

**ARLINGTON - BALLPARK / ARLINGTON - PARK SPRINGS
BURLESON / COLLEYVILLE / COPPELL / FORT WORTH
FRISCO / HERITAGE TRACE / WEATHERFORD**



*Online banking fraud is on the rise! If you receive an email containing **Wire Transfer Instructions**, please call your Escrow Officer immediately to verify the information before sending funds.*

ORDINANCE O-18-2065

AMENDING THE ZONING ORDINANCE AND THE OFFICIAL ZONING MAP OF THE CITY OF COLLEYVILLE, TEXAS, BY CHANGING THE ZONING ON 6.378 ACRES ON TRACT 1, ABSTRACT 1154, IN THE R H MCEWING SURVEY, LOCATED AT 8060 PRECINCT LINE ROAD FROM THE R-40 SINGLE FAMILY RESIDENTIAL DISTRICT TO THE PUD-C PLANNED UNIT DEVELOPMENT – COMMERCIAL ZONING DISTRICT; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Colleyville has received an application for a rezoning under Case No. ZC18-028; and

WHEREAS, the City of Colleyville deems it necessary, for the purpose of promoting the health, safety, morals, or general welfare of the City to enact a new zoning ordinance; and

WHEREAS, the City Council has appointed a Planning and Zoning Commission to recommend the boundaries of the various original zoning districts and appropriate regulations be enforced therein and to recommend a new zoning ordinance; and

WHEREAS, the Planning and Zoning Commission has divided the City into districts and has prepared regulations pertaining to such districts in accordance with a comprehensive plan designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health, general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and

WHEREAS, the Planning and Zoning Commission, has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, the Planning and Zoning Commission of the City of Colleyville and the City of Colleyville City Council, in compliance with the Charter of the City of Colleyville, and State Law with reference to changes to zoning classifications under the Zoning Ordinance Regulations and Zoning Map, having given the requisite notices by publication and otherwise, and after holding due hearings and

affording a full and fair hearing to all the property owners generally, and to the persons interested and situated in the affected area and in the vicinity thereof, the governing body of the City of Colleyville is of the opinion that said change in zoning should be made.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

- Sec. 1. THAT all the foregoing premises and findings are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety.
- Sec. 2. THAT the Comprehensive Zoning Ordinance of the City of Colleyville, Texas, be, and the same is hereby amended by changing the zoning on 6.378 acres on Tract 1, Abstract 1154, in the R H McEwing Survey, located at 8060 Precinct Line Road from the R-40 Single Family Residential zoning district to the PUD-C Planned Unit Development – Commercial zoning district, as depicted in the attached Exhibit "A" and Exhibit "C", and as described in Exhibit "B".
- Sec. 3. THAT the Official Zoning Map of the City of Colleyville be amended to incorporate the zoning change approved herein.
- Sec. 4. THAT the above described tract of land shall be subject to the following conditions:

1. GENERAL

- a. The purpose of this PUD-C is to allow for a self-storage facility totaling approximately 87,375 square feet and to provide development regulations for the future development of three (3) retail/restaurant lots on Tract 2.
- b. This development shall be generally consistent with the Statement of Planning Objectives, Exhibit "B".
- c. The proposed development is subject to CC-2 Shopping Center zoning district and all the associated regulations contained in the Land Development Code, except as amended by this Ordinance.

2. DEVELOPMENT PLAN

- a. The development shall be generally consistent with the conceptual site plan and landscaping plan, Exhibit "C", and the Site Plan and Building Elevations, Exhibit "C".
- b. The development of Tract 2 shall be generally consistent with the requirements of CC-2 Shopping Center zoning district and all the associated regulations contained in the Land Development Code, except as amended by this Ordinance.

3. PERMITTED USES

- a. Uses shall be those allowed in the CC-2 Shopping Center zoning district.
- b. The self-storage use as depicted in the attached exhibits shall be a permitted use on Tract 1.
- c. There shall be no outside storage allowed per this PUD to include RV's, boats, materials, etc.
- d. No commercial truck rentals on Tract 1 shall be allowed per this PUD.

4. Lot Width

- a. The minimum lot width allowed for Tract 1 shall be ± 38 feet at the property line.

5. BUILDING DESIGN

- a. The storage facility on Tract 1 shall be generally consistent with the building elevations and specified material depicted in Exhibit "C".
- b. Development on Tract 2 shall be generally consistent with the requirements of the Land Development Code of the City of Colleyville and the following design standards:
 - i. At least fifty percent (50) of the exterior wall surface

area shall be natural stone.

6. FENCING AND BUFFER YARDS

- a. The buffer yard along the rear (east) property line shall be a minimum of twenty-five feet.
- b. On Tract 1, in lieu of an eight (8) foot masonry wall along the east and south property lines adjacent to residential zoning, the rear of the buildings and connecting eight (8) foot masonry walls shall be permitted per the fence exhibit, Exhibit "D".

7. Tree Preservation Standards

- a. On Tract 1, minimum tree preservation standards will not be met per this PUD.
- b. Tree Preservation for Tract 2 shall be reviewed per Chapter 5 of the Land Development Code prior to development of this tract. This conceptual site plan and associated civil plans are not an approval of the layout as it pertains to tree preservation on Tract 2.

8. LANDSCAPING

- a. Tract 1: The requirement for fifty (50) percent of the required landscaping to be located in the street yard(s) as described in chapter 4.6 of the Land Development Code for the City of Colleyville shall be waived for Tract 1. On Tract 1, the landscape area shall be provided as generally depicted in Exhibit "D".
- b. Tract 2: Landscaping on Tract 2 shall conform to the CC-2 Shopping Center zoning district and all the associated regulations contained in the Land Development Code, except as amended as follows:
 - i. When Tract 1 develops, along North Precinct Line Road, there shall be a minimum twenty (20) foot wide green belt of "live plant material of the evergreen variety", exclusive of access drives. This area may be planted with trees shrubs required at the

front of the site. Landscape planting shall not be erected or installed in such a manner as to interfere with traffic view or impose a safety hazard.

- ii. In addition to the requirements of locating 50% of required landscaping in the street yard(s) as described in Section 4.6 of the Land Development Code for the City of Colleyville, developments on Tract 2 shall be required to provide landscaped areas immediately adjacent to each building equal to ten (10) percent of the footprint area of the building, with fifty (50) percent of that amount being located in the street yard.
- iii. Parking lots shall contain a minimum of one hundred forty (140) square feet of landscaped island per each nine (9) contiguous parking spaces required. This landscape island is to include one (1) three (3) inch caliper tree.

9. PARKING

- a. A total of nine (9) parking spaces shall be required for the storage facility on Tract 1.
- b. Parking requirements for Tract 2 shall conform to the CC-2 Shopping Center zoning district and all the associated regulations contained in the Land Development Code.
- c. No commercial truck rentals on Tract 1 shall be allowed per this PUD.
- d. Any vehicle associated with the operation of the self-storage use on Tract 1 shall be parked/stored interior of the development and shall not be utilized for any additional advertising.

10. MONUMENT SIGN

- a. All monument signs will conform to Exhibit "C" except for the copy on the face of the sign which will be customized for each user on Tract 2. The face of all signs will be the same material and color or anodized aluminum, and sign

copy will be uniformly white Lexan.

- Sec. 5. THAT the above described tract of land shall be used only in the manner and for the purposes provided by the Comprehensive Zoning Ordinance of the City of Colleyville as heretofore amended, and as amended herein.
- Sec. 6. THAT any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Colleyville, and upon conviction shall be punishable by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.
- Sec. 7. THAT if any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be judged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any portion thereof other than that portion so decided to be invalid or unconstitutional.
- Sec. 8. THAT in addition to and accumulative of all other penalties, the City shall have the right to seek injunctive relief for any and all violations of this ordinance.
- Sec. 9. THAT it has been found that there has been a change in conditions in the above described property, it is now necessary that it be given the above zoning classification in order to permit its proper development and in order to protect the public interest, comfort and general welfare, and requires that this ordinance shall take effect immediately from and after its passage.

AND IT IS SO ORDERED.

The first reading and public hearing being conducted on the 5th day of November 2018.

The second reading and public hearing being conducted on the 20th day of November 2018.

PASSED AND APPROVED BY A VOTE OF ____ AYES, ____ NAYS, AND ____
ABSTENTATIONS ON THIS THE 20TH DAY OF NOVEMBER 2018.

Mayor Richard Newton	_____	Mayor Pro Tem Bobby Lindamood	_____
Place 1, Tammy Nakamura	_____	Place 5, Chuck Kelley	_____
Place 3, Kathy Wheat	_____	Place 6, Callie Rigney	_____
Place 4, George Dodson	_____		

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
City Secretary

Richard Newton
Mayor

APPROVED AS TO FORM AND LEGALITY:

Whitt Wyatt
City Attorney

CITY OF COLLEYVILLE TEXAS

ZC18-028
8060 Precinct Line Road

DISCLAIMER:
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Legend:
[Red Outline] Subject Property
[Blue Shaded Area] Properties Outside the City Limit

Map Details:
The map shows a grid of property lots. The subject property, 8060 Precinct Line Road, is highlighted with a red outline. It is a large yellow lot (8060) zoned R-40. Surrounding lots are color-coded by zoning: orange for PUD-C, yellow for R-20, and green for PUD-R. Street names include Precinct Line Road, Lavaca Trail, Emmas Court, Chantal Lane, Sterling Drive, and Kays Court. Lot numbers are provided for many of the parcels.

Exhibit "B" – Statement of Planning Objectives

Statement of Planning Objectives

Advantage Storage
2600 Eldorado Parkway, Suite 110
McKinney, Texas 75070
972-547-0236
rjones@AdvantageStorage.net



7 September 2018

Mr. Ben Bryner, AICP
Director of Community Development
City of Colleyville
100 Main Street
Colleyville, Texas 76034

Re: Zoning Application
Proposed Self Storage Development
8060 North Precinct Line Road

Dear Mr. Bryner,

Please accept this letter in fulfillment of the zoning application provision for Statement of Planning Objectives, Development Schedule, Proposed Ownership and Economic Information.

STATEMENT OF PLANNING OBJECTIVES:

The project consists of 6.378 acres located along North Precinct Line Road and is configured in two tracts. Tract One contains 148,047 square feet (3.399 acres) and Tract Two contains 129,781 square feet (2.979 acres).

TRACT ONE:

The planning objective for Tract One is to develop a high quality self-storage facility. Storage facilities have changed significantly over the past 20 years reflecting the evolution of the asset type from a low-quality light industrial use to very high-quality retail service business. Whereas many early self-storage customers used storage for short term, transitory reasons, the majority of contemporary storage customers secure storage space for ongoing, space making reasons. These customers as well as others desire well located facilities near where they work and live. Storage use is much higher per capita today than twenty years ago. Storage development has changed to meet this market demand by providing higher quality facilities with architecture compatible with the high-end retail locations in which they reside. Advantage has since 1996 been on the leading edge of this evolution, developing state-of-the-art facilities in very high profile, retail locations.

The characteristics of the storage project are proposed to be:

- The project will be situated on a 3.399 acre site with 38' of North Precinct Line Road frontage.
- The project consists of two, two-story building and four single story buildings containing approximately 87,225 gross SF configured to provide approximately 71,175 net rentable square feet of storage consisting of approximately 625 individual storage units containing between 25 and 300 square feet.
- Approximately 65% of the net rentable area will be climate controlled, appealing to the higher household income in which the project resides.

Statement of Planning Objectives

- The buildings fronting North Precinct Line Road will be two-story with maximum 29.5' height. This allows the architecture of the building to replicate typical retail scale and incorporate interesting architectural features.
- All remaining buildings will be single story and will be oriented toward interior drives and will not exceed 15' in height. Drive visibility from North Precinct Line Road will be minimal, and no door openings will be oriented toward the perimeter of the project.
- The rental office for the facility will be in the front building.
- There will be no resident manager living on site
- The project will include state-of-the-art security features including CCV cameras and tenant only access via digital gate and building controls.
- Project signage will be a combination of masonry monument sign and building signage conforming to ordinance.
- Landscaping will conform to or exceed ordinance requirements, and will be concentrated on the project perimeters, most visible to the neighboring properties and the public.
- Adequate space has been provided for engineered storm water detention and public utility extensions as may be required.

TRACT TWO:

Tract Two contains 2.979 acres and will be zoned to provide for CC-2 Shopping Center uses. The tract is approximately 250' deep which is ideal for small commercial and retail users. Although the actual users have not yet been identified and therefore the precise building layout cannot be determined, the Conceptual Development Plan depicts the likely configuration of three pad sites for retail and restaurant users. The planning objective for Tract Two is to provide ideal lot depth to promote retail development and to provide an access and utility plan to fully develop the tract. Additionally, the planning objective is to provide construction standards to insure uniform, high quality development. Standards include the following:

- Requirement for increased use of natural stone in building facades.
- Enhanced requirement for landscape buffer along North Precinct Line Road.
- Enhanced requirement for landscaping adjacent to retail buildings.
- Enhanced requirement for landscaping in parking areas.
- Enhanced requirement for uniform monument signs.

DEVELOPMENT SCHEDULE:

- Platting and Site Plan Approval will commence immediately upon zoning approval.
- Storage building permit will occur approximately 120 days following zoning approval.
- Storage completion will occur approximately 14 months following zoning approval.
- Market demand will determine retail pad site development.

PROPOSED OWNERSHIP:

The storage project will be owned by a single asset limited liability company managed and controlled by Advantage Self Storage Advisors, LLC, a Texas limited liability company owned by Rick Jones and Davis Deadman.

ECONOMIC INFORMATION:

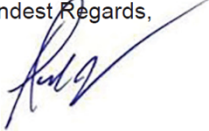
The proposed project will provide the following positive economic impact:

- Property tax valuation will likely increase from the current level of \$357,550 to approximately \$7,500,000 upon completion of the facility. The increase in property value will provide approximately \$167,000 in additional tax revenue, most of which stays in the local community via the city, school system and county.

Statement of Planning Objectives

- The configuration of the proposed site is strategically conceived to promote retail and commercial development on the pad-depth property remaining in front of the facility. The current 6-acre parcel of which the storage facility is a portion is 545' deep. This is a size and depth that is awkward for small to mid-size business who would typically locate on this mid-block commercial corridor and does not promote development. The site plan provides remaining retail parcels with +/- 250' depth, near ideal for small business and pad-site development. The property owner is understandably very hesitant to sell front parcels currently because of the limited use and marketability of the back portion of the land. With the storage development taking mainly the back portion, front parcels will likely be quickly developed placing the entire six acres into economic production.
- The storage facility will provide limited sales tax revenue via the sale of packing and moving supplies.
- The storage facility will have approximately 2-3 employees.

Kindest Regards,

A handwritten signature in blue ink, appearing to read 'Rick Jones', with a long, sweeping flourish extending to the right.

Rick Jones

Attachment: Draft PD Ordinance

LEGEND

- PROPOSED CURB
- EXISTING CURB
- REFORMED CONC. PAVEMENT
- LANDSCAPING AREA
- SIDEWALK PAVEMENT/PROTECTION BARRIER
- PARKING SPACES IN A ROW

NOTES

1. THE SITE IS LOCATED IN THE 8050 PRECINCT LINE ROAD, CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS.
2. THE SITE IS CURRENTLY A HOUSE STORAGE AND ACCESSORY BUILDING.
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12. THE SITE IS CURRENTLY A HOUSE STORAGE AND ACCESSORY BUILDING.

TRACT 1 SITE DATA TABLE

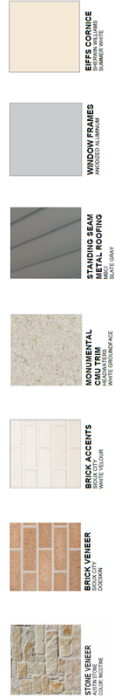
PROPOSED USE	LOT AREA	LOT COVERAGE	NET RENTABLE AREA	OPEN AREA	PARKING (PROVIDED)
RESTAURANT	3.399	42%	2,178	1,221	9 SPACES

TRACT 2 SITE DATA TABLE

PROPOSED USE	LOT AREA	LOT COVERAGE	NET RENTABLE AREA	OPEN AREA	PARKING (PROVIDED)
RESTAURANT	3.399	42%	2,178	1,221	9 SPACES

[illegible]

PROJECT NUMBER
1735
DATE
09.07.18
SHEET NUMBER
A1.0





City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 7a

Agenda Date 11/20/2018

Number Ordinance O-18-2066

Type Public Hearing Agenda Items

Department Community Development

Title

Consideration of a zoning change from R-40 Single Family Residential district to R-20 Single Family Residential district on Lot C, McEwing Subdivision & 1B02A, 1B2, 1B3, and 1B4, Abstract 1154, in the R H McEwing Survey, located at 712-810 Lavaca Trail, Case ZC18-033

Strategic Plan

Enable Responsible Development

Explanation

First Reading and Public Hearing

Keith Hamilton, the applicant, has submitted a request for a zoning change from the R-40 Single Family Residential district to the R-20 Single Family Residential district on Lot C, McEwing Subdivision & 1B02A, 1B2, 1B3, and 1B4, Abstract 1154, in the R H McEwing Survey, being approximately 17.32 acres. The purpose of the request is to allow for development of 25 new single-family residential lots and 5 open space lots.

Existing Conditions/Background: The subject property, 712-810 Lavaca Trail, resides on the north side of Lavaca Trail, across the street from an existing subdivision called Legacy Estates zoned R-20 Single Family Residential district. The property currently has R-40 zoning and remains undeveloped. The City's zoning map incorrectly shows these lots to be zoned R-20.

Proposed Zoning:

Request – The applicant requests to rezone the property from R-40 to R-20 for the creation of a single-family residential subdivision consisting of twenty-five (25) single-family residential lots and five (5) open space lots. The development covers a total of 17.32 acres.

The minimum standards for the R-20 zoning district are as follows:

Minimum Lot Size:	20,000 square feet
Minimum Lot Width:	100 feet
Minimum Lot Depth:	125 feet
Front Building Line:	30 feet
Side Building Line:	10 feet
Rear Building Line:	25 feet

Maximum Lot Coverage: 30 percent

Analysis: The requested rezoning allows the applicant to develop the lots in a manner complementary to the neighborhoods surrounding it.

The applicant had applied for a preliminary/final plat for the property due to the city's zoning map showing the zoning for these lots to be the R-20 zoning district. It has been discovered that these properties actually have R-40 zoning based on a Planning and Zoning Commission case from 2006, O-06-1600. A request to rezone the property from the R-40 district to the R-20 district was denied by the Planning and Zoning Commission at their November 13, 2006 meeting. The applicant at that time did not appeal to City Council, therefore the zoning remains R-40. Starting in January of 2007, the official zoning map has shown the R-20 zoning on the property. This error has continued through present day.

The exhibit provided is the Preliminary Plat exhibit, which will be scheduled with the Planning and Zoning Commission and City Council at a later date.

Timeline for Zoning:

Many properties in and around these properties have been developed for a decade or more and were rezoned from R-40 to R-20.

- 1997 O-97-1058 Remington Park from AG, R-20, & R-40 to PUD-R
- 2001 O-01-1286 Rosewood Villas from PUD-C to PUD- R and CC-2
- 2006 O-06-1594 Lavaca Trail/Estates from AG and R-40 to R-20
- 2006 O-06-1599 Lavaca Parc from R-40 to R-20
- 2006 O-06-1597 Legacy Estates western lots from R-40 to R-20
- 2006 O-06-1594 Kays Court and Emmas Court from R-40 & AG to R-20
- 2006 O-06-1563 Villas of Colleyville from CC-2 to PUD-R
- 2007 O-07-1627 Villas of Colleyville from CC-2 to PUD-R
- 2014 O-14-1924 Legacy Estates eastern lots from R-40 to R-20

Surrounding Development: The properties to the south, across Lavaca Trail and west have R-20 zoning and have developed with single-family residential structures. Properties to the north and east have PUD-R zoning and have developed with single-family residential structures.

Comprehensive Plan: The City's comprehensive plan, Destination Colleyville, identifies the subject property for single-family residential development. The proposed R-20 does not conflict with any portion of the comprehensive plan.

Public Notification: Staff mailed notices to all property owners within 500 feet as well as any Homeowners Associations within 1,000 feet of the subject property regarding this request. Grapevine-Colleyville ISD, where the subject property is located, was

notified per State law. Notice was published in the Fort Worth Star-Telegram as required by State law and the Land Development Code. To date, no correspondence has been received.

Staff Recommendation: Staff recommends approval for the applicant's request based on the following findings:

1. The proposed zoning meets the intent of the residential designation assigned in the Destination Colleyville comprehensive plan.
2. The R-20 zoning continues the R-20 zoning districts around the subject property and is similar to the development pattern already established.

Planning & Zoning Commission Recommendation: The Planning & Zoning Commission recommended approval at their October 22, 2018 meeting by a vote of 7-0.

Financial Impact

There is no fiscal impact to the City of Colleyville.

Recommendation

Approve

Attachments

1. Aerial Map
2. Zoning Map
3. Future Land Use Map
4. City Zoning Map 2006
5. City Zoning Map 2007
6. Adjacent Properties Zoning
7. Zimmerman - City Council Agenda Briefing
8. November 13, 2006 - Planning and Zoning Commission Minutes
9. Zoning Exhibit
10. Photos Taken by Staff
11. Notification Map
12. Notification List
13. Property Owner Notification
14. Letter from Applicant
15. Letters of Opposition
16. Letters of Support
17. Ordinance O-18-2066

Aerial Map



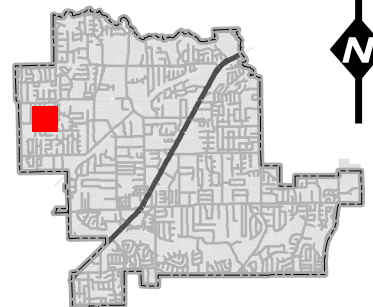
ZC18-033

712 - 810 Lavaca Trail

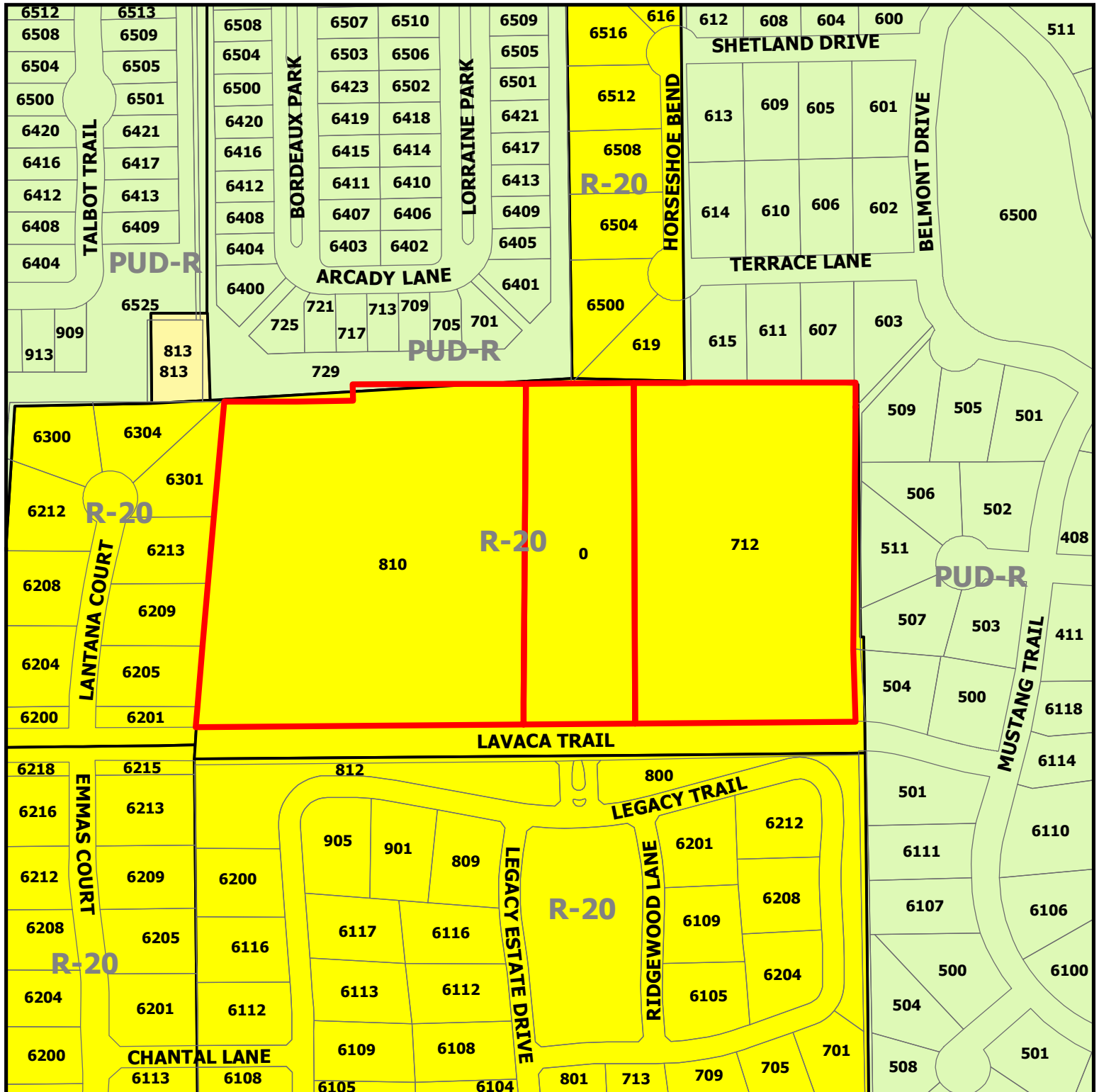
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Subject Property



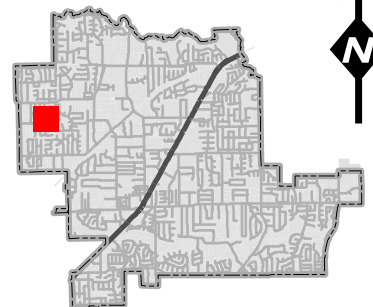
Zoning Map



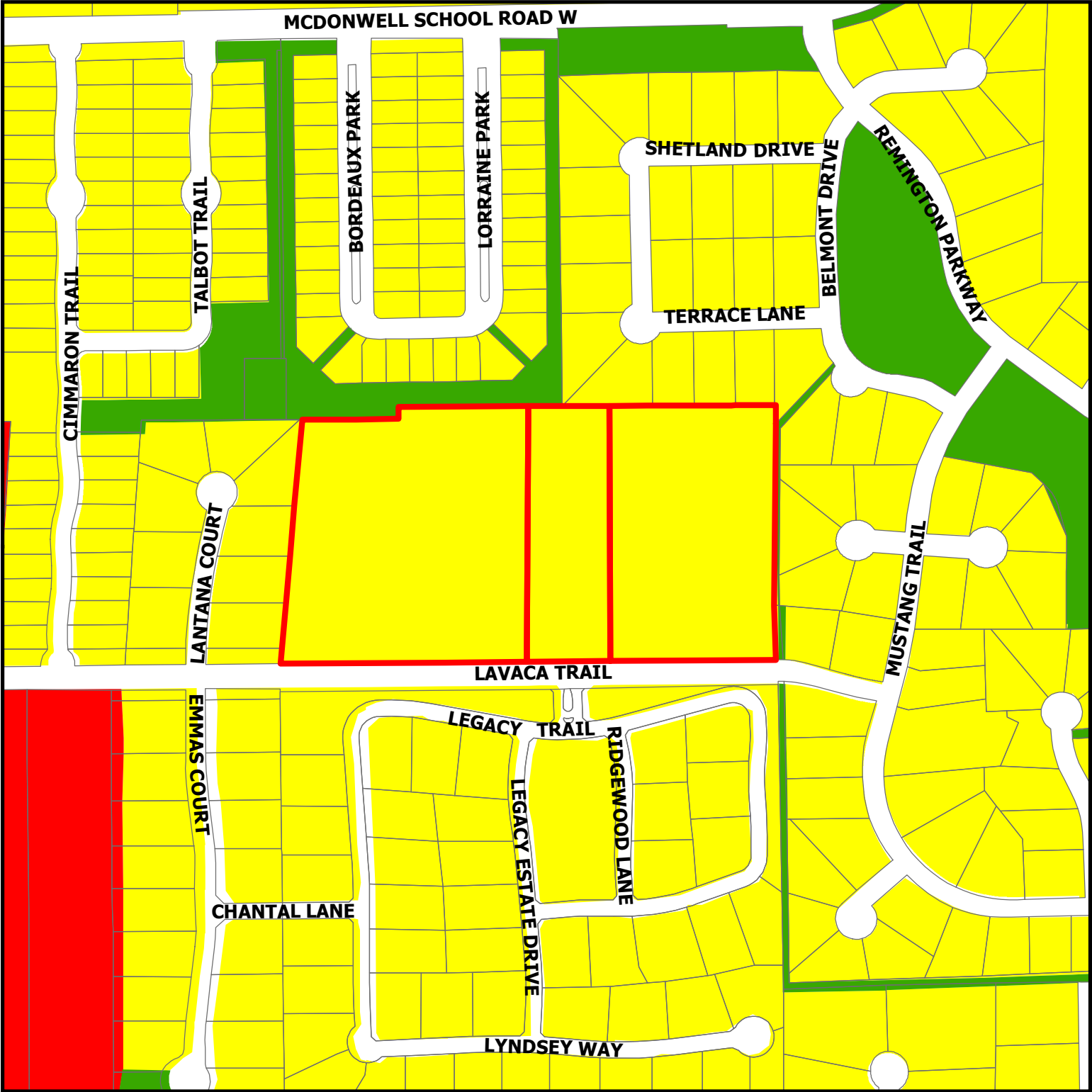
ZC18-033
712 - 810 Lavaca Trail

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 Subject Property



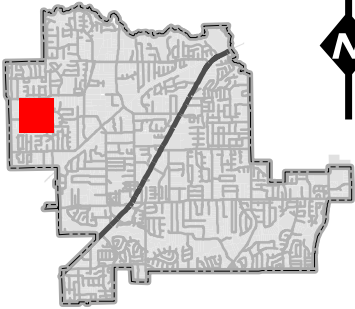
Future Land Use Map



ZC18-033

712 - 810 Lavaca Trail

-  Subject Property
-  Residential
-  Commercial
-  Open Space; Parks



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City Zoning Map 2006

Zoning

Legend

-  Schools
-  Parks
-  Municipal Locations
-  AG Agricultural
-  CC-1 Village Retail
-  CC-2 Shopping Center
-  CC-3 Highway Commercial
-  CN Neighborhood Commercial
-  CP0 Professional Office
-  ML Light Manufacturing
-  PUD-C Planned Unit Development, Commercial
-  PUD-R Planned Unit Development, Residential
-  R-10 Single Family Residential (10,000 sq. ft. min)
-  R-15 Single Family Residential (15,000 sq. ft. min)
-  R-20 Single Family Residential (20,000 sq. ft. min)
-  R-30 Single Family Residential (30,000 sq. ft. min)
-  R-40 Single Family Residential (40,000 sq. ft. min)
-  R-MF Multi-Family Residential
-  RD Two Family Residential
-  RE Single Family 'Estate' Residential



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Last update 10/1/06

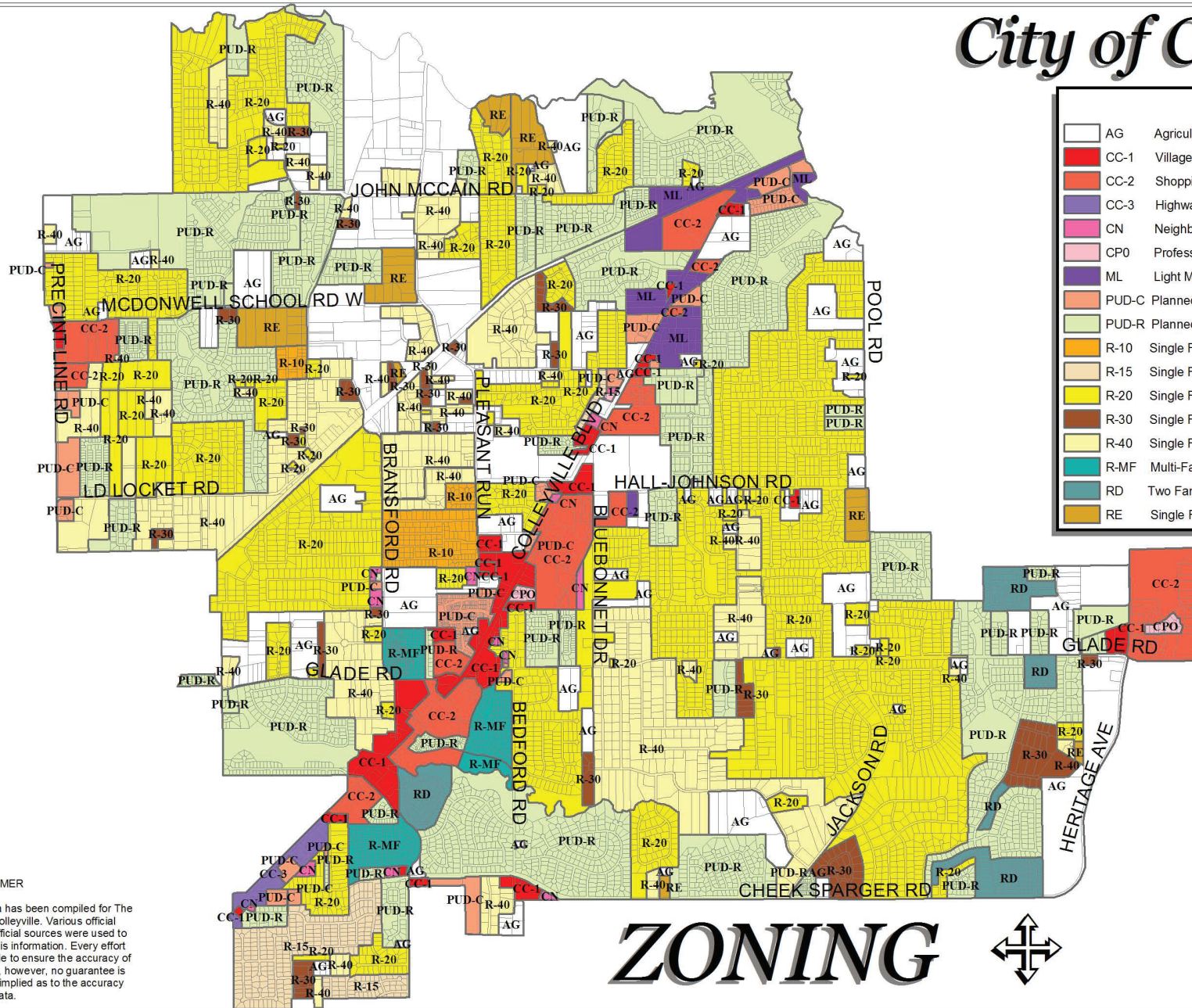


Geographic Information Systems

City Zoning Map 2007

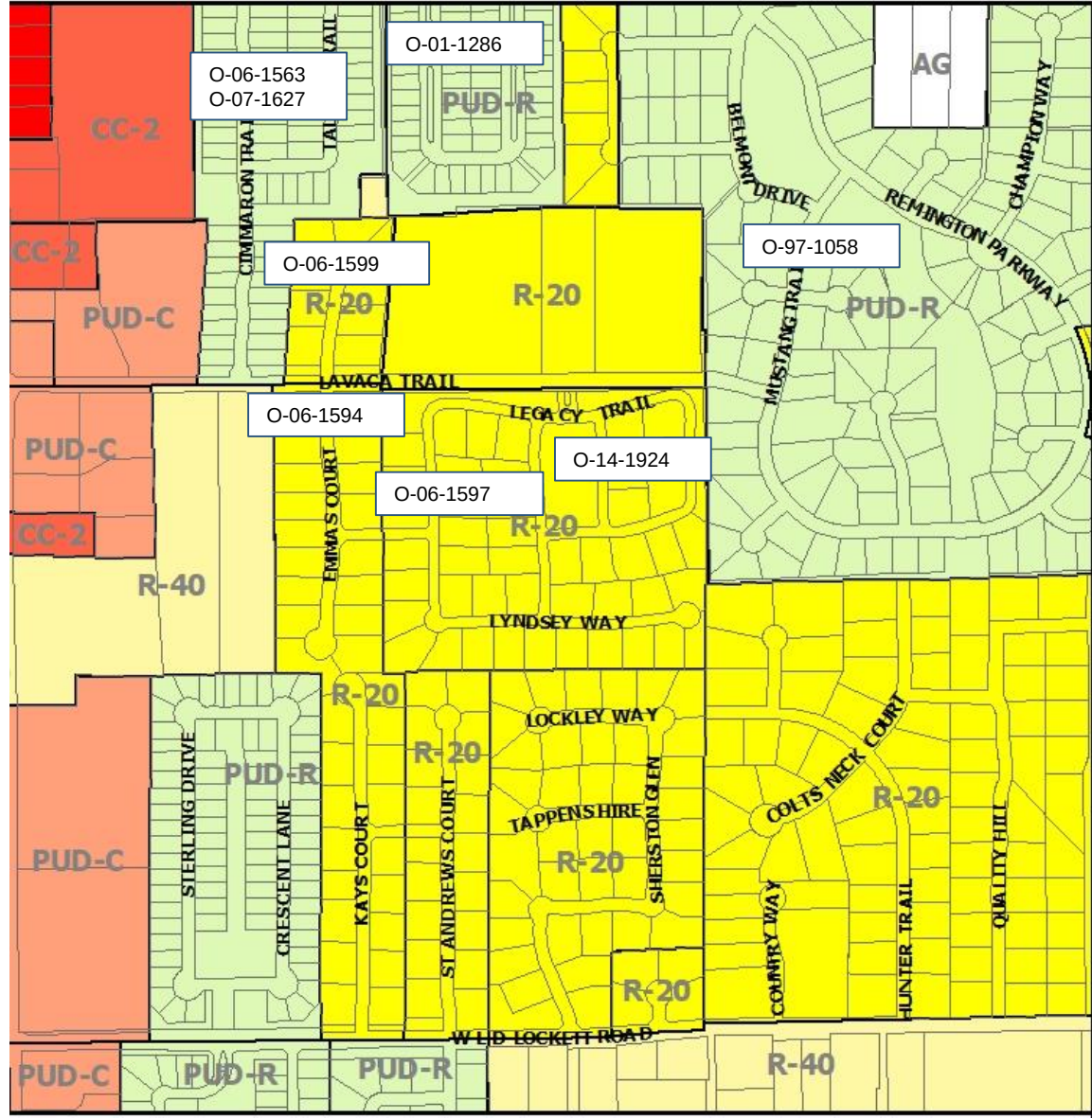
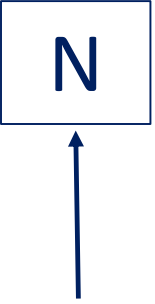
City of Colleyville

Legend	
AG	Agricultural
CC-1	Village Retail
CC-2	Shopping Center
CC-3	Highway Commercial
CN	Neighborhood Commercial
CP0	Professional Office
ML	Light Manufacturing
PUD-C	Planned Unit Development, Commercial
PUD-R	Planned Unit Development, Residential
R-10	Single Family Residential (10,000 sq. ft. min)
R-15	Single Family Residential (15,000 sq. ft. min)
R-20	Single Family Residential (20,000 sq. ft. min)
R-30	Single Family Residential (30,000 sq. ft. min)
R-40	Single Family Residential (40,000 sq. ft. min)
R-MF	Multi-Family Residential
RD	Two Family Residential
RE	Single Family 'Estate' Residential



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City of Colleyville

Agenda Briefing

100 Main Street
Colleyville, Texas 76034
(817) 503-1000
www.colleyville.com

File Number: O-06-1600

File Number: O-06-1600	File Type: Ordinance	Status: First Reading
Version: 1	Agenda Date: 12/05/2006	Controlling Body: City Council
Requester: Community Development Department	Agenda No.: 6a	Final Action:
File Name: Approval of a Request for a Special Use Permit on 17 acres out of the R.N. McEwing Survey and the McEwing Addition located at 712-900 Lavaca Trail, Case Z-06-027		
Attachments: Location and Zoning Map • List of Property Owners Notified • Zoning Exhibits • Ordinance O-06-1600		

History of Legislative File

Version:	Date:	Acting Body:	Action Text:
1	11/13/2006	Planning and Zoning Commission	
1	12/05/2006	City Council	

Title

Approval of a Request for a Special Use Permit on 17 acres out of the R.N. McEwing Survey and the McEwing Addition located at 712-900 Lavaca Trail, Case Z-06-027

Explanation

First Reading and Public Hearing

Jeffrey Zimmerman has submitted a request for consideration of a Special Use Permit (SUP) to allow grazing animals on 17 acres of land located on the north side of Lavaca Trail, approximately 275 feet west of Mustang Trail. The property is currently zoned R40-Single Family Residential.

The applicant originally submitted a request to rezone the property from the R40-Single Family Residential zoning district to the R20-Single Family Residential zoning district in conjunction with the SUP request. The Planning and Zoning Commission denied the R20 rezoning request and approved the SUP request. The applicant did not appeal the zoning request to City Council, therefore only the SUP request is being considered by the City Council. The Planning and Zoning Commission recommended approval of the SUP by a vote of 5-2.

Request. SUP to allow grazing animals on the property.

Location. The 17 acres is located at 712-900 Lavaca Trail.

Special Use Permit. The applicant is requesting approval of a SUP to allow grazing

animals on the property. Grazing animals are permitted by right within the AG-Agricultural and RE-Single Family Estate Residential zoning districts. The property is zoned R40 and the property owner indicated six cattle and three calves have existed on the property for many years.

Staff is recommending that a condition be placed within the ordinance stating that if the property is rezoned in the future, the SUP permitting the grazing of animals will become void. The proposed ordinance also contains a provision to limit the number of animals to the ratio permitted in Section 42 of the Colleyville Code of Ordinances, which allows one grazing animal per 15,000 square feet of land area. Using the formula permitted by the code, a total of 49 animals would be allowed on the 17 acre tract. The applicant is aware of the staff recommendations and has agreed to the conditions.

Surrounding Development Trends. The surrounding properties are primarily single family residential in nature. Properties to the north are zoned PUDR-Planned Unit Development Residential and R20-Single Family Residential and are developed as single family uses (Rosewood Villas and Remington Park). The properties to the west and south are zoned R20-Single Family Residential and are currently being developed for single family uses. The properties to the west are zoned PUDR-Planned Unit Development Residential and R20-Single Family Residential and are developed as single family uses (Remington Park).

Public Notification. Staff mailed notices to 36 adjacent property owners regarding this request. Notice was published in the *Fort Worth Star-Telegram* as required by state law and the Land Development Code. No correspondence has been received regarding this request.

Financial Impact

It has been determined that there is no financial impact.

Recommendation

Approval with the condition that the SUP becomes void upon any future rezoning of the property, which has been incorporated into the attached proposed ordinance. Staff is concerned that a future rezoning of the property without voiding the SUP provisions would allow all future properties within the 17 acres to have grazing animals and have possible adverse effects on the residents in the future of that neighborhood.

List of Property Owners Notified

Z-06-027

Zimmerman, Jeffrey K applicant 501 Lavaca Trl Colleyville, TX 76034	Zimmerman, Jeffrey K applicant 501 Lavaca Trl Colleyville, TX 76034	Zimmerman, Jeffrey K applicant 501 Lavaca Trl Colleyville, TX 76034
Zimmerman, Jeffrey K applicant 501 Lavaca Trl Colleyville, TX 76034	Anderson, Gregory L Etux Tina 509 Belmont Dr Colleyville, Tx 76034	Bouton, Terry L Etux Debra L 611 Terrace Ln Colleyville, TX 76034
Brown, Sean W 2700 Tibbets Dr Ste 350 Bedford, TX 76022	Chandler, Raman PO Box 611 Colleyville, TX 76034	Cochran, Jerry W Etux Anne M 511 Mustang Ct Colleyville, TX 76034
Crawford, Scott Etux Michelle 502 Mustang Ct Colleyville, TX 76034	Dacy, Carol Crowder Etvir Tim 6500 Horseshoe Bnd Colleyville, TX 76034	Gardner, Thomas J Etux Melinda 607 Terrace Ln Colleyville, TX 76034
Gary Panno Inc PO Box 715 Colleyville, TX 76034	Giacomini, Stephanie A 805 W Lavaca Trl Colleyville, TX 76034	Glasgow, William Etux Karen 6400 Bordeaux Park Colleyville, TX 76034
Gohr, Martin Etux Lorraine 809 Lavaca Tr Colleyville, TX 76034	Gtp Acquisition Partners II 1801 Clint Moore Rd Ste 215 Boca Raton, FL 33487	Invitation Park III Lp 215 W College St Grapevine, TX 76051
Lamberth, Geo A Etux Sharrian 503 Mustang Ct Colleyville, TX 76034	Larson, Charles Etux Marsha 615 Terrace Ln Colleyville, TX 76034	Ldds Communications Inc 500 Clinton Center Dr Clinton, MS 39056
Maner, Jolene C 506 Mustang Ct Colleyville, TX 76034	Martin, Stephen L Etux Nan C 813 W Lavaca Trl Colleyville, TX 76034	McIntosh, Doyle & Mary Fam Lp 8333 Thornhill Dr North Richland Hills, TX 76180
Michelsen, John J III 619 Terrace Ln Colleyville, TX 76034	Morrison, David J 603 Terrace Ln Colleyville, TX 76034	Myers, John R Etux Adrienne A 504 Lavaca Tr Colleyville, TX 76034
O'Hanlon, Kerry Lyn 709 Arcady Ln Colleyville, TX 76034	Ortiz, Maria T 505 Belmont Dr Colleyville, TX 76034	Pacilio, William J Etux Nancy 500 Lavaca Trl Colleyville, TX 76034

Peek, Edward Allen Etux Darcy
507 Mustang Ct
Colleyville, TX 76034

Pratt, Leonard E
711 W Lavaca Trl
Colleyville, TX 76034

Randall, Mark R
6111 Mustang Trl
Colleyville, TX 76034

Rem Park H A Inc
PO Box 343
Colleyville, TX 76034

Rogers, Patricia A
725 Arcady Ln
Colleyville, TX 76034

Royal Lepage Relocation Servic
1905 Harney St Ste 300
Omaha, NE 68102

Terry, Douglas L
717 Arcady Ln
Colleyville, TX 76034

Thompson, Harold D Etux
Sandra
6401 Lorraine Park
Colleyville, TX 76034

Westgate Villas Ltd
PO Box 611
Colleyville, TX 76034

Jeffrey K Zimmerman
501 Lavaca Trail
Colleyville, TX 76034

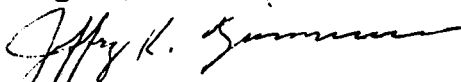
October 13, 2006

City of Colleyville
100 Main Street
Colleyville, TX 76034

Re: Zimmerman Ranch - Zoning Change from R40-R20 and Special Use Permit for
Grazing Animals

I am requesting a zoning change from R40 to R20 on my 17+ acres located on Lavaca Trail. I am requesting the zoning change in order to keep my land cohesive with the surrounding zoning. The special use permit (SUP) is needed for grazing animals so that I may continue to keep my cattle on this land.

Regards,


Jeffrey K. Zimmerman

Jeffrey K Zimmerman
501 Lavaca Trail
Colleyville, TX 76034

October 13, 2006

SPECIAL INSTRUCTIONS FOR BARRY LeBARON

Re: Zimmerman Ranch - Zoning Change from R40-R20 and Special Use Permit for
Grazing Animals

Barry,

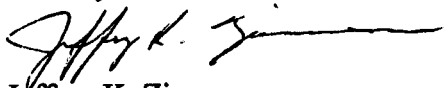
As discussed, I am applying for the single Ordinance that includes:

Section 1: R20 zoning

Section 2: SUP for grazing animals so that I may continue to keep livestock

We had determined that the SUP should expire if any portion of the property is platted or replatted, so we need wording in the SUP to reflect this.

Thank you,

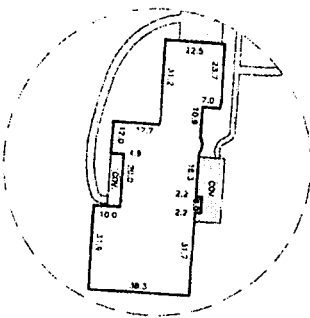
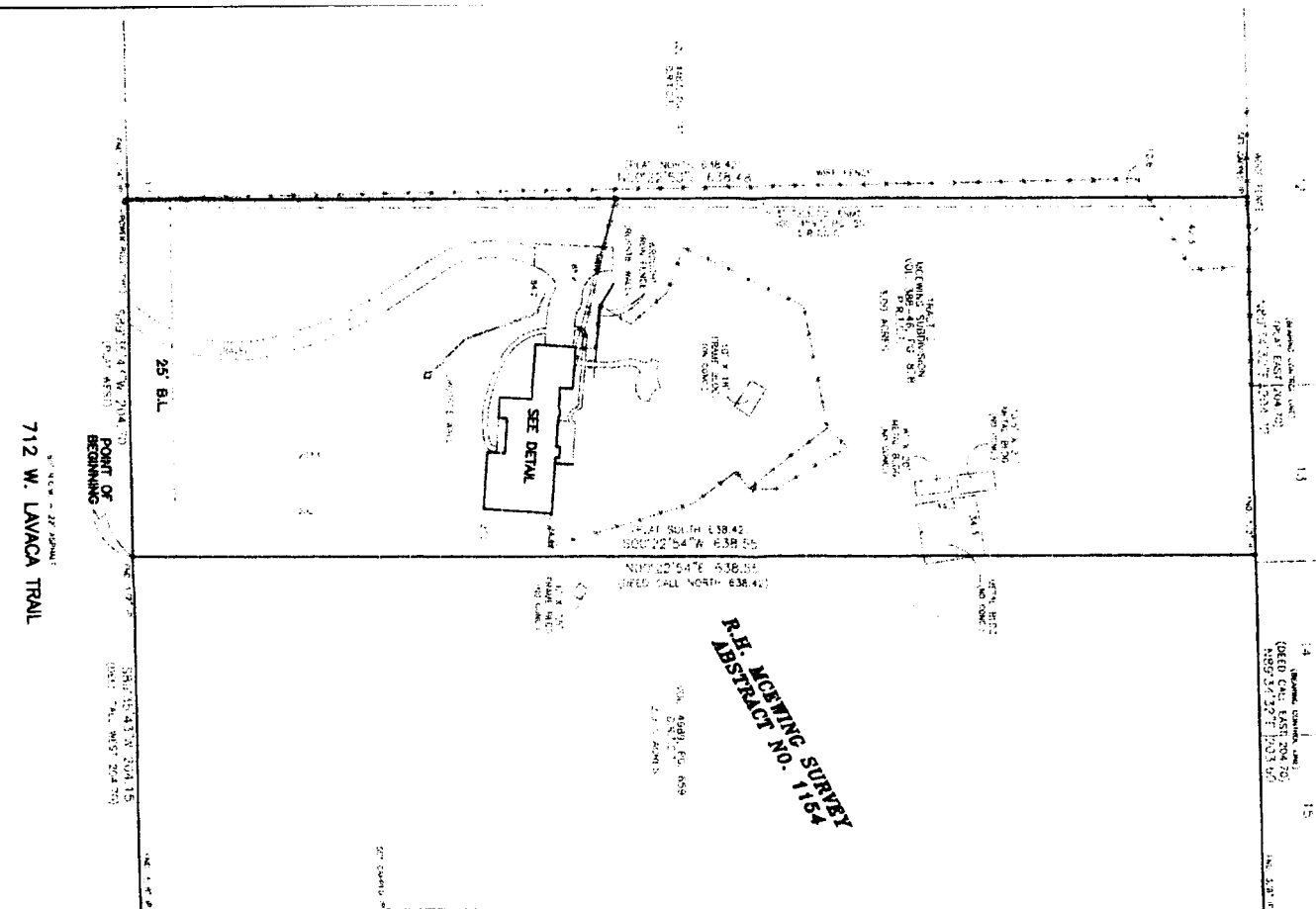


Jeffrey K. Zimmerman

Ph: 817-427-4130

Mobile: 817-637-6677

Email: jzidi@aol.com



**DETAIL
ONE STORY
BRICK & FRAME
RESIDENCE**

[illegible]

ELEMENTS IN MOT EFFECT:
VOL. 206, PG. 109, D.R.T.C.
VOL. 227, PG. 25, D.R.T.C.
ELEMENT DOES EFFECT:
VOL. 206, PG. 109, D.R.T.C. - RANGET ELEMENT

CONALTS & MOORE, of SAN FRANCISCO, CALIF., HAS SHOWN AND MADE AN INTERESTING AND VALUABLE CONTRIBUTION TO THE SCIENCE OF ALL CORRELATION OF THE PRODUCTION OF THE SEVERAL FORMS OF THE COASTAL PLANTS OF THE PACIFIC. HE HAS DISCOVERED THAT THE SEVERAL FORMS OF THE COASTAL PLANTS OF THE PACIFIC ARE NOT ONLY CORRELATED BY THEIR PHYSICAL AND CHEMICAL PROPERTIES, BUT ALSO BY THEIR GEOGRAPHICAL DISTRIBUTION. HE HAS DISCOVERED THAT THE SEVERAL FORMS OF THE COASTAL PLANTS OF THE PACIFIC ARE NOT ONLY CORRELATED BY THEIR PHYSICAL AND CHEMICAL PROPERTIES, BUT ALSO BY THEIR GEOGRAPHICAL DISTRIBUTION. HE HAS DISCOVERED THAT THE SEVERAL FORMS OF THE COASTAL PLANTS OF THE PACIFIC ARE NOT ONLY CORRELATED BY THEIR PHYSICAL AND CHEMICAL PROPERTIES, BUT ALSO BY THEIR GEOGRAPHICAL DISTRIBUTION.

LOYD BRANSON SURVEYORS INC.

CHARLES H. MOORE, JR.
REGISTERED PROFESSIONAL LAND SURVEYOR
1028 NORTH SYLVANIA AVENUE
FT. WORTH, TEXAS 76114

DATE: 05-22-01



01-1172

**DETAIL
ONE STORY
BRICK & FRAME
RESIDENCE**

BEING TRACT C, McEWING SUBDIVISION, AN ADDITION TO THE CITY OF HURST, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 388-46, PAGE 878, PLAT RECORDS, TARRANT COUNTY, TEXAS,
AND

A TRACT OF LAND OUT OF THE R.H. McEWING SURVEY, ABSTRACT NO. 1154, TARRANT COUNTY, TEXAS, AND BEING THE SAME TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 4989, PAGE 659, DEED RECORDS, TARRANT COUNTY, TEXAS, AND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2" IRON PIN FOUND IN THE NORTH LINE OF W. LAVACA TRAIL FOR THE SOUTHWEST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID TRACT C, McEWING SUBDIVISION AND BY DEED BEING LOCATED 1572.75 FEET SOUTH 0 DEGREES 30 MINUTES EAST AND 2487.15 FEET EAST FROM THE NORTHWEST CORNER OF SAID McEWING SURVEY;

THENCE NORTH 00 DEGREES 22 MINUTES 54 SECONDS EAST 638.55 FEET (DEED CALL NORTH 638.42 FEET) ALONG THE EAST LINE OF SAID TRACT C, McEWING SUBDIVISION TO A 1/2" IRON PIN FOUND IN THE SOUTH LINE OF BLOCK 1, REMINGTON PARK, PHASE TWO, AN ADDITION TO THE CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN CABINET A, SLIDE 4801, PLAT RECORDS, TARRANT COUNTY, TEXAS, FOR THE NORTHWEST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID TRACT C, McEWING SUBDIVISION;

THENCE NORTH 89 DEGREES 34 MINUTES 32 SECONDS EAST 203.60 FEET (DEED CALL EAST 204.70) ALONG THE SOUTH LINE OF SAID BLOCK 1, REMINGTON PARK, PHASE TWO TO A 3/8" IRON PIN FOUND FOR THE NORTHEAST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 15, SAID BLOCK 1, REMINGTON PARK, PHASE TWO;

THENCE SOUTH 00 DEGREES 32 MINUTES 58 SECONDS WEST 471.98 FEET (DEED CALL SOUTH) ALONG THE WEST LINE OF SAID BLOCK 1, REMINGTON PARK, PHASE TWO, TO A CAPPED IRON PIN SET FOR THE SOUTHWEST CORNER OF LOT 17, SAID BLOCK 1, REMINGTON PARK, PHASE TWO, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT A2, E.A. SMITH ADDITION, AN ADDITION IN TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 388-60, PAGE 31, PLAT RECORDS, TARRANT COUNTY, TEXAS;

THENCE SOUTH 00 DEGREES 17 MINUTES 03 SECONDS EAST 166.64 FEET (DEED CALL SOUTH) ALONG THE WEST LINE OF SAID LOT A2, E.A. SMITH ADDITION TO A 5/8" IRON PIN FOUND IN THE NORTH LINE OF W. LAVACA TRAIL FOR THE SOUTHEAST CORNER OF TRACT BEING DESCRIBED;

THENCE SOUTH 89 DEGREES 35 MINUTES 43 SECONDS WEST 204.15 FEET (DEED CALL WEST 204.70 FEET) ALONG THE NORTH LINE OF SAID W. LAVACA TRAIL TO THE POINT OF BEGINNING AND CONTAINING 2.975 ACRES OF LAND, MORE OR LESS

EASEMENTS DO NOT EFFECT:

VOL. 950, PG. 529, D.R.T.C.T.
VOL. 3271, PG. 25, D.R.T.C.T.

EASEMENT DOES EFFECT:

VOL. 3068, PG. 295, D.R.T.C.T.- BLANKET EASEMENT

VOL. 14747, PG. 325

LOT 12, BLOCK 1
INDUSTRIAL PARK
PHASE TWO
CAL A, BURE 440

N89°27'04"E 239.90

N00°27'09''W
35.11

S89°25'11"E 171.97

N89°43'27"E 240.45

N89°34'32"E 110.81

N05°36'17"E 803.36

R.E. MEYING SURVEY
ABSTRACT NO. 1164

DEED OF TRUST
VOL. 6897, PG. 564
D.R.T.C.T.
11.339 ACRES

S00°22'53"W 638.48

TRACT C
MEETING SUBMISSION
VOL. 368-46, PG. 878
P R I V A T E

89°58'33"W 817.50
60' R.O.B. ~ 2" ASPHALT
W. LAVACA TRAIL

POINT OF
ESTIMATING

ESSENTIAL DOES NOT EFFECT:
VOL. 3271, PG. 25, D.A.I.C.T.
VOL. 3008, PG. 244, D.A.I.C.T.

ESSENTIALS DO EFFECT:
VOL. 3048, PG. 285, D.A.I.C.T. - BLANKET ESSENTIAL
VOL. 850, PG. 329, D.A.I.C.T. - BLANKET ESSENTIAL

[illegible][illegible]

LOYD BRANSON SURVEYORS INC.

CHARLES B. HOOKS, JR

1028 NORTH SYLVANIA AVENUE
FT WORTH TEXAS 76114

(817) 834-3477

DATE: 09-24-01

① ROOM PM
 ○ ROOM PIPE
 △ ROOM D/ARC STAGE
 □ CONCRETE FOUNDATION
 ——— FLOOR
 - - - - - POLE LINE
 - - - - - TELEPHONE LINE
 - - - - - CABLE TELEVISION
 [] CONCRETE PAVING
 [] ASPHALT PAVING

0-12

01-2775

-24-01

1
PND. 1/3" P BEARS
S00'22'53" W 0.44

BEING A TRACT OF LAND OUT OF THE R.H. McEWING SURVEY, ABSTRACT NO. 1154, TARRANT COUNTY, TEXAS, AND BEING THE SAME TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 6897, PAGE 584, DEED RECORDS, TARRANT COUNTY, TEXAS, AND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/4" IRON PIN FOUND IN THE NORTH LINE OF W. LAVACA TRAIL FOR THE SOUTHEAST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF TRACT C, McEWING SUBDIVISION, AN ADDITION TO THE CITY OF HURST, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 388-48, PAGE 878, PLAT RECORDS, TARRANT COUNTY, TEXAS, AND BY DEED BEING LOCATED 1572.75 FEET SOUTH 0 DEGREES 30 MINUTES EAST AND 1873.05 FEET EAST FROM THE NORTHWEST CORNER OF SAID R.H. McEWING SURVEY;

THENCE NORTH 89 DEGREES 58 MINUTES 33 SECONDS WEST 817.50 FEET ALONG THE NORTH LINE OF SAID W. LAVACA TRAIL TO A 5/8" IRON PIN FOUND FOR THE SOUTHWEST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 6742, PAGE 340, DEED RECORDS, TARRANT COUNTY, TEXAS;

THENCE NORTH 05 DEGREES 36 MINUTES 17 SECONDS EAST 983.38 FEET ALONG THE EAST LINE OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 6742, PAGE 340 TO A 5/8" IRON PIN FOUND IN THE SOUTH LINE OF A TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325, DEED RECORDS, TARRANT COUNTY, TEXAS, FOR THE NORTHEAST CORNER OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 6742, PAGE 340 AND THE NORTHWEST CORNER OF TRACT BEING DESCRIBED;

THENCE NORTH 89 DEGREES 27 MINUTES 04 SECONDS EAST 239.90 FEET ALONG THE SOUTH LINE OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 TO A 1/2" IRON PIN FOUND FOR AN INSIDE CORNER OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 AND CORNER OF TRACT BEING DESCRIBED;

THENCE NORTH 60 DEGREES 27 MINUTES 06 SECONDS WEST 35.11 FEET ALONG EAST LINE OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 TO A 1/2" IRON PIN FOUND FOR AN INSIDE CORNER OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 AND CORNER OF TRACT BEING DESCRIBED;

THENCE SOUTH 89 DEGREES 25 MINUTES 11 SECONDS EAST 171.87 FEET ALONG THE SOUTH LINE OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 TO A 3/8" IRON PIN FOUND FOR CORNER OF TRACT BEING DESCRIBED;

THENCE NORTH 89 DEGREES 43 MINUTES 27 SECONDS EAST 240.45 FEET AND CONTINUING ALONG THE SOUTH LINE OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 TO A 1/2" IRON PIN FOUND FOR THE SOUTHEAST CORNER OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 AND THE SOUTHWEST CORNER OF LOT 12, BLOCK 1, REMINGTON PARK, AN ADDITION TO THE CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN CABINET A, SLIDE 4801, PLAT RECORDS, TARRANT COUNTY, TEXAS;

THENCE NORTH 89 DEGREES 34 MINUTES 32 SECONDS EAST 110.81 FEET ALONG THE SOUTH LINE OF SAID LOT 12, BLOCK 1, REMINGTON PARK TO THE NORTHEAST CORNER OF TRACT BEING DESCRIBED, FROM WHICH A 1/2" IRON PIN FOUND BEARS 0.44 FEET SOUTH 00 DEGREES 22 MINUTES 53 SECONDS WEST, SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID TRACT C, McEWING SUBDIVISION;

THENCE SOUTH 00 DEGREES 22 MINUTES 53 SECONDS WEST 838.48 FEET ALONG THE WEST LINE OF SAID TRACT C, McEWING SUBDIVISION TO THE POINT OF BEGINNING AND CONTAINING 11.339 ACRES OF LAND, MORE OR LESS

5" T.E.S.CO. ESMT
VOL. 4597, PG. 55
D.R.T.C.T.

S00'22'53" W 638.48

TRACT C
McEWING SUBDIVISION
VOL. 388-48, PG. 878
P.R.T.C.T.

ORDINANCE O-06-1600

AN ORDINANCE OF THE CITY OF COLLEYVILLE, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF COLLEYVILLE, TEXAS, AS HERETOFORE AMENDED; BY AMENDING THE OFFICIAL ZONING MAP BY AUTHORIZING A SPECIAL USE PERMIT TO ALLOW GRAZING ANIMALS ON 17 ACRES IN THE R.N. MCEWING SURVEY, PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Colleyville has received an application for rezoning under Case No. Z-06-027; and

WHEREAS, the City of Colleyville deems it necessary, for the purpose of promoting the health, safety, morals, or general welfare of the City to enact a new zoning ordinance; and

WHEREAS, the City Council has appointed a Planning and Zoning Commission to recommend the boundaries of the various original zoning districts and appropriate regulations be enforced therein and to recommend a new zoning ordinance; and

WHEREAS, the Planning and Zoning Commission has divided the City into districts and has prepared regulations pertaining to such districts in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health, general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and

WHEREAS, the Planning and Zoning Commission, has given reasonable consideration, among other things, the character of the districts and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, the Planning and Zoning Commission of the City of Colleyville and the City of Colleyville City Council, in compliance with the Charter of the City of Colleyville, and State Law with reference to changes to zoning classifications under the Zoning Ordinance Regulations and Zoning Map, having given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally, and to the persons interested and situated in the affected area and in the vicinity thereof, the governing body of the City of Colleyville is of the opinion that said change in zoning should be made.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

- Sec. 1. THAT all the foregoing premises and findings are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety.
- Sec. 2. THAT the Comprehensive Zoning Ordinance of the City of Colleyville, Texas, be, and the same is hereby amended by authorizing a Special Use Permit to allow grazing animals on Tracts 1B4, 1B2, and 1B3 of the R. N. McEwing Survey, Abstract 1154 and Lot C, McEwing Subdivision, as depicted in the attached Exhibit "A" and described in the attached Exhibit "B" subject to the following conditions:
1. If the property is rezoned in the future, the SUP permitting grazing animals will be revoked.
 2. The number of animals shall be in conformance with Chapter 42 of the Colleyville Code of Ordinances.
- Sec. 3. THAT the above described tract of land shall be used only in the manner and for the purposes provided by the Comprehensive Zoning Ordinance of the City of Colleyville as heretofore amended, and as amended herein.
- Sec. 4. THAT any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Colleyville, and upon conviction shall be punishable by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.
- Sec. 5. THAT if any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be judged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any portion thereof other than that portion so decided to be invalid or unconstitutional.
- Sec. 6. THAT in addition to and accumulative of all other penalties, the City shall have the right to seek injunctive relief for any and all violations of this ordinance.
- Sec. 7. THAT it has been found that there has been a change in conditions in the above described property, it is now necessary that it be given the above zoning classification in order to permit its proper development and in order to protect the public interest, comfort and general welfare, and requires that this ordinance shall take effect immediately from and after its passage.

AND IT IS SO ORDERED.

The first reading and public hearing being conducted on the _____ day of _____ 2006.

The second reading and public hearing being conducted on the _____ day of _____ 2006.

ATTEST:

CITY OF COLLEYVILLE

Cynthia Singleton, TRMC
City Secretary

David Kelly
Mayor

APPROVED AS TO FORM AND LEGALITY:

Matthew C. G. Boyle
City Attorney

EXHIBIT "A"

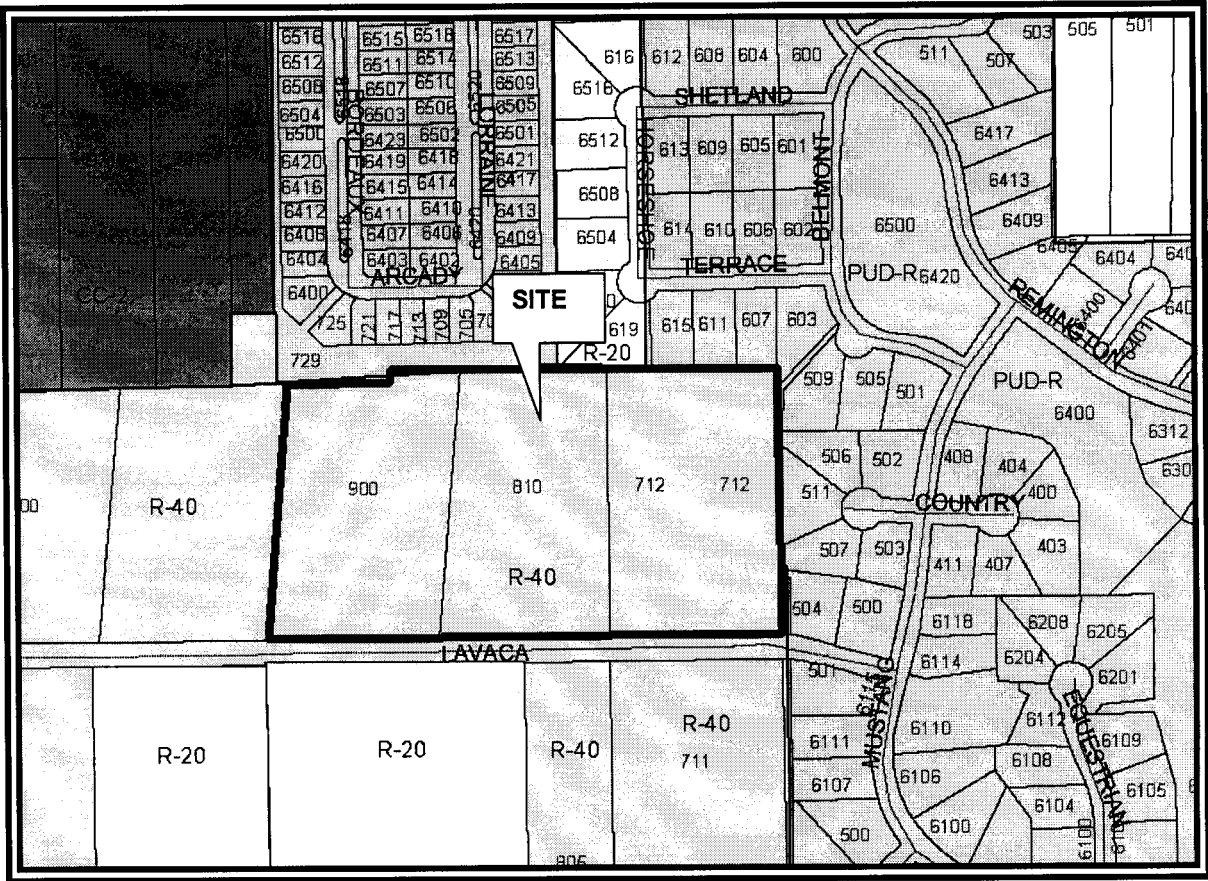


EXHIBIT "B"

BEING A TRACT OF LAND OUT OF THE R.H. McEWING SURVEY, ABSTRACT NO. 1154, TARRANT COUNTY, TEXAS, AND BEING THE SAME TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 6897, PAGE 564, DEED RECORDS, TARRANT COUNTY, TEXAS, AND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/4" IRON PIN FOUND IN THE NORTH LINE OF W. LAVACA TRAIL FOR THE SOUTHEAST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF TRACT C, McEWING SUBDIVISION, AN ADDITION TO THE CITY OF HURST, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 388-46, PAGE 878, PLAT RECORDS, TARRANT COUNTY, TEXAS, AND BY DEED BEING LOCATED 1572.75 FEET SOUTH 0 DEGREES 30 MINUTES EAST AND 1873.05 FEET EAST FROM THE NORTHWEST CORNER OF SAID R.H. McEWING SURVEY;

THENCE NORTH 89 DEGREES 58 MINUTES 33 SECONDS WEST 817.50 FEET ALONG THE NORTH LINE OF SAID W. LAVACA TRAIL TO A 5/8" IRON PIN FOUND FOR THE SOUTHWEST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 6742, PAGE 340, DEED RECORDS, TARRANT COUNTY, TEXAS;

THENCE NORTH 05 DEGREES 36 MINUTES 17 SECONDS EAST 603.36 FEET ALONG THE EAST LINE OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 6742, PAGE 340 TO A 5/8" IRON PIN FOUND IN THE SOUTH LINE OF A TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325, DEED RECORDS, TARRANT COUNTY, TEXAS, FOR THE NORTHEAST CORNER OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 6742, PAGE 340 AND THE NORTHWEST CORNER OF TRACT BEING DESCRIBED;

THENCE NORTH 89 DEGREES 27 MINUTES 04 SECONDS EAST 239.90 FEET ALONG THE SOUTH LINE OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 TO A 1/2" IRON PIN FOUND FOR AN INSIDE CORNER OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 AND CORNER OF TRACT BEING DESCRIBED;

THENCE NORTH 00 DEGREES 27 MINUTES 09 SECONDS WEST 35.11 FEET ALONG EAST LINE OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 TO A 1/2" IRON PIN FOUND FOR AN INSIDE CORNER OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 AND CORNER OF TRACT BEING DESCRIBED;

THENCE SOUTH 89 DEGREES 25 MINUTES 11 SECONDS EAST 171.97 FEET ALONG THE SOUTH LINE OF SAID TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 14747, PAGE 325 TO A 3/8" IRON PIN FOUND FOR CORNER OF TRACT BEING DESCRIBED;

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THENCE SOUTH 00 DEGREES 22 MINUTES 53 SECONDS WEST 638.48 FEET ALONG THE WEST LINE OF SAID TRACT C, McEWING SUBDIVISION TO THE POINT OF BEGINNING AND CONTAINING 11.339 ACRES OF LAND, MORE OR LESS

TRACT C
McEWING SUBDIVISION
VOL. 388-46, PG. 878
P.R.T.C.T.

BEING TRACT C, McEWING SUBDIVISION, AN ADDITION TO THE CITY OF HURST, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 388-46, PAGE 878, PLAT RECORDS, TARRANT COUNTY, TEXAS,

AND

A TRACT OF LAND OUT OF THE R.H. McEWING SURVEY, ABSTRACT NO. 1154, TARRANT COUNTY, TEXAS, AND BEING THE SAME TRACT OF LAND AS DESCRIBED IN DEED RECORDED IN VOLUME 4989, PAGE 659, DEED RECORDS, TARRANT COUNTY, TEXAS, AND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2" IRON PIN FOUND IN THE NORTH LINE OF W. LAVACA TRAIL FOR THE SOUTHWEST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID TRACT C, McEWING SUBDIVISION AND BY DEED BEING LOCATED 1572.75 FEET SOUTH 0 DEGREES 30 MINUTES EAST AND 2487.15 FEET EAST FROM THE NORTHWEST CORNER OF SAID McEWING SURVEY.

THENCE NORTH 00 DEGREES 22 MINUTES 54 SECONDS EAST 638.55 FEET (DEED CALL NORTH 638.42 FEET) ALONG THE EAST LINE OF SAID TRACT C, McEWING SUBDIVISION TO A 1/2" IRON PIN FOUND IN THE SOUTH LINE OF BLOCK 1, REMINGTON PARK, PHASE TWO, AN ADDITION TO THE CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN CABINET A, SLIDE 4801, PLAT RECORDS, TARRANT COUNTY, TEXAS, FOR THE NORTHWEST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID TRACT C, McEWING SUBDIVISION.

THENCE NORTH 89 DEGREES 34 MINUTES 32 SECONDS EAST 203.60 FEET (DEED CALL EAST 204.70) ALONG THE SOUTH LINE OF SAID BLOCK 1, REMINGTON PARK, PHASE TWO TO A 3/8" IRON PIN FOUND FOR THE NORTHEAST CORNER OF TRACT BEING DESCRIBED, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 15, SAID BLOCK 1, REMINGTON PARK, PHASE TWO;

THENCE SOUTH 00 DEGREES 32 MINUTES 58 SECONDS WEST 471.95 FEET (DEED CALL SOUTH) ALONG THE WEST LINE OF SAID BLOCK 1, REMINGTON PARK, PHASE TWO, TO A CAPPED IRON PIN SET FOR THE SOUTHWEST CORNER OF LOT 17, SAID BLOCK 1, REMINGTON PARK, PHASE TWO, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT A2, E.A. SMITH ADDITION, AN ADDITION IN TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 388-60, PAGE 31, PLAT RECORDS, TARRANT COUNTY, TEXAS;

THENCE SOUTH 00 DEGREES 17 MINUTES 03 SECONDS EAST 166.64 FEET (DEED CALL SOUTH) ALONG THE WEST LINE OF SAID LOT A2, E.A. SMITH ADDITION TO A 5/8" IRON PIN FOUND IN THE NORTH LINE OF W. LAVACA TRAIL FOR THE SOUTHEAST CORNER OF TRACT BEING DESCRIBED;

THENCE SOUTH 89 DEGREES 35 MINUTES 43 SECONDS WEST 204.15 FEET (DEED CALL WEST 204.70 FEET) ALONG THE NORTH LINE OF SAID W. LAVACA TRAIL TO THE POINT OF BEGINNING AND CONTAINING 2.975 ACRES OF LAND, MORE OR LESS



City of Colleyville

Minutes - Final

Planning and Zoning Commission

100 Main Street
Colleyville, Texas 76034
(817) 503-1000
www.colleyville.com

Monday, November 13, 2006

7:00 PM

City Council Chambers

**6:15 P.M. - PRE-COMMISSION WORKSHOP
EXECUTIVE CONFERENCE ROOM
THIRD FLOOR**

**LEGAL BRIEFING BY CITY ATTORNEY REGARDING PLANNING, ZONING,
PLATTING, AND LAND USE**

REVIEW OF REGULAR AGENDA ITEMS

**REGULAR MEETING
7:00 P.M.**

1. CALL TO ORDER

The Planning and Zoning Commission meeting of the City of Colleyville was called to order by Chairman Byerly on November 13, 2006 at 7:00 p.m.

2. ROLL CALL

Present: Commissioners Robert McCormick, Dave Dudziak, Scott Redfearn, Mary Taylor, David Phelps, Denis Duffy, Jeff Byerly

Staff Members: Barry LeBaron, Chris Fuller, Robert McKeown and Chad Barte

3. INVOCATION

The invocation was given by Commissioner Dudziak.

4. PLEDGE OF ALLEGIANCE

5. APPROVAL OF MINUTES

Commissioner Byerly stated City Attorney Michael Kallas needs to be placed throughout the minutes. The attorney's last name had been misspelled.

Commissioner Duffy stated the word codicil was misspelled in item number 11.

Commissioner Duffy moved to approve the minutes with corrections. Commissioner Dudziak seconded.

The motion carried by the following vote:

Aye: 7 - McCormick, Dudziak, Redfearn, Taylor, Phelps, Duffy, Byerly

6. CITIZEN COMMENTS REGARDING ITEMS NOT ON THE AGENDA

None

7. REGULAR AGENDA ITEMS

7a Consideration of appointments to the Park Land Dedication Committee

Barry LeBaron briefed the Commissioners regarding the Parkland Dedication Committee.

Commissioner Redfearn moved to appoint Commissioner Duffy to the Parkland Dedication Committee. Commissioner Dudziak seconded.

The motion carried by the following vote:

Aye: 7 - McCormick, Dudziak, Redfearn, Taylor, Phelps, Duffy, Byerly

8. PUBLIC HEARING AGENDA ITEMS

8a Case Z-06-026- PUBLIC HEARING - Request for a zoning change from R40-Single Family Residential to R20-Single Family Residential on 1.06 acres on Lot 5, Block 1 of the Alianne Estates located at 6214 Theresa Lane

Chris Fuller presented the case and briefed the Commissioners.

Commissioner Byerly opened the public hearing at 7:13 p.m.

Dean Larson, the applicant, came forward to present the case and brief the Commissioners regarding the rezoning request.

There being no one wishing to speak, the public hearing was closed at 7:15 p.m.

Commissioner Duffy moved to deny case Z-06-026. Commissioner Byerly seconded.

Commissioner Duffy disagreed with the rezoning request and stated this

will set the precedent for subdividing other R40 properties.

Commissioner Byerly concurred with Commissioner Duffy.

The motion carried by the following vote:

Aye: 7 - McCormick, Dudziak, Redfearn, Taylor, Phelps, Duffy, Byerly

8b

Approval of a Request for a Special Use Permit on 17 acres out of the R.N. McEwing Survey and the McEwing Addition located at 712-900 Lavaca Trail, Case Z-06-027

Chris Fuller presented the case and briefed the Commissioners.

Barry LeBaron briefed the Commissioners regarding a study being conducted concerning the traffic issues on Lavaca Trail and the surrounding area.

Commissioner Dudziak questioned staff if the Remington Park subdivision is served by the Liberty Elementary School in the Keller school district? Barry LeBaron replied the majority does not. Commissioner Redfearn stated some do go to that elementary school.

Commissioner Byerly opened the public hearing at 7:20 p.m.

Jeffrey Zimmerman, the applicant, came forward to present the case and brief the Commissioners.

Ron Shirley, 638 Castlrock, Southlake, stated he would like to see a conceptual plat or drainage study done before the rezoning request is approved. Other developers in this area have had to do so before rezoning their properties.

There being no one wishing to speak, the public hearing was closed at 7:30 p.m.

Commissioner Duffy made motion to separate the Special Use Permit (SUP) and rezoning as two separate issues. Commissioner Taylor seconded.

Commissioner Byerly questioned Mr. Zimmerman regarding if the R20 zoning would be acceptable without the SUP? Mr. Zimmerman stated he needs the SUP with the R20 zoning to allow for the grazing animals.

Commissioner Taylor questioned Mr. Zimmerman how many animals are there currently? Mr. Zimmerman replied six cattle and two calves.

Commissioner Phelps questioned Mr. Zimmerman for clarity the cattle are allowed now with the R40 zoning due to being "grandfathered" in? Mr. Zimmerman replied correct.

Commissioner Duffy moved to deny case Z-06-027. Commissioner Dudziak seconded.

Commissioner Duffy stated this commission needs to plan for the traffic and drainage before approving more homes in this area. He stated this area is not well planned. He suggested to deny this zoning case until a general overall study has been completed because Lavaca Trail needs to be improved.

Commissioner Taylor concurred with Commissioner Duffy.

Commissioner Phelps stated the history shows this rezoning would be reasonable, however, without having a drainage study or traffic study completed, it will not be a good decision to rezone. The timing for rezoning is premature for this property.

Commissioner Dudziak stated understanding why Mr. Zimmerman wants to rezone and thanked Mr. Zimmerman for keeping the rural feel for as long as he has.

Commissioner Byerly disagreed and stated understanding Mr. Zimmerman's issues. He stated a plat and a drainage study is not required for rezoning. He stated it is not necessary to see a preliminary plat for rezoning.

Commissioner McCormick questioned the Commissioners regarding why are we opposing what has been asked for in the past? Commissioner Taylor replied not opposing the actual R20 zoning, it is opposing it for all of the other reasons, the traffic and drainage for this area

Commissioner McCormick stated the roads will be built once the homes are built.

Commissioner Phelps stated it is not really the same without having a plat to look at in the beginning. If Mr. Zimmerman chose to keep the middle lot and sell the ones around him, then there would be two smaller R20 developments.

Commissioner Redfearn agreed with many concerns, the timing on this request is too soon. Over the next few months, the studies will be complete and will give further insight.

Commissioner Byerly questioned staff if the time limit is one year for this

applicant to come forward with the same rezoning request? Barry LeBaron replied the one year time frame only comes into affect if the council were to deny the zoning.

The motion carried by the following vote:

Aye: 5 - Dudziak, Redfearn, Taylor, Phelps, Duffy

Nay: 2 - McCormick, Byerly

Commissioner Byerly move to approve the Special Use Permit as provided in the code. Commissioner Taylor seconded.

Commissioner Duffy stated the Special Use Permit stays with the land, but if the land is subdivided, the Special Use Permit goes away. Both movers accepted.

The motion carried by the following vote:

Aye: 7 - McCormick, Dudziak, Redfearn, Taylor, Phelps, Duffy, Byerly

9. TABLED ITEMS

9a Case G-06-028- Consider amending the Planning and Zoning Commission's Rules of Procedure

Commissioner Duffy moved to remove case G-06-028 from the table. Commissioner Byerly seconded.

The motion carried by the following vote:

Aye: 6 - McCormick, Redfearn, Taylor, Phelps, Duffy, Byerly

Nay: 1 - Dudziak

Barry LeBaron briefed the Commissioners regarding this item.

Commissioner Redfearn moved to approve case G-06-028. Commissioner Phelps seconded.

The motion carried by the following vote:

Aye: 7 - McCormick, Dudziak, Redfearn, Taylor, Phelps, Duffy, Byerly

10. STAFF COMMENTS, REPORTS AND DISCUSSION ITEMS

Barry LeBaron thanked the Commissioners for being present at the workshop on November 2, 2006.

11. COMMISSIONERS' COMMENTS AND REPORTS

Commissioner Dudziak stated wanting to see the study for Lavaca Trail to help make better decisions.

Commissioner Byerly stated he wants the new procedures for the public hearing on the back of the speaker cards. Barry LeBaron replied we would do so.

Commissioner Byerly reminded everyone regarding the holidays, to bring calendars to the next meeting to make sure there is enough people to meet. Barry LeBaron stated the developers are busy as well.

12. ADJOURNMENT

There being no further business before the Planning and Zoning Commission, the meeting adjourned at 7:50 p.m. Approved by acclamation.

I hereby certify the above agenda was posted on the bulletin boards at City Hall on November 9, 2006 by 5:00 p.m.

Amy Shelley, Planning and Zoning Assistant

Minutes approved on November 27, 2006.

Zoning Exhibit



Zoning Exhibit

OWNER'S DEDICATION STATE OF TEXAS COUNTY OF TARRANT

WHEREAS, Ralph Sells, is the owner of all that certain 17.32 acres of land, which is all of Tracts I, which is all of Tract C, McEwing Subdivision, recorded in Volume 388-46, Page 878, in the Public Records of Tarrant County, Texas (P.R.T.C.T.), I, R, and N described in the deed to Omerta Cos II, LP, recorded in Document Number D21114766, I, P.R.T.C.T., in the R.N. McEwing Survey, A-1154, City of Coleville, Tarrant County, Texas and more particularly described by metes and bounds as follows: (All bearings shown hereon are based on the Texas Coordinate System of 1983, North Central Zone).

BEGINNING at a 3/4" iron rod found for the southwest corner of said Tract IV, common to the southeast corner of Lot 2, Lavaca Park, recorded in Document D207129471, P.R.T.C.T., in the north right-of-way line of West Lavaca Trail (right-of-way varies), from which a 3/4" iron rod found bears North 66° 32' East - 2.49' and a 3/8" iron rod found bears North 59° 43' East - 4.16';

THENCE North 04° 53' 39" East - 603.36' to the northwest corner of the herein described tract, common to the southeast corner of Lot 55, Block 1, Rosewood Villas, recorded in Document Number D203361290, P.R.T.C.T.,

THENCE along the south line of said Lot 55, Block 1, Rosewood Villas the following courses:

North 88° 42' 02" East - 239.91' to a 3/4" iron rod found for a point for corner of the herein described tract;

North 01° 19' 56" West - 35.08' to a 1/2" iron rod found for a point for corner of the herein described tract;

North 89° 21' 51" West - 412.31' to a 1/2" iron rod with a cap stamped "SPRY 5647" set for a point for corner of the herein described tract, common to the southeast corner of said Lot 55, Block 1, Rosewood Villas and southwest corner of Lot 12, Block 1, Remington Park Phase Two, recorded in Document Number D199029954, P.R.T.C.T., from which a 3/8" iron rod found bears South 74° 49' East - 0.32';

THENCE North 88° 51' 23" East - 519.12' departing the south line of said Lot 55, Block 1, Rosewood Villas, to a 3/8" iron rod found for the northeast corner of the herein described tract, common to the southeast corner of Lot 15, Block 1, of said Remington Park Phase Two;

THENCE South 00° 10' 13" East - 471.98' to a 5/8" iron rod found for a point for corner of the herein described tract, in the west line of Lot 17, Block 1, of said Remington Park Phase Two;

THENCE South 01° 00' 12" East - 166.64' to a 1/2" iron rod found for the southeast corner of the herein described tract, common to the southeast corner of Lot 28, Block 1, Remington Park Phase 4, recorded in Cabinet A, Slide 8469, P.R.T.C.T., in the north right-of-way line of said West Lavaca Trail;

THENCE along the north right-of-way line of said West Lavaca Trail the following courses:

South 88° 52' 34" West - 204.15' to a point for corner of the herein described tract and the common south corner of said Tracts I and II, Omerta Cos II, LP, from which a 1/2" iron rod bears North 78° 27' East - 0.38';

South 88° 49' 17" West - 204.70' to a 1/2" iron rod found for a point for corner of the herein described tract and the common south corner of Tracts I and II, Omerta Cos II, LP; South 89° 18' 49" West - 817.41' to the POINT OF BEGINNING and containing 17.32 acres of land.

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That Ralph Sells, the Owner, does hereby adopt this plat designating the herein before described property as Lots 1-15, Block A, Lots 1-6, Block B, Lots 1-6, Block C, & Lots 1-5 Open Space Lots, Legacy North, an addition to the City of Coleville, Tarrant County, Texas, and do hereby dedicate fee simple to the public use forever any streets, rights-of-way, and alleys shown thereon, and do hereby reserve the easements shown on this plat for the mutual use and accommodation of all public utilities desiring to use or using the same. Any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs or other improvements or growths in which any way endorser or interfere with the construction, maintenance or efficiency of its respective systems on any of these easements, and any public utility shall at all times have the right of ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, and patrolling, without the necessity at any time of procuring the permission of anyone. This plat approved subject to all plotting ordinances, rules, regulations, and resolutions of the City of Coleville, Texas.

Witness our hands this _____ day of _____, 2018.

Signature _____ Title _____

NOTARY CERTIFICATE
STATE OF TEXAS
COUNTY OF TARRANT

Before me, the undersigned authority, a Notary Public in and for the said County and State, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and considerations therein expressed and in the capacity therein stated and as the act and deed therein stated.

Given under my hand and seal of office, this _____ day of _____, 2018.

Notary Signature _____ Notary Stamp: _____

SURVEYOR CERTIFICATE

That I, David Carlton Lewis, a Registered Professional Land Surveyor licensed in the State of Texas, do hereby certify that I have prepared this plat from an actual on the ground survey of the land and the monuments shown hereon were found and/or placed under my personal supervision and in accordance with the Plotting Rules and Regulations of the City Plan Commission of the City of Coleville, Texas.

This document shall not be recorded for any purpose. This drawing shall be used for

REVIEW PURPOSES ONLY

David Carlton Lewis
R.P.L.S. No. 5647

Date: September 12, 2018



David Carlton Lewis, R.P.L.S.
Texas Registration No. 5647
Spry Surveyors, LLC
8241 Mid-Cities Blvd Ste 102
North Richland Hills, TX 76182

CITY COUNCIL APPROVAL

WHEREAS the City Council of the City of Coleville, Texas voted affirmatively on this _____ day of _____, 20____, to approve this Plat.

Mayor, City of Coleville _____

Attest: City Secretary _____

PLANNING AND ZONING COMMISSION APPROVAL

WHEREAS the Planning and Zoning Commission of the City of Coleville, Texas voted affirmatively on this _____ day of _____, 20____, to approve this Plat.

Chairman, Planning and Zoning Commission _____

Attest: Secretary, Planning and Zoning Commission _____

NOTES

- This Survey is issued without the benefit of a current title report and is subject to revision upon receipt thereof. Surveyor has done no additional research for possible easements, restrictions or covenants which may affect this property.
- All bearings shown hereon are based on the Texas Coordinate System of 1983, North Central Zone.
- Unless otherwise noted, all boundary and/or lot corners for the subject property shown hereon are 1/2" iron rods set with a cap stamped "SPRY 5647".
- Spry Surveyors and the Client have agreed to exclude the placement of monuments as required in Section 4.1 of the Texas Surveyors Association Manual of Practice.
- The Surveyor has not physically located any underground utilities and/or improvements which may be located under or near the subject property.
- Selling a portion of this addition by metes and bounds is a violation of the City Subdivision Ordinance and State plotting standards and is subject to fines and withholding of utilities and building permits.
- According to the Flood Insurance Rate Map No. map-fema-48439C0099K, published by the Federal Emergency Management Agency, dated: September 25, 2009, the surveyed property shown hereon does not lie within any special flood hazard area inundated by the 100-year flood.
- On the issue date of this survey the surveyed property shown hereon is zoned R-20 (Single Family Residential 20,000 sq.ft. minimum) according to the City of Coleville zoning ordinance maps. Refer to said zoning ordinance for minimum and maximum setback requirements.
- The maintenance of all drainage and utility easements located on private property are the responsibility of the property owner.
- All residences within the subdivision shall contain automatic fire-sprinkler systems.

LEGEND

- BOUNDARY CORNER
- LOT CORNER
- EASEMENT CORNER

ABBREVIATIONS

- N.T.S. NOT TO SCALE
- U.N.C. UNLESS NOTED OTHERWISE
- P.R.T.C.T. PUBLIC RECORDS OF TARRANT COUNTY, TEXAS
- P.G. PAGE
- C.B. CABINET
- D.C. NO. DOCUMENT NUMBER
- C.M. CONTROLLING MONUMENT
- IRF IRON ROD FOUND
- P.G.B. POINT OF BEGINNING
- C.M. CONTROLLING MONUMENT
- IRF IRON ROD FOUND
- IRS IRON ROD SET
- R.O.W. RIGHT-OF-WAY
- B.L. BUILDING LINE
- U.E. UTILITY EASEMENT
- D.E. DRAINAGE EASEMENT
- B.U.L.E. DRAINAGE & UTILITY EASEMENT
- T.E.S.O. TEXAS ELECTRIC SERVICE COMPANY
- C.O.S. COMMON OPEN SPACE
- C.O.C. CONCRETE

PURPOSE OF PLAT
The purpose of this plat is to develop the 17.32 acre tract into a residential subdivision.

A PRELIMINARY/FINAL PLAT OF
LOTS 1-15, BLOCK A, LOTS 1-6, BLOCK B, LOTS 1-6, BLOCK C,
LOT 1, BLOCK D, LOT 1, BLOCK E, & LOT 1, BLOCK F
25 RESIDENTIAL & 5 OPEN SPACE LOTS
LEGACY NORTH
AND PLAT VACATION OF
TRACT C, McEwing SUBDIVISION
AN ADDITION TO THE CITY OF COLLEVILLE,
IN THE R.N. McEWING SURVEY, A-1154
CITY OF COLLEVILLE, TARRANT COUNTY, TEXAS

SURVEYOR: Spry Surveyors, LLC
8241 Mid-Cities Blvd., Ste.102
North Richland Hills, TX 76182
Phone: 817-776-4049
Firm Reg. No. 10110005

ENGINEER: Hamilton Duffy, P.C.
E.S.&C.M., Inc.
8241 Mid-Cities Blvd., Ste.100
North Richland Hills, TX 76182
Phone: 817-268-0408

OWNER: Ralph Sells
2405 Southern Hills Court
Keller, TX 76248
Phone: 817-458-0040

SPRY PROJECT NO. 066-009-30
DATE: JUNE 2018

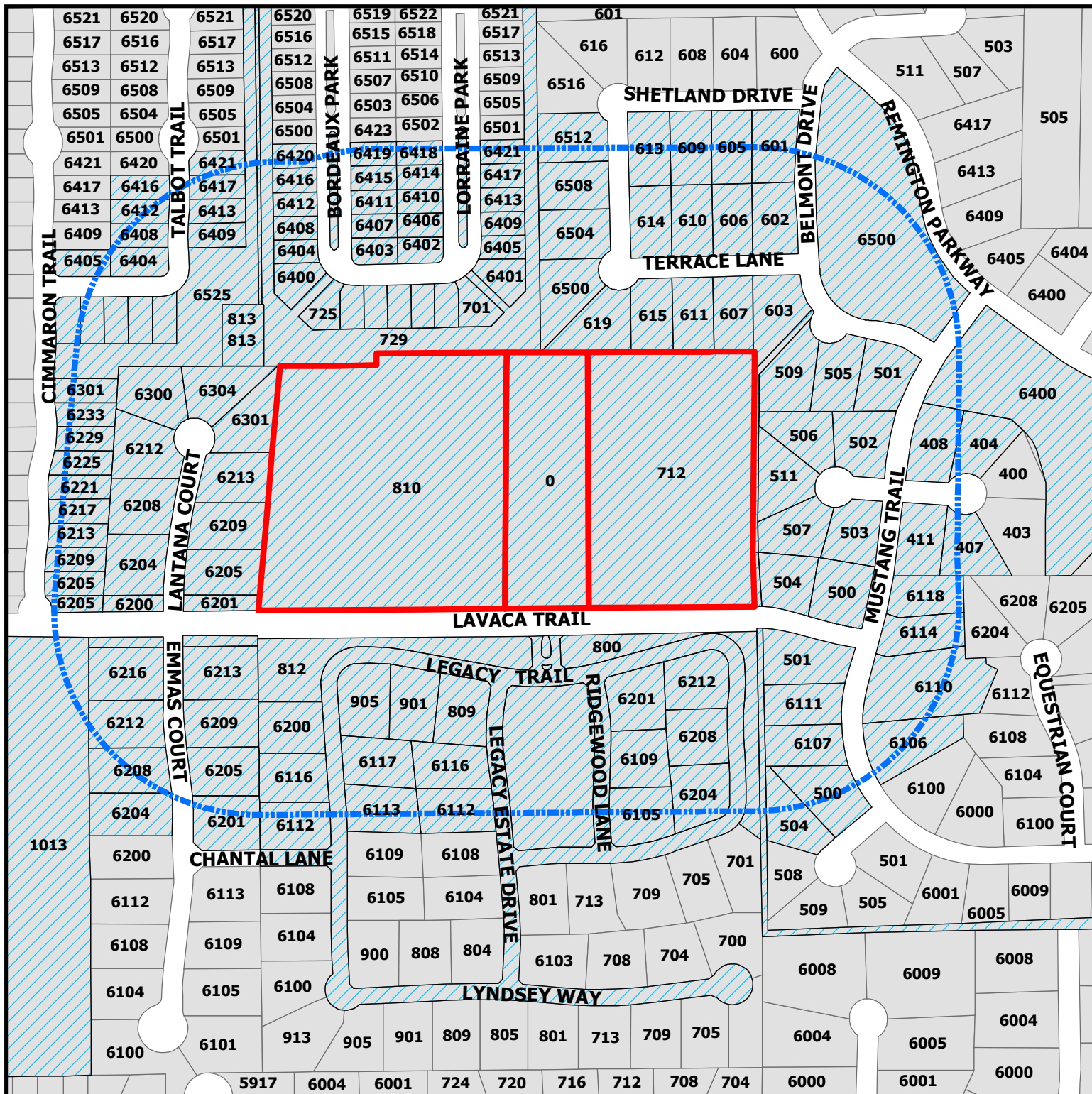
Photos Taken by Staff



Photos Taken by Staff



Notification Map

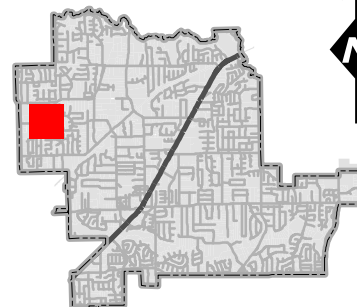


ZC18-033

712 - 810 Lavaca Trail

DISCLAIMER:
This map and information contained in it were developed exclusively for use by the City of Colleyville. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Colleyville, its officials or employees for any discrepancies, errors, or variances which may exist.

-  Subject Property
-  500ft Buffer
-  Properties within 500ft



Notification List

Owner Name	Owner Address	Owner City	Owner Zip	Situs Address
BROWN, SEAN W	720 INDUSTRIAL BLVD STE 400	GRAPEVINE, TX	76051	701 ARCADY LN
BROWN, DAVID S	608 TERRACE LN	COLLEVILLE, TX	76034	608 TERRACE LN
ARSEMENT, PRESTON	504 LAVACA TRL	COLLEVILLE, TX	76034	504 LAVACA TR
KING, ROBERT D	8413 LORRAINE	COLLEVILLE, TX	76034	8413 LORRAINE PK
LARSON, CHARLES	6605 CIMMARON TR	COLLEVILLE, TX	76034	6605 CIMMARON TR
APGAR FAMILY TRUST	6209 CIMMARON TR	COLLEVILLE, TX	76034	6209 CIMMARON TR
KIERKERING, KENNETH	810 TERRACE LN	COLLEVILLE, TX	76034	810 TERRACE LN
VILLAS OF COLLEVILLE HOA LLC	1108 W PIONEER PKWY	ARLINGTON, TX	76013	6205 CIMMARON TR
BOZYCKI, MICHAEL	408 COUNTRY PL	COLLEVILLE, TX	76034	408 COUNTRY PL
NEWTON, ERIC	6408 BORDEAUX PARK	COLLEVILLE, TX	76034	6408 BORDEAUX PK
MILLER, LOUIS	6404 TALBOT TRL	COLLEVILLE, TX	76034	6404 TALBOT TR
LAVACA PARK HOMEOWNERS ASSC	1540 KELLER PKWY STE 108-151	KELLER, TX	76248	6201 LANTANA CT
CHOPYAK, ROBERT A	8400 BORDEAUX PK	COLLEVILLE, TX	76034	8400 BORDEAUX PK
BRINNAN, ALAGORY	6419 BORDEAUX PK	COLLEVILLE, TX	76034	6419 BORDEAUX PK
HOWE, RICHARD	917 TALBOT TRL	COLLEVILLE, TX	76034	917 TALBOT TR
JOAN Y ORTH FAMILY TRUST	913 TALBOT TR	COLLEVILLE, TX	76034	913 TALBOT TR
KNUNENBURG, COR	6402 LORRAINE PK	COLLEVILLE, TX	76034	6402 LORRAINE PK
LDOS COMMUNICATIONS INC	PO BOX 152206	IRVING, TX	75015	813 MCDONWELL SCHOOL DR W
NEWSOME, CHAD	609 SHETLAND DR	COLLEVILLE, TX	76034	609 SHETLAND DR
HALL, STANLEY DEAN	6228 CIMMARON TR	COLLEVILLE, TX	76034	6228 CIMMARON TR
AWALT, TERRY	6221 CIMMARON TR	COLLEVILLE, TX	76034	6221 CIMMARON TR
NEAL, DAVID J	8417 TALBOT TR	COLLEVILLE, TX	76034	8417 TALBOT TR
WICKERSHAM, SCOTT	6301 CIMMARON TR	COLLEVILLE, TX	76034	6301 CIMMARON TR
DYNEBORN, JOSH	6301 LANTANA CT	COLLEVILLE, TX	76034	6301 LANTANA CT
CRAWFORD, SCOTT	502 MUSTANG CT	COLLEVILLE, TX	76034	502 MUSTANG CT
THOMPSON, HARGOLD D	6401 LORRAINE PK	COLLEVILLE, TX	76034	6401 LORRAINE PK
OMERTA COS II LP	2406 SOUTHERN HILLS CT	KELLER, TX	76248	810 LAVACA TR
VARLEY, JENIFFER	8411 BORDEAUX PK	COLLEVILLE, TX	76034	8411 BORDEAUX PK
MCPHERSON, BARBARA J	6226 CIMMARON TR	COLLEVILLE, TX	76034	6226 CIMMARON TR
STROTTIMAY TER, MARTIN	6213 CIMMARON TR	COLLEVILLE, TX	76034	6213 CIMMARON TR
LAVACA PARK HOMEOWNERS ASSC	1540 KELLER PKWY STE 108-151	KELLER, TX	76248	6200 LANTANA CT
PRAKASH, ANA	8213 LANTANA CT	COLLEVILLE, TX	76034	8213 LANTANA CT
COCHRAN, JERRY W	611 MUSTANG CT	COLLEVILLE, TX	76034	611 MUSTANG CT
LOZANO, ELSA	6404 BORDEAUX PK	COLLEVILLE, TX	76034	6404 BORDEAUX PK
HSU, LISAL W	6204 LANTANA CT	COLLEVILLE, TX	76034	6204 LANTANA CT
BROWN, SHARON E	7205 SMITHFIELD RD	NORTH RICHLAND HILLS, TX	76182	6007 BORDEAUX PK
YARRBROUGH, JOHN D	6118 MUSTANG TR	COLLEVILLE, TX	76034	6118 MUSTANG TR
WALTERS, WILLIAM	6512 HORSESHOE BND	COLLEVILLE, TX	76034	6512 HORSESHOE BEND
FONDREN, WYLIE A	6410 LORRAINE PK	COLLEVILLE, TX	76034	6410 LORRAINE PK
WILLIAMSON, DAVID	6403 BORDEAUX PK	COLLEVILLE, TX	76034	6403 BORDEAUX PK
SAGE, DESREE	6418 LORRAINE PK	COLLEVILLE, TX	76034	6418 LORRAINE PK
MYERS, CHARLES	8416 TALBOT TR	COLLEVILLE, TX	76034	8416 TALBOT TR
SHAKH, AFTAB SUNNY	6209 LANTANA CT	COLLEVILLE, TX	76034	6209 LANTANA CT
MANER, JOLENE G	506 MUSTANG CT	COLLEVILLE, TX	76034	506 MUSTANG CT
OMERTA COS II LP	2406 SOUTHERN HILLS CT	KELLER, TX	76248	812 LAVACA TR
REM PARK H A INC	PO BOX 343	COLLEVILLE, TX	76034	611 BELMONT DR
HALLETT, CHARLES E	6504 HORSESHOE BND	COLLEVILLE, TX	76034	6504 HORSESHOE BEND
YARACAGODA, YUANYA	601 SHETLAND DR	COLLEVILLE, TX	76034	601 SHETLAND DR
HOOVER, FRANK	6414 LORRAINE PK	COLLEVILLE, TX	76034	6414 LORRAINE PK
DESANTO, DAVID	6408 TALBOT TR	COLLEVILLE, TX	76034	6408 TALBOT TR
PEARSON, LANE D	6508 HORSESHOE BEND	COLLEVILLE, TX	76034	6508 HORSESHOE BEND
HAGOOD, ROCKY J	6416 BORDEAUX PK	COLLEVILLE, TX	76034	6416 BORDEAUX PK
LANIER, PAULA K	6412 BORDEAUX PK	COLLEVILLE, TX	76034	6412 BORDEAUX PK
PICK, EDWARD ALLEN	507 MUSTANG CT	COLLEVILLE, TX	76034	507 MUSTANG CT
SLICKER, ROBERT M	411 COUNTRY PL	COLLEVILLE, TX	76034	411 COUNTRY PL
PALMER, AUBRA W	6406 LORRAINE PK	COLLEVILLE, TX	76034	6406 LORRAINE PK
DAVIDHERTY, LARRY	901 TALBOT TR	COLLEVILLE, TX	76034	901 TALBOT TR
DAVIDSON, BRANDI RANEE	6108 MUSTANG TR	COLLEVILLE, TX	76034	6108 MUSTANG TR
GRANT, JAMES M	605 SHETLAND DR	COLLEVILLE, TX	76034	605 SHETLAND DR
PICKER, BRUCE A	813 SHETLAND DR	COLLEVILLE, TX	76034	813 SHETLAND DR
LDOS COMMUNICATIONS INC	PO BOX 152206	IRVING, TX	75015	813 MCDONWELL SCHOOL DR W
HUPP, DENNIS	603 TERRACE LN	COLLEVILLE, TX	76034	603 TERRACE LN
DURRANI, SABBEN	6304 LANTANA CT	COLLEVILLE, TX	76034	6304 LANTANA CT
BOLTON, TERRY L	811 TERRACE LN	COLLEVILLE, TX	76034	811 TERRACE LN
THOMASON, KENNETH	8413 TALBOT TRL	COLLEVILLE, TX	76034	8413 TALBOT TR
REM PARK H A INC	PO BOX 343	COLLEVILLE, TX	76034	609 REMINGTON PKWY
LANE, THOMAS M	6300 LANTANA CT	COLLEVILLE, TX	76034	6300 LANTANA CT
DURBIN, RICHARD G	725 ARCADY LN	COLLEVILLE, TX	76034	725 ARCADY LN
MOLSON, ALAN H	6205 CIMMARON TR	COLLEVILLE, TX	76034	6205 CIMMARON TR
BOULLIER, NORMAN	713 ARCADY LN	COLLEVILLE, TX	76034	713 ARCADY LN
MAKARY, MICHEL A	6217 CIMMARON TR	COLLEVILLE, TX	76034	6217 CIMMARON TR
ROSEWOOD VILLAS HOA INC	PO BOX 463	COLLEVILLE, TX	76034	6409 TALBOT TR
GUERRA, ROBERT	602 TERRACE LN	COLLEVILLE, TX	76034	602 TERRACE LN
DARCY, DALE PAUL	6412 TALBOT TR	COLLEVILLE, TX	76034	6412 TALBOT TR
HOPKINS, DILLARD E	6208 LANTANA CT	COLLEVILLE, TX	76034	6208 LANTANA CT
GLATZ, LARRY	501 BELMONT DR	COLLEVILLE, TX	76034	501 BELMONT DR
LYNCH, LAURA C	909 TALBOT TR	COLLEVILLE, TX	76034	909 TALBOT TR
OMERTA COS II LP	2406 SOUTHERN HILLS CT	KELLER, TX	76248	LAVACA TR
DAVIS, JERRY D	6421 LORRAINE PK	COLLEVILLE, TX	76034	6421 LORRAINE PK
TARVER, RUSSELL	6205 LANTANA CT	COLLEVILLE, TX	76034	6205 LANTANA CT
ARMITAGE, DOUGLAS R	6405 LORRAINE PK	COLLEVILLE, TX	76034	6405 LORRAINE PK
LEAVERTON, OWEN M	6420 BORDEAUX PK	COLLEVILLE, TX	76034	6420 BORDEAUX PK
BOLTON, VICTOR	614 TERRACE LN	COLLEVILLE, TX	76034	614 TERRACE LN
ZUBIZARRETA, EMILIO	6110 MUSTANG TR	COLLEVILLE, TX	76034	6110 MUSTANG TR
BURTON, BARRY	616 TERRACE LN	COLLEVILLE, TX	76034	616 TERRACE LN
ROSEWOOD VILLAS HOA INC	PO BOX 463	COLLEVILLE, TX	76034	725 ARCADY LN
GRAY, RANDY K	6233 CIMMARON TR	COLLEVILLE, TX	76034	6233 CIMMARON TR
MCORE, ROBERT E	404 COUNTRY PL	COLLEVILLE, TX	76034	404 COUNTRY PL
LANDS, ROBIN L	505 BELMONT DR	COLLEVILLE, TX	76034	505 BELMONT DR
LAMBERTH, GEORGE	503 MUSTANG CT	COLLEVILLE, TX	76034	503 MUSTANG CT
RINTALA, ROCKY L	925 TALBOT TR	COLLEVILLE, TX	76034	925 TALBOT TR
WRODEK, TODD	6600 HORSESHOE BEND	COLLEVILLE, TX	76034	6600 HORSESHOE BEND
DAVES, JAMES	407 COUNTRY PL	COLLEVILLE, TX	76034	407 COUNTRY PL
VILLAS OF COLLEVILLE HOA LLC	1108 W PIONEER PKWY	ARLINGTON, TX	76013	6525 TALBOT TR
MULLERS, MELANIE	6415 BORDEAUX PK	COLLEVILLE, TX	76034	6415 BORDEAUX PK
REM PARK H A INC	PO BOX 343	COLLEVILLE, TX	76034	6400 REMINGTON PKWY
REM PARK H A INC	PO BOX 343	COLLEVILLE, TX	76034	6500 REMINGTON PKWY
SWEENEY, MATTHEW	6114 MUSTANG TR	COLLEVILLE, TX	76034	6114 MUSTANG TR
BRUCE & BRENDA HUCKINS TRUST	6212 LANTANA CT	COLLEVILLE, TX	76034	6212 LANTANA CT
EASTERLIN, L A	6421 TALBOT TR	COLLEVILLE, TX	76034	6421 TALBOT TR
ROSEWOOD VILLAS HOA INC	PO BOX 463	COLLEVILLE, TX	76034	6601 LORRAINE PK
COLLINS, JOHNNY C	619 TERRACE LN	COLLEVILLE, TX	76034	619 TERRACE LN
ANDERSON, GREGORY I	509 BELMONT DR	COLLEVILLE, TX	76034	509 BELMONT DR
DERGANG, CHRISTOPHER	709 ARCADY LN	COLLEVILLE, TX	76034	709 ARCADY LN
KLEIN, DONALD W	721 ARCADY LN	COLLEVILLE, TX	76034	721 ARCADY LN
CRAIG, JAMES	717 ARCADY LN	COLLEVILLE, TX	76034	717 ARCADY LN
ROBERTS, KAREN	6409 LORRAINE PK	COLLEVILLE, TX	76034	6409 LORRAINE PK
GARRETT, COY E	709 ARCADY LN	COLLEVILLE, TX	76034	709 ARCADY LN
ROSEWOOD VILLAS HOA INC	PO BOX 463	COLLEVILLE, TX	76034	6418 BORDEAUX PK
EPELEY, H ROBERT	6417 LORRAINE PK	COLLEVILLE, TX	76034	6417 LORRAINE PK
GARNER, THOMAS J	607 TERRACE LN	COLLEVILLE, TX	76034	607 TERRACE LN
MALONE, TERRY	6409 TALBOT TR	COLLEVILLE, TX	76034	6409 TALBOT TR
PACLO, WILLIAM J	500 LAVACA TR	COLLEVILLE, TX	76034	500 LAVACA TR
PHINNEY, JASON	6213 EMMAS CT	COLLEVILLE, TX	76034	6213 EMMAS CT
JAEFZOLD, CORY B	6204 EMMAS CT	COLLEVILLE, TX	76034	6204 EMMAS CT
LT ESTATES HOA INC	215 W COLLEGE ST	GRAPEVINE, TX	76051	6215 EMMAS CT
CHANDLER, CHARLOTTE	6205 EMMAS CT	COLLEVILLE, TX	76034	6205 EMMAS CT
AJIBANI, VIVEK	6212 EMMAS CT	COLLEVILLE, TX	76034	6212 EMMAS CT
MOTIL, SALEEM	6218 EMMAS CT	COLLEVILLE, TX	76034	6218 EMMAS CT
LT ESTATES HOA INC	215 W COLLEGE ST	GRAPEVINE, TX	76051	6218 EMMAS CT
HOGAN, EDWARD L	6201 EMMAS CT	COLLEVILLE, TX	76034	6201 EMMAS CT
PIFFE, BRYAN D	6208 EMMAS CT	COLLEVILLE, TX	76034	6208 EMMAS CT
GEORGE, ANSH	6209 EMMAS CT	COLLEVILLE, TX	76034	6209 EMMAS CT
FEGAN, DENNIS J	1303 BELLEFONTE LN	COLLEVILLE, TX	76034	1013 LAVACA TR
RASMUSSEN, JASON	501 LAVACA TR	COLLEVILLE, TX	76034	501 LAVACA TR
MONUMENT CUSTOM BUILDERS LP	PO BOX 189	COLLEVILLE, TX	76034	8112 LEGACY TR
BILDERBACK, JAMES L	8105 RIDGEWOOD LN	COLLEVILLE, TX	76034	8105 RIDGEWOOD LN
TANEY, JOSEPH	901 LEGACY TR	COLLEVILLE, TX	76034	901 LEGACY TR
STAR, CHRISTOPHER	6201 RIDGEWOOD LN	COLLEVILLE, TX	76034	6201 RIDGEWOOD LN
LEGACY AT COLLEVILLE LLC THE	PO BOX 92747	SOUTHPLAKE, TX	76082	812 LEGACY TR
LEGACY AT COLLEVILLE LLC THE	PO BOX 92747	SOUTHPLAKE, TX	76082	806 LAGACY TR
TAYLOR, GREGORY	8117 LEGACY TR	COLLEVILLE, TX	76034	8117 LEGACY TR
PROVIDENTIAL LAND DEVELOPMENT	624 STONEGLEN DR	KELLER, TX	76248	6208 LEGACY TR
FORD, DOUGLAS	6200 LEGACY TR	COLLEVILLE, TX	76034	6200 LEGACY TR
PANDALL, MARK R	8111 MUSTANG TR	COLLEVILLE, TX	76034	8111 MUSTANG TR
ISELL, CHRISTOPHER M	504 LIBERTY CT	COLLEVILLE, TX	76034	504 LIBERTY CT
CAPPS, MICHAEL V	8116 LEGACY TR	COLLEVILLE, TX	76034	8116 LEGACY TR
ROSLAND, JAMES W	8107 MUSTANG TR	COLLEVILLE, TX	76034	8107 MUSTANG TR
RODRIGUEZ, JUAN	905 LEGACY TR	COLLEVILLE, TX	76034	905 LEGACY TR
O'NEILL LIVING TRUST	2806 EDGEWOOD LN	COLLEVILLE, TX	76034	8113 LEGACY TR
MCPHERSON, BRAD	14815 STORY LN	FRISCO, TX	75035	6204 LEGACY TR
STEWART, TERRACE	500 LIBERTY CT	COLLEVILLE, TX	76034	500 LIBERTY CT
CHUNG, KRAMER	809 LEGACY TR	COLLEVILLE, TX	76034	809 LEGACY TR
PHILLIP, ANDREW	8121 NILES CT	FORT WORTH, TX	76104	8109 RIDGEWOOD LN
PATRICK CUSTOM HOMES INC	2885 EXCHANGE BLVD STE 112	SOUTHPLAKE, TX	76082	8112 LEGACY ESTATES DR
REM PARK H A INC	PO BOX 343	COLLEVILLE, TX	76034	6021 REMINGTON PKWY
PROVIDENTIAL LAND DEVELOPMENT	624 STONEGLEN DR	KELLER, TX	76248	6116 LEGACY ESTATES DR
REATA BROKERAGE SERVICES LLC	4323 GLOSTER RD	DALLAS, TX	75220	6212 LEGACY TR
CLAREMONT ADDITION	3528 DAVIS BLVD SUITE 134	NORTH RICHLAND HILLS, TX	76182	COURTESY NOTICE
LAVACA TRAIL ESTATES		COLLEVILLE, TX	76034	COURTESY NOTICE
REMINGTON PARK ADDITION	5781 KROGER DRIVE	KELLER, TX	76244	COURTESY NOTICE
ROSEWOOD VILLAS	P.O. BOX 463	COLLEVILLE, TX	76034	COURTESY NOTICE
VILLAS OF COLLEVILLE	9051 AIRPORT FREEWAY SUITE 460	NORTH RICHLAND HILLS, TX	76182	COURTESY NOTICE
KELLER SD	350 KELLER PKWY	KELLER, TX	76248	STATE REQUIRED
GRAPEVINE COLLEVILLE SD	3501 PALM WOODS AVE	GRAPEVINE, TX	76051	STATE REQUIRED
HAMILTON, KEITH	8241 MCDONNELL BLVD	NORTH RICHLAND HILLS, TX	76182	APPLICANT



NOTICE OF PUBLIC HEARING

Zoning Case Number: ZC18-033

Applicant: Keith Hamilton

Owner: Omerta Cos II LP

Location: 712 – 810 Lavaca Trail

Property Description: Lot C, McEwing Subdivision & 1B02A, 1B2, 1B3, and 1B4, Abstract 1154, in the R H McEwing Survey

Present Zoning: R-40 Single Family Residential

Request: Consideration of a zoning change from R-40 Single Family Residential district to R-20 Single Family Residential district. The purpose is to subdivide the 3 properties into 25 single-family residential lots and 5 open spaces. The zoning map incorrectly shows the R-20 zoning on the property.

The City of Colleyville has scheduled public hearings concerning the above referenced request on the following dates and location:

Planning and Zoning Commission Meeting: Monday, October 8, 2018 at 7:00 p.m.
City Council Meetings: Tuesday, November 5, 2018 & Tuesday, November 20, 2018 at 7:30 p.m.
3rd floor of City Hall, 100 Main Street, Colleyville, Texas

This notice has been sent to all owners of real property within 500 feet of the request as such ownership appears on the last approved tax roll and all homeowners associations within 1000 feet. Approval by the Planning and Zoning Commission serves as a recommendation to the City Council and is not a final action on the request. Denial of the proposal by the Commission is final, unless the applicant submits a written notice of appeal within 10 days from the date of action by the Commission. If appealed, the request will be placed on the next available City Council agenda as listed above. Rezoning requests, zoning amendments and conditions recommended by the Commission for approval by the City Council may be more restrictive than those described in this notice.

All interested persons are encouraged to attend the public hearing and express their opinions on the zoning change request. If you are unable to attend, but wish to have your opinions made a part of the public record, please submit written comments prior to the public hearing, to the address below:

Community Development Department
City of Colleyville
100 Main Street
Colleyville, TX 76034

If the property owners of 20% or more of the land within the 200 foot notification area file a written protest prior to the public hearing, State law provides that the approval of the zoning change request shall require the approval of a super majority vote by City Council.

The application is on file for public examination in the Community Development Department at 100 Main Street, Colleyville, Texas. A brief project description can be found online on the Active Development Case map: <https://www.colleyville.com/government/departments-a-l/community-development/active-development-cases>. For additional information, please contact the Community Development Department at 817.503.1056. Please reference the zoning case number when requesting information.

Jacquelyn Reyff
Principal Planner
jreyff@colleyville.com

Letter from Applicant

Subject: FW: Zoning Case Number ZC18-033 (712- 810 Lavaca Trail)

From: "Christopher Derganc"

Date: October 5, 2018 at 10:28:36 PM CDT

To: ""Kosse Maykus""

Cc: <smathisencpa@gmail.com>, ""Rosewood Villas HOA""

, ""Coy Garrett""

""Richard Durbin""

Subject: RE: Zoning Case Number ZC18-033 (712- 810 Lavaca Trail)

Kosse,

I just resent to you the email we sent on September 25th in response to your initial email. I didn't send it to Ms. Mathisen as it doesn't relate to the current zoning proposal.

Thanks,
Chirs

From: Kosse Maykus

>

Sent: Friday, October 5, 2018 9:44 PM

To: Christopher Derganc

Cc: smathisencpa@gmail.com; Rosewood Villas HOA

Coy Garrett

<

>; Richard Durbin

Subject: Re: Zoning Case Number ZC18-033 (712- 810 Lavaca Trail)

Christopher,

The last communication I have are these items that I sent the day after we met:

Thank you for meeting yesterday. It's very obvious you care about your neighborhood and the preservation of its resources. These are the items I believe we agreed that I would include in my neighborhood:

- The existing trees on lots 6-9 within 20 feet adjacent to rosewood Villas will be preserved.
- We will install a "row" of Live Oaks with 30 foot spacing where no trees currently exist. These trees are being placed to minimize the visual impact of the new homes and to minimize the views from your trail looking down to these backyards
- We will agree, if possible, to install a "hedge" of shrubbery to minimize the visual impact of the new homes and to minimize the views from your trail looking down to these backyards
- Any installation of additional plantings, any preservation of existing trees, or any agreements made between Hat Creek Development and the Rosewood Villas will be placed in Legacy North's deed restrictions and will be subject to Legacy North HOA enforcement.
- Hat Creek Development and Rosewood Villas HOA will enter into a formal letter agreement outlining any agreements made. A condition of the agreement to install these additional amenities and place additional requirements on the Legacy North neighborhood will be Rosewood Villas agreement to not oppose any approvals that may be required to entitle Legacy North.

In addition, I did have my surveyor locate the existing retaining wall between our properties. The wall is on the property line. The fence on top of the wall is correctly placed. Therefore it is correct to use "natural" means to help the privacy.

Kosse Maykus

Cell: 817.991.8182

Letter from Applicant

Letter of Opposition

Araceli Botello

Subject: FW: Proposed Development on Lavaca Trail

From: Nanette Love

Sent: Friday, October 5, 2018 12:38 PM

To: Ben Bryner <BBryner@colleyville.com>

Subject: Proposed Development on Lavaca Trail

Hi Ben! My name is Nanette Love, and I am a resident in Remington Park here in Colleyville.

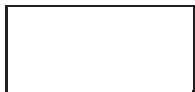
I wanted to share what I am hearing regarding the new development on Lavaca Trail. From my understanding the property is currently zoned as R40, however, I am hearing the developer is more in line with developing as R20, which is a higher density development.

My main concern is that Lavaca Trail can not support the higher density plan from a pure traffic standpoint. We are already seeing more cut through traffic in Remington Park, and developing as R20 vs. R40 will only add to this and create even more congestion to the area.

Believe me, I am all for new construction in our beautiful city, but I am requesting that the city of Colleyville consider how this new development (and all new developments) will impact our existing neighborhood and maintaining the quality of the surrounding areas. I personally think developing with larger lots with less density is best for our city and this particular area.

Please feel free to give me a call, and thank you in advance for your taking the time to read this email.

Nanette Love
Realtor
Keller Williams Realty DFW
cell: 817.602.4101



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Letter of Opposition

Araceli Botello

Subject: FW: Lavaca

-----Original Message-----

From: Kristi

Sent: Friday, October 5, 2018 1:40 PM

To: Ben Bryner <BBryner@colleyville.com>

Cc: Kevin McIntosh

Subject: Lavaca

I heard you are considering making a home development on Lavaca across from The Legacy with smaller lots. I am a resident of The Legacy & just moved in. I would hate to think that beautiful property with amazing trees & green space is being torn down for homes without comparable lots to The Legacy. This was the initial plan according to what I read. I do not agree with this movement.

Kristi McIntosh

Sent from my iPhone

Letter of Opposition

Araceli Botello

Subject: FW: Development off LaVaca behind Remington Park

-----Original Message-----

From: Tina Anderson

Sent: Friday, October 5, 2018 3:06 PM

To: Ben Bryner <BBryner@colleyville.com>

Subject: Development off LaVaca behind Remington Park

We strongly oppose the rezoning of the above referenced tract of land for higher density homes. Our neighborhood is already overrun with speeding pass thru traffic creating a safety hazard for our children. Additionally, during morning commute hours, it is already nearly impossible to exit RP at either the north or south entrances.

Tina And Greg Anderson

509 Belmont

Colleyville

Letter of Opposition

Araceli Botello

Subject: FW: Zoning Case: ZC18-033

Importance: High

From: Walt Mills

Sent: Monday, October 8, 2018 7:03 AM

To: Ben Bryner <BBryner@colleyville.com>

Cc:

Subject: Zoning Case: ZC18-033

Importance: High

Case: ZC18-033

Applicant: Keith Hamilton

Location 712-810 Lavaca Trail

I am strongly opposed to zoning this area to a lower density of R-20. Given the new development already in place and yet to be fully developed along with the vast amount of additional deep farm land along Lavaca Trail, increasing the density to R-20 will be a traffic disaster for businesses and our community. Currently, without a light at Precinct Line, the traffic patten will certainly be through Remington Park. This long term dramatic increase in traffic will be dangerous to our children and other pedestrians. Remington Park has a very long walking trail which often crosses the many streets in Remington Park. This trail connects to the Cotton Belt Trail, used by many residents in the adjoining neighborhoods as well as Remington Park residents. Scooter and bicycle users also enjoy the trails and streets of Remington Park and adding a high density development with the prospect of additional neighborhoods along Lavaca just doesn't make sense.

One might also argue that the notice was poorly worded to end with "the map incorrectly shows R-20 zoning on the property." Thus, burying the lead of high density homes. Moreover, many of the recipients reading the document do not understand the difference between R-20, R-30, R-40 or PUD.

Respectfully,

Walt Mills

404 Vintage Ct.

Remington Park HOA

Walt Mills

Photos By Walt

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 817-271-0353



Letter of Opposition

Araceli Botello

Subject: FW: Zoning Case: ZC18-033- Additional Information

From: Walt Mills

Sent: Monday, October 8, 2018 7:29 AM

To: Ben Bryner <BBryner@colleyville.com>

Cc:

Subject: Zoning Case: ZC18-033- Additional Information

Case: ZC18-033

Applicant: Keith Hamilton

Location 712-810 Lavaca Trail

Refreshing my memory on R-20 property, I ran across the following description from the City of Colleyville Land Development Code, 2015. One could hardly describe 712-810 (West) Lavaca Trail as “inner urbanized” or anything near this definition or “adjacent to shopping facilities.” Nor does it appear to even the casual observer as “the inner area of the city.”

Section 3.12

Purpose and Intent – The purpose and intent of the R20 - Single-Family Residential District is to provide for compatible land, building, and structural uses primarily oriented to medium-low density residential purposes, open space uses, and selected community facility uses. The locational characteristics of this district are generally found in the inner urbanized developed areas of the city, adjacent to shopping facilities. Land uses in this district are normally connected to an approved public or private sewage collection and treatment system, rather than individual septic tanks and sub-surface drainage fields. Moderately low density detached single-family residential dwellings as exist in the inner area of the city comprise the principal elements of the district. It is further the intent to use this district and its regulations to accommodate and recognize the existence of small lot conventional single-family development, which presently exists in the city,

Respectfully,

Walt Mills

404 Vintage Ct.

Remington Park

Walt Mills

Photos By Walt

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☎ 817-271-0353



Letter of Support

Rosewood Villas Homeowners' Association Legacy North Development Committee

**P.O. Box 463
Colleyville, Texas 76034**

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 5, 2018

Re: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

Dear Commissioners:

On September 11 we sent to City of Colleyville staff the attached documents in connection with the proposed development of the subject property. As you will note in reading these documents, we expressed several concerns with respect to the proposed Legacy North development and asked a question regarding the zoning of this property.

Although we would like you to be aware of our concerns with respect to the proposed Legacy North development, we have no objection to rezoning the subject property to R20. Kosse Maykus has created a beautiful neighborhood in the adjacent Legacy subdivision and we are pleased that he will be the developer of Legacy North.

Since the submission of our original letter, we have met and exchanged emails with Mr. Maykus regarding our most significant concern, the lack of a landscape buffer between Legacy North lots and Rosewood Villas' common recreation area in the original plat submitted by Mr. Maykus.

Based on that meeting, we believe that Mr. Maykus is willing to install such a buffer and is working with us in good faith to resolve this issue in a manner that will benefit both subdivisions.

Thank you.

We very much appreciate your time and consideration.

Very truly yours,

Rosewood Villas HOA Legacy North Development Committee

Note: Please use the following contact information for all communication with the HOA on this matter:

Email: _____ with a copy to _____

Telephone: Christopher Derganc (817) 437-1971

Letter of Support

Rosewood Villas Homeowners' Association

Attachment 1

12/05/2006 City Council Agenda Briefing re: Colleyville Ordinance 0-06-1600

Page 1

Rosewood Villas Homeowners' Association

Legacy North Development Committee

P.O. Box 463

Colleyville, Texas 76034

Ms. Jacquelyn Reyff, AICP
Principal Planner
City of Colleyville
100 Main Street
Colleyville, Texas 76034

Re: Proposed Legacy North Development

September 11, 2018

Dear Ms. Reyff:

We represent the Rosewood Villas HOA ("RWV"). We learned recently that Kosse Maykus has submitted to the City a preliminary plat for the "Legacy North" development, to be located along Lavaca Trail on Tracts 1B2, 1B2A and 1B4 of the RH Mc Ewing Survey and Lot C and A Tract 1B3 of the Mc Ewing Subdivision.

We have examined the preliminary plat and supporting documents and spoken with City staff regarding this proposed development, which will have a direct impact on our HOA. We thought it would be helpful to make you aware of our concerns with respect to this proposed development prior to the initial P&Z meeting.

Background

The Rosewood Villas HOA southern property line runs along a substantial portion of the proposed Legacy North's northern property line. The entire southern portion of our property consists of the HOA's only recreational area and includes our beautiful tree lined ponds and walking path. It is an area frequently used by residents and their guests for recreational walking and fishing in our stocked ponds. It is also the principal site for HOA functions. Listed below are the specific attributes of the recreational area we believe most relevant to the proposed development:

- A wrought iron fence runs along our entire southern property line.
- Our walking path is situated approximately 3 feet from this fence.
- There are several relatively mature trees immediately to the south of our property line that provide shade to our walking path and screen our common area.
- Our property is at grade with the Legacy North property at the eastern end but increases to 3 - 4 feet above grade along most of the property line.
- Our pond system partially overflows onto the proposed Legacy North property.

A central feature of our small-lot villas neighborhood, this recreational area is also a key selling feature of RWV. It enhances the value of all properties within RWV and is highlighted in virtually every sales listing. We hope that the new development will compliment this area, rather than detract from it.

Letter of Support

Rosewood Villas Homeowners' Association

Attachment 1

12/05/2006 City Council Agenda Briefing re: Colleyville Ordinance 0-06-1600

Page 2

Re: Proposed Legacy North Development

September 11, 2018

Page 2

Concerns with Proposed Legacy North Development

1. Lack of Landscape Buffer Between Legacy North and Rosewood Villas

Our principal concern is the lack of a landscape buffer between Legacy North and RWV.

The preliminary Legacy North plat shows lots placed directly along our southern property line. We believe such a placement will adversely impact the aesthetic beauty of our recreational area. It will also adversely impact the privacy and potentially the value of the Legacy North properties bordering this recreational area.

Leaving just the wrought iron fence in place will expose these properties to common area activities of another development, as well as to the backyards of the RWV homes lining the pond system. It will also fundamentally change the character of our recreational area.

Installing a wood or masonry wall directly against the existing RWV wrought iron fence seems to be not only inappropriate but will require the removal of several mature trees and destroy the aesthetic beauty of the RWV recreational area. In fact, we would not even be able to soften the impact of such a wall with landscaping due to the limited space between the existing fence and walking path.

Therefore, we would very much prefer that the developer add a landscape buffer along the north-south border of our properties.

This is the approach Mr. Maykus is proposing with respect to the Legacy North border with Remington Park (which also includes a walking path). It is also the approach used in the original Legacy development along the Remington Park border. We see no reason why our neighborhood should not be treated in a similar manner.

Furthermore, along the RWV eastern border with Remington Park, our developer included an approximately 30-foot common area buffer/drainage easement and, as an accommodation to Remington Park, agreed to limit all homes along this border to one story. On our western border with the Villas of Colleyville, both developers employed approximately 20-foot common area buffer zones, resulting in a substantial distance between the houses. Therefore, adding a similar buffer along our southern Property line is in keeping with the existing development and will protect homeowners of both Legacy North and RWV.

2. Drainage

The preliminary Legacy North plat reflects the removal of the existing pond on the subject property and channels all runoff water, including overflow from the RWV pond system, directly onto Lavaca Trail. We are concerned that this approach will lead to excessive runoff onto Lavaca Trail and urge the City to retain the existing or similar pond.

Furthermore, the existing pond/wetland area seems to have been in place for many years. Since at least the very early 2000s, when RWV was developed, this area has never been dry. It serves as a habitat for numerous species of birds, reptiles and mammals. We urge to City to take all appropriate action to protect and retain this valuable wetland area.

Letter of Support

Rosewood Villas Homeowners' Association

Attachment 1

12/05/2006 City Council Agenda Briefing re: Colleyville Ordinance 0-06-1600

Page 3

Re: Proposed Legacy North Development

September 11, 2018

Page 3

3. Tree Preservation

There is substantial tree canopy coverage on the eastern half of the Legacy North property. We assume you will require the developer to submit a tree preservation plan in compliance with Section 5 of the Colleyville Land Development Code and would appreciate the opportunity to review this plan when available. We would also like to note that the landscape buffer we are proposing would certainly help the developer in meeting the tree preservation requirement.

4. Density and Open Space

Although the original Legacy development set aside a significant portion of its land as open space, we see no similar open space or trail system in the preliminary plat for Legacy North. We assume you will address this issue in your review and would appreciate it if you would update us regarding its disposition. Again, the landscape buffer would also help the developer to meet any open space requirements.

5. Zoning Issue

Finally, the preliminary plat prepared by Mr. Maykus assumes the subject property is zoned R20, which is consistent with the current Colleyville zoning map. However, as the attached Agenda Briefing for City Council's consideration of Colleyville Ordinance 0-06-1600 on December 5, 2006 clearly indicates, the prior owner's application to rezone this property from R40 to R20 was denied by P&Z. It also indicates the applicant elected not to appeal this denial.

We are within the notification area for any such rezoning request and are unaware of a subsequent effort to rezone this property. Therefore, it is our belief that this property is, in fact, zoned R40. We would appreciate it if you would either confirm our understanding or provide us with documentation indicating a subsequent rezoning to R20.

Absent confirmation of a rezoning of this property to R20, we ask either that Mr. Maykus revise his plat to reflect the correct zoning of this property or the City take these parcels through the appropriate rezoning process.

Thank you. We very much appreciate your time and consideration on this matter.

Very truly yours,

Rosewood Villas HOA Committee on Legacy North Development

Please use the following contact information for all communication with the HOA:

Email: _____ with a copy to

Telephone: Christopher Derganc (817) 437-1971

Letter of Support

Rosewood Villas Homeowners' Association

Attachment 2

Letter to City Staff September 11, 2018

Page 1



City of Colleyville Agenda Briefing

100 Main Street
Colleyville, Texas 76034
(817) 503-1000
www.colleyville.com

File Number: O-06-1600

File Number: O-06-1600	File Type: Ordinance	Status: First Reading
Version: 1	Agenda Date: 12/05/2006	Controlling Body: City Council
Requester: Community Development Department	Agenda No.: 6a	Final Action:
File Name: Approval of a Request for a Special Use Permit on 17 acres out of the R.N. McEwing Survey and the McEwing Addition located at 712-900 Lavaca Trail, Case Z-06-027		
Attachments: Location and Zoning Map • List of Property Owners Notified • Zoning Exhibits • Ordinance O-06-1600		

History of Legislative File

Version:	Date:	Acting Body:	Action Text:
1	11/13/2006	Planning and Zoning Commission	
1	12/05/2006	City Council	

Title

Approval of a Request for a Special Use Permit on 17 acres out of the R.N. McEwing Survey and the McEwing Addition located at 712-900 Lavaca Trail, Case Z-06-027

Explanation

First Reading and Public Hearing

Jeffrey Zimmerman has submitted a request for consideration of a Special Use Permit (SUP) to allow grazing animals on 17 acres of land located on the north side of Lavaca Trail, approximately 275 feet west of Mustang Trail. The property is currently zoned R40-Single Family Residential.

The applicant originally submitted a request to rezone the property from the R40-Single Family Residential zoning district to the R20-Single Family Residential zoning district in conjunction with the SUP request. The Planning and Zoning Commission denied the R20 rezoning request and approved the SUP request. The applicant did not appeal the zoning request to City Council, therefore only the SUP request is being considered by the City Council. The Planning and Zoning Commission recommended approval of the SUP by a vote of 5-2.

Request. SUP to allow grazing animals on the property.

Location. The 17 acres is located at 712-900 Lavaca Trail.

Special Use Permit. The applicant is requesting approval of a SUP to allow grazing

Letter of Support

Araceli Botello

Subject: FW: Legacy North Planning and Zoning

From: Bryan Yelverton
Sent: Monday, October 8, 2018 3:23 PM
To: Ben Bryner <BBryner@colleyville.com>
Subject: Legacy North Planning and Zoning

Members of the Planning and Zoning Committee:

My name is Bryan Yelverton and I currently reside at 708 Lyndsey Way in Colleyville, Texas. I purchased this lot in 2016 in current development, The Legacy. I am in support of Hat Creek Development continuing to develop The Legacy North project which calls for 25 1/2 acre home sites. I feel that this proposal is in line with all surrounding neighborhoods in this area and will add value to all of the surrounding neighborhoods. I was about the 4th person to purchase a lot in early 2016 and I have seen the development grow at an amazing pace. There is a high demand for 1/2 acre home sites in this area.

They have done a wonderful job with our neighborhood and have been responsive to the concerns of both the residents and the builders. Maykus Custom Homes, Providential Custom Homes, and Larry Stewart Custom Homes build beautiful custom homes and I would like to see more of these quality homes in this area. The 25 1/2 acre lots to be developed is in line with our neighborhood and all of the surrounding neighborhoods in this area. As a homeowner, selfishly, I am interested in improving property values around my home. I feel that the planned Legacy North project will add great value to my home and the city of Colleyville by providing this area with quality custom homes.

Please do not hesitate to contact me if I can be of further assistance to the zoning committee.

Sincerely,

Bryan C. Yelverton, MD
US Anesthesia Partners
Arlington Division
(c) 972-523-0009

Letter of Support

Araceli Botello

Subject: FW: Legacy North Planning and Zoning

From: Matt Colby

Sent: Tuesday, October 9, 2018 7:32 AM

To: Ben Bryner <BBryner@colleyville.com>

Subject: Legacy North Planning and Zoning

Members of the Planning and Zoning Committee,

My name is Matthew Colby, and my family and I live at 700 Lyndsey Way in Colleyville, TX, in the Legacy development. We are in full support of the development of 25 ½ acre sites in the Legacy North project that Hat Creek Development is currently proposing.

As a property owner within and tax payer to the city of Colleyville, it is important to me that the integrity of our community is preserved by developing these sites with reputable custom builders like Maykus Custom Homes, Larry Stewart Custom Homes, and Providential Custom Homes. These builders hold themselves to a higher standard of excellence in all they do, and are deeply engrained in the communities where they build. The approval of the Legacy North Project's proposed 25 ½ acre home sites is in the best interest of the homeowners in the surrounding area, and ultimately that of the City of Colleyville.

If there is any way for me to further support the efforts of Hat Creek Development in The Legacy North project, please let me know. It is of great interest to the homeowners in our community that we see this project in the hands of those who have served us well in their efforts to protect the value of our homes and the integrity of the community in which we reside.

Best regards,

Matt Colby

MATT COLBY *Vice President*

214.838.5250 | DIRECT

713.870.4778 | MOBILE

1500 SOLANA BLVD., BLDG. 4, SUITE 4500
WESTLAKE, TEXAS 76262

www.goosehead.com |



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Letter of Support



Please consider the environment before printing this e-mail

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Letter of Support

Araceli Botello

Subject: FW: The Legacy North

-----Original Message-----

From: Brad McPherson

Sent: Wednesday, October 10, 2018 8:49 AM

To: Ben Bryner <BBryner@colleyville.com>

Subject: The Legacy North

Good Morning Mr. Bryner,

I hope this finds you well. I am writing you this morning to show my support on the development of The Legacy North. I was not able to attend the meeting on Monday, but as a future resident of The Legacy...in 3 months, I would like to see a similar neighborhood with ½ acre lots, along with the same quality of homes/builders.

We purchased our lot in The Legacy in 2017 after searching Colleyville, Southlake and Westlake. We are moving from Frisco to be closer to family, but ultimately, one of our main goals was to build a custom home in an area surrounded by custom homes on ½ acre lots. The vibe is luxury homes with a country and secluded feeling..This was impossible to find in Frisco given most developments are production builders on 7000 sq. ft lots.

I have spoken with several neighbors across Lavaca along with my parents and their neighbors in Remington Park. There does not seem to be any pushback or negative feedback about the development of The Legacy North, based on my conversations. The common response I've heard is that the development group invest some money into the entrance, fences, etc., and maintain the grounds as long as they are overseeing the HOA.

I approve the development of The Legacy North and hope you and your team can support this future subdivision. Thank you for your time and consideration.

Thanks,
Brad

Brad McPherson
HealthMark Group
325 N. Saint Paul Street
Suite 1650
Dallas, TX 75201
Office (214) 764.9122
Mobile (214) 458.6629
Fax (800) 833.5935

Araceli Botello

Subject: FW: Zoning Case Number ZC18-033 (712-810 Lavaca Trail)

From: Doug Wiseman

Sent: Sunday, October 21, 2018 8:23 PM

To: Ben Bryner <BBryner@colleyville.com>

Subject: Zoning Case Number ZC18-033 (712-810 Lavaca Trail)

Dear Commissioners:

Our names are Doug and Theresa Wiseman and we reside at 808 Lyndsey Way, in the Legacy. My husband and I searched for a long time for the perfect location to build our home after living in our previous home for 32 years in Bedford. We chose this subdivision and Colleyville because of the location, the walking trails, and surrounding subdivisions with similar lot sizes and pricing. While building our house we met many individuals walking through our gated community from the surrounding subdivision, creating a sense of community for us. When we purchased our land, we understood this land would someday be developed.

Maykus Customs Homes built our home and went beyond our expectations regarding their integrity and high standards. I am sure the developer will meet the expectations of the individuals in the surrounding subdivisions. We agree for Hatcreek Development to develop this land as R20 lots.

One concern on the video of the Planning and Zoning meeting on October 8, 2018 was the traffic going through Remington Park. It is very hard to enter Precinct Line Road at various times of the day. This is going to be a concern going forward because the lights are timed right now and once the commuter train starts running the lights won't be timed. Also, there is a new subdivision being developed across Precinct Line at Lavaca Trail in North Richland Hills. This will make it even more difficult to enter Precinct Line Road.

A traffic light needs to be considered in the future as the traffic flow continues to increase on Precinct Line Road. A light would decrease the traffic in the Remington Park.

Thank you for your consideration in this matter.

Theresa and Doug Wiseman

Sent from my iPad

Araceli Botello

Subject: FW: Lavaca Trail Development

-----Original Message-----

From: Sonia Bilderback

Sent: Sunday, October 21, 2018 9:08 PM

To: Ben Bryner <BBryner@colleyville.com>

Cc: Eason Maykus

Subject: Re: Lavaca Trail Development

Mr. Bryner,

We will be in attendance at the City Hall meeting, Monday, October 22nd in support of the proposed Maykus Development on Lavaca Trail. In keeping with all the requests from City leaders to support Colleyville, especially with Highway 26 construction, it seems only right to keep the development with home town folks rather than a National company. They are the ones that support the doctors, grocery stores and restaurants here locally.

We desire to have the development uniform like the one we live in across the street, The Legacy. The trees, walking paths that the Maykus Company propose are more in keeping with the country feel of Lavaca.

We have lived in this close area including Remington Park since 2006.

Thank you for your time and consideration.

Jimmy and Sonia Bilderback

The Legacy

6105 Ridgewood Lane

Colleyville 76034

Araceli Botello

Subject: FW: Letters from Rosewood Villas Homeowners re: Zoning Case ZC18-033
Attachments: Zoning Case ZC18-033 Rosewood Villas Letters.pdf

From: Christopher Derganc

Sent: Friday, October 19, 2018 2:47 PM

To: Ben Bryner <BBryner@colleyville.com>

Cc: smathisencpa@gmail.com; 'Kosse Maykus' <> 'Rosewood Villas HOA' <>; Coy Garrett <>; 'DURBIN' <>

Subject: Letters from Rosewood Villas Homeowners re: Zoning Case ZC18-033

Mr. Bryner,

Attached to this email is a pdf containing scans of letters from Rosewood Villas homeowners in support of the proposed rezoning. We'll drop off the originals on Monday in order to give our remaining homeowners an opportunity to submit a letter.

Thank you.

Chris Derganc

Rosewood Villas HOA Committee on Legacy North Development

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 15, 2018

Re: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

Dear Commissioners:

We are homeowners in the Rosewood Villas subdivision, located directly north of the referenced property, and would like to express our support for the proposal to rezone this property to R20.

It seems to us that it would be unfair to the property owner not to grant this rezoning request, as there is R20 zoning directly to the south and east and the higher density PUD zoning directly to the north and west of this property.

A decision like this is can be difficult and is often based only on a conceptual drawing. However, in this case there is a full-scale example of what the proposed neighborhood will look like directly across the street. The original Legacy is a beautiful neighborhood and we are confident that Legacy North will be equally beautiful.

In addition, the proposed developer of this property, Kosse Maykus, is a local resident who has built homes in this area for more than 40 years - his livelihood is dependent on his reputation within the local community. We also understand that Mr. Maykus intends to use only local custom builders to build homes in Legacy North.

As you are aware, our homeowners' association has been actively engaged in negotiations with Mr. Maykus regarding an appropriate buffer between our properties. It is our understanding that Mr. Maykus has been open and professional in these discussions and is willing to address our concerns.

We are also very concerned that if you do not grant this rezoning proposal and Mr. Maykus is forced to abandon this development, a national production builder with lower standards and little investment in the local community may replace him. This would be the worst possible outcome both for Rosewood Villas and Colleyville.

Therefore, we again urge you to approve this rezoning request with Kosse Maykus as developer. This will ensure that a local developer will use local builders - who depend on their local reputations - to create a beautiful neighborhood making Colleyville even more desirable than it is now.

Thank you for your consideration.



Signatures

SEAN BROWN

Print Names

701 ARCADE LN. COLLEYVILLE, TX 76034

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
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Print Names



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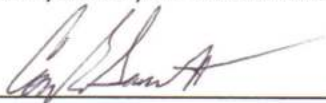
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Signatures



Print Names



Signatures



Print Names



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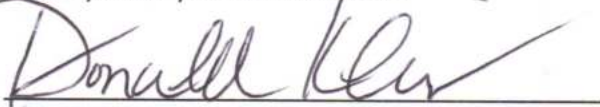
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Signatures



DONALD KLEIN

Print Names

DEBORAH KLEIN

721 Arcady Ln., Colleyville, 76034

Address

Rosewood Villas

Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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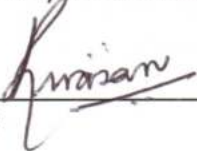
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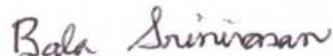
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Signatures

ALAGIRY SRINIVASAN

Print Names



Signatures

BALA SRINIVASAN

6419, Bordeaux Park, Colleyville, TX 76034

Address

Rosewood Villas

Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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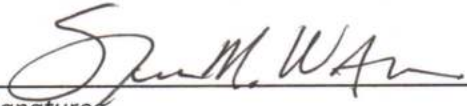
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Thank you for your consideration.



Signatures

STEVEN M. WADE

Print Names



Sandra L Wade

6504 Bordeaux Park, Colleyville

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 15, 2018

Re: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

Dear Commissioners:

We are homeowners in the Rosewood Villas subdivision, located directly north of the referenced property, and would like to express our support for the proposal to rezone this property to R20.

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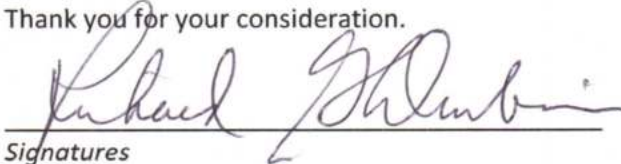
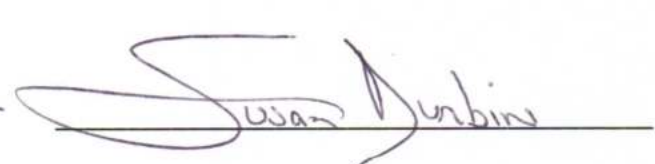
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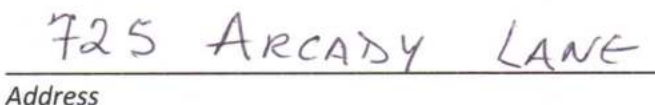
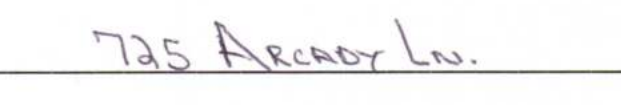
Thank you for your consideration.

Signatures

Print Names

Address

Rosewood Villas

Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 15, 2018

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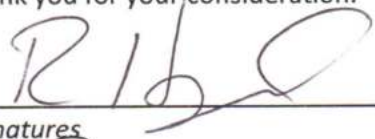
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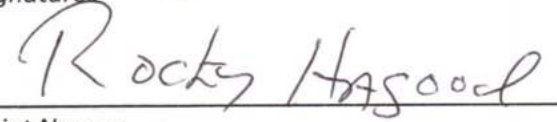
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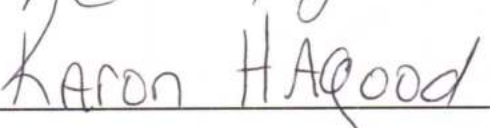


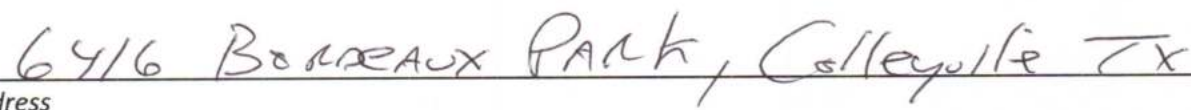
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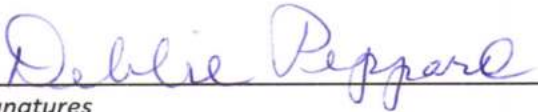
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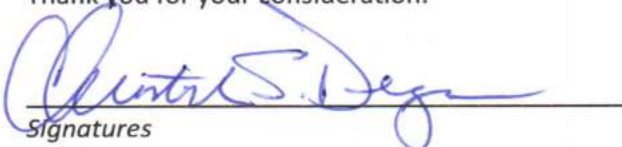
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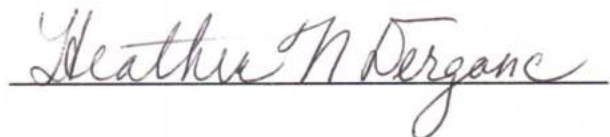
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Thank you for your consideration.


Signatures



CHRISTOPHER DERGAN
Print Names

Heather N Derganc

705 ARCADE LN, COLLEYVILLE, TX 76034
Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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Thank you for your consideration.

Please approve this rezoning request!

Kathleen M. Boone

Signatures

Kathleen M. Boone

Print Names

6423 Bordeaux Park *Colleyville, TX 76034*

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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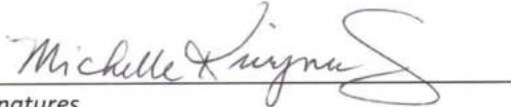
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Signatures


Michelle Krijnenburg

Print Names


Cor Krijnenburg

Address

6402 Lorraine Park Colleyville TX 76034

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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Signatures



NORMAN ROUILLIER
Print Names

ADORA ROUILLIER

713 ARCADEY LANE, COLLEYVILLE TX 76034
Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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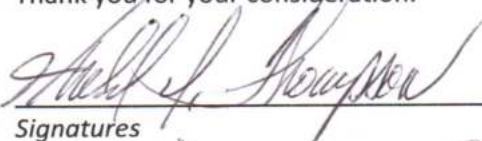
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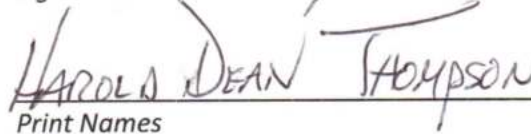
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Signatures



Print Names

6401 Lorraine Park 76034

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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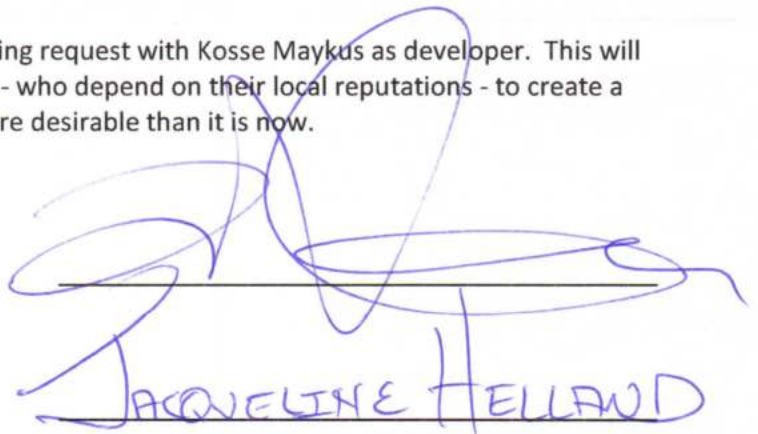
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Signatures

Jerome Helland

Print Names



JACQUELINE HELLAND

6509 Lorraine Park

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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Bob Larimore

Signatures

Ernie Larimore

Bob Larimore

Print Names

Ernie Larimore

6500 Bardeaux Park, Colleyville, TX 76034

Address

10-17-18

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
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October 15, 2018

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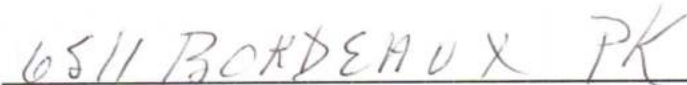
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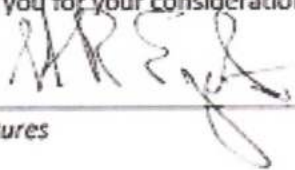
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Signatures

H. ROBERT EPLEY

Print Names

6417 LORRAINE PARK, COLLEYVILLE, TX 76034

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 15, 2018

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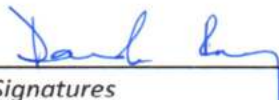
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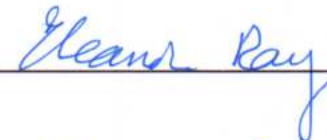
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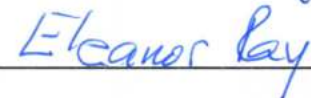


Signatures



Print Names







Address

Rosewood Villas

Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 15, 2018

Re: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

Dear Commissioners:

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Thank you for your consideration.

Willie A. Fonder

Signatures

Willie A. Fonder

Print Names

6410 Lorraine Park - Colleyville, TX 76034

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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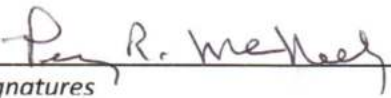
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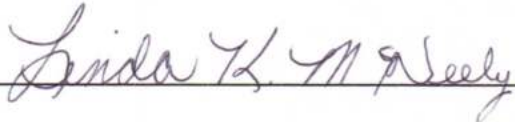
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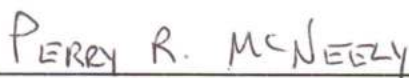
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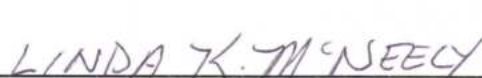
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Print Names



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Rosewood Villas

Colleyville, Texas

Planning and Zoning Commission
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Signatures

Print Names

16405 Lorraine Park Colleyville, TX 76034

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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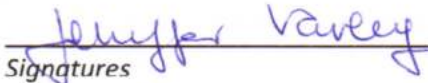
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Signatures

JENIFFER VARLEY

Print Names

641 Bordeaux Park Colleyville 76034

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
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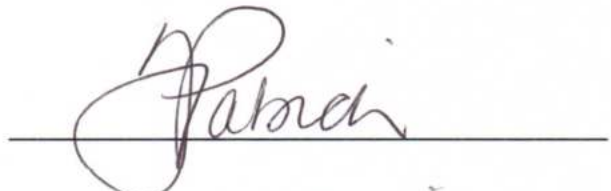
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Signatures

Edward Fabien
Print Names


Faerie Fabien

6505 Lorraine Park Colleyville 76034
Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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Signatures



Robert Chopsuk

Print Names

Sandra Timma

6400 Bordeaux Park, Colleyville, TX 76034

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
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Karen Roberts
Signatures

Karen Roberts
Print Names

6409 Lorraine Park Colleyville, TX 76034
Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
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City of Colleyville
100 Main Street
Colleyville, Texas 76034

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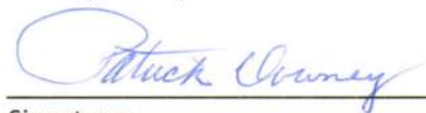
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Signatures



PATRICK DOWNEY

Print Names

LINDA L. DOWNEY

6518 LORRAINE PARK - COLLEYVILLE, TX. 76034

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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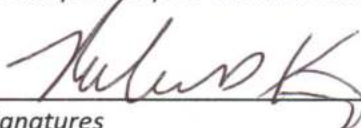
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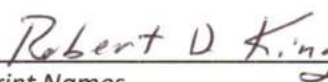
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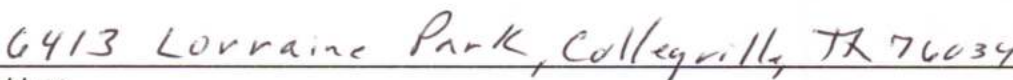
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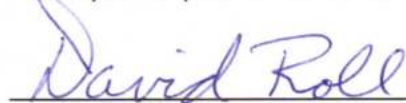
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Signatures

Jim LaBounty

Print Names



ANGELA LABOUNTY

6507 BORDEAUX PARK COLLEYVILLE, TX 76034

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
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Signatures



JERRY DON DAVIS
Print Names

Dean Davis

6421 LORRAINE PARK
Address

6421 Lorraine Park

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
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As you are aware, our homeowners' association has been actively engaged in negotiations with Mr. Maykus regarding an appropriate buffer between our properties. It is our understanding that Mr. Maykus has been open and professional in these discussions and is willing to address our concerns.

We are also very concerned that if you do not grant this rezoning proposal and Mr. Maykus is forced to abandon this development, a national production builder with lower standards and little investment in the local community may replace him. This would be the worst possible outcome both for Rosewood Villas and Colleyville.

Therefore, we again urge you to approve this rezoning request with Kosse Maykus as developer. This will ensure that a local developer will use local builders - who depend on their local reputations - to create a beautiful neighborhood making Colleyville even more desirable than it is now.

Thank you for your consideration.

DocuSigned by:
Fran W. Hoover
E2383F2320FC4BA...
Signatures

DocuSigned by:
Fran W. Hoover
E2383F2320FC4BA...
Print Names

6414 Lorraine Park

Address

DocuSigned by:
E.L. Hoover
5D510405A8584CE...

DocuSigned by:
E.L. Hoover
5D510405A8584CE...

6414 Lorraine Park

10/16/2018

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 15, 2018

Re: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

Dear Commissioners:

We are homeowners in the Rosewood Villas subdivision, located directly north of the referenced property, and would like to express our support for the proposal to rezone this property to R20.

It seems to us that it would be unfair to the property owner not to grant this rezoning request, as there is R20 zoning directly to the south and east and the higher density PUD zoning directly to the north and west of this property.

A decision like this is can be difficult and is often based only on a conceptual drawing. However, in this case there is a full-scale example of what the proposed neighborhood will look like directly across the street. The original Legacy is a beautiful neighborhood and we are confident that Legacy North will be equally beautiful.

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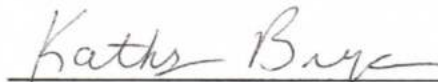
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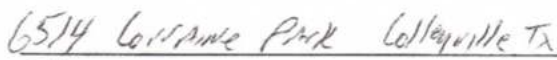
Signatures



Print Names







Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 15, 2018

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Thank you for your consideration.



Signatures

AUBRA PALMER

Print Names

406 LORRAINE PARK

Address



Signatures

JAYNE PALMER

Print Names

6406 LORRAINE PARK

Address

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

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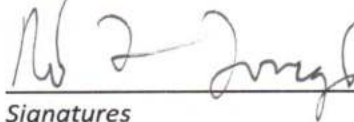
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Signatures



Robert Joseph Longoria

Print Names

Elsa Lozano

6404 Bordeaux Park

Address

Colleyville, TX 76034

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 15, 2018

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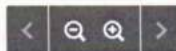
Signatures

Laxman Bhatia

Print Names

6508 BORDEAUX PK. Colleyville Tx.

Address



Christopher Derganc

From: Aubra Palmer <
Sent: Wednesday, October 17, 2018 8:34 PM
To: 'Christopher Derganc'
Subject: FW: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

From my personal email address.

From: Aubra Palmer
Sent: Wednesday, October 17, 2018 12:09 PM
To: 'kimberlydraperholt@yahoo.com' <kimberlydraperholt@yahoo.com>; 'ckbeill@hotmail.com' <ckbeill@hotmail.com>; 'smathisencpa@gmail.com' <smathisencpa@gmail.com>; 'julie.waltens@yahoo.com' <julie.waltens@yahoo.com>; 'ryan.moore@ferguson.com' <ryan.moore@ferguson.com>; 'JElms@pape-dawson.com' <JElms@pape-dawson.com>; 'm.koch75@rocketmail.com' <m.koch75@rocketmail.com>
Cc: 'Board Communications' <
Subject: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

Dear Commissioners:

My name is Aubra Palmer. My wife, Jayne, and I live at 6406 Lorraine Park in Colleyville in the Rosewood Villas addition. Our neighborhood is directly north of the planned "Legacy North" development. Our neighborhood will most likely be the neighborhood most impacted by the new development.

Jayne and I are fully in support of the proposed zoning change from R40 to R20. In fact, we don't really see it as a change but rather just the clean-up of mistakes in the old City map. We always believed it was zoned R20. Almost all other surrounding areas are R20 zoning, so it seems to really make good common sense.

The proposed developer, Mr. Maykus, has been a strong partner in our efforts to insist on the best possible development. His Legacy South, across Lavaca, is an excellent, well done neighborhood. We would love for that to be they type on neighborhood to our south.

I am also a Board Member of our Rosewood Villas HOA. Our Board fully supports the planned changes, as does the vast majority of our homeowners.

Thank you for your consideration to approve the change from R40 to R20.

**Aubra Palmer (cell) 817-271-9154
Jayne Palmer (home) 817-498-3777**

Christopher Derganc

From: Board Communications < > on behalf of Rosewood Villas HOA < >
Sent: Wednesday, October 17, 2018 8:40 PM
To: DERGANC
Subject: FW: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

From HOA Board mailbox. Note, I got email bounce back on both messages to 'ckbeill@hotmail.com'

From: Rosewood Villas HOA [
Sent: Wednesday, October 17, 2018 4:28 PM
To: 'Aubra Palmer'; 'kimberlydraperholt@yahoo.com'; 'ckbeill@hotmail.com'; 'smathisencpa@gmail.com'; 'julie.waltens@yahoo.com'; 'ryan.moore@ferguson.com'; 'JElms@pape-dawson.com'; 'm.koch75@rocketmail.com'
Cc: 'Board Mailbox'; BRYAN (; Fran Hoover ; LAXMAN & VICKI BHATIA ; Longoria
Subject: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

P&Z Commissioners:

We are the Board members representing the Rosewood Villas HOA.

We fully support of the proposed zoning change from R40 to R20. We believe it to be the highest and best use of the property.

We have had three committee members who have worked with the proposed developer, Mr. Maykus. He has been a strong partner in those efforts to create the best possible development. His Legacy South, across Lavaca, is an excellent, well done neighborhood. We would love for that to be they type on neighborhood to our south.

Thank you for your consideration to approve the change from R40 to R20.

The Board of Rosewood Villas HOA

Robert Longoria
Aubra Palmer
Laxman Bhatia
Fran Hoover
Nap Bryan

Araceli Botello

Subject: FW: Letter of Support for LLegacy North Planning and Zoning

From: Michael Capps

Sent: Monday, October 22, 2018 11:10 AM

To: Ben Bryner <BBryner@colleyville.com>

Cc:

Subject: Letter of Support for LLegacy North Planning and Zoning

Members of the Planning and Zoning Committee:

My name is Michael Capps, my wife and I live at [6116 Legacy Trl in Colleyville, TX](#). We purchased the home in the Legacy last year primarily due to the structure of the neighborhood, the open space and the 1/2-acre home sites. We have previously owned homes on lots that were more in the acre size and found that we didn't connect as well with the neighbors because of the distance between our homes. We were also moving back from California where lot sizes were less than half the size offered in this subdivision with no open space or green belts and wanted something with a little room.

We looked at many subdivisions before making our choice and felt that Hat Creek Development created a superior neighborhood with enough space for individualized homes as well as many of the mature trees were retained. I have personally talked to Mr. Maykus and many of his staff members on many occasions and found them to be honest and forthright in their dealings. The quality of the neighborhood and the homes they build are unmatched. Our specific home was not built by Maykus, but the builders that are in the subdivision build quality, unique products that are unmatched in the area with the exception of one or two other subdivisions in Colleyville and unfortunately those are not in areas we would have considered purchasing due to negative factors outside the subdivision complex (i.e. proximity to trains, water towers, highways, shopping centers).

My wife and I have worked in the mortgage banking industry for over 30 and know what creates positive and negative factors in an area. This area and developer hit all our positive marks in our search for what was right for us, including appropriate size lots, space and layout.

We urge you to vote in favor of the R-20 recommendation to allow Hat Creek Development to move forward with Legacy North. Should you have any additional questions, please don't hesitate to contact me.

Sincerely,

Michael Capps

M: [972.567.2693](tel:972.567.2693)

Subject: FW: Zoning Case Number ZC18-033

From: Mark Lanier
Sent: Monday, October 22, 2018 12:03 PM
To: Araceli Botello <ABotello@colleyville.com>
Subject: Zoning Case Number ZC18-033

I talked to Jacquelyn a few minutes ago and she suggested I e-mail my comments to you to ensure they are included in the discussion and record for the P&Z Commission meeting tonight.

We have no objection on going from R-40 to R-20 zoning.

We have one comments/concerns, which I understand are traditionally addressed as the project moves into the platting phase. Regardless, we wanted it to be included in the public record.

1. A permanent or perpetual drainage easement needs to be included to address the rainfall drainage from Rosewood southbound, I believe there is a drainage easement in the current plat. We just want to make sure all rainwater drainage is adequately addressed and accommodated in the revised plat for the new development. My understanding is the City is having an Engineer review the drainage to ensure it is adequately addressed.

We reserve the right to modify or include additional comments and concerns in the event that Kosse Maykus does not proceed and sells the property to another developer.

Please don't hesitate to contact me at (817) 229-9619, if you have any questions or need additional clarification.

Mark & Paula Lanier
6412 Bordeaux Park
Colleyville TX, 76034
(817) 229-9619

Rosewood Villas
Colleyville, Texas

Planning and Zoning Commission
c/o Community Development Department
City of Colleyville
100 Main Street
Colleyville, Texas 76034

October 15, 2018

Re: Zoning Case Number ZC18-033 (712 -810 Lavaca Trail)

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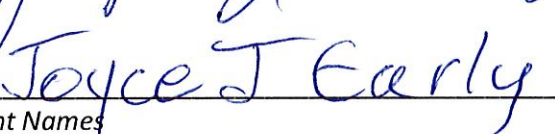
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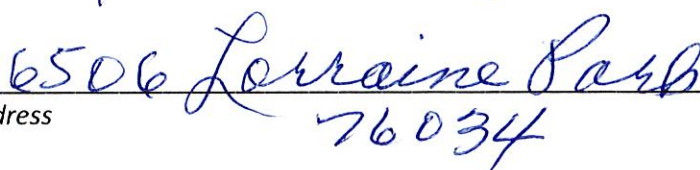
Thank you for your consideration.



Signatures



Print Names



Address
76034

November 14, 2018

Mayor Richard Newton and Honorable City Council Members
Colleyville City Hall
100 Main St.
Colleyville, Texas 76034

Re: ZC18-33

Dear Mayor and City Council Members,

The purpose of this letter is to lend support to ZC18-33 in which Hat Creek Development/Kosse Maykus is proposing to develop approximately 11 acres along Lavaca Trail. It is currently zoned R-40 and the request is to R-20.

My wife and I reside at 709 Arcady Lane, directly north and adjacent to the proposed development. We are homeowners, and through the Rosewood Villas HOA, have worked with Mr. Maykus on his development standards as they interact with Rosewood Villas Addition. We believe the agreed upon standards will enhance both his development, as well as protecting our existing common area and homesites, and will increase everyone's property values.

From a zoning standpoint, this is a classic case of an "infill zoning", which we believe to be entirely appropriate for this tract of land. The subject property is not abutting any undeveloped property and, therefore, will not require the extension of any city utilities. It already has adequate roads, water, sewer, etc. Additionally, I would be remiss if I did not mention that it is completely surrounded by developed properties that generally range from R-20 downward to small lot PUDs. It simply is not realistic to believe that R-40 is the correct zoning category, when it is surrounded by existing greater density and other completely built out properties.

The real estate market has changed in the past several years and there is now a much stronger market for the R-20 than there is for the R-40. An R-20 lot development will normally be built out more rapidly than R-40. As an adjacent resident, we absolutely want his development to be highly successful. We also want to see the least amount of disruption to the surrounding neighborhoods. The faster the developer can achieve "build out", the less interruptions we will experience. I feel that it is very important to the surrounding residents that Mr. Maykus be allowed to start as soon as possible.

Mr. Maykus' development to the south of Lavaca Trail (The Legacy) is very well done and is developed on R-20 zoned property. Our neighborhood, Rosewood Villas, is a 53 homesite PUD that is comprised mainly of older, retired empty nesters that just enjoy the beauty, tranquility and safety that Colleyville so wonderfully provides. Our HOA Board of Directors has sent written support of this development, as Mr. Maykus has been very receptive to our comments. I think we can all agree that the land will eventually be sold and developed. As a homeowner and a member of the HOA, we prefer a custom home developer/builder rather than a big box tract home builder on R-40.

We will not be in attendance for the hearing on November 20 due to previous Thanksgiving plans. We do plan to be in attendance for the December 4th hearing. Please consider our comments and please call me at 817-269-9999(O) or 817-307-9990© should you have any questions, comments or concerns.

In conclusion, we would respectfully request your positive support of the subject zoning request.

Respectfully Submitted,

Tanis Garrett & Coy E. Garrett

ORDINANCE O-18-2066

AMENDING THE ZONING ORDINANCE AND THE OFFICIAL ZONING MAP OF THE CITY OF COLLEYVILLE, TEXAS, BY CHANGING THE ZONING ON 17.32 ACRES, BEING LOT C, MCEWING SUBDIVISION & 1B02A, 1B2, 1B3, AND 1B4, ABSTRACT 1154, IN THE R H MCEWING SURVEY, LOCATED AT 712 – 810 LAVACA TRAIL, FROM THE R-40 SINGLE FAMILY RESIDENTIAL DISTRICT TO THE R-20 SINGLE FAMILY RESIDENTIAL DISTRICT; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Colleyville has received an application for rezoning under Case ZC18-033; and

WHEREAS, the City of Colleyville deems it necessary, for the purpose of promoting the health, safety, morals, or general welfare of the City to enact a new zoning ordinance; and

WHEREAS, the City Council has appointed a Planning and Zoning Commission to recommend the boundaries of the various original zoning districts and appropriate regulations be enforced therein and to recommend a new zoning ordinance; and

WHEREAS, the Planning and Zoning Commission has divided the City into districts and has prepared regulations pertaining to such districts in accordance with a comprehensive plan designed to lessen congestion in the streets; and to secure safety from fire, panic, and other dangers; to promote health, general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and

WHEREAS, the Planning and Zoning Commission, has given reasonable consideration to, among other things, the character of the districts and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, the Planning and Zoning Commission of the City of Colleyville and the City of Colleyville City Council, in compliance with the Charter of the City of Colleyville, and State Law with reference to changes to zoning classifications under the Zoning Ordinance

Regulations and Zoning Map, having given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally, and to the persons interested and situated in the affected area and in the vicinity thereof, the governing body of the City of Colleyville is of the opinion that said change in zoning should be made.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

- Sec. 1. THAT all the foregoing premises and findings are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety.
- Sec. 2. THAT the Comprehensive Zoning Ordinance of the City of Colleyville, Texas, be, and the same is hereby amended by changing the zoning on 17.32 acres, Lot C, McEwing Subdivision & 1B02A, 1B2, 1B3, and 1B4, Abstract 1154, in the R H McEwing Survey at 712-810 Lavaca Trail, from the R-40 Single Family Residential district to the R-20 Single Family Residential district, as depicted in the attached Exhibit "A" and Exhibit "B".
- Sec. 3. THAT the above described tract of land shall be used only in the manner and for the purposes provided by the Comprehensive Zoning Ordinance of the City of Colleyville as heretofore amended, and as amended herein.
- Sec. 4. THAT any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Colleyville, and upon conviction shall be punishable by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.
- Sec. 5. THAT if any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be judged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any portion thereof other than that portion so decided to be invalid or unconstitutional.
- Sec. 6. THAT in addition to and accumulative of all other penalties, the City shall have the right to seek injunctive relief for any and all violations

of this ordinance.

Sec. 7. THAT it has been found that there has been a change in conditions in the above described property, it is now necessary that it be given the above zoning classification in order to permit its proper development and in order to protect the public interest, comfort and general welfare, and requires that this ordinance shall take effect immediately from and after its passage.

AND IT IS SO ORDERED.

The first reading and public hearing being conducted on the 20th day of November 2018.

The second reading and public hearing being conducted on the 4th day of December 2018.

PASSED AND APPROVED BY A VOTE OF ____ AYES, ____ NAYS, AND ____ ABSTENTIONS ON THIS THE 4TH DAY OF DECEMBER 2018.

Mayor Richard Newton	_____	Mayor Pro Tem Bobby Lindamood	_____
Place 1, Tammy Nakamura	_____	Place 5, Chuck Kelley	_____
Place 3, Kathy Wheat	_____	Place 6, Callie Rigney	_____
Place 4, George Dodson	_____		

ATTEST:

CITY OF COLLEYVILLE

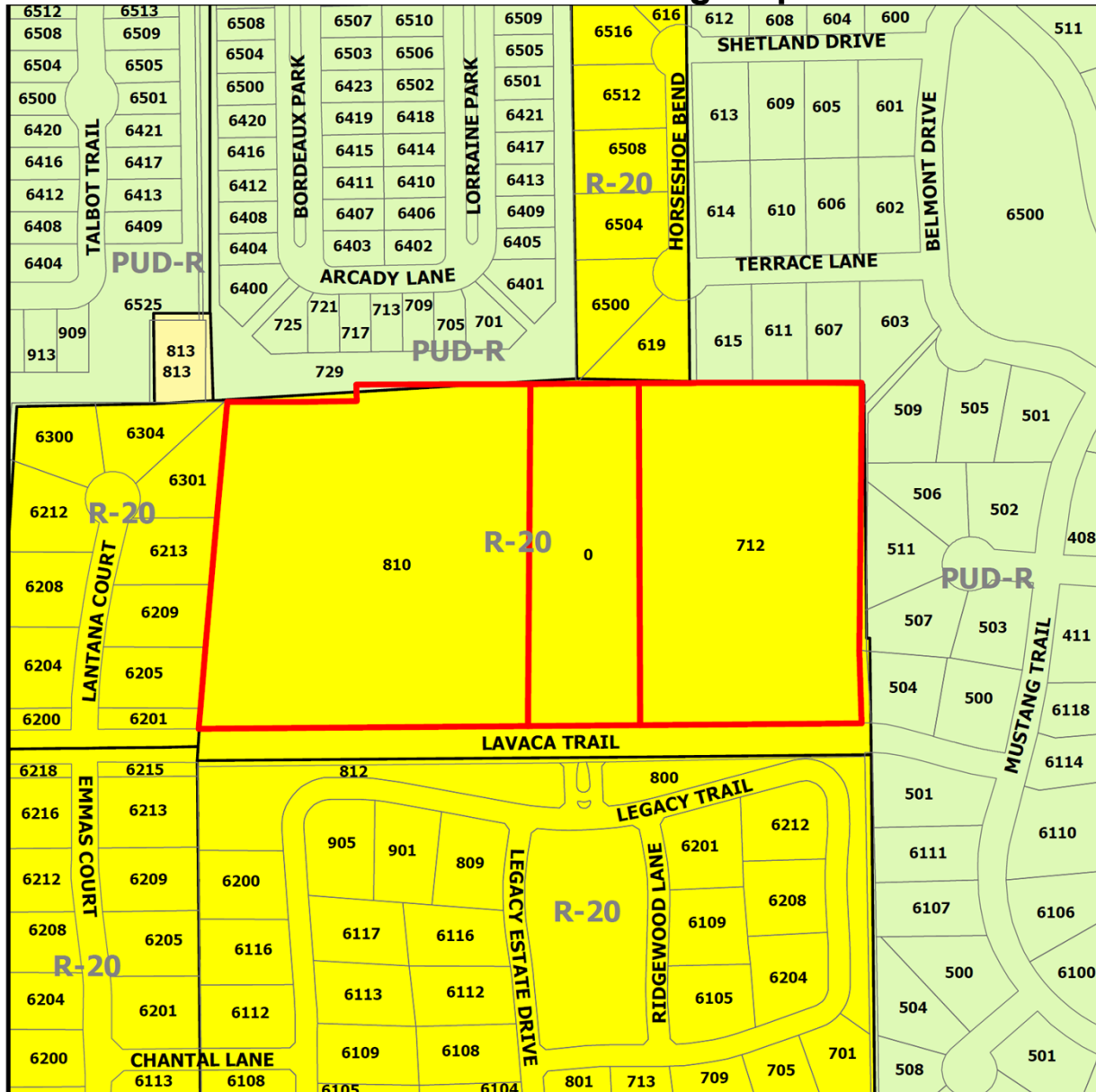
Christine Loven, TRMC
City Secretary

Richard Newton
Mayor

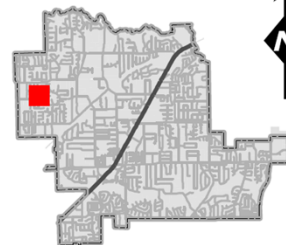
APPROVED AS TO FORM AND LEGALITY:

Whit Wyatt
City Attorney

Exhibit "A"- Zoning Map



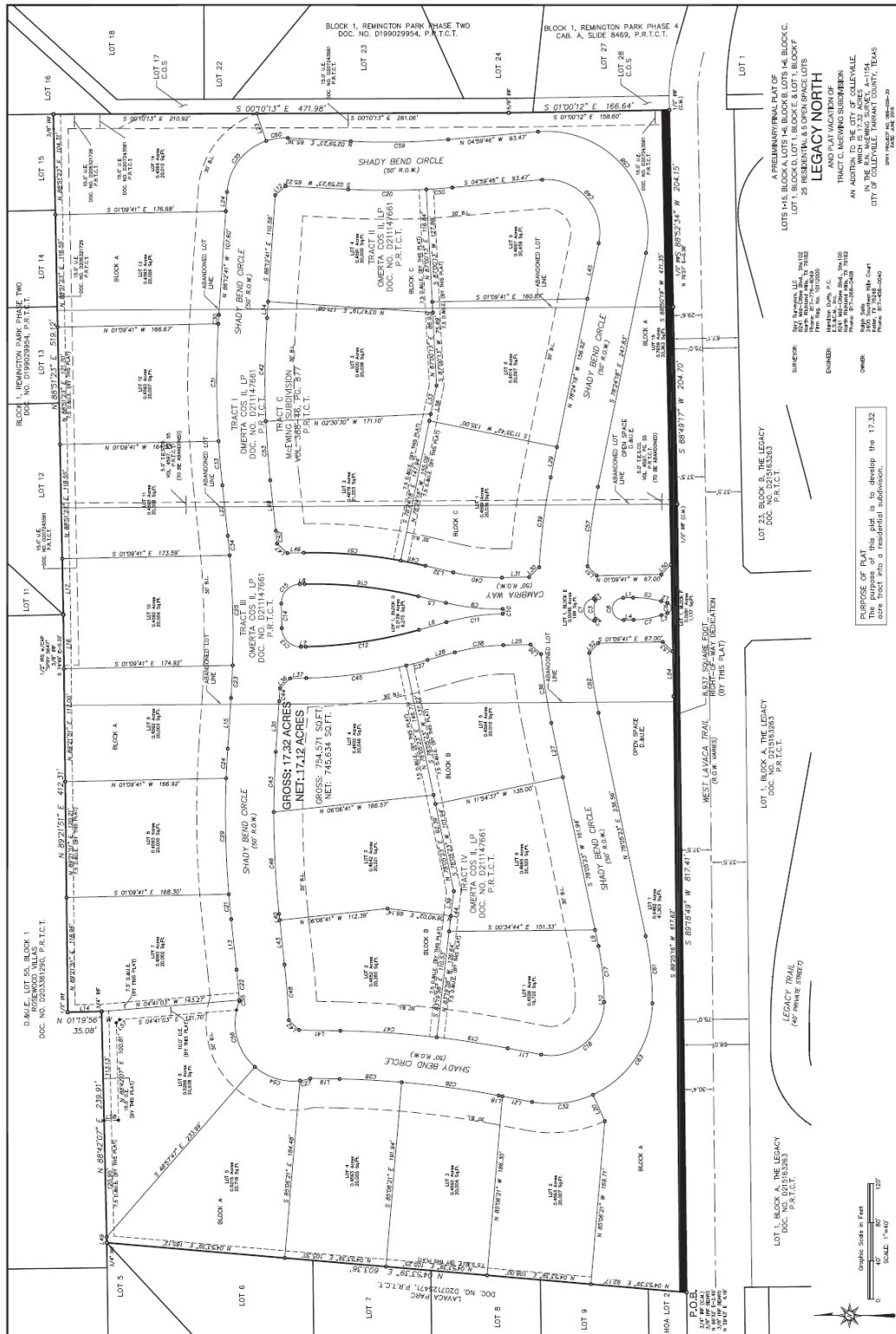
ZC18-033
712 - 810 Lavaca Trail



DISCLAIMER:
 This map and information contained in it were developed exclusively for use by the City of Colleyville. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Colleyville, its officials or employees for any discrepancies, errors, or variances which may exist.

 Subject Property

Zoning Exhibit





City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 7b

Agenda Date 11/20/2018

Number Ordinance O-18-2067

Type Ordinance

Department Community Development

Title

Consideration of amendments to the Land Development Code, specifically Chapter 3 – Land Use

Strategic Plan

4.3 Adopt best-practice planning and development processes

Explanation

First Reading and Public Hearing

The City Council had instructed staff to review and propose amendments to each chapter within the City's Land Development Code (LDC). City staff has already reviewed the attached chapters with the City Council at a recent worksession meeting. The process for adopting amendments to the LDC include formal review and recommendation by the Planning and Zoning Commission, followed by formal review and approval by the City Council.

The attached chapters are a continuation of the formal adoption process. Any remaining chapters will be brought forward over the next several months until the entire Land Development Code has been reviewed.

Financial Impact

There is no fiscal impact to the City of Colleyville.

Recommendation

Approve

Attachments

1. Ch. 03 Land Use - Redline v4 (11.09.18)
2. Ordinance - O-18-2067

Chapter 3 Land Use

Rev. 04/15/2014

Section 3.1 – Purpose of This Chapter

The zoning regulations and districts herein established have been made in accordance with a comprehensive plan for the purpose of promoting health, safety, morals and general welfare of the City of Colleyville. They have been designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public facilities. The zoning districts have been created with reasonable consideration, among other things, of the character of the district and its peculiar suitability for the particular uses and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the community.

Section 3.2 – Authorization for Adoption of This Chapter

The regulations contained in this Chapter have been adopted under the authority of *Chapter 211 – Municipal Zoning Authority of the Texas Local Government Code*, which authorizes a municipality to divide a municipality into districts and, within each district, regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land. This Chapter is also adopted under the authority of *the Home Rule Charter of the City of Colleyville*, which authorizes the City Council to exercise all powers granted to municipalities by the Constitution or the laws of the State of Texas.

Section 3.3 – Variances and Appeals

Any person seeking approval of a development as required by this Land Development Code may request a variance from a requirement contained in this Chapter, or appeal a decision of an Administrative Official by submitting a request using the procedures described in *Chapter 1 – General Provisions* of this Land Development Code.

Section 3.4 – Definitions

Definitions applicable to this Chapter may be found in *Chapter 2 - Definitions* of this Land Development Code.

Section 3.5 – Establishment of Districts

- A. Official Zoning Map – The City is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Chapter. The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Secretary, and bearing the seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in Ordinance No. 0-77-248 of the City of Colleyville, Texas," together with the date of adoption of this Chapter.
1. The Official Zoning Map shall be made current from time to time to reflect the changes and amendments, if any, that are approved by the City Council. Any such notations to bring said map current shall include, but not be limited to, the following: Ordinance number of zoning change, date of minutes of passage of said ordinance, boundary of zoning change, zoning classification declared by changing ordinance, and the initial of the City Secretary amending the map. Any unauthorized change of whatever kind to the Official Zoning Map by any person shall be and the same is prohibited.

2. The Official Zoning Map is not intended to control the procedural prerequisites applicable and the ordinances should be looked to as the authoritative source for all zoning. The Official Zoning Map shall be located and displayed in the Colleyville City Hall.
- B. Replacement of Official Zoning Map – In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the City Council may by resolution adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map and bring the Official Zoning Map up-to-date to reflect any and all amendments or changes in the same.
- C. Rules for Interpretation of District Boundaries – Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
 1. Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines.
 2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
 3. Boundaries indicated as approximately following City Limits shall be construed as following City Limits.
 4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
 5. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the centerlines of streams, drainage courses, creeks, canals, lakes, or other bodies of water shall be construed to follow such centerlines.
 6. Boundaries indicated as parallel to, or extensions of, features indicated in paragraphs 1 through 5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
 7. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered by paragraphs 1 through 6 above, the Zoning Board of Adjustment shall interpret the district boundaries.
 8. Where a district boundary line divides a lot which was in single ownership at the time of passage of the original zoning ordinance, the Zoning Board of Adjustment may permit, as a special exception, the extension of the regulations for either portion of the lot not to exceed fifty (50') feet beyond the district line into the remaining portion of the lot to either side of said district line.

Section 3.6 – Application of District Regulations; Classification of New and Unlisted Uses; and Platting of Property Not Properly Zoned

- A. Application – The regulations set by this Chapter within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land and particularly except as hereinafter provided:
 1. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, re-constructed, moved, or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located.
 2. No building or other structure shall hereafter be erected or altered:

- a. to exceed the height;
 - b. to accommodate or house a greater number of families;
 - c. to occupy a greater percentage of lot area;
 - d. to have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or in any other manner contrary to the provisions of this Chapter.
 3. No part of a yard, other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Chapter shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building except as specified in the "Off-Street Parking Requirements." of this Chapter.
 4. No yard or lot existing at the time of passage of this Chapter shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of the original zoning ordinance shall meet at least the minimum requirements established by this Chapter.
 5. In every dwelling unit the density of occupancy shall not exceed 1.5 persons per room.
 6. All territory which hereafter is annexed to the City shall automatically be considered to be in the AG - Agricultural District, unless otherwise classified by the City Council after public hearing and upon recommendation from the Planning and Zoning Commission.
- B. Classification of New and Unlisted Uses – It is recognized that new types of land may develop and forms of land use not anticipated herein may seek to locate in the City. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land and use shall be made as follows:
1. The Administrative Official shall refer the question concerning any new or unlisted use to the Planning and Zoning Commission requesting an interpretation as to the proper zoning classification into which such use should be placed. The use interpretation question shall be determined as to the nature of the use and whether it involves dwelling activity, sales, processing, type of product, storage and the amount and nature thereof, (i.e., enclosed or open storage), anticipated employment, transportation requirements, the general degree of noise, odor, fumes, dust, toxic material and vibration likely to be generated, if any, and the general requirements for public utilities such as water and sanitary sewer.
 2. The Planning and Zoning Commission shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various zoning districts, and determine the zoning district or districts within which such use should be permitted.
 3. The Planning and Zoning Commission shall transmit its findings and recommendations to the City Council as to the classification proposed for any new or unlisted use. The City Council shall approve the recommendation of the Planning and Zoning Commission, or make such other determination concerning the classification of such use as appropriate, based upon its findings of fact, and amend this Chapter to reflect said findings and decisions.
- C. Platting of Property not Properly Zoned – No plat of any residential or non-residential subdivision within the City, or that which is being annexed to the City, shall be approved unless and until the area covered by the proposed plat is or shall be zoned to the proper zoning classification by the City Council, upon recommendation from the Planning and Zoning Commission. A public hearing by the Planning and Zoning Commission on a proposed annexation, zoning classification, and plat approval, or any combination thereof, may be held simultaneously.

Section 3.7 – Non-conforming Uses, Lots and Buildings

- A. Intent – Within the districts established by this Chapter, or amendments that may later be adopted, there exist lots and uses of land, buildings and structures, uses of land and buildings in combination, and characteristics of use which were lawful before the original zoning ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Chapter or future amendment. It is the intent of this Chapter to permit these non-conformities to continue until they are

Commented [BB1]: Needs further review

removed, but not to encourage their survival. It is further the intent of this Chapter that such non-conformities shall not be enlarged upon, expanded or extended, nor be used as ground for adding other buildings and structures or uses prohibited elsewhere in the same district.

Non-conforming uses are declared by this Chapter to be incompatible with permitted uses in the districts involved. A non-conforming use of a building or structure, a non-conforming use of land, or a non-conforming use of buildings and land in combination shall not be extended or enlarged after passage of this Chapter by attachment on a building or premises or by the addition of other uses of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Chapter shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Chapter and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

- B. Non-conforming Lots of Record – In any zoning district in which single-family dwellings or commercial buildings are permitted, a single-family dwelling or commercial building and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Chapter, notwithstanding limitations imposed by other provisions of this Chapter. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Zoning Board of Adjustment.
- C. Non-conforming Uses of Land (or Land with Minor Building Only) – Where at the time of passage of this Chapter lawful use of land exists which would not be permitted by the regulations imposed by this Chapter, and where such use involves no individual structure with a replacement cost exceeding one thousand dollars (\$1,000), the use may be continued so long as it remains otherwise lawful, provided:
1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the original zoning ordinance;
 2. No such nonconforming use shall be moved in whole or in part to any portion of the same lot or parcel other than that occupied by such use at the effective date of adoption or amendment of the original zoning ordinance;
 3. If any such nonconforming use of land ceases for any reason for a period of more than ninety (90) consecutive days, any subsequent use of such land shall conform to the regulations specified by this Chapter for the district in which such land is located;
 4. No additional building not conforming to the requirements of this Chapter shall be erected in connection with such nonconforming use of land.
- D. Non-conforming Buildings – Where a lawful building exists at the effective date of adoption or amendment of this Chapter that could not be built under the terms of this Chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the building, such building may be continued so long as it remains otherwise lawful, subject to the following provisions:
1. No such non-conforming building may be enlarged or altered in a way which increases its nonconformity, but any building or portion thereof may be altered to decrease its nonconformity or to comply with City building codes.

2. Should such non-conforming building or non-conforming portion of a building be destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at time of destruction; it shall not be reconstructed except in conformity with the provisions of this Chapter, or when approved by the Zoning Board of Adjustment, after public hearing thereon, when the Board's findings, having due regard for the property rights of persons affected, were considered in the light of public welfare and the character of the area surrounding the nonconforming building and the conservation and protection of property.
 3. Should such building be moved for any reason any distance whatever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.
- E. Non-conforming Uses of Buildings or of Buildings and Premises in Combination – If lawful use involving individual buildings with a replacement cost of one thousand dollars (\$1,000.00) or more, or of buildings and premises in combination, exist at the effective date of adoption or amendment of this Chapter that would not be allowed in a particular district under the terms of this Chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
1. No existing building devoted to a use not permitted by this Chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the building to a use permitted in the district in which it is located, or to comply with City building codes.
 2. Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Chapter, but no such use shall be extended to occupy any land outside such building.
 3. If no structural alterations are made, except as required by the City's building codes, any non-conforming use of a building, or building and premises, may, as a special exception, be changed to another non-conforming use provided that the Zoning Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Zoning Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this Chapter.
 4. Any building, or building and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed.
 5. When a non-conforming use of a building, or building and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three-year period (except when government action impedes access to the premises), the building, or building and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
 6. Where non-conforming use status applies to a building and premises in combination, removal or destruction of the building shall eliminate the non-conforming status and any new construction shall be in accordance with the zoning regulations applicable to the district. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty (50) percent of the replacement cost at time of destruction. (O-00-1261 / 12/19/00)
- F. Repairs and Maintenance – On any non-conforming building or portion of a building containing a non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten (10) percent of the current replacement cost of the non-conforming building or non-conforming portion of the building as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming building or portion of a building containing a non-conforming use becomes physically

unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized City official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

Nothing in this Chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

G. Changing Non-conforming Uses

1. Any non-conforming use may be changed to a conforming use and once such change is made, the use shall not thereafter be changed back to a non-conforming use.
2. The Zoning Board of Adjustment may grant a change of use from one non-conforming use to another non-conforming use provided such change is to a use permitted in a zoning district where the original non-conforming use would be permitted or such change is to a use permitted in a more restrictive classification. However, such change of use and occupancy shall not tend to prolong the life of a non-conforming use. Upon review of the facts in accordance with the procedures for the Zoning Board of Adjustment, contained in *Chapter 1 – General Provisions* of this Land Development Code, the Zoning Board of Adjustment may establish a specific period of time for the return of the occupancy to a conforming use.
3. The Zoning Board of Adjustment may approve the remodeling or enlargement of a non-conforming use when such an enlargement would not tend to prolong the life of the non-conforming use. Upon review of the facts, the Zoning Board of Adjustment may establish a specific period of time for the return of the occupancy to a conforming use in accordance with the procedures of the Zoning Board of Adjustment contained in *Chapter 1 – General Provisions* of this Land Development Code.

Section 3.8 AG – Agricultural District

- A. Agricultural District – The regulations set forth in this Section, or as set forth elsewhere in this Chapter when referred to in this Section, are the regulations of the AG - Agricultural District.
- B. Purpose and Intent – The purpose of the AG - Agricultural District is to provide for compatible land, building and structure uses primarily oriented to agricultural farming and ranching, and extremely low density residential purposes. The district's locational characteristics are usually confined to the outer fringe of developed urbanized areas and/or along, unprotected flood-prone areas. The district also serves as: 1) a transitional land use element pending future, more intensive urbanization; 2) open space for the protection and enhancement of scenic areas, vistas, and recreational uses, and 3) where unusual or problematic soils, topographic conditions, or sensitive ecological features are present that would normally not be conducive or appropriate to more intensive forms and patterns of urbanization

The primary intent of this district is a land use designated to aid in the protection of certain lands suitable for producing and supplying food and related agricultural farm and ranch products from more intense urbanization until such time as warranted by demand and supportive community facilities and services.

- C. Use Regulations – Land, buildings and structures may be used only for the purposes allowed in this Chapter.
- D. Permitted Principal Uses – The permitted principal uses allowed in this district as are designated in *Section 3.24.C - Schedule of Permitted Principal Uses*.
- E. Permitted Accessory Uses – Subject to the provisions of *Section 3.28 - Supplementary District Regulations*, accessory buildings, structures and uses customarily incidental to the "Permitted Principal Uses" are allowed, including but not limited to the following:
1. Buildings, structures and uses accessory to permitted farming and ranching operations;
 2. Private residential garages, carports and related storage buildings and greenhouses accessory to

permitted residential uses.

3. Private swimming pools, wading pools, and game courts (lighted or unlighted), provided that: if lighted, the lighting shall be so directed and shielded so as not to shine directly on any adjacent residential property; and further provided that any such pool or game court is for the private use of the site occupants and their guests, and not operated as a business. ~~All "at-grade" swimming pools with a depth greater than twenty-four (24") inches and "above-grade" swimming pools having a water depth twenty-four (24") inches or more, except for inflatable portable tot pools, shall be enclosed by a fence and gate not less than (4') feet nor more than eight (8') feet in height, and of such material and design to discourage unauthorized entry to the facility. Such pool(s) may be located in a required side or rear yard, but not within a required front yard not forward of the primary dwelling, and shall not be located closer than five (5') feet to any side or rear property line.~~
4. ~~Servants quarters for domestic servants employed on the premises or family members~~ Accessory dwellings provided the gross habitable square feet of floor area shall not exceed six hundred (600) square feet complies with regulations found in Section 3.27 of this chapter. Such quarters may be housed within the principal residential dwelling, above a residential garage, or be part of an accessory building on the same premises, and shall comply with minimum standards for light, health, safety, and occupancy in conformance with other applicable City codes and ordinances.
5. Lanais, gazebos, garden and patio shelters, and children's play-houses, provided the privacy enjoyed by adjacent residential dwellings is not impaired.
6. Non-commercial radio and television receiving antennae and non-commercial radio transmitting antennae limited in height to sixty (60) feet (measured from the ground line in front of the dwelling or use facing a public street), and further provided no electrical, radio or television signal interference is created which would adversely affect such audio or visual signals to nearby dwellings and other permitted uses;
7. Required off-street parking and loading spaces.
8. Home occupation uses as defined in *Chapter 2 – Definitions* of this Land Development Code.
9. Parking and storage of private boats(s), camper trailer(s), or other recreational vehicle(s), in conformance with the regulations for "Parking, Storage or Use of Major Recreational Equipment and Vehicles."
10. Signs, in conformance with *Chapter 7 – Sign Regulations* of this Land Development Code and other applicable City codes and ordinances.
11. Supplemental single-family dwelling for a farm employee and family when located on the same premises as the principal agricultural use, provided:
 - a. Such dwelling shall be used exclusively for the housing of a single-family employed full time on the premises in the conduct of operation or management of the principal agricultural use;
 - b. Such dwelling is under the same ownership as that of the agricultural use and is on the same land as the owner's principal place of residency;
 - c. The land area devoted to such dwelling conforms with the minimum requirements established in *Section 3.24 - Schedule of District Regulations* for single-family dwellings in an "RE" District, as if it were on a separate recorded lot; and
 - d. The total land area under common ownership comprising the agriculture use and related owner's and employee's residence is not less than twenty (20) acres.

F. ~~Special Exception Uses – In order to allow for certain uses which, because of the unique or unusual character thereof, cannot be unconditionally permitted in this district, yet would or could be an appropriate or compatible use under certain controlled circumstances and locations, the "Zoning Board of Adjustment"~~

Commented [EW2]: Recommendation that the pool not extend past the front of the house

Commented [EW3]: Pool barrier requirements are codified in the adopted building codes

Commented [BB4]: New standards for Accessory Dwellings

Commented [BB5]: Deleted per Council direction

~~may, after public hearing thereon, authorize and grant the issuance of a "Special Exception" for such special exception uses as allowed in Section 3.24 - "Schedule of Permitted Principal Uses." The issuance of such "exception" by the "Board" shall be contingent upon reasonable and appropriate conditions and safeguards, including the length of time thereof, when appropriate, so as to properly protect any adjacent property, use, or neighborhood character, as well as insure the appropriate conduct of the special exception use of the land or buildings granted.~~

~~GE. Prohibited Uses~~ – Any use not expressly authorized and permitted herein is expressly prohibited in this district, unless otherwise allowed in conformance with the provisions for ~~—~~ "Classification of New and Unlisted Uses."

~~HG. Density; Area; Yard; Height; and Lot Coverage Requirement~~ – The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes, (front, side and rear), maximum building height (stories and feet), and maximum percent of lot coverage by buildings, as pertains to this district, shall conform with the provisions of *Section 3.24 - Schedule of District Regulations* and other applicable provisions of *Section 3.28 - Supplementary District Regulations*.

~~H. Off Street Parking and Loading Requirements~~ – Off-street parking and loading requirements pertaining to uses allowed in this district shall conform ~~with~~to the "Off-Street Parking Requirements" and "Off-Street Loading Requirements" contained elsewhere in this Land Development Code.

~~J. Land Plan and Supporting Documents Required~~ – Any application for a change in zoning district boundaries on the official zoning map affecting this district shall be accompanied by a land plan and supporting document therefor, in conformance with the provisions of *Chapter 1 – General Provisions* of this Land Development Code.

Section 3.9 RE – Single Family "Estate" Residential District

A. RE-Single Family Estate Residential District – The regulations set forth in this Section, or as set forth elsewhere in this Chapter when referred to in this section, are the regulations of the RE - Single-Family Residential Estate District.

B. Purpose and Intent – The purpose and intent of the RE - Single-Family Estate Residential District is to provide for compatible land, building, and structural uses primarily oriented to low density residential estate purposes, select agricultural uses, open space uses, and selected community facility uses. The locational characteristic of this district is generally confined to the outer fringe of the more intensely urbanized and developed areas and/or along unprotected flood prone areas. The district further serves as a transitional element between limited residential development and intense agricultural activities and of higher density urbanized areas of the city. Low density detached single-family residential dwellings and estate development, along with the aforescribed uses, comprise the principal elements of the district.

C. Use Regulations – Land, buildings and structures may be used only for the purposes allowed in this Section.

D. Permitted Principal Uses – The permitted principal uses allowed in this district are as designated in *Section 3.24 - Schedule of Permitted Principal Uses*.

E. Permitted Accessory Uses – Subject to the provisions of *Section 3.28 - Supplementary District Regulations*, accessory buildings, structures, and uses customarily incidental to the "Permitted Principal Uses" are allowed, including but not limited to the following:

1. Buildings, structures, and uses accessory to permitted farming and ranching operations;
2. Private swimming pools, wading pools, and game courts (lighted or unlighted), provided that: if lighted, the lighting shall be so directed and shielded so as not to shine directly on any adjacent residential property; and further provided that any such pool or game court is for the private use of the site occupants and their guests, and not operated as a business. ~~All "at grade" swimming pools with a water depth greater than twenty-four (24") inches and "above grade" swimming pools having a~~

water depth twenty-four (24") inches or more, except for inflatable portable tot pools, shall be enclosed by a fence and gate not less than four (4') feet nor more than eight (8') feet in height, and of such material and design to discourage unauthorized entry to the facility. Such pool(s) may be located in a required side or rear yard, but not within a required front yard forward of the primary dwelling on the lot, and shall not be located closer than five (5') feet to any side or rear property line.

Commented [EW6]: Pool barrier requirements are already codified in the adopted building codes

Commented [EW7]: Recommend that the pool does not extend past the front of the dwelling

3. Private residential garages, carports, and related storage buildings and greenhouses accessory to permitted residential uses.
4. ~~Servants quarters for domestic servants employed on the premises or family members. Accessory dwellings provided the gross habitable square feet of floor area shall not exceed six hundred (600) square feet complies with regulations found in Section 3.27 of this chapter. Servants quarters for domestic servants employed on the premises or family members provided the gross habitable square feet of floor area shall not exceed six hundred (600) square feet.~~ Such quarters may be housed within the principal residential dwelling, above a residential garage, or be part of an accessory building on the same premises, and shall comply with minimum standards for light, health, safety, and occupancy in conformance with other applicable City codes and ordinances.
5. Lanais, gazebos, garden and patio shelters, and children's play-houses, provided the privacy enjoyed by adjacent residential dwellings is not impaired.
6. Non-commercial radio and television receiving antennae and non-commercial radio transmitting antennae limited in height to sixty (60) feet (measured from the ground line in front of the dwelling or use facing a public street), and further provided no electrical, radio or television signal interference is created which would adversely affect such audio or visual signals to nearby dwellings and other permitted uses;
7. Required off-street parking and loading spaces.
8. Home occupation uses as defined in *Chapter 2 – Definitions* of this Land Development Code
9. Parking and storage of private boat(s), camper trailer(s) or other recreational vehicle(s), in conformance with the regulations for "Parking, Storage or Use of Major Recreational Equipment and Vehicles."
10. Signs, in conformance with *Chapter 7 – Sign Regulations* of this Land Development Code.
11. Private domestic greenhouses.
12. Private stables for the keeping of grazing animals, provided:
 - a. Significant ground accumulations of manure shall be collected and properly disposed of so as not to create offensive odors, fly breeding, or in any way become a health hazard or nuisance to humans or animals;
 - b. Fences for pens, corrals or similar enclosures shall be of sufficient height and strength to properly retain the grazing animal(s) on the premises; and
 - c. The minimum space area of the lot upon which such grazing animal(s) may be kept, including pens, corrals, and stables, shall not be less than 15,000 square feet per each grazing animal over five hundred (500) pounds and not less than five thousand (5,000) square feet for any other grazing animal.

Commented [BB8]: New standards for Accessory Dwellings

~~F. **Special Exception Uses** — In order to allow for certain uses which, because of the unique or unusual character thereof, cannot be unconditionally permitted in this district, yet would or could be an appropriate or compatible use under certain controlled circumstances and locations, the "Zoning Board of Adjustment" may, after public hearing thereon, authorize and grant the issuance of a "Special Exception" for such special exception uses as allowed in Section 3.24 – Schedule of Permitted Principal Uses. The issuance of such "exception" by the "Board" shall be contingent upon reasonable and appropriate conditions and~~

~~safeguards, including the length of time thereof, when appropriate, so as to properly protect any adjacent property, use or neighborhood character, as well as insure the appropriate conduct of the special exception use of the land or buildings granted.~~

GF. Prohibited Uses – Any use not expressly authorized and permitted herein is expressly prohibited in this district, unless otherwise allowed in conformance with the provisions for the “Classification of New and Unlisted Uses.”

HG. Density, Area, Yard, Height, and Lot Coverage Requirements – The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes (front, side and rear), maximum building height (stories and feet), and maximum percent of lot coverage by buildings, as pertains to this district, shall conform with the provisions of *Section 3.24 - Schedule of District Regulations* and other applicable provisions of *Section 3.28 - Supplementary District Regulations*.

H. Off-street Parking and Loading Requirements – Off-street parking and loading requirements pertaining to uses allowed in this district shall conform ~~with~~to the provisions of the “Off-Street Parking Requirements,” and the “Off-Street Loading Requirements.”

J. Land Plan and Supporting Documents Required – Any application for a change in zoning district boundaries on the Official Zoning Map affecting this district shall be accompanied by a land plan and supporting document therefore, in conformance with the provisions of *Chapter 1 – General Provisions* of this Land Development Code.

Section 3.10 ~~R-40~~ – Single Family Residential District

A. **~~R-40 – Single Family Residential District~~** – The regulations set forth in this Section, or as set forth elsewhere in this Chapter when referred to in this section, are the regulations of the ~~R-40 – Single Family Residential District~~.

B. **Purpose and Intent** – The purpose and intent of the ~~R-40 – Single Family Residential District~~ is to provide for compatible land, building and structure uses primarily oriented to low density residential purposes, open space uses, and select community facility uses. The locational characteristics of this district are not confined to any specific or general area; however, they are most appropriate on the outer fringe of the more intensively urbanized parts of the community, and/or along protected flood prone areas. Land uses in this district are normally connected to an approved public or private sewage collection and treatment system, rather than individual septic tanks and subsurface drainage fields. Low density detached single family residential dwellings and development, along with the aforescribed uses, comprise the principal elements of the district.

C. **Use Regulation** – Land, buildings and structures may be used only for the purposes allowed in this Section.

D. **Permitted Principal Uses** – The permitted principal uses allowed in this district are as designated in *Section 3.24 - Schedule of Permitted Principal Uses*.

E. **Permitted Accessory Uses** – Subject to the provisions of *Section 3.28 - Supplementary District Regulations*, accessory buildings, structures, and uses customarily incidental to the “Permitted Principal Uses” are allowed, including but not limited to the following:

1. Private residential garages, carports and related storage buildings and greenhouses accessory to permitted residential uses.
2. Private swimming pools, wading pools, and game courts (lighted or unlighted), provided that: if lighted, the lighting shall be so directed and shielded so as not to shine directly on any adjacent residential property; and further provided that any such pool or game court is for the private use of the site occupants and their guests, and not operated as a business. ~~All “at-grade” swimming pools with a water depth greater than twenty-four (24”) inches and “above grade” swimming pools having a water depth twenty-four (24”) inches or more, except for inflatable portable tot pools, shall be enclosed by a fence and gate not less than four (4’) feet nor more than six (6’) feet in height, and of~~

~~such material and design to discourage unauthorized entry to the facility. Such pool(s) may be located in a required side or rear yard, but not within a required front yard -but not forward of the primary dwelling on the lot, -and shall not be located closer than five (5') feet to any side' or rear property line.~~

Commented [EW9]: Pool barrier requirements are already codified in the adopted building codes

Commented [EW10]: Recommend that the pool cannot extend beyond the front of the existing dwelling

3. Lanais, gazebos, garden and patio shelters, and children's play-houses, provided the privacy enjoyed by adjacent residential dwellings is not impaired.
4. Noncommercial radio and television receiving antennae and noncommercial radio transmitting antennae limited in height to sixty (60') feet (measured from the ground line in front of the dwelling or use facing a public street), and further provided no electrical, radio or television signal interference is created which would adversely affect such audio or visual signals to nearby dwellings and other permitted uses;
5. Required off-street parking and loading spaces.
6. Home occupation uses as defined in *Chapter 2 – Definitions* of this Land Development Code.
7. Parking and storage of private boat(s), camper trailer(s), or other recreational vehicle(s), in conformance with the regulations for the "Parking, Storage or Use of Major Recreational Equipment and Vehicles."
8. Signs, in conformance with *Chapter 7 – Sign Regulations* of this Land Development Code
9. Private domestic greenhouses.
10. Private stables for the keeping of grazing animals, provided:
 - a. Significant ground accumulations of manure shall be collected and properly disposed of so as not to create offensive odors, fly breeding, or in any way become a health hazard or nuisance to humans or animals;
 - b. Fences for pens, corrals or similar enclosures shall be of sufficient height and strength to properly retain the grazing animal(s) on the premises; and
 - c. The minimum space area of the lot upon which such grazing animal(s) may be kept, including pens, corrals, and stables, shall not be less than 15,000 square feet per each grazing animal over five hundred (500) pounds and not less than five thousand (5,000) square feet for any other grazing animal.

~~F. Special Exception Uses – In order to allow for certain uses which, because of the unique or unusual character thereof, cannot be unconditionally permitted in this district, yet would or could be an appropriate or compatible use under certain controlled circumstances and locations, the "Zoning Board of Adjustment" may, after public hearing thereon, authorize and grant the issuance of a "Special Exception" for such special exception uses as allowed in Section 3.24 - "Schedule of Permitted Principal Uses." The issuance of such "exception" by the "Board" shall be contingent upon reasonable and appropriate conditions and safeguards, including the length of time thereof, when appropriate, so as to properly protect any adjacent property, use or neighborhood character, as well as insure the appropriate conduct of the special exception use of the land or buildings granted.~~

~~GE. Prohibited Uses – Any use not expressly authorized and permitted herein is expressly prohibited in this district, unless otherwise allowed in conformance with the provisions of the regulation for the "Classification of New and Unlisted Uses."~~

~~HG. Density, Area, Yard, Height, and Lot Coverage Requirements – The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes (front, side and rear), maximum building height (stories and feet), and maximum percent of lot coverage by buildings, as pertains to this district, shall conform with the provisions of Section 3.24 - *Schedule of District Regulations* and other applicable provisions of Section 3.28 - *Supplementary District Regulations*.~~

- H. Off-street Parking and Loading Requirements** – Off-street parking and loading requirements pertaining to uses allowed in this district shall conform ~~with~~to the provisions for "Off-Street Parking Requirements," and "Off-Street Loading Requirements."
- J. Land Plan and Supporting Documents Required** – Any application for a change in zoning district boundaries on the Official Zoning Map affecting this district shall be accompanied by a land plan and supporting document therefore, in conformance with the provisions of *Chapter 1 – General Provisions* of this Land Development Code.

Section 3.11 ~~R-30~~ Single Family Residential District

- A. **~~R-30~~ Single Family Residential District** – The regulations set forth in this Section, or as set forth elsewhere in this Chapter when referred to in this Section, are the regulations of the ~~R-30~~ Single-Family Residential District.
- B. **Purpose and Intent** – The purpose and intent of the ~~R-30~~ Single-Family Residential District is to provide for compatible land, building, and structural uses primarily oriented to low density residential purposes, open space uses, and selected community facility uses. The locational characteristics of this district are generally found in the inner urbanized developed areas of the City. Land uses in this district are normally connected to an approved public or private sewage collection and treatment system, rather than individual septic tanks and subsurface drainage fields. Moderately low density detached single-family residential dwellings and development, along with the aforescribed uses, comprise the principal elements of the district.
- C. **Use Regulation** – Land, buildings and structures may be used only for the purposes allowed in this Section.
- D. **Permitted Principal Uses** – The permitted principal uses allowed in this district are as designated in *Section 3.24 - Schedule of Permitted Principal Uses*.
- E. **Permitted Accessory Uses** – Subject to the provisions of *Section 3.28 - Supplementary District Regulations*, accessory buildings, structures, and uses customarily incidental to the "Permitted Principal Uses" are allowed, including but not limited to the following:
1. Private residential garages, carports and related storage buildings and greenhouses accessory to permitted residential uses.
 2. Private swimming pools, wading pools, and game courts (lighted or unlighted), provided that: if lighted, the lighting shall be so directed and shielded so as not to shine directly on any adjacent residential property; and further provided that any such pool or game court is for the private use of the site occupants and their guests, and not operated as a business. ~~All "at-grade" swimming pools with a water depth greater than (24") inches and "above grade" swimming pools having a water depth (24") inches or more, except for inflatable portable tot pools, shall be enclosed by a fence and gate not less than (4') feet nor more than (8') feet in height, and of such material and design to discourage unauthorized entry to the facility. Such pool(s) may be located in a required side or rear yard, but not within a required front yard forward of the primary dwelling on the lot,~~ and shall not be located closer than (5') feet to any side or rear property line.
 3. Lanais, gazebos, garden and patio shelters, and children's play-houses, provided the privacy enjoyed by adjacent residential dwellings is not impaired.
 4. Noncommercial radio and television receiving antennae and noncommercial radio transmitting antennae limited in height to sixty (60') feet (measured from the ground line in front of the dwelling or use facing a public street), and further provided no electrical, radio or television signal interference is created which would adversely affect such audio or visual signals to nearby dwellings and other permitted uses;
 5. Required off-street parking and loading spaces.

Commented [EW11]: Pool barrier requirements are already codified in the adopted building codes

Commented [EW12]: Recommend that the pool cannot extend beyond the front of the existing dwelling on the lot

6. Home occupation uses as defined in *Chapter 2 – Definitions* of this Land Development Code.
7. Parking and storage of private boats(s), camper trailer(s), or other recreational vehicle(s), in conformance with the regulations for the "Parking, Storage or Use of Major Recreational Equipment and Vehicles."
8. Signs, in conformance with these regulations and other applicable City codes and ordinances.
9. Private domestic greenhouses.

~~F. Special Exception Uses – In order to allow for certain uses which, because of the unique or unusual character thereof, cannot be unconditionally permitted in this district, yet would or could be an appropriate or compatible use under certain controlled circumstances and locations, the "Zoning Board of Adjustment" may, after public hearing thereon, authorize and grant the issuance of a "Special Exception" for such as allowed in Section 2.24 – "Schedule of Permitted Principal Uses." The issuance of such "special exception uses" by the "Board" shall be contingent upon reasonable and appropriate conditions and safeguards, including the length of time thereof, when appropriate, so as to properly protect any adjacent property, use, or neighborhood character, as well as insure the appropriate conduct of the special exception use of the land or buildings granted.~~

~~GE. Prohibited Uses – Any use not expressly authorized and permitted herein is expressly prohibited in this district, unless otherwise allowed in conformance with the provisions for the "Classification of New and Unlisted Uses."~~

~~HG. Density, Area, Yard, Height, and Lot Coverage Requirement – The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes, (front, side and rear), maximum building height (stories and feet), and maximum percent of lot coverage by buildings, as pertains to this district, shall conform with the provisions of Section 3.24 - "Schedule of District Regulations" and other applicable provisions of Section 3.28 - "Supplementary District Regulations."~~

~~JH. Off-street Parking and Loading Requirements – Off-street parking and loading requirements pertaining to uses allowed in this district shall conform with the provisions of the "Off-Street Parking Requirements" and "Off-Street Loading Requirements."~~

~~JL. Land Plan and Supporting Documents Required – Any application for a change in zoning district boundaries on the "Official Zoning Map" affecting this district shall be accompanied by a land plan and supporting document therefore, in conformance with the provisions of Chapter 1 – ~~General~~ General Provisions of this Land Development Code regarding "Petition for Zoning District Change: Land Plan and Supporting Documents Required."~~

Section 3.12 ~~R-20~~ Single Family Residential District

- A. R-20 – Single Family Residential District – The regulations set forth in this Section, or as set forth elsewhere in this Chapter when referred to in this Section, are the regulations of the ~~R-20~~ Single-Family Residential District.
- B. Purpose and Intent – The purpose and intent of the ~~R-20~~ Single-Family Residential District is to provide for compatible land, building, and structural uses primarily oriented to medium-low density residential purposes, open space uses, and selected community facility uses. The locational characteristics of this district are generally found in the inner urbanized developed areas of the city, adjacent to shopping facilities. Land uses in this district are normally connected to an approved public or private sewage collection and treatment system, rather than individual septic tanks and sub-surface drainage fields. Moderately low density detached single-family residential dwellings as exist in the inner area of the city comprise the principal elements of the district. It is further the intent to use this district and its regulations to accommodate and recognize the existence of small lot conventional single-family development, which presently exists in the city.

- C. Use Regulations – Land, buildings and structures may be used only for the purposes allowed in this Section.
- D. Permitted Principal Uses – The permitted principal uses allowed in this district are as designated in *Section 3.24 - Schedule of Permitted Principal Uses*.
- E. Permitted Accessory Uses – Subject to the provisions of *Section 3.28 - Supplementary District Regulations*, accessory buildings, structures, and uses customarily incidental to the “permitted principal uses” are allowed, including but not limited to the following:
1. Private residential garages, carports and related storage buildings and greenhouses accessory to permitted residential uses.
 2. Private swimming pools, wading pools, and game courts (lighted or unlighted), provided that: if lighted, the lighting shall be so directed and shielded so as not to shine directly on any adjacent residential property; and further provided that any such pool or game court is for the private use of the site occupants and their guests, and not operated as a business. ~~All “at-grade” swimming pools with a water depth greater than twenty-four (24”) inches and “above grade” swimming pools having a water depth twenty-four (24”) inches or more, except for inflatable portable tot pools, shall be enclosed by a fence and gate not less than four (4’) feet nor more than eight (8’) feet in height, and of such material and design to discourage unauthorized entry to the facility. Such pool(s) may be located in a required side or rear yard, but not within a required front yard forward of the primary dwelling on the lot, and shall not be located closer than five (5’) feet to any side or rear property line.~~
 3. Lanais, gazebos, garden and patio shelters, and children’s play-houses, provided the privacy enjoyed by adjacent residential dwellings is not impaired.
 4. Noncommercial radio and television receiving antennae and noncommercial radio transmitting antennae limited in height to sixty (60) feet (measured from the ground line in front of the dwelling or use facing a public street), and further provided no electrical, radio or television signal interference is created which would adversely affect such audio or visual signals to nearby dwellings and other permitted uses.
 5. Required off-street parking and loading spaces.
 6. Home occupation uses as defined in *Chapter 2 – Definitions* of this Land Development Code.
 7. Parking and storage of private boat(s), camper trailer(s), or other recreational vehicle(s), in conformance with the regulations for “Parking, Storage or Use of Major Recreational Equipment and Vehicles.”
 8. Signs, in conformance with *Chapter 7 – Sign Regulations* of this Land Development Code.
 9. Private domestic greenhouses.
- ~~F. Special Exception Uses – In order to allow for certain uses which, because of the unique or unusual character thereof, cannot be unconditionally permitted in this district, yet would or could be an appropriate or compatible use under certain controlled circumstances and locations, the “Zoning Board of Adjustment” may, after public hearing thereon, authorize and grant the issuance of a “Special Exception” for such special exception uses as allowed in *Section 3.24 - “Schedule of Permitted Principal Uses.”* The issuance of such “exception” by the “Board” shall be contingent upon reasonable and appropriate conditions and safeguards, including the length of time thereof, when appropriate, so as to properly protect any adjacent property, use or neighborhood character, as well as insure the appropriate conduct of the special exception use of the land or buildings granted.~~
- F. R-10 Single-Family Residential District Historic Designation All lots within the City of Colleyville with the R-10 designation shall conform to the standards of the R-20 zoning district.

Commented [EW13]: Pool barrier requirements are already codified in the adopted building codes

Commented [EW14]: Recommend that the pool cannot extend beyond the front of the existing dwelling on the lot

Commented [BB15]: This will address the existing R-10 properties

- G. Prohibited Uses – Any use not expressly authorized and permitted herein is expressly prohibited in this district, unless otherwise allowed in conformance with the provisions for the “Classification of New and Unlisted Uses.”
- H. Density, Area, Yard, Height, and Lot Coverage Requirements – The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes (front, side and rear), maximum building height (stories and feet), and maximum percent of lot coverage by buildings, as pertains to this district, shall conform with the provisions of *Section 3.24 - “Schedule of District Regulations”* and other applicable provisions of *Section 3.28 - “Supplementary District Regulations.”*
- I. Off-street Parking and Loading Requirements – Off-street parking and loading requirements pertaining to uses allowed in this district shall conform ~~with~~to the provisions for “Off-Street Parking Requirements,” and “Off-Street Loading Requirements.”
- J. Land Plan and Supporting Documents Required – Any application for a change in zoning district boundaries on the Official Zoning Map affecting this district shall be accompanied by a land plan and supporting document therefore, in conformance with the provisions contained in *Chapter 1 – General Provisions* of this Land Development Code.

Section 3.13 ~~R-15~~ – Single Family Residential District

- A. R-15 – Single Family Residential District – The regulations set forth in this Section, or as set forth elsewhere in this Chapter when referred to in this Section, are the regulations of the ~~R-15~~ – Single-Family Residential District.
- B. Purpose and Intent – The purpose and intent of the ~~R-15~~ – Single-Family Residential District is ~~to~~ provide for compatible land, building, and structural uses primarily oriented to medium-low density residential purposes, open space uses, and selected community facility uses. The locational characteristics of this district are generally found in the inner urbanized developed core of the city and/or adjacent to shopping facilities. Land uses in this district are normally connected to an approved public or private sewage collection and treatment system, rather than individual septic tanks and sub-surface drainage fields. Medium low density detached single-family residential buildings as exist in the inner core area of the city on typically small lots, along with the aforescribed uses, comprise the principal elements of the district. It is further the intent to use this district and its regulations to accommodate and recognize the existence of small lot conventional single-family development, which presently exists in the city, but not to create new-zoned areas for such conventional small lots.
- C. Use Regulations – Land, buildings and structures may be used only for the purposes allowed in this Section.
- D. Permitted Principal Uses – The permitted principal uses allowed in this district are as designated in *Section 3.24 - Schedule of Permitted Principal Uses*.
- E. Permitted Accessory Uses – Subject to the provisions of *Section 2.28 - Supplementary District Regulations*, accessory buildings, structures, and uses customarily incidental to the “permitted principal uses” are allowed, including but not limited to the following:
 - 1. Private residential garages, carports and related storage buildings and greenhouses accessory to permitted residential uses.
 - 2. Private swimming pools, wading pools, and game courts (lighted or unlighted), provided that: if lighted, the lighting shall be so directed and shielded so as not to shine directly on any adjacent residential property; and further provided that any such pool or game court is for the private use of the site occupants and their guests, and not operated as a business. ~~All “at-grade” swimming pools with a water depth greater than twenty-four (24”) inches and “above-grade” swimming pools having a water depth twenty-four (24”) inches or more, except for inflatable portable tot pools, shall be enclosed by a fence and gate not less than four (4) feet nor more than eight (8) feet in height, and of~~

~~such material and design to discourage unauthorized entry to the facility.~~ Such pool (s) may be located in a required side or rear yard, but not within a required front yard forward of the primary dwelling on the lot, and shall not be located closer than five (5') feet to any side or rear property line.

Commented [EW16]: Pool barrier requirements are already codified in the adopted building codes

Commented [EW17]: Recommend that the pool cannot extend beyond the front of the existing dwelling on the lot

3. Lanais, gazebos, garden and patio shelters, and children's play-houses, provided the privacy enjoyed by adjacent residential dwellings is not impaired.
4. Noncommercial radio and television receiving antennae and noncommercial radio transmitting antennae limited in height to sixty (60') feet (measured from the ground line in front of the dwelling or use facing a public street), and further provided no electrical, radio or television signal interference is created which would adversely affect such audio or visual signals to nearby dwellings and other permitted uses;
5. Required off-street parking and loading spaces.
6. Home occupation uses, as defined in *Chapter 2 – Definitions* of this Land Development Code.
7. Parking and storage of private boat(s), camper trailer(s), or other recreational vehicle(s), in conformance with the regulations for the "Parking, Storage or Use of Major Recreational Equipment and Vehicles."
8. Signs, in conformance with *Chapter 7 – Sign Regulations* of this Land Development Code.
9. Private domestic greenhouses.

~~F. R-10 Single Family Residential District Historic Designation: All lots within the City of Colleyville with the R-10 designation shall conform to the standards of the R-15 zoning district.~~

Commented [BB18]: This will address the existing R-10 properties. {At the worksession this was moved to the R-20 district}

~~G. Special Exception Uses – In order to allow for certain uses which, because of the unique or unusual character thereof, cannot be unconditionally permitted in this district, yet would or could be an appropriate or compatible use under certain controlled circumstances and locations, the "Zoning Board of Adjustment" may, after public hearing thereon, authorize and grant the issuance of a "Special Exception" for such special exception uses as allowed in Section 3.24 – "Schedule of Permitted Principal Uses." The issuance of such "exception" by the "Board" shall be contingent upon reasonable and appropriate conditions and safeguards, including the length of time thereof, when appropriate, so as to properly protect any adjacent property, use or neighborhood character, as well as insure the appropriate conduct of the special exception use of the land or buildings granted.~~

- G. Prohibited Uses – Any use not expressly authorized and permitted herein is expressly prohibited in this district, unless otherwise allowed in conformance with the regulations for the "Classification of New and Unlisted Uses."
- H. Density, Area, Yard, Height, and Lot Coverage Requirements – The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes (front, side and rear), maximum building height (stories and feet), and maximum percent of lot coverage by buildings, as pertains to this district, shall conform with the provisions of Section 3.24 "Schedule of District Regulations" and other applicable provisions of Section 3.28 - "Supplementary District Regulations."
- I. Off-street Parking and Loading Requirements – Off-street parking and loading requirements pertaining to uses allowed in this district shall conform withto the provisions for "Off-Street Parking Requirements," and "Off-Street Loading Requirements."
- J. Land Plan and Supporting Documents Required – Any application for a change in zoning district boundaries on the Official Zoning Map affecting this district shall be accompanied by a land plan and supporting document therefore, in conformance with the provisions of *Chapter 1 – General Provisions* of this Land Development Code.

Section 3.14 RD – Two-Family Residential District

- A. ~~RD – Two-Family Residential District~~ – The regulations set forth in this Section, or as set forth elsewhere in this Chapter when referred to in this Section, are the regulations of the RD – Two-Family Residential District.
- B. Purpose and Intent – The purpose and intent of the RD – Two-Family Residential District is to provide for compatible land, building, and structure uses primarily oriented to medium-low density two-family residential purposes, open space usage, and selected community facility uses. The locational characteristics of this district are generally, but not always, found in the inner urbanized developed core of the city around shopping centers and neighborhood service facilities, plus as a transitional element between low density, single family districts and higher density multiple family districts. Land uses in this district are normally connected to an approved public or private sewage collection and treatment system, rather than individual septic tanks and sub-surface drainage fields. Dwellings containing two-family dwelling units, plus the aforescribed uses, comprise the principal elements of the district. ~~The intent of this district is not to allow single-family detached dwellings.~~
- C. Use Regulations – Land, buildings and structures may be used only for the purposes allowed in this Section.
- D. Permitted Principal Uses – The permitted principal uses allowed in this district are as designated in *Section 3.24 - Schedule of Permitted Principal Uses*.
- E. Permitted Accessory Uses – Subject to the provisions of *Section 3.28 - Supplementary District Regulations*, accessory buildings, structures, and uses customarily incidental to the “permitted principal uses” are allowed, including but not limited to the following:
1. Private residential garages, carports and related storage buildings and greenhouses accessory to permitted residential uses.
 2. Private swimming pools, wading pools, and game courts (lighted or unlighted), provided that: if lighted, the lighting shall be so directed and shielded so as not to shine directly on any adjacent residential property; and further provided that any such pool or game court is for the private use of the site occupants and their guests, and not operated as a business. ~~All “at-grade” swimming pools with a water depth greater than twenty-four (24”) inches and “above-grade” swimming pools having a water depth twenty-four (24”) inches or more, except for inflatable portable tot pools, shall be enclosed by a fence and gate not less than four (4’) feet nor more than eight (8’) feet in height, and of such material and design to discourage unauthorized entry to the facility. Such pool (s) may be located in a required side or rear yard, but not within a required front yard.~~ forward of the primary dwelling on the lot. and shall not be located closer than five (5’) feet to any side or rear property line.
 3. Lanais, gazebos, garden and patio shelters, and children’s play-houses, provided the privacy enjoyed by adjacent residential dwellings is not impaired.
 4. Noncommercial radio and television receiving antennae and noncommercial radio transmitting antennae limited in height to sixty (60’) feet (measured from the ground line in front of the dwelling or use facing a public street), and further provided no electrical, radio or television signal interference is created which would adversely affect such audio or visual signals to nearby dwellings and other permitted uses;
 5. Required off-street parking and loading spaces.
 6. Home occupation uses, as defined in *Chapter 2 – Definitions* of this Land Development Code.
 7. Parking and storage of private boat(s), camper trailer(s), or other recreational vehicle(s), in conformance with the requirements for “Parking, Storage or Use of Major Recreational Equipment and Vehicles.”
 8. Signs, in conformance with *Chapter 7 – Sign Regulations* of this Land Development Code.
 9. Private domestic greenhouses.

Commented [BB19]: The vast majority of properties zoned RD are developed with single-family residences

Commented [EW20]:

Commented [EW21R20]: Pool barrier requirements are already codified in the adopted building codes

Commented [EW22]: Recommend that the pool cannot extend beyond the front of the existing dwelling on the lot

~~F. Special-Exception Uses – In order to allow for certain uses which, because of the unique or unusual character thereof, can not be unconditionally permitted in this district, yet would or could be an appropriate or compatible use under certain controlled circumstances and locations, the “Zoning Board of Adjustment” may, after public hearing thereon, authorize and grant the issuance of a “Special Exception” for such special exception uses as allowed in Section 2.24 – “Schedule of Permitted Principal Uses.” The issuance of such “exception” by the “Board” shall be contingent upon reasonable and appropriate conditions and safeguards, including the length of time thereof, when appropriate, so as to properly protect any adjacent property, use or neighborhood character, as well as insure the appropriate conduct of the special exception use of the land or buildings granted.~~

F. Single-Family Residential Uses – When a property with RD zoning is developed with a single-family residential use, the property shall conform to the standards of the R-20 Single Family Residential zoning district.

Commented [BB23]: Added per Council direction to address single-family residential development

G. Prohibited Uses – Any use not expressly authorized and permitted herein is expressly prohibited in this district, unless otherwise allowed in conformance with the provisions for the “Classification of New and Unlisted Uses.”

H. Density, Area, Yard, Height, and Lot Coverage Requirements – The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes (front, side and rear), maximum building height (stories and feet), and maximum percent of lot coverage by buildings, as pertains to this district, shall conform with the provisions of Section 3.24 - “Schedule of District Regulations” and other applicable provisions of Section 3.28 - “Supplementary District Regulations.”

I. Off-street Parking and Loading Requirements – Off-street parking and loading requirements pertaining to uses allowed in this district shall conform with the provisions for the “Off-Street Parking Requirements,” and “Off-Street Loading Requirements.”

J. Land Plan and Supporting Documents Required – Any application for a change in zoning district boundaries on the Official Zoning Map affecting this district shall be accompanied by a land plan and supporting document therefore, in conformance with the provisions of Chapter 1 – General Provisions of this Land Development Code.

Section 3.15 RMF – ~~Multi-family~~ Family Residential District

A. RMF – ~~Multi-family~~ Family Residential District – The regulations set forth in this Section, or as set forth elsewhere in this Chapter when referred to in this Section, are the regulations of the RMF – ~~Multi-family~~ Family Residential District.

B. Purpose and Intent – The purpose and intent of the RMF – ~~Multi-family~~ Family Residential District is to provide for compatible land, building, and structure uses primarily oriented to medium density multi-family residential purposes, open space uses, select community facility uses, and under special conditions, single-family uses. The locational characteristics of this district are generally, but not always, found in the inner urbanized developed core of the city around shopping centers and neighborhood service facilities, near employment centers, at the intersections of major and secondary thoroughfare streets, and as a transitional element between lower density and more intense nonresidential land uses. Land uses in this district are normally connected to an approved public or private sewage collection and treatment system, rather than individual septic tanks and sub-surface drainage fields. Garden apartment buildings and condominiums, and low-density townhouses, plus the aforescribed uses, comprise the principal elements of the district.

C. Use Regulations – Land, buildings and structures may be used only for the purposes allowed in this Section.

D. Permitted Principal Uses – The permitted principal uses allowed in this district are as designated in Section 3.24 - Schedule of Permitted Principal Uses.

E. Permitted Accessory Uses – Subject to the provisions of Section 3.28 - Supplementary District

Regulations, accessory buildings, structures, and uses customarily incidental to the "permitted principal uses" are allowed, including but not limited to the following:

1. Private residential garages, carports and related storage buildings and greenhouses accessory to permitted residential uses.
2. Private swimming pools, wading pools, and game courts (lighted or unlighted), provided that: if lighted, the lighting shall be so directed and shielded so as not to shine directly on any adjacent residential property; and further provided that any such pool or game court is for the private use of the site occupants and their guests, and not operated as a business. ~~All "at-grade" swimming pools with a water depth greater than twenty-four (24") inches and "above-grade" swimming pools having a water depth twenty-four (24") inches or more, except for inflatable portable tot pools, shall be enclosed by a fence and gate not less than four (4') feet nor more than eight (8') feet in height, and of such material and design to discourage unauthorized entry to the facility. Such pool-(s) may be located in a required side or rear yard, but not within a required front yard forward of the primary dwelling on the lot, and shall not be located closer than five (5') feet to any side or rear property line.~~
3. Lanais, gazebos, garden and patio shelters, and children's play-houses, provided the privacy enjoyed by adjacent residential dwellings is not impaired.
4. Noncommercial radio and television receiving antennae and noncommercial radio transmitting antennae limited in height to (60) feet (measured from the ground line in front of the dwelling or use facing a public street), and further provided no electrical, radio or television signal interference is created which would adversely affect such audio or visual signals to nearby dwellings and other permitted uses;
5. Required off-street parking and loading spaces.
6. Parking and storage of private boat(s), camper trailer(s), or other recreational vehicle(s), in conformance with the regulations for "Parking, Storage or Use of Major Recreational Equipment and Vehicles."
7. Signs, in conformance with *Chapter 7 – Sign Regulations* of this Land Development Code.
8. Private domestic greenhouses.
9. Outdoor storage areas or storage buildings for boats, trailers, and other recreational equipment, automobiles, or household effects - for the exclusive use of the site occupants, provided these accessory uses are screened in general conformity with the requirements for "Fences, Free Standing Walls, and Screening Materials."
10. An office area not containing more than (2) percent of the gross floor area of the main building in a multifamily development used exclusively for administration purposes for said development only.
11. Coin-operated vending machines in a principal or accessory building for newspapers, candy, tobacco, soft drinks, ice and similar services for use by the site occupants and guests of permitted uses in this district.
12. Social and recreation buildings for use by the site occupants and guests of permitted uses in this district.
13. Group dining quarters within a principal building.

Commented [EW24]: Pool barrier requirements are already codified in the adopted building codes

Commented [EW25]: Recommend that the pool cannot extend beyond the front of the existing dwelling on the lot

~~F. **Special Exception Uses** — In order to allow for certain uses which, because of the unique or unusual character thereof, cannot be unconditionally permitted in this district, yet would or could be an appropriate or compatible use under certain controlled circumstances and locations, the "Zoning Board of Adjustment" may, after public hearing thereon, authorize and grant the issuance of a "Special Exception" for such special exception uses as allowed in Section 3.24 – "Schedule of Permitted Principal Uses." The issuance of such "exception" by the "Board" shall be contingent upon reasonable and appropriate conditions and~~

~~safeguards, including the length of time thereof, when appropriate, so as to properly protect any adjacent property, use or neighborhood character, as well as insure the appropriate conduct of the special exception use of the land or buildings granted.~~

F. Single-Family Residential Uses – When a property with MF zoning is developed with a single-family residential use, the property shall conform to the standards of the R-20 Single Family Residential zoning district.

Commented [BB26]: Added per Council direction to address single-family residential development

G. Prohibited Uses – Any use not expressly authorized and permitted herein is expressly prohibited in this district, unless otherwise allowed in conformance with the provisions for the - "Classification of New and Unlisted Uses."

H. Density, Area, Yard, Height, and Lot Coverage Requirements – The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes (front, side and rear), maximum building height (stories and feet), and maximum percent of lot coverage by buildings, as pertains to this district, shall conform with the provisions of Section 3.24 - "Schedule of District Regulations" and other applicable provisions of Section 3.28 - "Supplementary District Regulations."

I. Off-street Parking and Loading Requirements – Off-street parking and loading requirements pertaining to uses allowed in this district shall conform ~~with~~ the provisions of the "Off-Street Parking Requirements," and ~~and~~ "Off-Street Loading Requirements."

J. Site Plan and Supporting Documents Required – Any application for a change in zoning district boundaries on the Official Zoning Map affecting this district, or for a "Special Use Permit" to be issued in this district, shall be accompanied by a site plan and supporting document therefore, unless otherwise waived by the City Planning and Zoning Commission or Zoning Board of Adjustment, in conformance with the provisions of Chapter 1 – General Provisions of this Land Development Code.

K. Open Space Required – Unless waived by the Planning and Zoning Commission, the RMF ~~Multi-family~~ Family Residential District shall conform to the Open Space Requirements as set forth in the provision for "Open Space Requirements," "Maximum Residential Density Permitted; and Density Increase Bonuses," and "Guarantee of Common Open Space."

L. Planned Single-Family Use in RMF Zoning Districts by Special Use Permit

Commented [BB27]: Not needed; single-family residential development to be allowed by right

~~1. Purpose and Intent – the purpose and intent of the grant of a special use permit for single family use in a R-MF Zoning District is to provide for the use in said zoning district of land, buildings and structures, for an appropriate combination of residential uses, accessory uses and special uses and to accommodate uses of land in multifamily zoning districts for single family purposes when said use is pursuant to a plan designed to encourage the most appropriate and aesthetic uses of land having due regard for the special arrangement of buildings, land uses, open spaces, circulation transportation patterns and consideration of special site and topographical features, which are controlled and the actual development becomes incorporated into the grant of the special use permit.~~

~~2. Allowable Uses – land, buildings or structures within an area zoned R-MF on which a special use has been granted may be used for any appropriate combination of principal uses, accessory uses, and special uses as permitted in residential zoning districts. However, the Planning and Zoning Commission and the City Council reserve the right to prohibit and exclude certain uses within any planned district, when, in their opinion, the inclusion of certain uses would or could cause or create an adverse impact within or to an adjacent development, or be an otherwise inappropriate use within the development or detrimental to persons or property within the adjacent districts thereto.~~

~~3. Permitted Uses – the land, buildings and structures within an RMF Zoning District upon which a special use permit has been granted may be used in any single purpose or mixed type of residential dwellings, including but not limited to the attached single family dwelling on conventional subdivision type lots, attached dwellings such as duplexes and townhouses, "cluster housing", patio homes, atrium homes, zero-lot line homes, (with a maximum of one side wall of the dwelling in common with a side property line). Additionally, accessory uses customary and incidental and secondary to any allowed foregoing use are allowed in the district.~~

- ~~4. Prohibited Uses – uses not expressly permitted in residential zoning districts of this Chapter are expressly prohibited in any R-MF District with special use permit unless otherwise authorized and approved by the City Planning and Zoning Commission and the City Council.~~
- ~~5. Minimum Lot Size Requirements; Minimum Yard Requirements; Maximum Building Heights; and Maximum Lot Coverage – the maximum height, lot width, lot depth, floor area ratio and lot area, and the minimum off street parking and loading requirements for a special use permit in RMF Zoning District shall comply with or be more restrictive than the standard established in RMF Zoning Districts. The Planning and Zoning Commission and City Council may alter such requirements when in their opinion the proposed development densities and land use arrangements shown on the site plan would result in the more innovative siting of buildings and facilities which would improve the usefulness of yard areas and the relationship to traffic circulation, admittance of light and air to buildings, fire protection and useable open space.~~
- ~~6. Off-Street Parking and Loading Requirements – off street parking and loading requirements pertaining to uses allowed in this district shall conform with to the provisions of the “Off-Street Parking Requirements,” and “Off-Street Loading Requirements.”~~
- ~~7. Site Plan and Supporting Documents Required – any application for a change in zoning district boundaries on the “official zoning map” to establish a special use permit in an RMF Zoning District shall be accompanied by a site plan and supporting documents therefore, in conformance with the provisions of Chapter 1 – General Provisions of this Land Development Code.~~
- ~~8. Nature of Amending Ordinance Approving a Special Use Permit in RMF Zoning Districts – in approving any request for a special use permit in RMF Zoning Districts, the City Council shall, on the recommendation of the Planning and Zoning Commission, incorporate in the amending ordinance reference to the approved site plan, supporting documents and other conditions or restrictions imposed on the project by the commission including those of Council, and said information, conditions and restrictions shall constitute controls and limitations upon the development and use of the property. The approval and adoption of the amending ordinance by the Council shall result in the appropriate change to the “Official Zoning Map.” However, the zoning change does not constitute recording of a “final plat,” nor authorize the issuance of building permits and “certificates of occupancy,” until such time as a “final plat,” and supporting legal and construction documents have been prepared and submitted for City Council approval on all or part of the proposed development, in conformance with the requirements and procedures of the City Subdivision Regulation Ordinance and the requested zoning change.~~
- ~~9. Requirements for “Final Plat,” Submission Following Grant of Special Use Permit – within a maximum of six (6) consecutive months, following the approval of the special use permit in the RMF Zoning District by the City Council, the applicant shall file with the City Planning and Zoning Commission a “final plat” and necessary supporting documents of all or a part of the site in conformance with the City’s Subdivision Regulations Ordinance. In its discretion and for good cause, the Planning Commission may extend for six (6) months the period of filing for the “final plat,” upon written request by the applicant. Should the applicant fail to submit a “final plat” within the six-month period following the City Council approval of the Special Use Permit, or by the termination date of the filing of the extension granted by the Planning and Zoning Commission, the Commission may initiate proceedings to amend the official zoning map by removing all or part of the Special Use Permit in the RMF Zoning District from the official zoning map. The City Council may uphold the Commission’s recommendation and proceed to advertise and hold public hearings thereon, or may elect to continue the special use permit in the R-MF Zoning District.~~
- ~~10. Compliance with Development Schedule – an application for a planned unit development district shall be accompanied by a development schedule indicating the appropriate date on which construction is expected to begin and the rate of anticipated development to completion. The development schedule, if adopted and approved by the City Council, shall become a part of the development plan and shall be adhered to by the owner, developer and his successors in interest. The development schedule shall be reviewed annually by the City Manager or his designee and he shall report to the Planning and Zoning Commission the actual development accomplished as compared with the~~

~~development schedule. The Planning and Zoning Commission may, if in its opinion the owner or owners of property are failing or have failed to meet the approved schedule, initiate proceedings to amend the official Zoning Map by removing all or part of the special use permit in the RMF Zoning District from the official zoning map. Upon the recommendation of the Planning and Zoning Commission and for good cause shown by the owner and developer, the City Council may also extend the development schedule or adopt such new development schedule as may be indicated by the facts and conditions of the case.~~

Section 3.16 MH – Mobile Home Residential District

- A. MH – Mobile Home Residential District – The regulations set forth in this Section, or as set forth elsewhere in this Chapter when referred to in this Section, are the regulations of the MH – Mobile Home Residential District.
- B. Purpose and Intent – The purpose and intent of the MH – Mobile Home Residential District is to provide for the orderly, safe, and healthful development of mobile home parks and mobile home subdivisions. Since mobile homes are recognized as a special form of housing, the intent of this district is to provide appropriate standards as to compatible land uses, density, minimum mobile home park or subdivision size, and other relevant requirements pertaining to the design, construction, alterations, and extensions of mobile home parks and mobile home subdivisions. Land uses in this district are normally connected to an approved public or private sewage collection and treatment system, rather than individual septic tanks and sub-surface drainage fields.
- C. Use Regulation – Every mobile home park or mobile home subdivision hereafter constructed, enlarged, altered, extended, or created shall comply with all regulations set forth under this Section.
- D. Permitted Principal Uses – The permitted principal uses allowed in this district are as designated in *Section 3.24 - Schedule of Permitted Principal Uses*.
- E. Permitted Accessory Uses – Subject to the provisions of *Section 3.28 - Supplementary District Regulations*, accessory buildings, structures, and uses customarily incidental to the “permitted principal uses” are allowed, including but not limited to the following:
1. Private residential garages, carports and related storage buildings and greenhouses accessory to permitted residential uses.
 2. Private swimming pools, wading pools, and game courts (lighted or unlighted), provided that: if lighted, the lighting shall be so directed and shielded so as not to shine directly on any adjacent residential property; and further provided that any such pool or game court is for the private use of the site occupants and their guests, and not operated as a business. ~~All “at-grade” swimming pools with a water depth greater than twenty-four (24”) inches and “above grade” swimming pools having a water depth twenty-four (24”) inches or more, except for inflatable portable tot pools, shall be enclosed by a fence and gate not less than four (4’) feet nor more than eight (8’) feet in height, and of such material and design to discourage unauthorized entry to the facility. Such pool (s) may be located in a required side or rear yard, but not within a required front yard~~ **forward of the primary dwelling on the lot**, and shall not be located closer than five (5’) feet to any side or rear property line.
 3. Lanais, gazebos, garden and patio shelters, and children's play-houses, provided the privacy enjoyed by adjacent residential dwellings is not impaired.
 4. Non-commercial radio and television receiving antennae and non-commercial radio transmitting antennae limited in height to sixty (60’) feet (measured from the ground line in front of the dwelling or use facing a public street), and further provided no electrical, radio or television signal interference is created which would adversely affect such audio or visual signals to nearby dwellings and other permitted uses;
 5. Required off-street parking and loading spaces.
 6. Home occupation uses, as defined by *Chapter 2 – Definitions* of this Land Development Code.

Commented [EW28]: Pool barrier requirements are already codified in the adopted building codes

Commented [EW29]: Recommend that the pool cannot extend beyond the front of the existing dwelling on the lot

7. Parking and storage of private boat(s), camper trailer(s), or other recreational vehicle(s), in conformance with the requirements for the "Parking, Storage or Use of Major Recreational Equipment and Vehicles."
8. Signs, in conformance with *Chapter 7 – Sign Regulations* of this Land Development Code.
9. Private domestic greenhouses.
10. Pool cabanas, laundry buildings, restroom/shower buildings, park office building, and other similar uses accessory to a Mobile Home Park or Mobile Home Subdivision.

~~F. Special Exception Uses – In order to allow for certain uses which, because of the unique or unusual character thereof, cannot be unconditionally permitted in this district, yet would or could be an appropriate or compatible use under certain controlled circumstances and locations, the "Zoning Board of Adjustment" may, after public hearing thereon, authorize and grant the issuance of a "Special Exception" for such special exception uses as allowed in Section 3.24 – "Schedule of Permitted Principal Uses." The issuance of such "exception" by the "Board" shall be contingent upon reasonable and appropriate conditions and safeguards, including the length of time thereof, when appropriate, so as to properly protect any adjacent property, use or neighborhood character, as well as insure the appropriate conduct of the special exception use of the land or buildings granted.~~

~~GE. Prohibited Uses – Any use not expressly authorized and permitted herein is expressly prohibited in this district, unless otherwise allowed in conformance with the provisions for the "Classification of New and Unlisted Uses."~~

~~HG. Density, Area, Yard, Height, and Lot Coverage Requirements – The requirements regulating the maximum permissible residential density, minimum lot size, minimum yard sizes (front, side and rear), maximum building height (stories and feet), and maximum percent of lot coverage by buildings, as pertains to this district, shall conform with the provisions of Section 3.24 - "Schedule of District Regulations" and other applicable provisions of Section 3.28 - "Supplementary District Regulations."~~

~~I. Off-street Parking and Loading Requirements – Off-street parking and loading requirements pertaining to uses allowed in this district shall conform with the provisions for the "Off-Street Parking Requirements" and and "Off-Street Loading Requirements."~~

~~J. Site Plan and Supporting Documents Required – Any application for a change in zoning district boundaries on the Official Zoning Map affecting this district, or for a "Special Use Permit" to be issued in this district, shall be accompanied by a site plan and supporting document therefor, unless otherwise waived by the Planning and Zoning Commission or Zoning Board of Adjustment, in conformance with the provisions of *Chapter 1 – General Provisions* of this Land Development Code.~~

Section 3.17 CPO - Professional Office Commercial District

A. Purpose – This district is designed to be compatible adjacent to or near residential areas and so as to provide office services needed by homeowners on a usual basis. The lot size maximum is small to encourage small-scale developments, and hours of operation do not permit businesses to be open at night.

B. Permitted Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

C. Special Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

D. Site Requirements

Colleyville, Texas, Land Development Code

Minimum lot size: — 7, 200 s.f.	Minimum setbacks:	Max. Building height in stories: — 2 st.
Maximum lot size: 1 acre	front: 40 ft.	Max. building height in feet: — 35 ft.
Minimum lot width at front setback line: 100 ft.	side abutting residential: 25 ft.	Max. building height adj. to residential district: see Sec. 24
Minimum lot depth: 120 ft.	side abutting non-residential: 15 ft.	
Maximum lot coverage: 40%	rear abutting residential: 25 ft.	
	rear abutting non-residential: 10 ft.	

E. Supplementary Requirements

General:	Landscaping Plans:	Off-Street Parking:
- outdoor storage is not permitted	- required as per Chapter 4	- as required by Sec. 3.29
- uses adjacent to single family uses must be screened as per Sec. 3.26	Commercial Bldg. Design Stds.	Site Plans:
- may be operated in daytime only	- each site must have a minimum of 25 points as per Chapter 65 — as required per Chapter 6	- plans must be submitted in accordance with Sec. 3.31

Section 3.18 CN - Neighborhood Commercial District

A. Purpose – This district is designed to be compatible adjacent to or near residential areas and to provide goods needed by homeowners on a usual basis. The lot size maximum is small to encourage small-scale developments, and hours of operation do not permit businesses to be open at night.

B. Permitted Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

C. Special Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

D. Site Requirements

General Requirements:	PRIMARY USE & STRUCTURE:	Accessory Use & Structure:
Minimum lot size: 10,000 s.f.	Minimum setbacks:	Permitted per Sec. 3.24 & 3.2827
Maximum lot size: 1 acre	front: 40 ft.	
Minimum lot width at front setback line: 100 ft.	side abutting residential: 25 ft.	
Minimum lot depth: 120 ft.	side abutting non-residential: 15 ft.	
Maximum lot coverage: 40%	rear abutting residential: 25 ft.	
	rear abutting non-residential: 10 ft.	
	Max. Building height in stories: 2 st.	
	Max. building height in feet: 35 ft.	
	Max. building height adj. To residential district: see Sec. 24	

E. Supplementary Requirements

General:	Landscaping Plans:	Off-Street Parking:
- outdoor storage is not permitted	- required per Chapter 4	- as required by Sec. 3.29
- uses adjacent to single family uses must be screened as per Sec. 24	Commercial Bldg. Design Stds.	Site Plans:
- may be operated in daytime only	- each site must have a minimum of 25 points per Chapter 65 — as required per Chapter 6	- plans must be submitted in accordance with Sec. 3.31

Section 3.19 CC1 - Village Retail District

A. Purpose – This district is oriented to general commercial retail goods and services as well as some office, entertainment and community facility uses. While the district is designed to encourage “clustering” stores, the site requirements allow for a smaller scale than a shopping center type development. It is likely that Village Retail centers will be built without a major anchor store and be located near but not at major street intersections.

B. Permitted Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

C. Special Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

D. Site Requirements

General Requirements:	PRIMARY USE & STRUCTURE:	Accessory Use & Structure:
Minimum lot size: 15,000 s.f.	Minimum setbacks:	Permitted per Sec. 3.24 & 3.2827
Maximum lot size: 5 acres	front: 40 ft.	
Minimum lot width at front setback line: 150 ft.	side abutting residential: 25 ft.	
Minimum lot depth: 120 ft.	side abutting non-residential: 15 ft.	
Maximum lot coverage: 50%	rear abutting residential: 25 ft.	
	rear abutting non-residential: 10 ft.	
	Max. Building height in stories: 2 st.	
	Max. building height in feet: 35 ft.	
	Max. building height adj. To residential district: see Sec. 3.24 (A&B)	

E. Supplementary Requirements

General:	Landscaping Plans:	Off-Street Parking:
- outdoor storage is not permitted	- required as per Chapter 4	- as required by Sec. 3.29
- uses adjacent to single family uses must be screened as per Sec. 24	Commercial Bldg. Design Stds.	Site Plans:
- may be operated 24 hours/day	each site must have a minimum of 30 points as defined by Chapter 56 as required per Chapter 6	- plans must be submitted in accordance with Sec. 3.31

Section 3.20 CC2 - Shopping Center District

A. Purpose – This district is oriented to general commercial goods and services as well as office, entertainment and community facility uses. By nature, shopping center tracts are large-scale usually accommodating a large anchor store and several smaller stores. These tracts are generally located at major street intersections.

B. Permitted Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

C. Special Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

D. Site Requirements

General Requirements:		<u>PRIMARY USE & STRUCTURE</u>	<u>Accessory Use & Structure</u>
Minimum lot size:	20,000 s.f.	Minimum setbacks:	Permitted per Sec. 3.24 & 3.2827
Maximum lot size:	none	front: 40 ft.*	
Minimum lot width at front setback line:	150 ft.	*see Sec. 23 (D) for special "urban Village" front yard setback.	
Minimum lot depth	120 ft.	side abutting residential: 25 ft.	
Maximum lot coverage	60%	side abutting non-residential: 15 ft.	
		rear abutting residential: 25 ft.	
		rear abutting non-residential: 10 ft.	
		Max. Building height in stories: 2 st.	
		Max. building height in feet: 35 ft.	
		Max. building height in PUD: 4 st.	
		Max. building height adj. To residential district: see Sec. 3.24 (A&B)	

E. Supplementary Requirements

General: - outdoor storage is not permitted - uses adjacent to single family uses must be screened as per Sec. 3.24 - may be operated 24 hours/day	Landscaping Plans: - required as per Chapter 4 Commercial Bldg. Design Stds. each site must have a minimum of 25 points as defined by Chapter 56 as required per Chapter 6	Off-Street Parking: - as required by Sec. 3.29 Site Plans: - plans must be submitted in accordance with Sec. 3.31
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Section 3.21 CC3 - Highway Commercial District

A. Purpose – This district would permit uses that do not fit within the retail or manufacturing categories. Service and retail uses associated with outdoor storage, noise, especially auto repair and service and others would be permitted. The minimum lot size is less than the Shopping Center District to allow for more flexibility of uses. It is anticipated that most of these districts would not be located near residential districts.

B. Permitted Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

C. Special Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

D. Site Requirements

General Requirements:		<u>PRIMARY USE & STRUCTURE:</u>	<u>Accessory Use & Structure:</u>
Minimum lot size:	10,000 s.f.	Minimum setbacks:	Permitted as per Sec. 3.24 & 3.2827
Maximum lot size:	none	front: 40 ft.	
Minimum lot width at front setback line:	150 ft.	side abutting residential: 25 ft.	
Minimum lot depth	120 ft.	side abutting non-residential: 15 ft.	
Maximum lot coverage	70%	rear abutting residential: 25 ft.	
		rear abutting non-residential: 10 ft.	
		Max. Building height in stories: 2 st.	
		Max. building height in feet: 35 ft.	
		Max. building height adj. to residential	

district: see Sec. 3.24 (A&B)

E. Supplementary Requirements

General: - outdoor storage is permitted - uses adjacent to single family uses must be screened as per Sec. 3.24 - may be operated 24 hours/day.	Landscaping Plans: - required as per Chapter 4 Commercial Bldg. Design Stds: each site must have a minimum of 20 points as defined by Chapter 56 <u>as required per Chapter 6</u>	Off-Street Parking: - as required by Sec. 3.29 Site Plans: - plans must be submitted in accordance with Sec. 3.31
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Section 3.22 ML - Light Manufacturing District

A. **Purpose** – This district would permit uses that involve the fabrication of products or have outdoor storage, noise, odors or other objectionable aspects that would not be compatible in retail or service areas. This district is limited to those uses that are not retail in nature or in some cases those that need outdoor space.

B. Permitted Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

C. Special Uses

1. See Table 3.24.B - Schedule of Permitted Principle Uses

D. Site Requirements

General Requirements: Minimum lot size: 10,000 s.f. Maximum lot size: none Minimum lot width at front Setback line: 100 ft. Minimum lot depth: 120 ft. Maximum lot coverage: 60%	PRIMARY USE & STRUCTURE: Minimum setbacks: front: 40 ft. side abutting residential: 25 ft. side abutting non-residential: 15 ft. rear abutting residential: 25 ft. rear abutting non-residential: 10 ft. Max. Building height in stories: 2 st. Max. building height in feet: 35 ft. Max. building height adj. To residential district: see Sec. 3.24 (A&B)	Accessory Use & Structure: Permitted per Sec. 3.24 & 3.29 27
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E. Supplementary Requirements

General: - outdoor storage is permitted - uses adjacent to single family uses Must be screened as per Sec. 3.24 - may be operated 24 hours/day.	Landscaping Plans: - required as per Chapter 4 Commercial Bldg. Design Stds: each site must have a minimum of 30 points as defined by Chapter 56 <u>as required per Chapter 6</u>	Off-Street Parking: - as required by Sec. 3.29 Site Plans: - plans must be submitted in accordance with Sec. 3.31
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Section 3.23 PUD – Planned Unit Developments

(Ord. O-05-1529 / 06/21/05)

A. **Purpose** - The purpose of a Planned Unit Development (PUD) is to provide for greater flexibility and discretion in the approval of residential, non-residential and mixed use developments by encouraging creative, efficient and aesthetically desirable residential and commercial projects that are superior to what could be accomplished in other zoning districts through the use of increased open spaces, greenbelts, or

by providing enhanced amenities or features within the development that will be of special benefit to the property owners or to the community.

- B. Ordinance Required and Effect on Official Zoning Map – Every Planned Unit Development approved under the provisions of this section shall be considered an amendment to the Land Development Code and Official Zoning Map of the City of Colleyville, Texas. In approving any request for a Planned Unit Development district, the City Council shall, upon recommendation of the Planning and Zoning Commission, incorporate in the approving ordinance reference the approved site plan, supporting documents and include other conditions or restrictions imposed on the project by the Commission, including those of the Council. The approval and adoption of the amending ordinance by the City Council shall result in the appropriate change to the “Official Zoning Map.”
- C. General Development Standards – The standards and requirements set forth in the Land Development Code shall be applicable to every Planned Unit Development, except where a new or different standard or requirement has been set forth in the ordinance establishing the PUD district. Such standards or requirements may be in addition to or in lieu of a development standard contained in the Land Development Code. The ordinance creating the Planned Unit Development may establish these requirements specifically in the ordinance or by reference to another zoning district.
- D. Classification of Planned Unit Developments – The approving ordinance establishing a Planned Unit Development shall include one of the following classifications, which shall also be shown on the Official Zoning Map using the applicable letter symbol.

Planned Unit Development Classifications		
PUD Classification	Planned Unit Development- Residential	Planned Unit Development - Commercial
Map Symbol	PUD-R	PUD-C
Classifications Defined	Planned developments containing primarily residential dwelling units, which may be grouped into clusters and may have a higher density than a conventional single family project of the same acreage, shall be classified as Planned Unit Development – Residential. A PUD-R may also contain a portion of non-residential uses.	Planned developments containing primarily non-residential uses, such as commercial, office, professional services, retail, institutional and industrial uses, or combinations thereof, shall be classified as Planned Unit Development – Commercial. A PUD-C may also contain a portion of residential uses.

- E. Permitted Uses – The uses permitted in a Planned Unit Development shall be enumerated in the approving ordinance with land use descriptions consistent with the Table of Permitted Uses, contained elsewhere in this Land Development Code. A Planned Unit Development may allow a combination of land uses, a specific use, or a class of generic uses, such as single family residential, office, retail, commercial or educational facilities, or a reference to another zoning district.
- F. Prohibited Uses – Uses not expressly permitted in the ordinance approving the Planned Unit Development shall be prohibited.
- G. Maximum Residential Density – The maximum residential density permitted in a PUD-R district, or in a PUD-C district where residential uses are proposed, shall not exceed 1.8 dwelling units per gross net acre. For the purpose of this regulation, the density calculation shall include all residential areas of the project and one-half of any abutting street situated adjacent to the project. This calculation shall exclude all proposed non-residential acreage and street rights-of-way from the gross-net acreage.
- ~~H. Density Bonus – A proposal for a PUD-R or a PUD-C containing a residential density exceeding 1.8 dwelling units per acre may be considered where the amount of open space area provided exceeds the minimum open space requirement or where additional amenities are provided within the open space area. A PUD proposal which contains a density exceeding 1.8 dwelling units per acre shall only be acceptable in an area consistent with sound land use planning, such as a transitional area situated between a non-~~

residential area and less dense residential developments, or near a major street intersection, or for smaller parcels with unique topographical features that make less dense development economically difficult.

Commented [BB30]: No density bonus desired

- I. ~~Minimum Residential Lot Size~~ – Notwithstanding Paragraph G above regarding maximum density, ~~the minimum lot size in a PUD-R district shall be 13,000 square feet, with an average lot size of 16,000 square feet. No lot shall have less than 100 feet of width at the building line. The minimum lot size in a Planned Unit Development district shall be stated in the approving ordinance.~~

Commented [BB31]: The PUD ordinance will determine minimum lot standards for area dimension (size, width & depth)

- J. Open Space Requirements – All requests for approval of a Planned Unit Development shall include provisions for open space areas in conformance with the following:

Commented [BB32]: Should the 20% standard be a recommendation? Should Council be able to reduce this standard as part of the PUD approval?

1. *Residential Areas* – For all residential uses, common open space land, comprising not less than twenty percent (20%) of the gross residential project area unless modified by the City Council, shall be provided for the primary use of the occupants of the residential units.
2. *Non-Residential Areas* – For all non-residential uses, open space land, comprising not less than twenty percent (20%) of the non-residential area unless modified by the City Council, shall be provided. Said open space area may be the same area as the landscaped area required elsewhere in this Land Development Code.
3. *Definition of Common Open Space*. For the purpose of this section, common open space is defined as follows:
 - a. Common Open Space may include:
 - i. land area of the development used for aesthetic, leisure and recreational purposes, that is accessible to and permanently reserved for the common use and enjoyment of the occupants of the development,
 - ii. golf courses, parks, and public open space areas adjacent to the development, which are readily accessible,
 - iii. low-impact passive uses include conservation of open land in its natural state (for example, woodland, fallow field, or meadow), neighborhood squares, common areas, picnic areas, community gardens, walking trails, bikeways, other kinds of pathways, and similar low-impact passive recreational uses, or
 - iv. active recreation uses including recreational playing fields, playgrounds, tennis courts, neighborhood pools, and clubhouse structures.
 - b. Common Open Space shall not include:
 - i. land areas reserved for the exclusive use and benefit of an individual owner or tenant,
 - ii. public or private street right-of-way, parkways, alleys, driveways, parking or loading areas,
 - iii. religious institutions or private school sites, or
 - iv. street medians or islands.
2. *Open Space Design Requirements*.
 - a. An application for a Planned Unit Development that includes a common open space area shall include a written description or a plan of amenities, such as landscaped areas, trees and shrubs, sidewalks and trails, benches, pavilions, and play areas, to be included in the open space areas.
 - b. The maximum amount of common open space used for storm water detention or retention purposes shall not exceed twenty-five (25%) of the common open space area. If the open space area contains a retention pond, the pond shall include at least one (1) aeration device, such as a fountain, waterfall or underwater device.
 - c. Common open space areas adjacent to street rights-of-way shall be a minimum depth of twenty-five (25) feet and shall be landscaped to include the retention or planting of one (1) three (3") inch caliper tree per each fifty (50) feet of street frontage, which may be clustered or distributed within the open space area.

3. **Guarantee of Common Open Space.** In order to guarantee the preservation and maintenance of the common open space, one of the following methods shall be required:
 - a. **Public Open Space** – Common open space may be conveyed to the City or other public agency, provided the public agency accepts the conveyance and agrees to maintain the common open space and any buildings, structures or other improvements.
 - b. **Private Open Space** – Common open space may be conveyed to a homeowner's association or property owner's association, provided the declaration of covenants and restrictions that govern the association include, but is not limited to, the following:
 - i. the establishment of the association is made before any lot in the development is sold or any building occupied,
 - ii. membership in the association is mandatory for each building or property owner and any successive owner and give the association the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of the common open space areas,
 - iii. ownership and maintenance of the common open space is guaranteed by a restrictive covenant, which is permanent, running with the land for the benefit of the occupants of the development and state that the association is totally responsible for the maintenance of the common open space and any improvements,
 - iv. submittal of a draft copy of the proposed covenants at the time of preliminary platting, which will ensure the guarantees stated in this section and provides for restricting the use of common spaces for the designated purposes, and
 - v. the plat contains a note stating that the common open space shall be maintained by the home owners association
- K. **Special Submittal and Exhibit Requirements** – To facilitate the review and public hearing process, all applications for a Planned Unit Development shall include the following documents and exhibits:
 1. **Application** – These forms are furnished by the Administrative Official.
 2. **Application Fee** – No application shall be processed or scheduled for public hearing until the application fee has been paid.
 3. **Statement of Planning Objectives** – The developer shall provide a written statement of planning objectives which describes the nature and character of the proposed development, any proposed development standards, and the rationale behind the assumptions and choices made by the applicant, including use and ownership of any open spaces, etc.
 4. **Legal Description** – A written metes and bounds description of the total site area proposed for the Planned Unit Development.
 5. **Development Schedule** – A development schedule indicating the target dates for the start and completion of the project, including any key dates of phasing of the project. The development schedule, if adopted and approved by the City Council, shall be incorporated into the approving ordinance, which shall be adhered to by the owner, developer and his successors in interest.

If upon review by the Administrative Official, the owner or owners of property fail to meet the approved schedule, the Planning and Zoning Commission or City Council may initiate proceedings under Chapter 1 – General Provisions of this Land Development Code regarding "Amendments, Frequency of Petition and Site Plan Requirements: Zoning and Special Use Permits," to amend the Planned Development District by removing all or part of the Planned Development District from the Official Zoning Map and placing the area involved in another appropriate zoning district. Upon the recommendation of the Planning and Zoning Commission and for good cause shown by the owner and developer, the City Council may also extend the development schedule or adopt such new development schedule as may be indicated by the facts and conditions of the case.
 6. **Site Plan** – The Site Plan, which may be conceptual and general in nature, but in sufficient detail appropriate for the type of development being proposed and shall at a minimum include the following items, where applicable:
 - a. Proposed layout, indicating the approximate size and dimensions of all residential and non-residential lots

- b. Proposed land uses and building locations
- c. General elevation drawings of all non-residential structures indicating building height
- d. Landscaping, lighting, fencing and screening of common areas
- e. General locations of existing tree clusters
- f. Location and construction type of perimeter fencing
- h. Design of ingress and egress with description of any special pavement treatments
- i. Calculations and location of off-street parking and loading facilities
- j. Location and type of all commercial signage and lighting, including pole heights, for parking lots and common areas
- k. Location and description of subdivision signs and landscaping at entrance areas
- l. Street names on all proposed streets

Exception: A Planned Unit Development application may be submitted and approved without a Site Plan, if the approving ordinance contains sufficient written detail to establish all site criteria.

- 7. **Drainage Analysis** – The applicant shall submit a Preliminary Drainage Analysis to determine the need for drainage facilities. The Preliminary Drainage Analysis shall be prepared in accordance with drainage analysis requirements contained in *Chapter 14 – Engineering Design Standards* of the Land Development Code.

- L. **Optional Preliminary Plat Submittal** – To expedite a development proposal, a developer may submit a separate application for a Preliminary Plat, which meets all of the requirements specified in Chapter 8 of this Land Development Code for a Preliminary Plat submittal, and which may be processed and reviewed concurrently with a PUD application, provided that no Preliminary Plat application shall be approved prior to the approval of the PUD application. The developer shall request a waiver of the 30 day time limit for Preliminary Plat approval where such applications run concurrently with a PUD application.

M. **Approval Process**

- a. **Application** – An application for a Planned Unit Development shall be submitted and processed using the same requirements used for submittal of a rezoning request, which shall be reviewed and considered in accordance with the procedures specified in Chapter One of this Land Development Code.
- b. **Conditions Related to Approval** – In establishing a Planned Unit Development, each application shall be evaluated by the Planning and Zoning Commission and City Council as to its probable effect on the adjacent property and the community. The Planned Unit Development may be approved or denied as the findings indicate appropriate. The Planning and Zoning Commission may recommend and the City Council may approve safeguards or conditions of approval to reduce the effect on adjacent or surrounding properties, which may include any or all of the following site conditions:
 - i. Accessory buildings
 - ii. Building and structure heights
 - iii. Drainage
 - iv. Exterior construction materials
 - v. Exterior lighting
 - vi. Fire protection measures
 - vii. Hours of operation
 - viii. Land uses
 - ix. Landscaping and open space
 - x. Lot coverage, density & setbacks
 - xi. Lot sizes and dimensions
 - xii. Outside storage and display
 - xiii. Pedestrian circulation
 - xiv. Public street access
 - xv. Refuse and waste storage
 - xvi. Screening or buffer areas
 - xvii. Signs
 - xviii. Vehicle traffic, circulation, and parking lots
 - xix. Other conditions deemed appropriate
 - xx. Project phasing and development schedule
- c. **Modification of a PUD requirement** – The Planning and Zoning Commission may recommend and the City Council may approve a proposal for a Planned Unit Development that includes a provision which modifies any requirement contained in these Planned Unit Development regulations.
- d. **Amending a Planned Unit Development** – Changes to a Planned Unit Development or to its approved Site Plan shall be processed in the same manner as the original request. However, the administrator of this Code may approve minor modifications in an approved Concept Plan, provided the modifications:
 - i. Do not alter the basic physical relationship of the property to adjacent property;

- ii. Do not change the permitted land uses;
 - iii. Do not increase the maximum density, floor area, height; or,
 - iv. Do not reduce the minimum yards or setbacks.
- N. Effect of this Section on Existing Planned Unit Developments – Previously approved PUD amending ordinances to the City's preceding zoning ordinance and Land Development Code, including accompanying plans and supporting documents, shall remain in full force and effect with respect to this Chapter and shall not be made to comply with the provisions of this Chapter. Where a prior ordinance fails to provide specific information regarding minimum lot sizes, lot width, lot depth, set backs, building heights and maximum lot coverage, the requirements contained in Section 3.24.G shall prevail.

Section 3.24 Schedule of Permitted Uses

- A. General Requirement and Symbols Used – Land and buildings may be used in accordance with Table 3.24.C, *Schedule of Permitted Principal Uses* and the additional requirements of this section. The following symbols are used in Table 3.24.C, *Schedule of Permitted Principal Uses*:
- 1. *Permitted Uses* – A "P" in a cell indicates that the use is allowed by right as the principal use in the applicable zoning district in accordance with Table 3.24.C, *Schedule of Permitted Principal Uses*.
 - 2. *Specific Uses* – An "S" in a cell indicates that the use may be allowed with the approval by the City Council of a Special Use Permit following the applicable review and approval procedures.
 - 3. *Prohibited Uses* – An empty cell indicates that the land use is prohibited in the applicable zoning district, unless otherwise allowed with the approval by the City Council of an ordinance establishing a Planned Unit Development District, or authorized by a Special Use Permit, or in conformance with the provisions contained in Section 3.6.B-*Classification of New and Unlisted Uses*.

Table 3.24.B- - Schedule of Permitted Principal Uses

Table 3.24.B- - Schedule of Permitted Principal Uses																		
Land Use Classification	Residential District									Non-Residential Districts						Special Land Use Standards or Section Ref.	Parking Group	
	AG	RE	R40	R30	R20	R15	RD	RMF	MH	CPO	CN	CC1	CC2	CC3	ML			
A. RESIDENTIAL ACCOMODATION USES																		
Single Family Detached Dwelling	P	P	P	P	P	P	P	S	P	P							8	3
Duplex – Attached Dwelling							P	S									8	2
Townhome – Attached Dwellings								P									8	4
Multi-family – Attached Dwellings								P									8	4
HUD Code Manufactured Housing									P								8	2
Assisted Living Facilities	PUD only															2	17	
Bed and Breakfast Lodging	S	S	S	S	S	S	S	S									1,8	18
Private (HOA) Recreational Facilities		P	P	P	P	P	P	P	P								9	5
B. ACCESSORY USES																		
Accessory Building	P	P	P	P	P	P	P	P	P								Sec. 3.27	n.a.
Carport	S	S	S	S	S	S	S	S	S								Sec. 3.27.C	n.a.
Home Occupations Uses	P	P	P	P	P	P	P	P	P								8	n.a.
Servants or Caretakers Quarters <u>Accessory Dwelling</u>	P	P	S	S	S										S		16	1
C. AGRICULTURAL USES																		
Commercial equestrian boarding stable and school	P	S															17	25
Crop Farming	P	P																n.a.
Livestock raising and breeding	P	P															12	n.a.
Private horse stables for domestic use	P	P	P	S	S													n.a.
Roadside produce stands (year round)	S	S	S	S	S	S	S	S	S									n.a.
D. UTILITY USES																		
Electrical Substations	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S			21

Commented [BB33]: Only applies to AG & RE districts

Public Utility Supply and Storage Yards	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		24
Table 3.24.B- - Schedule of Permitted Principal Uses																	
Land Use Classification	Residential District									Non-Residential Districts						Special Land Use Standards	Parking Group
	AG	RE	R40	R30	R20	R15	RD	RMF	MH	CPO	CN	CC1	CC2	CC3	ML		
Solid Waste Disposal Sites															Ø		24
Telecommunications Towers	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	3	21
Water Pumping Stations	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		24
Wind Driven Generators	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		n.a.
E. PUBLIC AND INSTITUTIONAL USES																	
Colleges or Universities	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		12
Community Centers or Recreation Centers	S	S	S	S	S	S	S	S	S	P	P	P	P	P	P		5
Government Buildings, Offices and Facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		8
Fire Stations / Police Stations	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		16
Golf Courses – Public Owned	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		22
Government Maintenance Facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		25
Libraries										P	P	P	P	P	P		9
Museums										P	P	P	P	P	P		8
Post Office	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		10
Parks and Open Space Areas	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		25
Public Maintenance and Storage Buildings	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		25
Private Schools – Elementary and Secondary	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		13
Private Schools – High School	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		14
Public Schools – Elementary and Secondary	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		13
Public Schools – High School	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		14
Religious Institutions	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		18
F. OFFICE USES																	

Commented [BB34]: Not a desired use

Commented [BB35]: Not appropriate in residential districts

Accountant's Offices												P	P	P	P	P	S	8
Table 3.24.B- - Schedule of Permitted Principal Uses																		
Land Use Classification	Residential District									Non-Residential Districts						Special Land Use Standards	Parking Group	
	AG	RE	R40	R30	R20	R15	RD	RMF	MH	CPO	CN	CC1	CC2	CC3	ML			
Advertising Agencies										P	P	P	P	P	S		8	
Attorney Offices										P	P	P	P	P	S		8	
Chiropractic Clinics										P	P	P	P	P	S		8	
Emergency Clinic (24 hrs.)												S	P	P	S	10	6	
Engineering, Architect's, and Surveyor's Offices										P	P	P	P	P	S		8	
General Business Offices not elsewhere listed										P	P	P	P	P	S		8	
Insurance Agencies										P	P	P	P	P	S		8	
Management and Public Relations Services Offices										P	P	P	P	P	S		8	
Optometrist Office										P	P	P	P	P	S		8	
Psychologist Offices										P	P	P	P	P	S		8	
Physician's or Dentist's Offices										P	P	P	P	P	S	5	7	
Real Estate Agency Offices										P	P	P	P	P	S		8	
Security Broker Offices										P	P	P	P	P	S		8	
Telemarketing Offices												P	P	P	S		5	
Title Abstract Offices										P	P	P	P	P	S		8	
Trade or Business Schools												S	S	S	P		15	
Travel Agency / Airline Ticket Offices										P	P	P	P	P	S		8	
G. RETAIL AND SERVICE USES																		
Alcoholic Beverage Sales – (Beer and Wine Only) – Off-Premises Consumption												S	S	S		13	n.a.	
Alcoholic Beverage Sales – On-premises Consumption												S	S	S		13	n.a.	
Package Store Sales – Off-premises Consumption												S	S	S		13	n.a.	
Alcohol or Drug Treatment Center										S	S	S	S	S	S		24	

Commented [BB36]: Permitted in restaurant that meets 60/40 alcohol food ratio (no more than 60% of total receipts for alcohol)

Antique Stores														P	P	<u>P</u>			7
Table 3.24.B- - Schedule of Permitted Principal Uses																			
Land Use Classification	Residential District										Non-Residential Districts						Special Land Use Standards	Parking Group	
	AG	RE	R40	R30	R20	R15	RD	RMF	MH	CPO	CN	CC1	CC2	CC3	ML				
Apparel and Accessory Stores												P	P	<u>P</u>				7	
Arts and Crafts Stores and Hobby Shops												P	P	<u>P</u>				7	
Bakery Stores												P	P	<u>P</u>				7	
Banks, Credit Unions and Financial Institutions											P	P	P	<u>P</u>				8	
Barber Shops, Beauty Shops and Day Spas											P	P	P	<u>P</u>		10		7	
Bicycle Shops												P	P	<u>P</u>				7	
Book, Stationary or Greeting Card Shops												P	P	P				7	
Camera or Music Stores												P	P	<u>P</u>				7	
Carnivals and Circuses												S	S					24	
Cemeteries or Mausoleums										S	S	S	S	S	S			24	
Charitable Donation Station												S	S	S				24	
Civic, Social or Fraternal Organizations										S	S	P	P					7	
Convenience Stores with gasoline sales												S	S	S	S			7	
Copy Centers/Print Shops										S	S	P	P	P	P			7	
Dance Studios, and Martial Arts Studios, and Cheerleading & Gymnastics Facilities										S	S	P	P	<u>P</u>	<u>P</u>			7	
Day Care Centers										S	S	S	S	S		17		11	
Department Stores												P	P	<u>P</u>				7	
<u>Dog Boarding with indoor kennels</u>													<u>P</u>	<u>P</u>	<u>P</u>	<u>4</u>		<u>8</u>	
<u>Dog Boarding with outdoor kennels</u>													<u>S</u>	<u>S</u>	<u>S</u>			<u>8</u>	
<u>Dog Grooming</u>													<u>P</u>	<u>P</u>	<u>P</u>			<u>8</u>	
Dry Cleaner Pick-up Stations											S	P	P	<u>P</u>				7	
Dry Cleaners (up to 5,000 s. f. w/on-site laundry)												P	P	<u>P</u>				7	

Equipment Rental and Leasing Stores														S	P		7
Florist Shops										P	P	P	<u>P</u>				7
Food Catering												<u>P</u>	<u>P</u>	<u>P</u>			8
Funeral Homes											S	S	S				24
Furniture and Appliance Stores											P	P	P				9
General Retail Store (not listed elsewhere)												<u>S</u>	<u>S</u>	<u>S</u>			7

Table 3.24.B- - Schedule of Permitted Principal Uses

Land Use Classification	Residential District										Non-Residential Districts						Special Land Use Standards	Parking Group
	AG	RE	R40	R30	R20	R15	RD	RMF	MH	CPO	CN	CC1	CC2	CC3	ML			
Grocery Stores												P	P	<u>P</u>		18	7	
Hardware, electrical & plumbing w/o outside display											P	P	P	P				
Hardware , electrical & plumbing with outside display													S	P	P			
Hospitals												S	S	S			24	
Hotels and Motels												<u>S</u>	P	P			19	
Interior <u>Home</u> Decoration Stores										P	P	P	P	<u>P</u>			7	
Jewelry Stores											P	P	P	<u>P</u>			7	
Locksmiths											S	S	<u>S</u>	<u>S</u>	<u>P</u>		8	
Mailing and Shipping Stores											P	P	P	P	<u>P</u>		7	
Meat or Fish Market												P	P	P			7	
Nurseries and Greenhouses with outside display													S	P	P		16	
Pawn Shops															<u>P</u> <u>S</u>		7	
Pet Stores												P	P	<u>P</u>			7	
Pharmacy											S	P	P	P			7	
Photography Studios										P	P	P	P	P	P		8	

Commented [BB37]: Catch-All Category

Purchasing and/or resale of precious metals including jewelry, gem stones, gold, silver, and platinum and not licensed as a Pawn Shop by the State of Texas												\$	\$	\$	S		7
Restaurants, Cafes and Cafeterias												P	P	P			5
Restaurants with drive-in or drive-thru service													P	P			5
Second hand goods shop												S	S	S			7
Self-service Laundries											S	S	S	S			7
Short Term Loans (Title/Payday)																S	7
Second-hand-goods-shop												\$	\$	\$			7
Self-service Laundries												\$	\$	\$	\$		7

Table 3.24.B- - Schedule of Permitted Principal Uses

Land Use Classification	Residential District									Non-Residential Districts						Special Land Use Standards	Parking Group
	AG	RE	R40	R30	R20	R15	RD	RMF	MH	CPO	CN	CC1	CC2	CC3	ML		
Sporting Goods Store												P	P	P			
Shoe Repair Shops											P	P	P	P			8
Tailor and Alteration Shops											P	P	P	P			8
Veterinarian Clinic with indoor kennels													P	P	P	4	8
Veterinarian Clinic with outdoor kennels													S	P	P		8
Video Rental and Sales Stores												P	P	P			7
Wedding Chapels												S	S	S	S		24

H. RECREATIONAL AND ENTERTAINMENT USES

Adult Entertainment Establishments	See section 22-5 Code of Ordinances																5
Amusement Centers (indoors)												\$ P	\$ P	P	S		247
Archery and Firearms Ranges														S	S	6	24

Commented [JR38]: City Attorney reviewing this use

Commented [BB39]: New use

Commented [BB40]: New use

Billiard Parlors														S	S	<u>S</u>		17	23
Commercial Recreation (outdoor)	S												S	S	S	S	S		24
Fitness Centers													<u>S</u>	P	P	P	<u>P</u>		7
Golf Courses – Privately Owned	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	P	P	P	P	P	P	P		22
Golf Driving Ranges													<u>S</u>	P	P	<u>S</u>	<u>S</u>		22
Miniature Golf Courses														P	P	<u>S</u>			20
Roller or Ice Skating Rinks													<u>S</u>	S	S				24
Theaters														P	P	<u>P</u>	<u>S</u>	7	18
I. AUTOMOTIVE AND TRANSPORTATION USES														<u>S</u>	<u>S</u>			<u>17</u>	<u>23</u>
Airports and Heliports	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		24
Auto Alarm / Stereo / Window Tinting Stores															P	P	P	13	7
Auto Lube Shops															S	P	P	13	9
Automotive and Motor Vehicle Sales															S	S	S	13	8

Table 3.24.B- - Schedule of Permitted Principal Uses

Land Use Classification	Residential District										Non-Residential Districts						Special Land Use Standards	Parking Group
	AG	RE	R40	R30	R20	R15	RD	RMF	MH	CPO	CN	CC1	CC2	CC3	ML			
Auto Parts and Accessory Stores												P	P	P	P	13	7	
Auto, Truck or Trailer Rental													S	S	S	13	8	
Auto Upholstery Shops														P	P	13	9	
Auto Parking Lots and Garages (free standing)										S	S	S	S	S	S		n.a.	
Auto Repair Shop													S	S	S	13	9	
Boat and Water-craft Sales and Service													S	S	S	13	8	
Bus or Passenger Train Stations												S	S	S	S		24	

Car Wash (self service and automatic)													S	P		9
Commuter Transit Stations										S	S	S	S			24
Gasoline Service Stations												S	S		13	7
LPG / CNG Dispensing Stations												S	S			24
Motorcycle Sales and Service												S	S		13	8
Paint and Body Shops												S	S		13	9
Park and Ride Facilities										S	S	S	S			24
Railroad or Motor Freight Terminals												S	S	S		24
Recreational Vehicle Sales and Service												S	S		13	8
Tire and Battery Stores												S	S	S	13	7
Truck and Heavy Equipment Sales and Service												S	S		13	8
Vehicle Storage Yards or Facilities											S	S	S	S		24

J. HEAVY COMMERCIAL, INDUSTRIAL & MANUFACTURING USES

Appliance Repair Shops																S	S		8
Building Material Sales with outside storage																S	P S		7

Table 3.24.B- - Schedule of Permitted Principal Uses

Land Use Classification	Residential District										Non-Residential Districts						Special Land Use Standards	Parking Group
	AG	RE	R40	R30	R20	R15	RD	RMF	MH	CPO	CN	CC1	CC2	CC3	ML			
Commercial Laundry														S	S		24	
Contractor Office with storage yard														S	S		24	
Contractor Office without storage yard														P	P		8	
Electronic Assembly or Manufacturing															P		25	
Exterminator Shop														S	S		24	

Colleyville, Texas, Land Development Code

Food Packaging and Manufacturing																	S		24
Furniture and Cabinet Manufacturing																	P		25
Office Showroom																	P		25
Oil and Gas Extraction	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	See Ch. 3.1		24
Plumbing, HVAC and Electrical Trades Shops																	P	P	8
Printing and Publishing - Commercial																	P		8
Plumbing, HVAC and Electrical Trades Shops																	P	P	8
Printing and Publishing - Commercial																	P		8
Research and Development Labs																	P		8
Scientific Instrument Assembly and Manufacturing																	P		8
Self Storage Facilities (mini-warehouse)																	S		24
Upholstery and Furniture Repair Shops																	P	P	8
Warehouse and Distribution Facilities																	S		24
Wood, Paper or Leather Products																	P		25
Manufacturing not elsewhere listed																	S		24
Welding or Machine Shop																	P		25
<u>Wholesale Store/Supply</u>																	<u>P</u>		<u>25</u>
<u>Wholesale Store/Supply with outdoor storage</u>																	<u>S</u>		<u>24</u>

Commented [BB41]: Duplicate listings

Commented [BB42]: New Uses

C. Special Land Use Standards – The following Special Land Use: Standards, which are referenced in the Special Land Use Standards column of Table 3.24.B, Schedule of Permitted Principal Uses, refer to additional standards and requirements that are applicable to the listed land use.

1. Bed and Breakfast – A Certificate of Occupancy (C.O.) is required prior to occupancy of the premises as a bed & breakfast. The C.O. shall be obtained after an inspection has determined that the structure is in compliance with all applicable current codes and ordinances of the City of Colleyville and the following additional conditions:
 - a. The structure is structurally sound.
 - b. There are no clear and present dangers as to fire and fire safety.
 - c. The plumbing is in compliance with the currently adopted code requirements for the zoning district in which it is located.
 - d. The electrical system is in compliance with the currently adopted Electrical Code for the zoning district in which it is located.
 - e. Smoke detectors shall be placed in each individual bedroom which is offered for public use and smoke detectors shall also be placed in any hallway adjacent thereto.
 - f. Signs, not exceeding one and one-half (1-1/2) square feet, shall indicate only the address and the establishment name.
 - g. Off-street parking shall be located behind the front building line of the structure and shall be screened from public view, and shall be provided in the following manner: one space per bedroom offered for temporary rental in addition to that required for the zoning district in which it is located.
 - h. The total rental bedroom area of the structure shall not exceed twenty-five (25) percent of the total floor area of the dwelling.

Also, in order to continue operation:

- i. Annual inspections shall be required for each bed and breakfast facility to ensure ongoing compliance with the requirements of this Section.
- ii. Food service shall comply with all provisions of the City Code.
- iii. The structure shall comply with all current City Codes, including, but not limited to Building Codes, Plumbing Codes, Electrical Codes, Fire and Safety Codes, and others as may from time to time be adopted.
- ix. The length of stay for any guest is limited to fifteen (15) consecutive days.

2. Assisted Living Facilities – A facility operated under a certificate of compliance document issued by the Texas Department of Aging and Disability Services, in which food, shelter, and person assistance or supervision are provided for a period of at least 14 days for four or more aged adults who do not require hospitalization or skilled or intermediate nursing care.

Commented [BB43]: Move to Ch. 2 - Definitions

3. Telecommunication Towers – Construction shall be of monopole design only; and

- a. the distance between the base of the tower and any Agricultural (Ag) or residential district or use shall be not less than two (2) times the height of the tower; and
- b. the site plan shall meet all other commercial development requirements of the City such as site plan review, landscaping, setbacks; and
- c. a minimum of one paved parking space shall be provided at the site of the structure.

4. Veterinarian Clinic with indoor kennels – A facility containing indoor kennels shall be subject to the following conditions.

- a. The entire business must be conducted within a soundproofed building. Noise and odors created by activities within the building shall not be discernible beyond the property line.
- b. No animals shall be kept outside the building.

5. Medical and veterinary clinics – Outpatient services only.

6. Archery & firearm ranges – An SUP required in every zoning district, except CN & CC, for sales activity over 9 mo. per year.

7. Movie Theater Uses: A movie theater shall not contain more than six primary projection screens and two secondary executive viewing rooms and shall not exceed 28,500 square feet in total building size. For purpose of this regulation, a secondary executive viewing room shall not exceed a maximum of fifty (50) seats. (O-04-1454 / 4-16-04) (O-05-1538 / 09/06/05)

Commented [BB44]: Regulations deemed not needed

8. Home Occupation Uses:

- a. No person other than members of the family residing on the premises shall be engaged in such occupation;
- b. The use of the dwelling unit or accessory building for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
- c. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one (1) square foot in area, non-illuminated, and mounted flat against the wall of the principal building.
- d. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street on a driveway or other hard surface all weather area;
- e. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses of any adjacent or nearby site occupant. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
- f. Home occupation uses and activities shall be limited to the following: seamstress; accounting; bookkeeping and tax services; notary public; insurance and real estate; small-scale production of cosmetics and household sundries; private educational, music and dance tutoring; arts, crafts and home hobby shops; garage, yard and patio sales of short temporary duration; mail order brokerage; and other similar activities --- but excluding medical and law offices, auto repair, beauty shops, pet grooming services, kennels and other such activities.

Commented [BB45]: Clarification of uses, permitted & non-permitted

Commented [EW46]: Recommended language for clarity of activities allowed

- g. If a home occupation is deemed to become a nuisance as described in 'e' above, the Administrative Official may halt the use of the home occupation.

Commented [BB47]: New proposed regulation

9. Private (HOA) Recreational Facilities – Buildings or structures in which members of a neighborhood association may gather for social, educational or cultural activities that are intended to serve the site occupants and guests thereof.

Commented [BB48]: Move to Ch. 2 - Definitions

10. Emergency Clinics – Outpatient services only.

11. Livestock Raising and Breeding – A Special Use Permit is required for swine farming.

12. Alcoholic Beverage and Package Store Sales – A Special Use Permit is required for the sale of alcoholic beverages. A package store shall require the approval of a separate Special Use Permit. Any existing Special Use Permit for the sale of alcoholic beverages for off-premise consumption shall only be for beer and/or wine as specified in the approving ordinance and shall not be considered as approval for a package store as defined in Chapter Two. Also refer to Chapter 6 of the Code of Ordinances for additional regulations regarding alcoholic beverage sales.

Commented [BB49]: A review of Ch. 6 needed to modify the alcohol to food ratio for total receipts

13. Vehicle Repair – Vehicle repair, including the repair of other motorized vehicles, are permitted in accordance with the Schedule of Permitted Uses, subject to the following conditions.

- a. All repairs and servicing shall be conducted within an enclosed building.
- b. A business that conducts vehicle repair and is located on property adjacent to a residential use shall provide an sixeigh-foot tall solid screen along the property line adjacent to the residential use.

- c. Except for wrecked vehicles, no more than two vehicles per bay or repair/inspection station that have been accepted for repair or servicing shall be parked/stored outside after regular business hours.
- d. Wrecked or dismantled vehicles waiting for repair shall not be visible from the street or other residential property and shall be stored in an enclosed building or within a completely enclosed area behind a ~~six~~eight-foot tall solid masonry screening fence.

Commented [EW50]: Recommended provisions

- 14. ~~Servants or Caretaker Family or Servants Quarters~~ Accessory Dwelling – ~~A secondary dwelling for use by family members or domestic servants employed on the premises or family members provided the gross habitable square feet of floor area shall not exceed six hundred (600) square feet complies with regulations found in Section 3.27 of this chapter 5% of the lot area.~~ Such quarters may be housed within the principal residential dwelling, above a residential garage, or be part of an accessory building on the same premises, and shall comply with minimum standards for light, health, safety, and occupancy in conformance with other applicable City codes and ordinances.

Commented [EW51]: Recommend change in heading for this section

Commented [EW52]: Same language but relocated to beginning of paragraph

Commented [BB53]: New standards for Accessory Dwellings

- 15. Day Care Centers – A facility operated with a state license for the purpose of providing care, protection and guidance to more than twelve children under the age of fourteen years of age for less than a 24-hour period. This term does not include kindergartens and public and private educational facilities or any facility offering care to individuals for a full 24-hour period.

Commented [BB54]: Move to Ch. 2 - Definitions

- 16. Grocery Stores – A special use permit is required for the use of gasoline pumps in conjunction with a grocery store.

- 17. Billiard Parlor – Compliance with Chapter 10 of the Code of Ordinances is required for a Billiard Parlor.

- 18. Wind Driven Generators – No wind driven generator shall be constructed without approval of a special use permit per Section 3.24 of the Land Development Code.

- a. All wind driven generator towers shall be of a monopole design. All wiring shall be buried underground by means of a conduit system.
- b. A wind driven generator may be considered on lots measuring a minimum of 1.5 acres.
- c. The maximum height of a wind driven generator shall be no greater than 50 feet, measured from the existing ground level to the highest point of the blades.
- d. All wind energy structures, including tower and rotor, shall stand independent of any building or structure and shall have a minimum setback from any property line, right-of-way, power line, or other improvement of 1.5 times the height of the wind energy structure. It shall also be located entirely in the rear yard and shall not be located in any required setback.
- e. The maximum noise level shall not exceed 50 dB(a), measured from the property line, adjacent to any residentially zoned property, and 60 dB(a) adjacent to all other zoning districts.
- f. A wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.
- g. The wind tower must either (a) have a locked anti-climb device installed on the tower; or (b) be completely enclosed by a locked, protective fence at least 6 feet in height.
- h. No signage or advertisements shall be allowed on the wind tower.
- i. A maximum of one wind energy system, including the tower, shall be permitted per lot.
- j. A wind driven generator, found to be non-productive or unused, for a period exceeding 180 days, shall be immediately removed from the premise and the site returned to its prior condition, at the expense of the property owner.

- 19. Portable Storage Structures – A portable storage structure is any container, storage unit, shed-like container or other portable structure, other than an accessory building as defined in Chapter Two of the Land Development Code, complying with all building codes and Land Development Code requirements, that can or is used for the storage of personal property of any kind and which is located for such purposes outside an enclosed building.

The use of portable storage structures are allowed under the following conditions:

- a. Seven Day Provision: Portable storage structures placed on private property for a period of not more than seven (7) days are hereby exempt from these regulations provided the view of any

vehicular traffic is not impeded in any way. A permit shall be required per the provisions of sub-section "b". However, there shall be no fee required for structures that are placed for seven (7) or fewer days.

- b. A temporary use permit for a portable storage structure shall be obtained from the Community Development Department prior to placement for any portable storage structure.
- c. There shall be no more than one (1) portable storage structure per property.
- d. The portable storage structure shall be no larger than ten (10) feet wide, twenty (20) feet long and ten (10) feet high.
- e. Notwithstanding the requirements of sub-sections "k" and "l" below, a portable storage structure shall not remain at a property in any zoning district in excess of thirty (30) consecutive days, and shall not be placed at any one property in a zoning district in excess of thirty (30) days in any calendar year.
- f. The portable storage structure shall be set back a minimum of five (5) feet from all property lines.
- g. The portable storage structure shall be set back a minimum of five (5) feet from the nearest wall of a building.
- h. Where a side facing garage or a garage that is located behind the principal structure exists, the portable storage structure shall be located behind the front line of the principal structure.
- i. The portable storage structure shall be placed on an asphalt or concrete surface. A gravel surface is permitted if the portable storage structure is located behind the principal structure.
- j. The portable storage structure shall not be placed upon any street or within any rights-of-way. Exception: Portable storage structures located in mixed-use, townhome, multifamily, or similar residential developments may locate within existing, striped on-street parking spaces provided there are no public safety or vehicular traffic issues caused by the location of the structure.
- k. Portable storage structures associated with construction of a new principal building at a site where a new building permit has been issued are permitted for the duration of construction and shall be removed from the site within fourteen (14) days of the end of construction. Portable storage structures associated with new construction are exempt from the aforementioned conditions.
- l. Portable storage structures associated with any construction that is not part of the construction of a new principal building, and only in conjunction with the issuance of a building permit, may be placed for a maximum period of 180 days or upon completion of construction, whichever occurs first. The fee assessment for a portable storage structure associated with this sub-section shall be as follows:

0 to 30 days:	standard fee
30 to 60 days:	double the standard fee
60 to 90 days:	three times the standard fee
90 to 120 days:	four times the standard fee
120 to 180 days:	six times the standard fee

- m. Any waivers to the conditions of this section shall be considered by the Zoning Board of Adjustment Special Use Permit (SUP) in accordance with Chapter One Section 3.25 Special Use Permit of the Land Development Code.

Commented [BB55]: Revised for SUP approval

D. Temporary Buildings and Uses (O-04-1497 / 12/21/04)

1. Temporary Use Permit – The Building Official may approve a permit for a temporary use specified in this Section for limited periods of time, provided evidence is furnished by the applicant that adequate measures are taken to satisfy public safety concerns and related site criteria concerns. All temporary

uses shall be subject to the regulations contained in this Section. The building official may recommend a temporary use permit application be considered by the City Council where it has been determined by the building official that the proposed temporary use may have significant public interests. A temporary use permit, as herein prescribed, shall not be required for neighborhood block parties held in conjunction with the annual National Night Out neighborhood celebration or for events approved by a municipal department where said event is conducted on municipally owned property.

a. *Revocation:* The Building Official may revoke a temporary use permit if determined that:

- i. The applicant has misrepresented any material fact on the application, or supporting materials.
- ii. The temporary use fails or ceases to comply with applicable standards or criteria for issuance of a permit.
- iii. The operation of the temporary use violates any statute, law, ordinance or regulation.
- iv. The operation of the temporary use constitutes a nuisance or poses a real or potential threat to the health, safety or general welfare of the public.

2. Permit Conditions – The Building Official is hereby authorized to prescribe reasonable conditions upon a temporary use permit to protect the public health, safety, and general welfare of the community, with particular attention to areas adjacent to or in the vicinity of the permitted temporary use. Such conditions may include specific performance standards, noise mitigation measures, lighting restrictions, limitation on hours of operation, odor control measures, off-street parking requirements, traffic restrictions, or other standards designed to minimize adverse impacts on surrounding properties. In the event that a sponsor is dissatisfied with the Building Official's decision, the sponsor may appeal the decision to the City Council.

3. Construction Offices and Sales Offices – The Building Official may approve a permit for a temporary building for use as a construction office or a sales office for new home or lot sales in any zoning district during the construction phase of a permanent building or new subdivision, provided such temporary buildings comply with the following requirements:

- a. No temporary used as a construction office or a sales office shall encroach within five (5) feet of a property line or encroach within the visibility triangle required in Section 3.26 of this Land Development Code.
- b. A temporary building used as a construction office during the construction of a permanent building shall be removed within ten (10) days after the issuance of the certificate of occupancy of the permanent building, weather permitting, ~~weather permitting~~.
- c. A temporary building used as a real estate sales office shall be removed within ten (10) days after ninety (90%) percent of the lots within the subdivision have been sold.
- d. A temporary construction office or real estate sales office shall sit on a blocked foundation acceptable to the Building Official. No temporary construction office or real estate sales office shall be used that rests only on the wheels.
- e. A model home may be used as a temporary real estate sales office and shall be exempt from paragraphs a, b, c, and d above.

4. Community Special Events – Outdoor events of public interest which are anticipated to attract less than 500 persons in attendance at any one time for a period of eight consecutive hours or more, such as business activities, carnivals, circuses, and similar temporary events or special fund-raising events, ~~sponsored by a public entity, civic or non-profit organization located within the City.~~ Events sponsored by the City shall be exempt from the requirements of this section. Special Events shall comply with the following:

- a. Application and site plan for a Special Event shall be submitted at least ten (10) business days in advance of the proposed event
- b. Events located in parking lots which cause the loss of existing parking spaces shall require the submittal of written approval from the owner

c. ~~A Special Event shall not extend greater than any time period over twothree (23) consecutive days.~~

Commented [BB56]: Revised per Council direction

d. ~~There shall be at least one-hundred eighty (180) calendar days between events before another permit can be obtained by the business or organization. Any entity that is directly or indirectly affiliated with the previous permit holder shall require the minimum separation between permits. There shall be no more than four (4) special events allowed per location per calendar year. There shall be at least thirty (30) calendar days between events before another permit can be obtained for the location.~~

Commented [BB57]: Revised per Council direction

5. Tents – A temporary use or special event which includes the use of a tent shall require a separate permit in accordance with the standards contained in the Colleyville Fire Code.
6. Temporary Asphalt or Concrete Batch Plant – The Building Official shall approve a permit for a temporary asphalt or concrete batch plant to provide construction materials for the site on which the temporary batch plant is located during the construction phase of a permanent building, new residential subdivision or other project as authorized by the city manager, provided such temporary use comply with the following requirements:
 - a. The temporary batch plant shall receive an approved air quality permit from the State of Texas, and evidence must be presented at the time of application for the temporary use permit.
 - b. The temporary batch plant shall follow all State of Texas storm water run-off requirements. A copy of any required State documents must be on the site of the temporary batch plant at all times.
 - c. A location map, drawn to scale, shall be provided and indicate the following: the location of the batch plant on the subject property along with a defined plant boundary, the location of all related equipment including but not limited to batching equipment and containers, storage areas, hazardous materials storage if applicable. Another drawing, drawn to scale, shall be provided showing the closest habitable residences, schools and religious institutions. The minimum distances shall be 300 feet measured in a direct line from the boundary of the temporary batch plant, as indicated on the application, to the property boundary of the protected use.
 - d. The material delivery route shall be provided indicating routes for raw material delivery with details on the type and numbers of trucks per day. Said route shall require final approval by the City Manager or his/her designee.
 - e. The hours of operation shall follow the construction hours of operation as required in the Colleyville Code of Ordinances.
 - f. A letter of permission shall be provided by the property owner stating that the temporary batch plant will be used to provide concrete/asphalt for the same site where it is located and no other project(s). The letter must also state that the site will be left in good or better condition.
 - g. The application must state the amount of time that the temporary batch plant will be in operation. The permit duration shall not exceed 30 days from the date of issuance. ~~The Administrative Official may extend the permit for an additional 30 days with good cause. Only one permit may be issued for a given parcel of property within a 12 month period.~~
 - i. The Public Works Director shall determine if additional materials testing is required and may determine the testing personnel required. Any cost of testing shall be paid by the applicant.
 - j. The batch plant shall not be used as a batching facility for any other site other than the site on which it is located and no concrete, asphalt and or any raw materials may be sold from said plant.

- k. Any appeal or waiver from the requirements of this section shall require final approval by the City Council.

E. Outdoor Storage; Screening and Hours of Operations

Zoning Districts		Outdoor Storage Allowed	Screening Requirements Adjacent to Single Family	Hours of Operation	Commercial Building Design Standards
CPO	Professional Office Commercial	No	8'	Daytime only	30 pts.
CN	Neighborhood Commercial	No	8'	Daytime only	30 pts.
CC1	Village Retail	No	8'	24 hours	30 pts.
CC2	Shopping Center	No	8'	24 hours	30 pts.
CC3	Highway Commercial	Yes	8'	24 hours	30 pts.
ML	Light Manufacturing - Industrial	Yes	8'	24 hours	30 pts.

Commented [BB58]: Revised to match each district

Commented [BB59R58]: No longer needed

F. District Regulation Notes *{renumber as needed}*

- ~~A. Where abutting a lot zoned or used for residential purposes (RE through MH) maximum building height shall not exceed requirements shown in Figure 1 "Height Zones for Commercial Districts Adjoining Residential Districts". The roofline within that 50 feet shall have a maximum height of 16' at the eave and the roof design shall be of a residential style.~~
- ~~B. No structure shall be erected in any zoning district in excess of the specified maximum building height either in the number of stories or feet, whichever is less, unless an exception to said maximum building height is contained in this Chapter, except as noted in note "C" below.~~
- ~~C. Heights of four (4) stories may be permitted in CC2 (Shopping Center) district if combined with a Planned Unit Development (PUD).~~
- ~~D. To achieve the "urban village" design, front yards may be varied to as little as 10' from the front property line if required parking is setback not less than forty feet (40') from the front property line.~~
- ~~E. Where abutting a lot zoned or used for residential purposes (RE through MH) there shall be a twenty-five (25') foot side yard.~~
- ~~F. Side or rear yards not required where no windows or other openings for light or entry face the yard, and not adjacent to single family.~~
- ~~G. There shall be a ten foot (10') side yard set-back, unless an ordinance approving a planned unit development for the property in question specifies a different side yard set-back; however, where abutting a lot zoned for commercial or industrial use, no side yard shall be required, provided there are no window or other openings for light or entry in the encroaching walls facing the side yard.~~
- ~~H. There shall be a ten (10') foot side yard set-back, unless an ordinance approving a planned unit development for the property in question specifies a different side yard set-back.~~
- ~~I. Where abutting a lot zoned or used for residential purposes (RE through MH) there shall be a twenty-five (25') foot rear yard.~~
- ~~J. There shall be a minimum twenty-five (25) foot rear yard set-back, unless an ordinance approving a planned unit development for the property in question specifies a different rear yard set-back; however, the rear yard set-back may be reduced to ten feet (10'), provided there are no window or other openings for light or entry in the encroaching walls facing the rear yard.~~
- ~~K. Where abutting a lot zoned or used for residential purposes there shall be a minimum twenty-five (25') foot rear yard set-back, unless an ordinance approving a planned unit development for the property in question specifies a different rear yard set-back, however, the rear yard set-back may be reduced to ten feet (10') where abutting a lot zoned or used for non-residential purposes.~~
- ~~L. All regulations may vary when above districts are used as a base district for a PUD.~~

Commented [BB60]: These notes not needed, not included on the chart

Commented [BB61]: Not needed with removal of PUD lined from chart

Commented [BB62]: Not needed with removal of PUD lined from chart

Commented [BB63]: Not needed with removal of PUD lined from chart

Commented [BB64]: Move to footnotes section of the chart

SECTION 3.24.G - SCHEDULE OF DISTRICT REGULATIONS

MAXIMUM RESIDENTIAL DENSITY; MINIMUM LOT SIZE REQUIREMENTS; MINIMUM YARD REQUIREMENTS;
MAXIMUM BUILDING HEIGHT; MAXIMUM LOT COVERAGE; OUTDOOR STORAGE; SCREENING

AND HOURS OF OPERATION

(See District Regulations Notes following Section 3.24.F for explanation of letters in charts)

Zoning Districts		Max. [*] Res. Density	Minimum Lot Size Requirements					Minimum Yard Requirements				Max. Building Height		Max. Lot Coverage
Classification	DU/AC	Per Family	Area (sq. ft.)		Min. Width in feet	Min. Depth in feet	Max. Lot Size	Front (feet)	Each Side (feet)	Rear (feet)	Stories	Feet	Percent	
			Total											
AG Agricultural	0.3	130,680	130,680	200'	300'	n.a.	40'	25'	40'	2.5	35'	20%		
RE S. F. "Estate" Residential	0.5	80,000	80,000	200'	300'	n.a.	40'	25'	40'	2.5	35'	20%		
R-40 Single Family Residential	1.25	40,000	40,000	150'	150'	n.a.	40'	15'	25'	2.5	35'	20%		
R-30 Single Family Residential	1.5	30,000	30,000	125'	125'	n.a.	35'	10'	25'	2.5	35'	25%		
R-20 Single Family Residential	2.1	20,000	20,000	100'	125'	n.a.	30'	10'	25'	2.5	35'	30%		
R-15 Single Family Residential	3	15,000	15,000	100'	125'	n.a.	30'	10'	25'	2.5	35'	30%		
R-D Two Family Residential	8	4,000	8,000	70'	115'	n.a.	25'	10'	25'	2.5	30'	50%		
R-MF Multi-Family Residential (zoned after June 16, 1981)	8	2,700	18,000	70'	115'	n.a.	25'	10'	25'	2.0	30'	50%		
R-MF Multi-Family Residential (zoned before June 16, 1981)	18	1,500	10,000	70'	115'	n.a.	25'	10'	25'	3.0	30'	75%		
MH Mobile Home (Minimum size of mobile home park - 40 spaces)	2.1	20,000	20,000	100'	125'	n.a.	30'	10'	25'	2.5	30'	30%		
C-PO Professional Office Commercial	n.a.	n.a.	7,200	100'	120'	1 acre	40'	15' (E / F)	10' (F / I)	2.0	35'	40%		
CN Neighborhood Commercial	n.a.	n.a.	10,000	100'	120'	1 acre	40'	15' (E / F)	10' (F / I)	2.0	35'	40%		
CC1 Village Retail	n.a.	n.a.	15,000	150'	120'	5 acres	40' (D)	15' (E / F)	10' (F / I)	2.0	35'	50%		
CC2 Shopping Center	n.a.	n.a.	20,000	150'	120'	none	40' (D)	15' (E / F)	10' (F / I)	2.0	35'	60%		
CC3 Highway Commercial	n.a.	n.a.	10,000	150'	120'	none	40'	15' (E / F)	10' (F / I)	2.0	35'	70%		
ML Light Manufacturing	n.a.	n.a.	10,000	100'	120'	none	40'	15' (E / F)	10' (F / I)	2.0	35'	60%		
PUD-R Planned Unit Dev. - Residential	n.a.	n.a.	15,000***	100'	120'	n.a.	30'	10' (D)	25' (D)	3.0	30'	30%		
PUB-C Planned Unit Dev. - Commercial	n.a.	n.a.	7,200	70'	115'	n.a.	40'	10' (S)	(X)	3.0 (S)	35'	30%		
PUB-I Planned Unit Dev. - Industrial	n.a.	n.a.	10,000	70'	115'	n.a.	40'	10' (S)	(X)	3.0	30'	30%		

* Maximum residential density is the number of dwelling units per acre, not including streets, alleys, or public space. R-MF zoned after June 16, 1981 - four units per building maximum.

** 15,000 s.f. average

*All regulations may vary when above districts are used as a base district for a PUD

Section 3.25 Special Use Permit

(O-02-1331 / 02-19-2002)

The purpose of a Special Use Permit is to allow a use not normally allowed in a zoning district, which could be of benefit in a particular case to the general welfare, provided adequate development standards, and special requirements are imposed to protect surrounding uses or to preserve the character of the neighborhood. Upon proper application and payment of the applicable fee, the City Council, after public hearing and proper notice to all parties affected and after recommendation from the Planning and Zoning Commission, may authorize a Special Use Permit for a use not allowed by right in *Section 3.24 "Schedule of Permitted Principal Uses"* in accordance with the following criteria.

1. Procedures – Every Special Use Permit application shall be reviewed and considered using the same procedures for reviewing and considering a rezoning application as specified in *Chapter 1 – General Provisions* of this Land Development Code.
2. Site Plan – The applicant must submit a site plan in the form and manner specified by the Administrative Official, showing the details of the proposed use and its relationship to surrounding properties.
3. Additional Information – The City Council and the Planning and Zoning Commission, in considering and determining its recommendation to the City Council on any request for a Special Use Permit, may require from the applicant, plans, information, operating data and expert evaluation concerning the location and function and characteristics of any building, structure or use proposed.
4. Conditions of Approval – The City Council may impose such safeguards, requirements and conditions as it deems are necessary to properly protect any surrounding property, surrounding use, or neighborhood character and to insure the appropriate conduct of the special permitted use, including, without limitation, imposing development standards, requiring public facility improvements and means of ingress and egress of public streets, establishing conditions of operation, establishing time limits, establishing location, arrangement and construction of any uses or structures, adopting regulations to protect the general welfare and adjacent property from excessive noise, vibration, dust, dirt, smoke, fumes, gas, odor, explosion, glare, offensive view of other undesirable or hazardous conditions. All conditions imposed by the City Council shall be complied with prior to the issuance of a Certificate of Occupancy.
5. Revocation Upon Failure to Develop – A special use permit approved by the Council shall become null and void one year from the date of approval by the City Council unless a building permit or certificate of occupancy, whichever is applicable, has been obtained on the property within said one year period. The City Council may in its adopting ordinance, shorten or lengthen the time in which a building permit or certificate of occupancy must be issued in order to preserve the special use permit. Any Special Use Permit in existence upon the passage of this ordinance shall become null and void one year after the passage of this ordinance, unless a building permit or certificate of occupancy, whichever is applicable, has been issued within said year.

Exception: The ordinance authorizing a Special Use Permit may provide for an alternate expiration period.

6. Termination and Abandonment of Use – In the event the building, premises or land uses authorized by a Special Use Permit are terminated or abandoned for a period of six (6) months or longer, the use of the same shall thereafter conform to the regulations applicable to the zoning district, unless a new and separate Special Use Permit is approved for continuation of the use.
7. Modification – No building or premises authorized by a Special Use Permit may be enlarged, modified, structurally altered, or otherwise significantly changed unless an amendment to the Special Use Permit is approved by the City Council using the procedures specified in *Chapter 1 – General Provisions* of this Land Development Code.
8. Violation – It shall be unlawful for property owner or tenant to violate any terms or conditions of the ordinance approving the Special Use Permit.

Section 3.25.1 Large Commercial Buildings

(O-00-1249 / 11/08/00)

Commented [BB65]: Section to be moved to Chapter 6: Commercial Design Standards

A. Applicability — The criteria in this Section shall be applicable to the construction of any new large commercial building proposed for construction on or after November 8, 2000. These criteria shall not be applicable to the following:

1. ~~The use, re-use, modification or consolidation of existing commercial buildings developed prior to November 8, 2000, or to the expansion of commercial buildings existing as of November 8, 2000, provided expansion does not exceed ten percent (10%) of the existing building footprint, including the cumulative amount of all prior expansions, or~~
2. ~~Buildings constructed within the limits of the PUD-C established by ordinance O-99-1141.~~

B. General Provision — No new large commercial building shall be permitted for construction within the city of Colleyville, except where allowed as follows:

1. ~~Large Commercial Building shall be allowed by right in the ML — Light Manufacturing District.~~
2. ~~Large Commercial Building shall be allowed with approval of a Planned Unit Development — Commercial.~~
3. ~~No large commercial building shall be permitted within a previously approved Planned Unit Development — Commercial, unless the approving ordinance contains a specific provision for a large commercial building as provided in this Section. The requirements and procedures for a Planned Unit Development — Commercial contained elsewhere in the Colleyville Land Development Code and the additional requirements set forth in this Section shall be used in the review of an application for a large commercial building. The City Council may establish such terms and conditions as are necessary to protect life, health, property, public peace and the general welfare of the public and the adjacent properties. For purpose of this regulation, a commercial building which contains a building footprint of forty thousand (40,000) square feet, or more, shall be declared a large commercial building and be subject to these criteria.~~

C. Application and Development Requirements — Every large commercial building must comply with the requirements of this Section. All site plan reviews required by the Colleyville Land Development Code or applications for a rezoning request for a Planned Unit Development — Commercial for a large commercial building shall include all the information outlined as follows:

1. Site Plan — A site plan, drawn to scale, showing the property boundary, all proposed buildings, water features, creek channels, the 100-year flood plain, outdoor display areas, proposed driveways, parking lots, landscaped areas, loading and delivery docks, refuse and recycling facilities and other physical features which may influence the development of the site.
2. Elevation Drawings — Building elevation drawings, drawn to scale, indicating the type and percentage of each exterior building wall material.

D. Development Requirements

1. Building Height, Set Back Requirements and Maximum Lot Coverage — The minimum front, side and rear building set back lines, maximum building height, and maximum lot coverage for a 40,000 square foot building footprint shall be in accordance with the following schedule:

Minimum Building Line Set Backs, Maximum Height and Maximum Lot Coverage for a 40,000 s.f. Large Commercial Building			
Minimum Building Set Back	Front:	40 ft.	(1)-(2)
	Side:	40 ft.	(1)-(2)
	Rear:	40 ft.	(1)-(2)
Maximum Building Height		35 ft.	
Maximum Lot Coverage		40%	

Notes:

- (1) ~~The minimum building set back line adjacent to a public street shall be increased one foot for each additional increment of 2,000 s.f. of building footprint over 40,000 square feet of building footprint.~~
- (2) ~~The minimum building set back line adjacent to a residential-zoned property shall be a minimum of 50 feet and shall be increased one foot for each additional increment of 1,000 s.f. of building footprint over 50,000 square feet of building footprint with a maximum building setback of 250 feet. If a public road stands between the residential-zoned property and the commercial establishment, the road width may be included in the setback calculation if the setback exceeds 100 feet.~~
- (3) ~~The setback requirements between two commercial-zoned properties shall conform with the CC2 zoning requirements as outlined in the Land Development Code.~~

~~2. Façade Articulation — All large commercial buildings shall have facades which comply with the following requirements:~~

- a. ~~Horizontal Articulation — No building façade which faces a public street shall extend horizontally greater than three (3) times the height of the wall without having an off-set of not less than fifteen (15%) percent of the wall's height as shown on the attached Exhibit "A", and such off-set shall continue for a minimum distance equal to at least twenty-five (25%) percent of the length of the longest adjacent plane.~~
- b. ~~Vertical Articulation — No building façade which faces a public street shall extend horizontally for a distance greater than three (3) times the height of the wall unless the wall contains at least one of the following features and every front building façade shall have no less than two of the following features:~~
 - (1) ~~Parapets which change the roof line. The parapet height shall be a minimum of fifteen (15%) percent of the wall's height, and such height change shall continue for a minimum distance equal to at least twenty-five (25%) percent of the length of the longest adjacent plane.~~
 - (2) ~~Overhanging eaves, extending no less than three (3) feet past the supporting walls.~~
 - (3) ~~Sloping roofs that do not exceed the average height of the supporting walls, with an average slope greater than or equal to one (1) foot of vertical rise for every three (3) feet of horizontal run and less than or equal to one (1) foot of vertical rise for every one (1) foot of horizontal run.~~
 - (4) ~~Three or more roof slope planes.~~
 - (5) ~~A covered walkway along a minimum of fifty (50%) percent of the front façade length.~~

~~3. Side and Rear Facade Features — Side and rear building facades, which do not face a public street, shall include a minimum of three architectural changes, such as (1) a changing plane not less than five (5) feet in width and eighteen (18) inches in depth, (2) a surface material change of not more than thirty (30) feet in length, as measured horizontally, or (3) a combination of these elements.~~

~~4. Building Design — In addition to the building façade requirements contained herein, the site plan and building elevation plans shall comply with the requirements of Chapter 6 — Building Design of the Colleyville Land Development Code, except where modified by the requirements in this Section. The minimum building design score shall be 30 points.~~

~~5. Exposed Columns — Exposed structural support columns shall be constructed of, or clad in, the same masonry material as the principal structure. Architecturally significant columns (e.g. fluted, etc.) may be permitted.~~

~~6. Exterior Surface Materials — A minimum of ninety (90%) percent of each exterior wall surfaces, excluding door and window openings, shall be constructed of clay-fired brick, native stone, cast stone, or a combination of these materials. Tilt-up concrete construction is permitted, provided the~~

exterior surface is covered with clay-fired brick, native stone, cast stone, or a combination of these materials. Stucco and EIFS (Exterior Installation Finished System) are permitted for not more than ten (10%) percent of the exterior surface. Concrete block, split-faced block or cinder block shall not be acceptable, except where a wall surface faces an adjacent non-residential building. Proposals for surface materials with similar durability and appearance of clay-fired brick, native stone, or cast stone may be considered.

- ~~7. Exterior Surface Colors~~ The exterior surfaces shall be of a natural finish, provided the colors are subtle, or neutral colors. Trim and accent areas may be painted and feature brighter colors, including primary colors, but not more than ten (10%) percent of the wall surface area. High intensity or fluorescent colors are prohibited.
- ~~8. General Landscaping Requirement~~ The landscaping of the development shall comply with the requirements of Chapter 4 – Landscaping and Buffering of the Land Development Code, except where modified by the requirements of this Section. All ground surfaces not used for buildings, sidewalks, roadways or other impermeable surfaces shall be covered with live grass, turf, shrubbery, trees, ground cover, flowering plants or appropriate mulching. In order to insure for a variety of plant materials the following minimum requirements for grass, shrubs, and trees shall be provided:
 - ~~a. Minimum Landscaping Coverage:~~ Not less than twenty percent (20%) of the total land area of the development shall be, landscaped. At least fifty percent (50%) of the total landscaped area shall be located in the street yard(s). The overall minimum percentage of required landscaping may not be reduced by the application of landscaping enhancement credits.
 - ~~b. Trees:~~ Landscaping shall include the retention or planting of one (1) three-inch (3") caliper overstory shade tree per each forty (40) feet of street frontage. These trees to be planted within the landscaped buffer adjacent to each street frontage.
- ~~9. Landscape Buffer and Screening Wall Adjacent to Residential Property~~ Along the entire length of the common property line adjacent to residential property there shall be a landscape buffer, a minimum of forty (40) feet in width, and a solid screening wall constructed of clay fired brick, native stone, cast stone, or a combination of these materials, not less than eight (8) feet in height nor more than ten (10) feet in height. The landscape buffer and the solid screening wall shall be provided along the entire length of any property line adjacent to any residential property. The landscaped buffer shall contain lawn grass or ground cover and be maintained as a permanent landscaped area. There shall be no buildings, parking areas, driveways, sidewalks or structures contained within the required buffer. The landscaping buffer shall include the retention or planting of one (1) three-inch (3") caliper overstory shade tree per each forty (40) feet of common property line with an adjacent residential property. Said screening wall shall be constructed generally along the common property line with the residential property, but its terminus shall not encroach nearer than twenty-five (25') to a street right-of-way.
- ~~10. Landscape Buffer and Screening Adjacent to Public Streets~~ There shall be a minimum forty (40) foot wide landscape buffer adjacent to all street rights-of-way. There shall be no buildings, parking areas, driveways, sidewalks or structures, except permanent signs, contained within the required landscape buffer. A driveway or sidewalk may cross the buffer to provide access to the site. Within the landscaped buffer, there shall be either one or a combination of the following landscaping features:
 - ~~a. Earthen Berms:~~ A minimum of thirty (30) inches in height with a maximum side slope of three feet to one foot of rise as shown on the attached Exhibit "B". The berm shall not extend parallel to the street right-of-way, but shall meander in a serpentine fashion and shall be entirely vegetated with lawn grass or groundcover.
 - ~~b. Shrubs:~~ A row of shrubs consisting of individual shrubs planted not more than thirty-six (36) inches on center which will form a solid continuous visual screen of not less than thirty (30) inches in height within a two year period after planting as shown on the attached Exhibit "C". Shrubs shall be maintained so as to not exceed six (6) feet in height. The shrub row shall be located along the portion of the landscaped buffer that is the furthest from the street right-of-way.

- c. ~~Low Solid Wall:~~ A solid wall constructed of clay-fired brick, native stone, cast stone, or a combination of these materials, not less than thirty (30) inches in height as shown on the attached Exhibit "D". Said wall shall be constructed generally parallel to and twenty (20) feet from the street right-of-way. The solid wall shall not constitute more than thirty (30) percent of the length of the abutting street frontage.
11. ~~Parking Lot Landscaping~~ — Parking areas shall contain a minimum of one (1) landscaped island/landscaped island per sixteen (16) parking spaces. No landscaped island shall be less than three-hundred (300) square feet. Every landscaped island shall include one (1) three-inch (3") caliper shade tree with the remaining area covered with grass, shrubs or ground cover. Landscaped planting areas shall be located so that no parking space shall be more than seventy-five (75) feet from the trunk of a shade tree. Where a landscaped island is adjacent to a landscaped buffer, the parking spaces adjacent to the landscaped island shall be paved with a pervious material pave stone. The parking lot landscaping requirements contained in the paragraph shall not be applicable to the interior parking spaces of a parking garage.
12. ~~Parking Lot Walkways~~ — There shall be a pedestrian walkway a minimum of eight (8) feet in width for every four rows of parking within the parking area. Said walkway shall be constructed parallel to the parking rows as shown on the attached Exhibit "B". The walkway shall be paved with a hard surface.
13. ~~Curbing of Landscaped Areas~~ — All landscaped islands and landscaped areas shall be protected from vehicular encroachment by concrete curbs a minimum of six (6) inches in height.
14. ~~Permanent Ground Signs~~ — The development shall comply with the provisions of Chapter 7 — Sign Regulations of the Colleyville Land Development Code, except that only one monument sign per street frontage shall be allowed. The maximum height of the monument sign structure shall be eight (8) feet. The maximum area of the monument sign structure shall be one-hundred (100) square feet. Only external illumination shall be allowed. Each side of the monument sign structure shall contain an architectural feature of clay-fired brick, native stone, cast stone or a combination of these materials. The architectural feature shall be equivalent to fifteen (15%) percent of the total area of the sign structure.
15. ~~Attached Building Signs~~ — The development shall comply with the provisions of Chapter 7 — Sign Regulations of the Colleyville Land Development Code, except that the total square footage of all wall signs shall not exceed ten (10%) percent of the wall face.
16. ~~Tree Preservation~~ — The development shall comply with the provisions of Chapter 5 — Tree Preservation of the Colleyville Land Development Code.
17. ~~Off-Street Parking and Loading Requirements~~ — The development shall comply with the requirements of Section 3.29 — Off-Street Parking Requirements of the Colleyville Land Development Code. The maximum number of parking spaces shall be one (1) space per two-hundred (200) square feet of gross floor area.
18. ~~Delivery / Loading Spaces~~ — No delivery or loading space shall be located within one-hundred (100) feet of a residential property. All delivery and loading spaces shall be screened from public view from a street right-of-way or an adjacent residential property by an eight (8) foot to ten (10) foot tall solid screening wall constructed of like material to the building. Additional planting materials shall be provided so that no more than two-thirds of the surface area of the solid screening wall is visible from the street or residential property. The live plant screening shall consist of shrubs, a minimum of three (3) feet in height when planted, and which can be expected to reach six (6) feet or greater in height within three (3) years of planting. Shrubs shall be spaced so that there shall be no gap greater than four (4) feet between mature plant materials. No delivery or loading area shall be operated between the hours of 11:00 p.m. and 6:00 a.m. Parking of delivery vehicles shall not exceed 48 hours duration.
19. ~~Outdoor Display Areas~~ — Outside display of merchandise shall be allowed, provided that it shall be limited to an area within eight (8) feet of the front wall of the primary building and further provided that emergency pedestrian access to the building is not blocked. No merchandise shall be displayed between the hours of 11:00 p.m. and 6:00 a.m.

For purpose of this regulation, the front wall shall be the front containment wall of the structure and not the front of an overhanging walkway cover.

20. ~~Outside Storage and Sales Areas~~—There shall be no outside storage or outside sales areas of landscaping materials, plants or general merchandise, except for an outside display area, as provided in the above paragraph. For purpose of this regulation, nothing shall prohibit the sale or display of landscaping materials, plants or general merchandise located behind an enclosed solid screening wall constructed of like materials to the building, provided merchandise is not visible above the top of the screening wall.

21. ~~Refuse Collection~~—No refuse collection shall occur within 100 feet of residential property. All refuse containers, including recycling containers, and trash compactors shall be screened from view from a public street and from adjacent residential properties by an enclosure constructed on three sides with an eight (8) foot high solid masonry screening wall constructed of like material to the building. Said screening enclosure shall include solid metal doors. When a refuse container, trash compactor or recycling container is situated adjacent to a residential property, the screening wall enclosure shall comply with the building setback lines established for the zoning district.

22. ~~Screening of Mechanical Equipment~~—Roof or ground-mounted mechanical equipment shall be screened to mitigate noise and views in all directions from adjacent property. If roof mounted, the screening material shall be designed to conform architecturally with the design of the building. Ground-mounted mechanical equipment shall be screened by a solid masonry screening wall constructed of like material to the building and be of sufficient height to block the view and noise of the equipment from adjacent property.

23. ~~Cart Storage~~—All shopping cart storage areas shall be contained within the primary building. Temporary shopping cart parking within parking areas shall be allowed, provided carts are removed to within the primary building on a frequent basis.

24. ~~Outdoor Lighting~~—Light poles situated within 300 feet of residential property shall not exceed twenty (20) feet in height. Exterior lighting must be High Intensity Discharge (HID) lights shielded and directed away from adjacent properties and shall produce light no greater than one foot candle at the property line, except at driveway entrances which shall be lighted adequately to provide for safe access to the property. The parking lot lighting system shall be designed to dim between the hours of 11:00 p.m. and 6:00 a.m. Wooden light poles shall be prohibited as an illumination standard. Security lighting at the rear and sides of the building shall be designed to reduce light pollution and to prevent objectionable glare onto any residential property. Exterior lighting shall comply with Chapter 6 (Building Design Standards) of the Land Development Code.

Commented [EW66]: New Section 6.6 in Chapter 6 addresses exterior lighting in all commercial districts

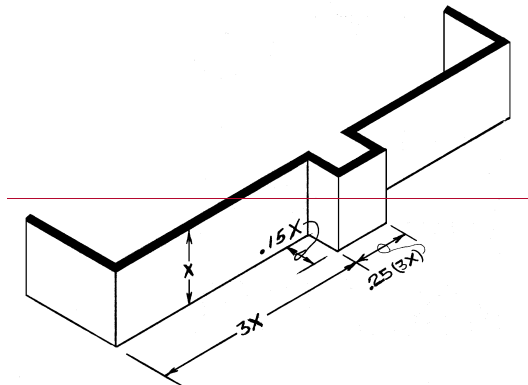
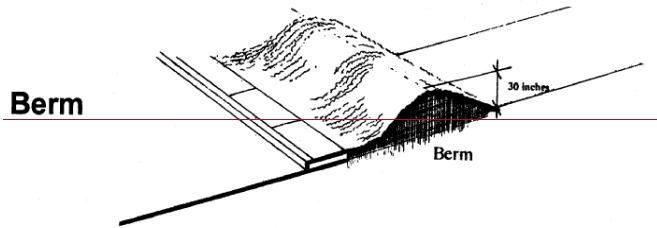
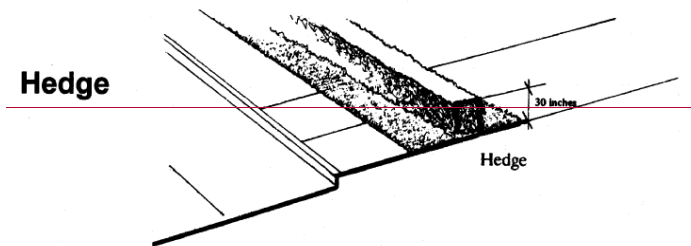


Exhibit "A"

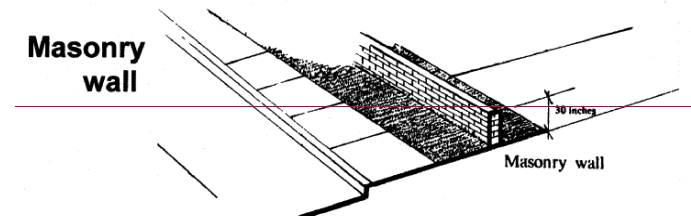
Façade Articulation



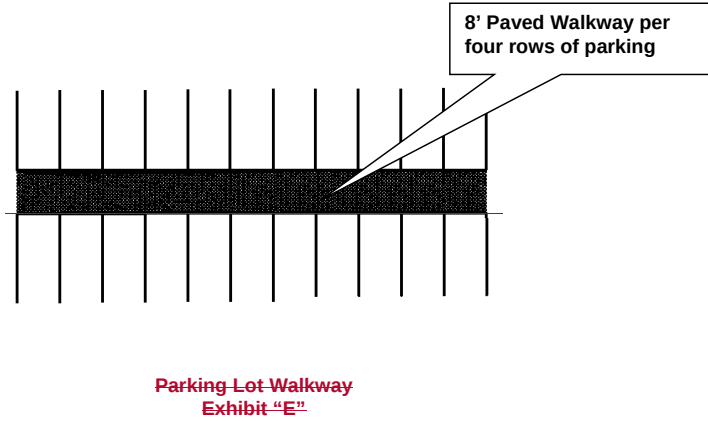
**Landscape-Berm
Exhibit "B"**



**Landscape Shrubs
Exhibit "C"**



**Solid-Wall
Exhibit "D"**



Section 3.26 Fences, Free Standing Walls, and Screening Materials

A. Scope

1. This section is to regulate fences, free standing walls and other screening material in a manner so as to promote safety, preserve property values, promote the general welfare of the City of Colleyville, and to enhance the aesthetic quality of the community.
2. No fence, screen, freestanding wall or other visual barrier shall be constructed or placed in such a manner as would endanger the health or safety of the general public.
3. For administrative purposes, all references to fences or walls shall be interpreted to apply to free standing structures.

B. Definitions Fence or Wall Placement

~~Perimeter Subdivision Fencing. A subdivision perimeter fence shall be construed to be any decorative or security fence along a substantial portion of the boundary or property line of any plat, replat or phase of a plat or replat or filing of a plat or replat as those terms are defined in Chapter 2 - Definitions of this Land Development Code, of any property (1) zoned other than CPO, CN, CC1, CG2, CC3, or ML and shown on an approved plat thereof, or (2) property that is zoned AG, RE, R40, R30, R20, R15, RD, RMF. The actual location of a fence or wall on a site is assumed to be to on the property or common property line and encroachments onto adjacent property are not expressly authorized by the Administrative Official or their representatives.~~

Commented [EW67]: A sub-section for "Definitions" that contains only one definition is not necessary and should be located in Section 2 of LDC. Retitled this section as "Fence or Wall Placement".

Commented [BB68]: Move to Ch. 2 - Definitions

C. Maintenance

1. All fences erected as provided for in this section shall be maintained in good condition.
2. A fence shall not lean more than one inch out of vertical for each foot of height as measured from the top of the fence.
3. The owner shall replace broken, damaged, removed or missing parts of a fence within ten (10) days of the day the owner received notice from the Administrative Official, with the same material, or material with comparable composition, color, size, shape and quality of the original fence to which the repair is being made. No permit is required for repairs as defined in this ordinance. The Administrative Official may, upon written notice from the owner that unusual circumstances prevent the timely repair of a fence, extend the replacement time as required. The Administrative Official shall not extend the replacement time longer than reasonably necessary. The owner requesting a replacement time

Commented [EW69]: Added disclaimer for when property owners dispute the fence is crossing property lines.

extension shall provide the Administrative Official a written scope and schedule detailing materials and estimated time period of the completed replacement for approval.

4. A fence shall be maintained in sound structural condition as a whole or completely removed, including post(s).
5. Property owners shall maintain fences, including those existing prior to the adoption of this Ordinance, at all times in a state of good repair, safe and secure condition, with all braces, bolts, nails, supporting frame and fastenings free from deterioration, termite infestation, rot, rust or loosening, and able to withstand at all times the wind pressure for which they were designed.
6. Property owners shall regularly paint fence supports, gates, structural members and exterior surfaces that are covered with paint to prevent rusting, peeling or blistering surfaces.
7. Existing fences that were constructed prior to the adoption of this Ordinance that were constructed with materials not currently permitted by this Ordinance may be maintained as long as no part of the fence is or becomes unsafe, dilapidated, or a public nuisance. If the Administrative Official determines the fence is unsafe, dilapidated, or a public nuisance the fence must be repaired with materials approved by this Ordinance or be removed.
8. The construction of a fence or wall on the property line shall not preclude the property owner's responsibility to maintain and keep the area between the fence and an adjacent fence on a neighboring property, the property line to the back of curb or edge of the pavement or center of alley, free and clear of debris and high weeds.

D. General Requirements/Prohibitions for all Fences and Free-standing Walls

1. *Screening Required in Residential Districts:*

- a. Nonresidential uses in a residential district shall be suitably screened from view of any adjacent residential lot or dwelling use along the side and rear property lines of such nonresidential use with a decorative masonry wall of not less than eight (8) feet in height. ~~Said screening requirements shall not be mandatory for public schools, parks or churches, except where active outdoor intensive use area (such as a playground) is adjacent to a residential lot or dwelling. Off-street loading areas of any non-residential use shall be adequately screened from view of any residential dwelling or lot or of any other adjacent public or semi-public land use with a decorative masonry wall of not less than (8) feet in height or a landscaped berm.~~
- b. Where a multifamily or mobile home use abuts a one or two family district, or where a mobile home use abuts a one, two or multifamily use or district, the side and rear property lines of said multifamily or mobile home use or district shall be suitably screened from view of any adjacent dissimilar residential dwelling or lot with a decorative masonry wall of not less than eight (8) feet in height or a landscaped berm.
- c. Nothing in this section shall restrict the fencing of tennis courts with traditional fencing material to a maximum of twelve (12) feet.

2. *Screening Required in Non-Residential Districts:*

- a. Where a nonresidential use abuts a residential lot, use or district, the side and rear property lines abutting said residential lot, use or district shall be suitably screened, with a decorative masonry wall, by the nonresidential use so as to obscure the view from the residential lot, use or district to the nonresidential use to a height not less than eight (8) feet.
- b. Where a district boundary separating a residential district from a nonresidential district is along a street, and an automobile parking lot or parking area is located in the front yard of the nonresidential use, then said parking lot or parking area facing the residential lot, use or district shall be suitably screened to a height of not less than three and one-half (3-1/2) feet.

Commented [BB70]: Churches and schools should be expected to provide screening when adjacent to residential uses

- c. In all districts where open storage is permitted and the screening thereof is required, then such screening shall be provided around the exposed perimeter thereof of not less than six (6) feet in height and shall be composed of decorative masonry material
 - d. Off-street loading areas shall be adequately screened from view of any residential dwelling lot or of any other adjacent residential land use with a decorative masonry wall of not less than eight feet in height or a landscaped berm.
 - e. All roof mounted mechanical equipment and parapet wall structural supports shall be screened from view.
 - f. All required screening between residential and commercial, institutional, multifamily and mobile home uses shall be maintained in good condition by the property owner of the commercial, institutional, multifamily and mobile home use.
3. *Screening Requirements for Waste, Garbage, Compacting and Recycling Containers:* The following regulations shall apply to all multifamily, mixed-use, institutional and commercial uses where large containers are utilized for the storage or compacting of waste, garbage or recycling materials for any properties where the building permit for the primary structure was issued on or after April 17, 2013:
- a. All containers shall be fully enclosed by a decorative masonry wall.
 - b. Masonry materials shall match the masonry materials of the exterior wall of the primary structure on the property where the container is located.
 - c. The height of the screening wall shall be a minimum of six feet, or one foot above the height of the container/compactor, whichever is greater, and shall not exceed 10 feet in height.
 - d. The gate shall be composed of solid metal and shall be of a color that matches or complements the masonry wall.
 - e. The gate shall remain closed at all times. Exception: gates for recycling bins that are accessible to the public may remain open provided all recycling material is completely stored within the container.
 - f. Where possible, gates shall be oriented away from the view of any roadway traffic.
 - g. All enclosures and containers shall be located behind all required building setbacks.
 - ~~h. and All enclosures and containers shall be located a minimum of 25 feet from any properties zoned or used for non-multifamily residential purposes.~~
 - h. Unless subject to a different requirement as part of an SUP or PUD ordinance, for properties where the building permit for the primary structure was issued before April 17, 2013, the required enclosure and gate may be composed of wood or masonry materials to a minimum height of six feet and the gate must remain closed at all times. Otherwise, said properties shall be exempt from the other provisions of this section. However, loss of any legal-nonconforming status for any property and/or building as described in Section 3.7 in the Land Development Code shall require full compliance with this section.
 - i. The City shall have the right to remove any container in an enclosure that has been non-compliant with this sub-section for more than 30 days.
4. *Obstruction Prohibited:* No fence, screen, free standing wall or other visual barrier shall be so located or placed that it obstructs the vision of a motor vehicle driver approaching any street, alley or drive intersection. A visual barrier shall be deemed to be any fence, wall, hedge, shrubbery, etc., higher than thirty (30) inches above ground level at the property line, except single trees having single trunks, which are pruned to a height of seven (7) feet above ground level. See Exhibit "3-1".

Commented [BB71]: Separated into 2 regulations

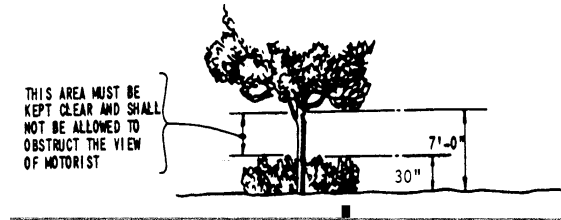


Exhibit "3-1"
Obstructions Prohibited

5. *Twenty-Five (25) Foot Visibility Triangle Required:* No fence, screen, wall or visual barrier shall be located or placed where it obstructs the vision of motor vehicle drivers approaching any street intersection. At all street intersections, clear vision shall be maintained across the lot for a distance of twenty-five (25) feet back from the property corner along both streets. See Exhibit "3-2".

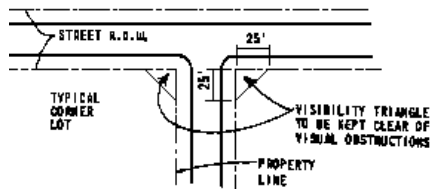


Exhibit "3-2"
Visibility Triangle

6. *Barbed Wire Prohibited:* Fences constructed of barbed wire and walls topped with broken glass or surfaced with any like material shall be prohibited except as provided below.

Barbed wire fences used in conjunction with permitted agricultural, livestock, and related activities, or in industrial districts are permitted without restrictions.

Barbed wire strands may be placed on the top of security fences in non-residential districts for the purpose of security from theft, entry and hazard such as around public utility substations and uses of a similar nature, provided the top strand is not higher than eight (8) feet nor the bottom strand lower than six (6) feet from the adjacent grade line.

7. *Electrical Fences:* Electrical fences and fence charging devices (Underwriters Laboratory approved) shall be plainly marked at a minimum of twenty-five (25) foot intervals as to the nature thereof.
8. *Eight (8) Foot Maximum Height:* No fence in a residential district shall exceed eight (8) feet in height above ground level at the fence line.
9. *Property Owners' Responsibility:* The construction of a fence or wall on the property line shall not preclude the property owner's responsibility to maintain and keep the area defined between the extension of the property lines to the back of curb or edge of pavement free and clear of debris and high weeds. See Exhibit "3-3".

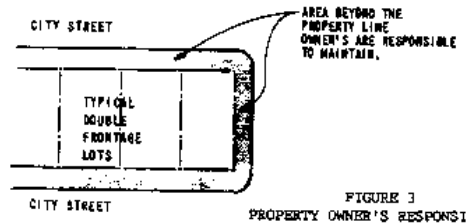


Exhibit "3-3"
Property Owner's Responsibility

10. *Public Property:* No fence, guy wire, brace or any post of such fence shall be constructed upon or cause to protrude over property that the City or the general public has dominion and control over, owns or has an easement over, under, around or through, except upon drainage and utility easements which are permitted to be fenced.
11. *Floodway Permit Required:* The construction of a fence or wall in a floodway as shown on the most recent revision of the "Floodway - Flood Boundary and Floodway Map" prepared by the Federal Emergency Management Agency (FEMA) shall require a development permit as currently required in the City's drainage policies.
12. *Swimming Pools:* All swimming pools shall be fenced. A solid or chain link type fence or a barrier at least four (4) feet in height shall completely enclose every swimming pool to be constructed. There shall be no openings, holes, or gaps bigger than four (4) inch spaces and no openings whatsoever on horizontal picket type fences. All gates allowing access to the pool area shall be self-closing with self-latching devices located in the upper quarter of the gate. All entrances to the swimming pool area must be able to be secured by a combination or key locking device. A dwelling house, accessory building, or apartment building may be used as part of such enclosure provided that all entrances to the swimming pool are equipped with gates as described herein. All fences should conform to local governmental codes and restrictions.
13. *Pre-Formed Concrete:* Pre-formed concrete is a permitted masonry material provided the texture adequately mimics the intended style match, be it wood, brick, stone, etc. Pre-formed concrete fences shall be maintained in good condition including any painted fences. The building official shall approve the final finished surface and reserves the right to deny a fence permit application if the surface does not adhere to these regulations.
14. *General Construction Requirements for Wood Fences*
 - a. For commercial properties, all vertical posts on fences over four (4) feet in height shall be galvanized steel with a minimum two (2) and three-eighths (3/8") inch diameter, a minimum fifteen (15) gauge thickness, and set in a concrete footing. Picket fences, split rail fences, ranch style or agricultural fences, or other types of decorative fences approved by the Building Official or his/her designee shall be permitted to use wood posts.
 - b. Concrete footings shall be a minimum of eight (8) inches in diameter.
 - c. For fences less than seven (7) feet in height, posts shall be spaced at a maximum of eight (8) feet on center, set in a concrete footing of no less than twenty-four (24") inches deep.
 - d. For fences that are seven (7) feet or greater in height, posts shall be spaced at a maximum of six (6) feet on center, set in a concrete footing of no less than thirty-six (36") inches deep.
 - e. Fence posts attached to or supported by other structures, including retaining walls, shall be provided with foundation and anchorage to prevent movement of structure or retaining wall.

- f. All materials shall be securely fastened, vertical boards to horizontal stringers, stringers to vertical posts, top rail, to ensure an ongoing attractive appearance and safe condition, free from rot, rust, vandalism and other sources of decay.
- g. The bottom of the fence shall be designed to prevent ground to wood contact. This can be achieved through the use of a concrete strip poured between the fence supports or by raising the pickets to provide a minimum of two inches between the bottom of the pickets and the ground. Fences located within drainage easements must be approved by the Public Works Director per the requirements of Section 8-170 of the Land Development Code and shall be built such that required drainage and storm water run-off is not impeded.
- h. All wood material shall be stained, pressure treated, painted, or adequately sealed to prevent decay.

Commented [EW72]: "storm water" is two separate words

15. Perimeter Subdivision Fences: A fence along the perimeter of a subdivision is allowed under the following conditions:

- a. No setback shall be required from any street right-of-way line.
- b. No perimeter subdivision fence shall encroach into the required twenty-five (25) foot visibility triangle as defined above.
- c. The perimeter subdivision fence shall have a maximum height of eight (8) feet, to include any element associated with the fence.
- d. Materials along Street Frontage: The perimeter subdivision fence shall be decorative in nature and constructed of stone, brick, wrought-iron, or a combination of these materials for any portion along a perimeter street. The use of wood and composite materials shall be prohibited along the street frontage.

Commented [BB73]: Codified standards for perimeter subdivision fences

Commented [BB74R73]: After review, staff recommends approval of these standards. Revision was made to material standards along street frontages.

16. Sealed Plans Required for Masonry Walls, Columns and Fences: For all masonry walls, columns and fences authorized by this Section, required plans and specifications shall be prepared and sealed by a State of Texas registered engineer and shall consider the site's soil characteristics, wind loadings, and other environmental considerations. All field inspections and verifications for a new masonry wall, fence, and column must be approved by the design professional mentioned above or the professional's representative. Said inspection approval must be submitted to the Building Official in writing prior to the City's final inspection.

E. Fence and Free Standing Wall Setback Requirements

- 1. **Front Yards:** No fence or free standing wall greater than thirty (30) inches in height and no greater than twenty-five (25) percent solid opaque construction shall extend into the required yard on which the primary structure faces.
 - a. The primary fencing material shall be of wrought iron, pre-formed concrete, poured in place concrete, concrete masonry unit (CMU), brick, approved wood rail construction, a combination thereof or other similar material approved by the City Building Official. All poured in place concrete and CMU shall contain an architectural finish.
 - b. On a corner lot, a house shall be deemed to face on that street on which it has its least dimension unless otherwise determined by the Building Official.
 - c. Vehicle Gate setback: Any vehicle gate shall be set back a sufficient distance from the property line to allow vehicle queuing space in order to maintain safety and to prevent backup along the street pavement. Sufficient distance shall be determined by the Building Official.
 - d. Exceptions to front yard requirement: Lots containing a minimum of 40,000 square feet, and subdivisions, shall be allowed to construct a perimeter fence within the front yard setback. Said

Commented [EW75]: Provides consistency for term used throughout Subsection E

Commented [EW76]: Specifies that the section applies to vehicle gates – not pedestrian gates

fencing shall be no greater than eight (8) feet in height and shall have no greater than twenty-five (25) percent solid opaque construction within the front yard. Allowed construction materials shall be the same as paragraph "1.a" above. **This exception shall not apply to properties zoned as a PUD district.**

Commented [EW77]: Provides consistency for term used throughout Subsection E

2. **Corner Side Yards:** Except where allowed elsewhere in this chapter, fences and walls within a required side yard adjacent to a street right-of-way shall meet the following setback standards:

A privacy fence or wall (which shall be defined as any fence or wall greater than thirty inches (30") in height ~~or that is~~ greater than 25 percent opaque construction) within a required street side yard shall be subject to whichever of the following provisions a) through d) shall yield the greatest setback:

Commented [BB78]: This clarifies that a fence that is not opaque (i.e. wrought iron) allowed to be located along the property/ROW line and within the setback.

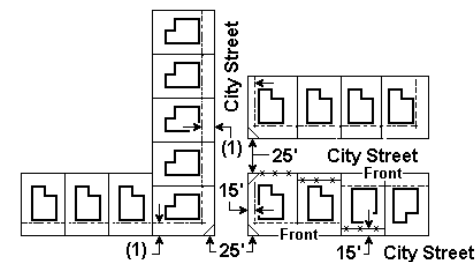
Commented [BB79R78]: Per City Council, all fences must meet setback. Waiver requests require SUP approval?

- a. If the subject lot has a street side yard which faces a dwelling front or lot front across the side street, the side yard privacy fence or wall shall be located not less than fifteen feet (15') from the property line, except on any lot having either a required side yard less than fifteen (15') feet or an existing primary structure setback less than fifteen (15') feet, then the fence or wall may be constructed with the same setback as the primary structure; or
- b. If the subject lot backs to the rear of another residential lot, the side yard privacy fence or wall shall be located not less than fifteen feet (15') from the side property line; or
- c. If the subject lot backs to the side of another residential lot, the side yard privacy fence or wall shall be located not closer to the side property line than the required front setback of the adjoining lot; or
- d. If the subject lot backs to an alley, the side yard privacy fence or wall shall be located not closer than fifteen feet (15') from the side property line.

A decorative wall or fence (which is defined as any wall or fence not greater than thirty inches in height and not greater than twenty-five percent opaque construction) within a required street side yard shall not be placed less than three feet (3') from the side property line, and shall not be subject to the provisions of the preceding sections (a) through (d).

3. **Adjacent to Undeveloped Property:** Except for perimeter subdivision fencing meeting the requirements in paragraph "1.a" above, no fence or wall greater than thirty (30) inches in height ~~and not that is~~ greater than twenty-five (25) percent solid masonry opaque construction, shall be located less than fifteen (15) feet from the side property line adjacent to the street which leads into undeveloped property. See Exhibit "3-4".

Commented [EW80]: Provides consistency with term used throughout Subsection E



(1) Set-back established
by district regulations

Exhibit "3-4"
Typical 15'-0" Solid Fence Setbacks

4. **Rear Fence and Free Standing Wall Setbacks:** Fences and walls meeting all of the construction

requirements of paragraph "1.a" above and the Uniform Building Code other adopted standards may be erected on the rear property line except; however, lots whose rear property line abuts a public street on which one of the immediate adjacent lots maintains its required front yard, then no fence nor wall greater than thirty (30) inches in height shall be located within fifteen (15) feet of the subject lots rear property line. See Exhibit "3-4".

Commented [EW81]: Uniform codes are obsolete

5. Twenty-five Percent Opaque Construction: The intent of this provision in Subsection E is to discourage barriers that resemble a compound or fortress and the calculation shall be as follows: Every eight (8) linear feet of fencing shall be at least 75% open to view from the street or public way. The 25% opaque construction shall be calculated based on the area of each eight (8) foot linear segment of the barrier.

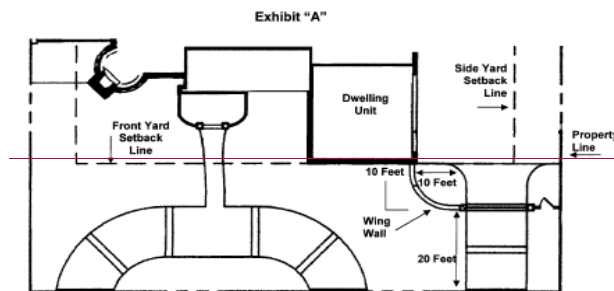
Commented [EW82]: This added provision attempts to specify how the calculation is applied to eliminate completely solid walls for longer runs and then installing wrought-iron on the ends

6. Special Use Permit Provision: Any request for a building permit for a fence/wall which does not meet the criteria in this Section shall only be authorized after approval of a Special Use Permit by the City Council using the procedures contained elsewhere in this Land Development Code.

F. Security Gating Encroachments

A front yard fence or screening wall providing support for a security gate and not exceeding a maximum height of 6 feet, may encroach a maximum of 10 feet into the front yard setback of a residential lot when the fence or screening wall meets the following criteria and shown in Exhibit "A":

1. The fence or screening wall shall attach to a gated entry across the driveway;
2. The fence or screening wall shall attach to the dwelling unit not more than 10 feet from the driveway and extend toward the driveway;
3. The fence or screening wall shall extend to the nearest side property line;
4. The fence or screening wall shall not extend beyond 10 feet into the setback from the dwelling unit;
5. The fence or screening wall shall not enclose nor extend across the entire front yard;
6. The gate and columns may not extend beyond one foot in height above the fence;
7. A minimum setback distance of 20 feet from the fence, screening wall and gate to the front property line shall be maintained.



G. Administration

1. Fence Permit Required - It shall be unlawful for any individual, partnership, company or corporation to erect or have erected a fence or any part of a fence of permanent construction in the city limits without first obtaining a fence permit from the Community Development Department.
2. Application for Permit - Any individual, partnership, company or corporation making application for a fence permit must sign an application for same showing the following information:

- a. Applicants name, address, and in addition, if the applicant represents a company or corporation, the name and address of the supervisor or foreman of said company or corporation and the name of its president.
- b. Name and owner of the property.
- c. Local address where fence is proposed to be erected.
- d. Materials and type of fence construction.
- e. Height of fence.
- f. Applicant shall provide engineering plans and specifications for those types of fences where such engineering is deemed appropriate by the Building Official. The engineering plans shall be reviewed and approved by the Building Official prior to issuance of a fence permit.
- g. Survey showing lot on which the fence is proposed to be erected and the location of adjoining or adjacent lots showing existing structures and fences. The proposed fence shall be delineated by a dark heavy line. In AG zoning districts a scaled plot plan can be submitted in lieu of a survey.

H. Variances

1. Any variance to the provisions of this section shall be heard by the Zoning Board of Adjustment.

Commented [BB83]: Redundant language

Section 3.27 Accessory Buildings and Residential Carport Regulations

The following regulations shall govern the location, size and use of accessory buildings:

A. Accessory Buildings Located in Residential Zoning Districts (O-00-1223 / 07/18/00)

1. Permit Required:

- a. A building permit shall be required for any accessory building which exceeds one hundred and twenty (120) square feet. However, all accessory buildings containing 120 square feet or less shall comply with the height and setback requirements of this Section. An accessory building shall only be allowed as an incidental structure to a principle building unless the accessory building is located in the Agricultural District.
- b. For the purpose of this Section, the term accessory building shall include detached residential garages, and pool houses, but shall exclude a carport (see Section 3.27.C). gaccessory dwellings, gazebos, cabanas, trellises, arbors, outdoor fireplaces/chimneys, or other shade structures. Exception: structures for specific use as playground assemblies and/or playhouses shall be exempt provided that minimum five (5) feet setbacks from property lines are maintained.

Commented [EW84]: Recommended expansion of language and provisions for children's structures

2. Maximum Size and Number of Buildings:

- a. The maximum number of accessory buildings allowed per lot shall be three (3) buildings. In addition, the combined square footage of all accessory buildings shall not exceed the maximum square footage specified in the following table. four percent (54%) of the aggregate area of the lot. Exemption: Lots containing a minimum of 80,000 square feet shall be exempt from the requirement for the maximum number of accessory buildings.

Commented [BB85]: Four percent (4%) is more in-line with current size allowances

Commented [EW86]: Allows for building sizes based on land area, not category

Commented [BB87]: Exemption added for large properties per Council direction

Maximum Square Footage of all Accessory Buildings				
Lot Size	Under .5 ac	.5-.99 ac.	1-2.99 ac.	3+ ac.

Total s. f.	750 s. f.	1,000 s. f.	1,750 s. f.	2,500 s. f.
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b. Accessory dwellings allowed by the Land Development Code shall be limited in size to be no more than the most restrictive of the following:

1. Fifty percent (50%) of the primary structure;
2. The maximum allowed square footage for accessory buildings on the lot; or
3. No more than twelve hundred (1,200) square feet

Commented [BB88]: Size limitations for accessory dwellings

c. For the purpose of this Section, the size of an accessory building shall be the square footage of the building footprint each floor, mezzanine, covered porch, or shade structure.

Commented [EW89]: Large accessory structures and extensions from accessory buildings should be accounted for.

ed. An application to exceed the total square footage shown in the above table authorized above may be approved as a Special Use Permit (SUP).

Commented [EW90]: Non-compliance should be addressed in new Section 7 below - Variances

de.- An existing accessory building may be remodeled or expanded provided the combined square footage of all accessory buildings does not exceed the maximum square footage allowed. However, an a legally-existing accessory building which exceeds the maximum square footage allowed may be remodeled or replaced with a new accessory building, but not expanded or increased in height.

Commented [BB91R90]: Need to keep per City Council direction

Commented [EW92]: Provision that does not "grandfather" buildings that were constructed without permits or otherwise authorized

ef. There shall be no physical connection between accessory buildings and a minimum separation of three (3) feet between accessory buildings.

3. Setbacks:

a. No accessory building shall be erected in any required yard, as defined in *Chapter 2 – Definitions*, except as set forth herein.

b. Attached accessory buildings – Accessory buildings erected ten (10) feet or closer to the principal building shall be considered attached, and shall comply with the setback lines established for the applicable zoning district. For the purpose of this regulation, the distance between buildings shall be measured between the nearest wall surfaces. Exception: Open structures (open on at least 2 ¼ sides), such as patio covers, shall be allowed to extend into the required rear yard setback a maximum of 10 feet.

Commented [BB93]: As long as there are no walls, the exception will allow for attached patio covers.

c. Detached accessory buildings – A detached accessory building shall comply with the setback lines established for the applicable zoning district, unless the accessory building is located totally behind the rear of the principal building, then it shall not be placed closer than five (5) feet to any side or rear lot line.

4. *Maximum Height:* No accessory building shall penetrate a vertical height envelope defined as being a point five feet from a side or rear lot line and extending vertically 8 feet to a point, then extending at a 45° angle to the height of the primary building.

5. *Permitted Uses:* The use of an accessory building shall be consistent with the permitted uses of the applicable zoning district, except, no accessory building shall be used for dwelling purposes other than for domestic family or servants quartersan accessory dwelling employed for the premises, where permitted by the district regulations.

Commented [EW94]: Matches definitions

6. *Special Use Permit Provision:* Any request for a building permit for an accessory building which does not meet the criteria in this Section shall only be authorized after approval of a Special Use Permit by the City Council using the procedures contained elsewhere in this Land Development Code.

B. For Accessory Buildings Located in Non-residential Zoning Districts

1. No accessory building shall be erected in any required yard area except as set forth by this section.

2. No accessory building shall be erected within ten (10) feet of any other building unless such

accessory building is used as a commercial kiosk, in which case such commercial kiosk cannot be located within fifty (50) feet of another building.

3. Commercial kiosks as accessory uses and/or buildings may be located within approved nonresidential districts subject to the following conditions:
 - a. Maximum size of two hundred-fifty (250) square feet.
 - b. No inside sales or service or drive in sales or service; walk-up and/or drive-up service permitted.
 - c. Exterior walls shall be of at least seventy-five percent (75%) masonry, glass, or other equivalent material, provided metal material does not exceed twenty-five percent (25%) of the exterior walls.
 - d. Located within required setbacks and in conformance with this section.
 - e. Located in such a manner as to not impede, impair or endanger vehicular traffic on the property where the kiosk is located and for vehicular traffic ingressing from and egressing to public rights-of-way.
 - f. Submission of an acceptable site plan shall be required for consideration of the issuance of a building permit unless a current valid Certificate of Occupancy exists.
 - g. Limited to one (1) kiosk per platted plot.

~~4. Accessory buildings on sites involving residential adjacency shall require approval of a Special Use Permit by City Council unless previously identified on an approval Site Plan.~~

C. Residential Carport Regulations – Carports located in zoning districts which permit single family residential dwellings shall comply with the regulations contained in this section.

1. Approval by Special Use Permit Only: In accordance with the Special Use Permit procedures contained in this Chapter of these zoning regulations, no carport shall be built in the City of Colleyville without approval by the City Council for a Special Use Permit to construct a carport in a zoning district that permits single family residential dwellings.
2. Carport Standards: A carport shall comply with the following regulations, unless the City Council in approving a Special Use Permit for a carport has imposed other requirements necessary in the particular case to protect the public interests.
 - a. Size: A carport shall not exceed 480 square feet in area. The longest dimension on a carport shall not exceed 24 feet.
 - b. Height: A carport shall not exceed a maximum height of 15 feet. The height shall be measured from the finished grade to the highest point of the roof.
 - c. Setbacks:
 - i. A carport located within ten (10) feet of the principal building shall comply with the front, side and rear yard setbacks of the zoning district. The distance shall be measured between the two closest points of the carport and principal building.
 - ii. A carport located 10 feet or more from a principal building may extend into a required side yard, provided all of the following conditions are satisfied:
 - (1) every part of such carport is unenclosed except for necessary structural supports;
 - (2) no part of the carport is less than five (5) feet from a side or rear lot line, and
 - (3) the carport is located completely within the rear yard area as defined in these zoning regulations.
 - d. Maximum Number Per Lot: one

Commented [EW95]: Recommended for protections of residentially zoned properties

Commented [BB96R95]: Needed?

e. *Paving and Street Access:*

The parking area of a carport shall be paved not less than nine feet (9') by eighteen feet (18') and provide access to a public street right-of-way. Said access shall be a minimum of nine feet (9') in width and paved. All paved surfaces shall be either concrete, asphalt or pave-stone.

f. *Design Criteria:*

- i. Roof - Carports shall have a pitched roof of at least 2:12. Flat roofs shall be prohibited.
- ii. Posts - Posts shall be ~~constructed clad or finished~~ of brick, stone, cedar or decorative metal, such as metal lattice. For purpose of this requirement, decorative metal shall consist of twenty-five (25) percent opaque surfaces. The dimension of each post as viewed from each primary elevation shall not be less than ~~twelve-eight~~ inches (~~128"~~) or more than forty-eight inches (48"). Any carport with two or more elevations that exceed the 48-inch criteria shall be considered an accessory building and be regulated as such. ~~Wooden Cedar~~ posts shall be ~~prohibited wrapped using masonry stone or brick from the base to at least 50% of the post height.~~ The exposed portion of the cedar post shall be a minimum of 8 inches.

Commented [EW97]: Recommend allowing cedar as an approved material

g. *Adequacy of Plans and Specifications:*

The applicant requesting a Special Use Permit to construct a carport shall submit plans and specifications of the proposed carport for review. Said plans and specifications shall contain sufficient information to allow the City Council to determine that the proposed carport complies with these regulations and the City Council may require additional information when necessary to clarify the applicant's request. At a minimum, the drawings shall contain a plot plan, elevation views and a description of the construction materials.

Section 3.28 Supplementary District Regulations

A. Reserved (O-00-1241 / 10/03/00)

B. Erection of More Than One Principal Building on a Lot – In any district other than Agricultural zoning, no more than one (1) building housing a permitted or permissible principal use may be erected on a single lot.

Commented [EW98]: Ag zoning district allows for a secondary dwelling

C. Buildings Constructed Across Lot Lines – No building may be constructed across existing platted lot lines unless a replat is filed and approved in accordance with applicable regulations of the city.

D. Exceptions to Height Regulations

1. Schools, public buildings, and institutions may be erected to a height ~~not exceeding (85) feet~~ the maximum height in any district in which they are permitted, provided front and rear yards are increased in depth and side yards increased in width one (1) foot for each foot of height that the building exceeds the height regulations of the district in which it is located.
2. The height regulations prescribed elsewhere in this Chapter shall not apply (except as may be applicable to paragraph d. hereof) to grain elevators, television and radio towers, church spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, ornamental towers, monuments, conveyors, fuel storage tanks, asphalt and concrete batch plant equipment not intended for human occupancy.
3. Limitations on number of stories shall not apply to buildings used exclusively for manufacturing or storage purposes provided such buildings do not exceed the height in feet permitted in the district in which they are located.
4. The permitted height of any occupied building shall be further restricted to the capability of the local fire fighting equipment to adequately handle any such building height.

Commented [BB99]: The size of the property will dictate the maximum height of the structure

5. In CC and ML zoning districts, the City Council may vary the maximum height of a building if the City Council finds that the location and/or configuration of the building is such that it will conform to the surrounding area and provide adequate light and air under the circumstances. For each foot of proposed height over the standard, there shall be a foot increase in the front and rear yards or as approved by the council. The request for a variance shall be accompanied by a site plan of the property and an architectural drawing of the proposed building.

E. Projections of Buildings, Structures and Appurtenances into Required Yards

1. Open or lattice enclosed fire escapes may project into a required yard not to exceed fifteen (15) feet. The ordinary projections of chimneys and pilasters shall be permitted by the City's Building Official when placed so as not to obstruct light and ventilation.
2. Terraces, balconies, decks, ~~uncovered porches~~ and ornamental features above the floor level of the ~~ground~~ (first) story may project into a required side yard, provided these projections be at least five (5) feet from any adjacent side lot line.
3. ~~An uncovered porch in the front yard may not be more than eighty (80) square feet or project into the front yard setback for distance of more than eight (8) feet. Fountains and other decorative features may project into the required front yard but shall not include structures used for occupancy such as guard sheds, shade structures, etc.~~
4. A porte-cochere or canopy may project into a required side yard, provided every part of such porte-cochere or canopy is unenclosed except for necessary structural supports, and not less than five (5) feet from any side lot line.
5. Every part of a required yard shall be open to the sky, unobstructed by a building, except for the ordinary projections of sills, belt courses, cornices, and ornamental features not exceeding twelve (12) inches, or as otherwise excepted in paragraph a. through d. above. Roof eaves may project into required side yards provided the projections be at least five (5) feet from any adjacent side lot line.
6. Gasoline filling station pumps and pump islands may be located or project into a required yard provided they are not less than twenty-five (25) feet distant from any street, highway or alley right-of-way line, and not less than fifty (50) feet distant from any residential property line.

- F. **Minimum Width of Enclosed or Partially Enclosed Open Space** – Where an open space is more than fifty (50) percent surrounded by a building, the minimum width of the open space shall be at least twenty (20) feet for one-story and one and a half-story buildings, thirty (30) feet for two-story buildings, and forty (40) feet for three or more story buildings.

- G. **Buildings and Structures to Have Access** – Every building or structure hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

- H. **Parking, Storage or Use of Major Recreational Equipment and Vehicles** – No major recreational equipment shall be parked or stored on any lot in a residential district except in a carport or enclosed building, or in a required side or rear yard on an all-weather hard surface driveway; provided, however, that such equipment may be parked anywhere on residential premises not to exceed twenty-four (24) hours during loading or unloading. No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, except for the temporary housing of guests not to exceed two (2) consecutive weeks.

For purposes of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

Commented [EW100]: Uncovered flatwork has no effect on the requirement provided lot drainage is not impacted

Commented [EW101]: Uncovered flatwork, regardless of size, has no effect on aesthetics at the front of a property

Commented [EW102]: Provides for decorative features in a front yard

Commented [BB103]: Need to define in Chapter 2

Commented [EW104]: Prohibits parking RV's on the grass

I. Parking and Storage of Vehicles in General

1. One commercial vehicle of not more than one ton capacity, except pick-up trucks, when used in the employ by the site occupant of a dwelling may be permitted on a residentially zoned lot, provided said parking space shall be in an enclosed garage, carport, or on an all-weather hard surface driveway, or in a side or rear yard on an all-weather surfaced driveway. Nothing in this Chapter shall prohibit the occasional overnight storage or parking of a commercial vehicle on residential property.
2. Off-street vehicle parking spaces shall not be located within ten (10) feet of existing proposed major thoroughfare street right-of-way lines in any commercial or industrial district. Such off-street parking spaces shall consist of a paved surface, i.e., concrete, HMA, brick or paving stone approved by the city building official. All ten (10) foot buffer areas shall be landscaped and maintained to enhance esthetic qualities.
3. To avoid the unsightly appearance of junked and abandoned vehicles in residential districts, no vehicles may be parked or stored on a residential premise where visible to any adjacent residential use, unless a current state vehicle inspection sticker is displayed thereon.

J. Front Yard Adjustments – Front yard requirements as established in *Section 3.24 - Schedule of District Regulations* may be adjusted in the following cases:

1. Where forty (40) percent or more of the frontage on the same side of a street between two intersecting streets is presently developed or may hereafter be developed with buildings that have (with a variation of ten (10) feet or less), a front yard greater or lesser in depth than herein required, new buildings shall not be erected closer to the street than the average front yard so established by the existing buildings.
2. Where forty (40) percent or more of the frontage on one side of a street between two intersecting streets is presently developed or may hereafter be developed with buildings that do not have a front yard as described above, then:
 - a. ~~Where a building is to be erected on a parcel of land that is within one hundred (100) feet of existing buildings on both sides, the minimum front yard shall be a line drawn between the two closest front corners of the adjacent building on each side, or~~
 - b. ~~Where a building is to be erected on a parcel of land that is within one hundred (100) feet of an existing building on one side only, such building may be erected as close to the street as the existing adjacent buildings.~~
3. Interior lots abutting on two streets shall provide the required front yard on both streets.
4. On corner lots, a front yard shall be provided on each street frontage except for lots of record as described in this Chapter.
5. Front yard requirements in all districts adjacent to an existing or proposed major thoroughfare or secondary thoroughfare street, as designated in the City's latest Comprehensive Plan, shall be measured from such existing or proposed major thoroughfare or secondary thoroughfare street right-of-way line.

K. Side Yard Adjustments – Side yard requirements as established in *Section 3.24 -Schedule of District Regulations* may be adjusted in the following cases:

1. Commercial buildings used in part for dwelling purposes, where permitted, shall provide side yards not less than five (5) feet in width unless every dwelling unit therein opens directly upon a front yard, rear yard or court yard.
2. Whenever a lot of record at the time of the effective date of this Chapter has a width of less than fifty (50) feet, the side yard on each side of a building may be reduced to a width not less than ten (10) percent of the width of the lot, but in no instance shall such width be less than four (4) feet.

3. On corner lots of record the yard adjacent to the side street shall not be less than fifteen (15) feet.
4. For commercial or industrial lots abutting a lot zoned CC1, CC2, CC3, CN, CPO or ML, subject to the approval of the city building official, a zero lot line is permitted on one side, provided a four hour fire wall is constructed at said zero lot line.
- L. Rear Yard Adjustments – Rear yard requirements as established in *Section 3.24 - Schedule of District Regulations* may be adjusted in the following case:
 1. Where a lot abuts an alley, one-half the alley width may be considered as part of the required rear yard.
- M. Lot Area Per Family Adjustments – Lot area per family (dwelling unit) requirements as established in *Section 3.24 - Schedule of District Regulations* shall be adjusted in the following cases:
 1. Where a lot of record or a lot in a subdivision which the Planning and Zoning Commission and City Council have officially approved and agreed to accept at the time of the effective date of this Chapter has less area or width than herein required, in the district in which it is located, said lot may nonetheless be used for a residential or nonresidential use, whichever is applicable, in the district in which it is located.

Section 3.29 – Parking Requirements

- A. Purpose – The purpose of this section is to require off-street parking and loading facilities proportional to the need created by each use. Where the minimum number of required parking spaces can not be calculated in accordance with the parking group schedule, the Building Official shall be authorized to determine the minimum number of required parking spaces using acceptable industry comparables.
- B. General Provision – In all zoning districts, there shall be provided in connection with the appropriate permitted use, off-street parking spaces in accordance with the provision of this section, unless a different parking standard has been set forth as a condition of a Special Use Permit or Planned Unit Development for a specific site. Existing facilities being used for off-street parking shall not be reduced in capacity to less than the minimum number of spaces prescribed, or altered in design or function to less than the minimum standards prescribed herein.
- C. Location of Parking – All required parking spaces shall be provided on the same lot or tract occupied by the use being served, except that where an increase in the number of spaces is required by a change or enlargement of a non-residential use, the additional required parking spaces may be located off-premises in accordance with the shared parking requirements contained in this section, unless a different parking standard has been set forth as a condition of a Special Use Permit or Planned Unit Development for a specific site. Required parking spaces for a residential use shall be provided on the lot or tract occupied by the use being served.
- D. Parking Space Locations Prohibited – No off-street parking space shall be located, either in whole or in part, within any fire lane, driveway, driving lane, or maneuvering area. Furthermore, no required off-street parking space shall be located, either in whole or in part, in a public street, sidewalk, parkway, alley or other public right of way.
- E. Parking Space Dimensions – No required off-street parking space shall be less than nine (9) feet in width by eighteen (18) feet in length.
- F. Mixed Use Parking – The parking requirements for a lot or building containing a mixture of uses shall be the sum of the requirements for each type of use. No parking space provided for one type of use or building shall be included in the calculation of the parking requirements for any other use or building. For multi-tenant developments containing greater than 30,000 square feet of floor area, the sum of the total number of required parking spaces may be reduced by ten percent (10%).
- G. Shared Parking – Where an increase in the number of off-street parking spaces is required by a change

or enlargement of use, the additional required spaces may be located on another property that is located on or adjacent to the site as defined by contiguous lot lines of a use not normally open and used or operated during the same hours, provided, that the following conditions are satisfied:

Commented [EW105]: Allows for an adjacent property to be used for shared parking

1. The parking spaces are located within three-hundred feet from an entrance to the building or use being served, measured along the shortest available pedestrian route with public access.
2. A copy of the written agreement, executed by the parties concerned, is furnished to the Building Official, assuring their retention for such purposes.

H. Building Renovations – When an existing building or use is enlarged, structurally altered, or remodeled to the extent of increasing or changing the use by more than ten percent (10%), but less than fifty percent (50%), of the existing square footage, additional off-street parking shall be provided for the incremental increase in accordance with the off-street parking regulations set forth herein. When an existing building or use is enlarged, structurally altered, or remodeled to the extent of increasing or changing the use by fifty percent (50%) or more of the existing square footage, the off-street parking requirements for the entire building shall be comply with the parking regulations set forth herein.

I. Supplemental Parking Space Requirements

1. Parking regulations are based on the gross floor area (GFA) of the building.
2. In determining the required number of parking spaces, fractional spaces shall be rounded to the nearest whole space. Parking spaces located in buildings used for repair garages or car washes, and spaces in drive-through lanes shall not be counted as meeting the required minimum number of parking spaces.
3. Wooden poles shall not be used for parking lot or site lighting for a non-residential use.
4. Except for single-family dwelling units, parking spaces shall be arranged so that vehicles shall not be required to back out of the parking spaces directly into a street.

5. A reduction of up to twenty percent (20%) may be authorized after approval of a Special Use Permit by the City Council when associated with new development or a significant change in use of an existing building or site. A parking analysis report justifying the reduction shall be provided as part of a request for parking reduction.

Commented [BB106]: The percentage is up for discussion; this allows for greater flexibility for unique and/or large developments

J. Parking Group Schedule – The minimum number of off-street parking spaces to be provided in connection with the permitted use listed in Table 3-310, *Schedule of Permitted Principal Uses*, shall be in accordance with the following Table 3.29 – *Parking Group Schedule*.

Table 3.29
Parking Group Schedule

Parking Group	Minimum Number of Off-Street Parking Spaces
1	1 per unit
2	2 per unit
3	2 per unit, exclusive of "in-garage" parking
4	1 per unit plus 1 guest space per every 5 units
5	1 per 100 sq. ft. of gross floor area
6	1 per 150 sq. ft. of gross floor area
7	1 per 200 sq. ft. of gross floor area
8	1 per 300 sq. ft. of gross floor area
9	1 per 400 sq. ft. of gross floor area
10	1 per 500 sq. ft. of gross floor area
11	1 per 5 pupils plus drop-off and pick-up areas
12	1 per classroom plus 1 per each 2 students
13	1 per classroom plus 1 per 400 sq. ft. of office space
14	1 per 1.5 students and staff, based on capacity
15	1 per 3 students
16	1 per 200 sq. ft. of gross floor area plus 1 per 5,000 sq. ft. of exterior nursery area
17	1 per living unit
18	1 per 3 seats in primary seating area
19	1 per guest room plus 1 per 300 sq. ft. of office area – parking for restaurant additional
20	2 per hole
21	1 space
22	5 per hole (one per tee area for driving ranges)
23	5 per alley or table
24	As set by the SUP or PUD approved ordinance
25	Determined by the Building Official using acceptable industry comparables

Section 3.29.1 – Parking Space Construction Standards

- A. Dimensions – No parking space shall be less than nine (9) feet in width by eighteen (18) feet in length. The design and dimensions of off-street parking areas shall be in accordance with the following Table 3.29.1 – *Table of Parking Space Dimensions*.

Table 3.29.1 Table of Parking Space Dimensions					
Angles (Degrees)	0	30	45	60	90
Stall, Parallel to Aisle	23.0	18.0	12.7	11.4	9.0
Stall, Perpendicular to Aisle	9.0	16.5	19.0	20.0	18.0
Aisle Width, One-Way (1)	12.0	12.0	12.0	16.0	22.0
Aisle Width, Two-Way	24.0	24.0	24.0	24.0	24.0

(1) Aisle width shall comply with the requirements of the fire code when the aisle serves as a fire lane

- B. Surfacing (New Structures) – All parking spaces, aisles and maneuvering areas shall be constructed of an all-weather surface composed of concrete, asphalt, brick or paving stone. Such paving shall meet the minimum construction standards contained in the Colleyville Building Code. Such all-weather surface shall be provided for all parking spaces, whether enclosed or unenclosed, and shall be connected by an all-weather surface driveway to a street or alley. Rock, gravel and dirt parking surfaces are prohibited.
- C. Striping – For all non-residential uses and multi-tenant residential uses, parking spaces shall be striped or otherwise clearly designated on the parking facility surface, as determined by the Building Official.
- D. Curbs, Wheel Stops and Islands – Parking spaces abutting on adjoining property lines or street right-of-

way lines shall be provided with wheel guards or bumper guards so located that no part of a normally parked vehicle will extend beyond the property line.

Section 3.30 Off-Street Loading Requirements

- A. Purpose and Intent – The purpose and intent of these regulations are to secure safety from fire, panic and other dangers; to lessen congestion in the streets and alleys; to facilitate the adequate provision of transportation and circulation; to conserve the value of building and land uses; and to encourage the most appropriate use of land. To this end, in all zoned districts where applicable, there shall be provided at the time any use is established or expanded, or any building is erected or structurally altered (except as otherwise provided elsewhere in this section) minimum off-street loading in conformance with the requirements established herein.
- B. Location of Loading Spaces – Off-street loading spaces shall be provided and maintained for all retail, commercial and industrial uses and structures for receiving and loading merchandise, supplies, and materials within a building or on the lot or tract adjacent thereto. Such spaces shall be marked with painted outline and may be adjacent to a public alley or private service drive or may consist of a truck berth within a building or structure, however no portion of the off-street loading space shall be located within or extend into any public street, highway or alley right-of-way. (O-00-1261 / 12/19/00)
- C. Computation of Off-street Loading Space Sizes – At least one-half of the required number of off-street loading spaces or truck berths shall have a minimum dimension of ten (10) feet by fifty (50) feet each and the remaining required spaces or berths shall have a minimum dimension of ten (10) feet by twenty-five (25) feet each - exclusive of turnaround and maneuvering space.
- D. Type of Parking Surface Required for Loading Space – All surface areas upon which vehicles and trucks are parked during unloading operations shall consist of a paved surface, i.e., concrete, HMA, brick, paving stone, approved by the city building official.
- E. Rules for the Computation of Off-street Loading Spaces
1. No building, structure or part thereof used for nonresidential purposes on any "CN" or "CC" district shall hereafter be enlarged or extended unless off-street loading space is provided in accordance with the provisions of this section.
 2. No building, structure or part thereof used for nonresidential purposes in any "ML" district shall hereafter be enlarged or extended to provide a gross floor area of 25,000 square feet or more unless off-street parking is provided in accordance with the provisions of this section.
- F. Number of Off-street Spaces Required – The minimum number of off-street loading spaces required shall be in conformance with the following schedules:
1. Retail, Service (except personal service), Commercial and Industrial Uses

Sq. Ft. of Floor Area in Building or Structure	Minimum Number of Off-Street Loading Spaces or Berths Required
0 to 9,999	None
10,000 to 49,999	1
50,000 to 99,999	2
100,000 to 199,999	3
Each additional 100,000	1 additional

2. Office Buildings, Hotels/Motels, Restaurants and Similar Establishments

Sq. Ft. of Floor Area in Building or Structure	Minimum Number of Off-Street Loading Spaces or Berths Required
0 to 49,999	None
50,000 to 149,999	1
150,000 to 299,999	2
300,000 to 499,999	3
500,000 to 999,999	4
Each additional 500,000	1 additional

Section 3.31 Duties of Administrative Official

- A. Administration and Enforcement – An Administrative Official designated by the City Manager shall administer and enforce this Chapter. Said person may be provided with the assistance of such other persons as the City Manager may direct.

If the Administrative Official finds that any of the provisions of this Chapter are being violated, he ~~the~~ Administrative Official or their representative shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He ~~The~~ Administrative Official or their representative shall order discontinuance of illegal use of land, buildings, or structures, removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done, or shall take any other action authorized by this Chapter to ensure compliance with or to prevent violation of its provisions.

Commented [EW107]: Revised language that was gender-specific

- B. Building Permits Required – No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefore where applicable, and issued by the Administrative Official. No building permit shall be issued by the Administrative Official except in conformity with the provisions of this Chapter, unless he receives a written order from the Zoning Board of Adjustment in the form of an administrative review, special exception, or variance as provided by this Chapter. No building permit shall be issued unless the property has been platted of record, except that a building permit may be issued for unplatted property meeting all of the following five criteria:

1. The parcel is a "lot of record" as defined herein; and
2. Right-of-way and easements sufficient for Master Plan roads or drainage/utility facilities exist; and
3. The parcel adjoins an approved public street; and
4. The parcel contains a principal residential use in a residential structure; and
5. The requested construction permit(s) and all construction permits issued for the parcel within the past three years allow improvements whose combined value does not exceed 50% of the appraised value of the parcel as shown in the current parcel record of the Tarrant County Appraisal District.

- ~~C. Application for Building Permit – All applications for building permits shall be accompanied by plans in triplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any, and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Administrative Official, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this and other city ordinances.~~

~~One copy of the plans shall be returned to the applicant by the Administrative Official, after he shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. The original and one copy of the plans, similarly marked, shall be retained by the Administrative Official.~~

Commented [EW108]: The adopted building codes already codify the requirements for building permit applications

- D. Site Plan Approval Required – Where the property is zoned CPO, CN, CC, ML, SU, PUD-C, or PUD-I, a

site plan shall be submitted for review and approval to the Administrative Official prior to the issuance of a building permit. The site plan referred to herein shall contain the following:

1. The boundary lines and dimensions of the property, existing subdivision lots, available utilities, easements, roadways, sidewalks, fire lanes, and public rights-of-way.
2. Topography of the property proposed for development in contours of not less than two (2) feet, together with any proposed grade elevations, if different from existing elevations. If the natural contour of the land is to be altered or changed in any location on the property more than four (4) feet then the site plan must provide detailed information on the proposed grading plan. This information shall include the correlation of the proposed grading plan to the surrounding properties and the use of surrounding properties, and shall include information indicating the drainage and line of sight effect the proposed grading plan will have on the surrounding properties.
3. The 100 year flood plain, water courses, wetlands, drainage areas, and other significant features including, but not limited to, rock outcroppings and tree groupings.
4. The location and use of all existing and proposed buildings or structures, including all refuse storage areas, and the minimum distance between buildings. Where building complexes are proposed, a site plan showing the location of each building and the minimum distance between buildings, and between buildings and the property line, street or curb line and/or alley shall be submitted.
5. Total number of off -street parking and loading spaces in accordance with Section 29 "Off-Street Parking Requirements", and Section 30 "Off-Street Loading Requirements" of this Chapter.
6. All points of vehicular ingress and egress and circulation within the property. Any special traffic regulation facilities, proposed or required, to assure the safe function of the circulation plan shall also be shown.
7. Setbacks, lot coverage, and when relevant, the relationships of the setbacks provided and the height of any existing or proposed building or structure.
8. The location, size, and arrangement of all outdoor signs, exterior auditory speakers and lighting.
9. A landscape plan prepared in accordance with the requirements of *Chapter 4 – Landscaping & Buffering* of this Land Development Code.
10. The location and height of fences or, screen plantings and the type of building materials or plantings to be used for fencing or screening in accordance with the requirements of Section 26 "Fences, Free Standing Walls, and Screening Materials" of this Chapter.
11. Note a soil erosion control plan for the period during which construction will be taking place.
12. Where multiple types of land uses are proposed, a land use plan delineating the specific areas to be devoted to various uses shall be required.
13. Vicinity map, north point, scale, name of the development, name of the owner, name of the planner, total acreage of the project, street address or common description of the property.
14. Current land uses and zoning district of the property and current land uses and zoning districts of the contiguous properties and buildings on the exterior of the site and within twenty-five (25) feet of all property lines.
15. The location and size of existing and proposed surface and subsurface drainage facilities.
16. A description of the type of land use that is proposed for the site including its Standard Industrial Classification (SIC) Code if there are any chemicals or toxic materials involved.

The Administrative Official may allow all of the foregoing to be contained within a single drawing if in the opinion of the Administrative official the drawing can be properly evaluated.

~~E. Expiration of Building Permit — If the work described in any building permit has not begun within (6) calendar months from the date of issuance thereof, said permit shall expire. It shall be cancelled by the Administrative Official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained. Further, the Administrative Official shall make an inspection of the work each (6) months, and if the work has not progressed, said permit shall expire.~~

Commented [EW109]: The adopted building codes already codify the requirements for expired permits

~~F. Certificate of Occupancy Required: For New, Altered Changes in Use, or Non-conforming Uses — It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy shall have been issued therefor by the Administrative Official stating that the proposed use of the principal building or land conforms to the requirements of this Chapter.~~

~~a. No nonconforming building or use shall be maintained, renewed, changed, or extended until a certificate of occupancy shall have been issued by the Administrative Official. The certificate of occupancy shall state specifically wherein the nonconforming use differs from the provisions of the ordinance.~~

~~b. No permit for erection, alteration, moving or structural repair of any building shall be issued until an application has been made for a certificate of occupancy, and the certificate shall be issued in conformity with the provisions of this Chapter upon completion of the work.~~

~~c. A temporary certificate of occupancy may be issued by the Administrative Official for a period not exceeding (6) months during alterations or partial occupancy of a building pending its completion, provided that said temporary certificate may include such conditions and safeguards as will protect the safety of the occupants and the public.~~

~~d. The Administrative Official shall maintain a public record of all certificates of occupancy.~~

~~e. Failure to obtain a certificate of occupancy shall be a violation of this Chapter and punishable under Chapter 1 — General Provisions of this Land Development Code.~~

Commented [EW110]: The adopted building codes already codify the requirements for a Certificate of Occupancy

~~f. Construction and Use to be Provided in Applications, Plans, Permits and Certificate of Occupancy — Building permits or certificates of occupancy issued on the basis of plans and applications approved by the Administrative Official authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed violation of this Chapter, and punishable as provided by Chapter 1 — General Provisions of this Land Development Code.~~

Section 3.32 Comprehensive Zoning Ordinance – Zoning Map

This Chapter when read together with the official Zoning Map of the City of Colleyville, Texas, shall constitute the comprehensive zoning ordinance for the City of Colleyville, Texas.

The Zoning Map, as submitted with Ordinance 0-70-15, revised and updated in 1976, a copy of which is on file in the City Secretary's office shall remain the official Zoning Map of the City of Colleyville, until a new map is established in accordance with the provisions contained in this Chapter.

Section 3.33 Amendments to This Chapter

Reserved for listing of amendments to this Chapter.

Ord. Number	Date	Subject
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Colleyville, Texas, Land Development Code

O-00-1223	07/18/00	Residential Accessory Buildings
O-00-1241	10/03/00	Temp. Construction Offices & Temp. Real Estate Offices
O-00-1249	11/08/00	Large Commercial Buildings
O-00-1261	12/19/00	Location of Loading Spaces / Non-conforming Uses, Lots and Buildings
O-02-1331	02/19/02	Established one year time limit on SUP performance
O-02-1330	02/26/02	Tents and other special events
O-04-1454	04/16/04	Maximum size and number of screens for movie theaters
O-04-1497	12/21/04	Temporary Buildings and Uses
O-05-1529	06/21/05	Amend PUD regulations
O-05-1532	07/19/05	Amend PUD side and rear yard set-back regulations
O-05-1538	09/06/05	Amend movie theater regulations regarding viewing screens
O-07-1607	01/16/07	Update Land Use Table and Parking Schedule
O-07-1608	02/20/07	Security gating setback standards across driveways
O-07-1633	9/4/07	Amend Sections 3.17 to 3.22 and Section 3.24, Table of Permitted Uses
O-08-1656	02/05/08	Amend Section 3.24, Table of Permitted Uses
O-09-1708	02/17/09	Amend Sections 3.26 and 3.27
O-09-1709	02/17/09	Amend Section 3.24.C, Wind Driven Generators
O-10-1750	05/04/10	Addition of Package Store Use, Regulations and Provisions
O-12-1838	6/19/12	Amend Section 3.24, Table of Permitted Uses to include purchasing and/or resale of precious metals
O-13-1863	2/5/13	Amend Section 3.24, Table of Permitted Uses to include addition of medical office uses to CPO zoning district
O-13-1871	4/16/13	Addition of Portable Storage Structure standards to Section 3.24(C). Amendments to Section 3.26 regarding commercial screening and dumpster screening
O-14-1905	1/21/14	Addition of fence maintenance and construction standards
O-14-1914	4/15/14	Addition of Concrete/Asphalt batch plant standards

ORDINANCE O-18-2067

AMENDING CHAPTER 3 – LAND USE OF THE LAND DEVELOPMENT CODE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Colleyville approved Ordinance O-00-1214 on April 18, 2000, adopting the Land Development Code; and

WHEREAS, the City of Colleyville desires to amend Chapter 3 – Land Use of the Land Development Code as part of a comprehensive review of the Land Development Code; and

WHEREAS, notice of a public hearing before the City Council was published in a newspaper of general circulation in Colleyville at least 15 days before such hearing.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

- Sec. 1. THAT *Chapter 3 – Land Use* of the Land Development Code are hereby amended to read as depicted in the attached Exhibit "A".
- Sec. 2. THAT any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Colleyville, and upon conviction shall be punishable by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.
- Sec. 3. THAT if any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be judged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any portion thereof other than that portion so decided to be invalid or unconstitutional.
- Sec. 4. THAT in addition to and accumulative of all other penalties, the City shall have the right to seek injunctive relief for any and all violations of this ordinance.

Sec. 5. THAT this ordinance shall take effect immediately from and after its passage.

Sec. 6. THAT all other provisions of the Land Development Code shall remain in full force and effect, except as amended herein.

AND IT IS SO ORDERED.

The first reading and public hearing being conducted on the 20th day of November 2018.

The second reading and public hearing being conducted on the 4th day of December 2018.

PASSED AND APPROVED BY A VOTE OF ____ AYES, ____ NAYS, AND ____ ABSTENTIONS ON THIS THE 4TH DAY OF DECEMBER 2018.

Mayor Richard Newton	_____	Mayor Pro Tem Bobby Lindamood	_____
Place 1, Tammy Nakamura	_____	Place 5, Chuck Kelley	_____
Place 3, Kathy Wheat	_____	Place 6, Callie Rigney	_____
Place 4, George Dodson	_____		

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
City Secretary

Richard Newton
Mayor

APPROVED AS TO FORM AND LEGALITY:

Whitt L. Wyatt
City

Attorney

Exhibit “A”

{Chapter 3}



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 8a

Agenda Date 11/20/2018

Number Ordinance O-18-2064

Type Ordinance

Department Community Development

Title

Consideration of a zoning change from AG Agricultural district to R-30 Single Family Residential district on Tracts 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey, located at 1309 Glade Road, Case ZC18-023

Strategic Plan

There is no Strategic Plan connection for this item.

Explanation

Second Reading and Public Hearing

This item was tabled at the November 5, 2018 City Council meeting.

The applicant has provided draft CC&R's for the Council to review. In addition to the CC&R's, a concern was raised about requiring a 6' masonry wall for separation from the neighbors to the east. The applicant is amiable to having the home builder provide an 8-foot board-on-board cedar fence, stained with a cap and metal posts, along with 8-foot stone columns (2'x2') at each rear property corner to complement the cedar fence. Finally, the applicant will modify the plat to identify that the setbacks for the corner side yard will be established for both building structures and fences.

First Reading and Public Hearing

Rome Barnes, the applicant, has submitted a request for a zoning change from the AG Agricultural to the R-30 Single Family Residential district on Tracts 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey, being approximately 4.369 acres. The purpose of the request is to allow for development of 5 new single-family residential lots.

Existing Conditions/Background: The subject property, 1309 Glade Road, resides on the south side of Glade Road and the east side of Carmel Place, across from the existing subdivision called Carmel Place zoned Planned Unit Development – Residential (PUD-R). The property currently has Agricultural (AG) zoning and remains undeveloped except for a single house on the property which is planned to be removed.

Proposed Zoning:

Request – The applicant requests to create a single-family residential subdivision

consisting of five (5) lots, ranging from 32,615 square feet to 44,334 square feet. The two large one acre lots fronting Glade Road have lot widths under the required 125 feet. Therefore, a lot width waiver is being requested with the associated plat. All lots will meet the required minimum front yard setback of thirty-five (35) feet, side yard setbacks of ten (10) feet, and rear yard setback of twenty-five (25) feet with a maximum building height of thirty-five (35) feet.

Overall, this would result in a development covering a total of 4.3968 acres with 5 residential lots, achieving a density of 1.14 units per acre which is below the R-30 residential density requirement of 1.45 dwellings per acre.

The minimum standards for the R-30 zoning district are as follows:

Minimum Lot Size:	30,000 square feet
Minimum Lot Width:	125 feet
Minimum Lot Depth:	125 feet
Front Building Line:	35 feet
Side Building Line:	10 feet
Rear Building Line:	25 feet
Maximum Lot Coverage:	25 percent

The five (5) lots will have the following minimum lot areas:

Lot 1:	44,334 square feet
Lot 2:	44,031 square feet
Lot 3:	32,667 square feet
Lot 4:	32,615 square feet
Lot 5:	32,632 square feet

If zoning is approved, the applicant anticipates home construction to begin in late 2018 with the average home size to be 5,200 square feet with an approximate price point of \$950,000.

Analysis: The requested rezoning allows the applicant to develop the lots in a manner complementary to the approved PUD-R on the west side of Carmel Place while also being compatible with the neighborhood surrounding it.

All homes are required to have fire sprinklers regardless of square footage due to the limited size of Glade Road, which could impede the fire department's ability to fight a potential fire, and the length of Carmel Place.

Surrounding Development: The properties to the south, east and west (adjacent to Carmel Place) have R-20 zoning and have developed with single-family residential

structures. Properties across Glade Road to the north have PUD-R zoning and have developed with single-family residential structures. Lots directly across the Carmel Place have an existing PUD-R which the applicant proposes to compliment with their project's design.

Comprehensive Plan: The City's comprehensive plan, *Destination Colleyville*, identifies the subject property for single-family residential development. The proposed R-30 does not conflict with any portion of the comprehensive plan. The proposed R-30 facilitates the maximum desired residential density of 1.45 units per net acre.

Public Notification: Staff mailed notices to all property owners within 500 feet as well as any Homeowners Associations within 1000 feet of the subject property regarding this request. Grapevine-Colleyville ISD, where the subject property is located, was notified per State law. Notice was published in the *Fort Worth Star-Telegram* as required by State law and the Land Development Code. To date, no correspondence has been received.

Staff Recommendation: Staff recommends approval for the applicant's request based on the following findings:

1. The proposed zoning meets the intent of the residential designation assigned in the Destination Colleyville comprehensive plan.
2. The R-30 zoning complements the zoning districts surrounding the subject property.

Planning & Zoning Commission Recommendation: The Planning & Zoning Commission recommended approval of the R-30 zoning at their September 10, 2018 meeting by a vote of 4-0. A Preliminary Plat was also recommended for approval with the recommendation to re-orient the lots to face Carmel Place. The Preliminary/Final Plat item will be placed on the same meeting as the 2nd reading of the zoning.

Financial Impact

There is no financial impact to the City.

Recommendation

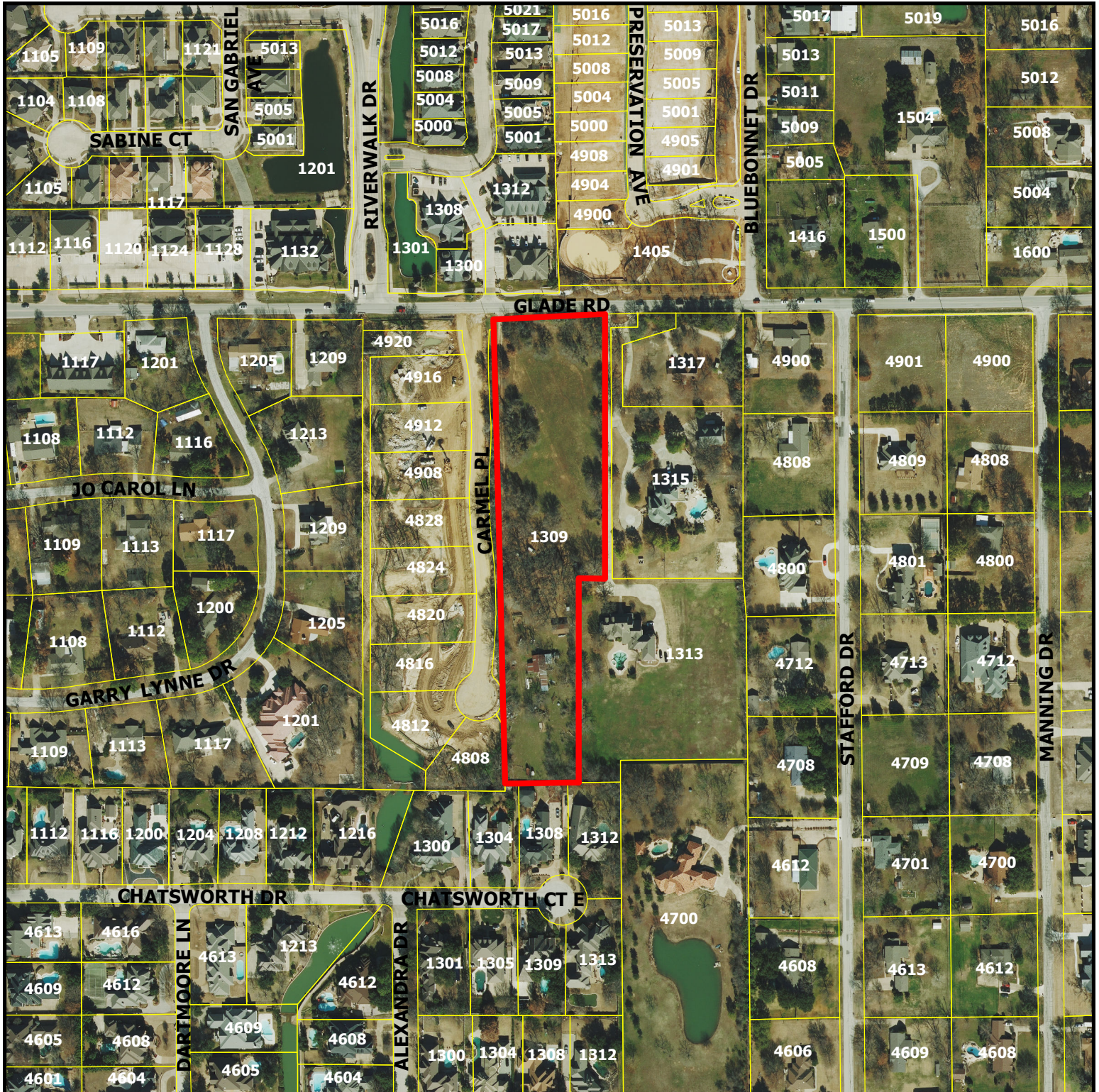
Approve

Attachments

1. Aerial Map
2. Zoning Map
3. Future Land Use Map
4. Statement of Planning Objectives
5. Zoning Exhibit
6. Updated Layout per P&Z Recommendation
7. Carmel East CCR Rough Draft 10-17-18

8. Notification Map
9. Notification List
10. Property Owner Notification
11. Ordinance O-18-2064

Aerial Map

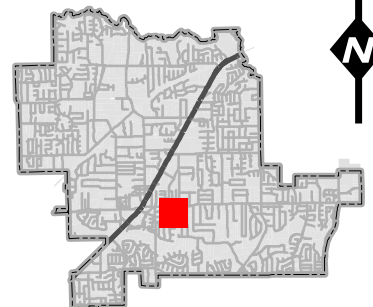


ZC18-023

1309 Glade Road

DISCLAIMER:
This map and information contained in it were developed exclusively for use by the City of Colleyville. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Colleyville, its officials or employees for any discrepancies, errors, or variances which may exist.

 Subject Property



Zoning Map

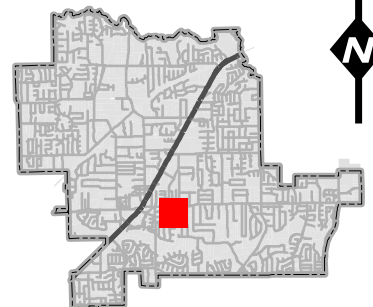


ZC18-023

1309 Glade Road

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 Subject Property



Future Land Use Map

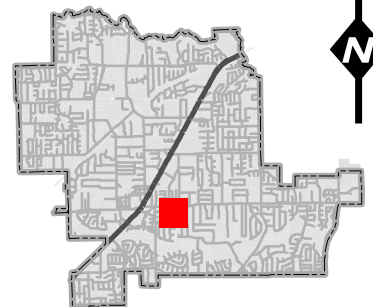


ZC18-023

1309 Glade Road

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 Subject Property



Statement of Planning Objectives

ZONING APPLICATION NARRATIVE

CARMEL PLACE ESTATES EAST

1309 GLADE ROAD, COLLEYVILLE, TX 76034

STATEMENT OF PLANNING OBJECTIVES

Centurion Acquisitions, LLC is requesting rezoning of a 4.3968-acre site (191,524 square feet) located at 1309 Glade Road abutting the eastern portion of Carmel Place within the City of Colleyville, from **AG-Agriculture** to **R30-Single Family Residential District (R30)**. The rezoning objective is to create five residential lots meeting or exceeding the R30 minimum lot size. The abutting residential area is zoned R20 and PUD-R; however, at the request of the City, Carmel Place Estates East rezoning request is being submitted under the R30 zoning district.

- The residential density will be 1.14 dwellings per acre, well below the R30 residential density of 1.45 dwellings per acre.
- The R30 minimum residential lot size is 30,000 square feet; the five residential lots will have the following minimum lot area:
 - Lot 1 – 44,334 square feet
 - Lot 2 – 44,031 square feet
 - Lot 3 – 32,667 square feet
 - Lot 4 – 32,615 square feet
 - Lot 5 – 32,632 square feet
- The R30 required minimum lot width is 125 feet; three of the lots meet and exceed the minimum lot width; however, the two large 1-acre lots fronting Glade Road have lot widths of 116 feet, 9 feet shy of the required minimum lot width (would meet minimum 100-foot lot width required by the adjacent R20 zoning district). **A lot width waiver is being requested for these two lots.**
- All lots will meet the required minimum front yard setback of 35 feet, side yard setback of 10 feet, and rear yard setback of 25 feet and the required maximum building height of 35 feet.

Statement of Planning Objectives

DEVELOPMENT SCHEDULE

It is anticipated that home construction will begin on the five residential lots sometime in late 2018.

Once a building permit is issued, time for completion is estimated from 10-12 months.

ECONOMIC DEVELOPMENT INFORMATION

The average home size is anticipated to be around 5200 square feet at a price point of \$950,000. Using Tarrant County Appraisal District's tax estimator, the City of Colleyville's ad valorem tax rate of .33834 for a home valued at \$950,000 would generate \$3,214 in City taxes and another \$13,269 (tax rate of 1.39670) in taxes to support the City's school system, the Grapevine/Colleyville Independent School District. Five homes built at this price point would generate \$16,070 in ad valorem taxes for the City and \$66,345 for the City's school system. This is an estimate and could change based on specific criteria considered by the Tax Assessor's office.

TRAFFIC IMPACT ANALYSIS

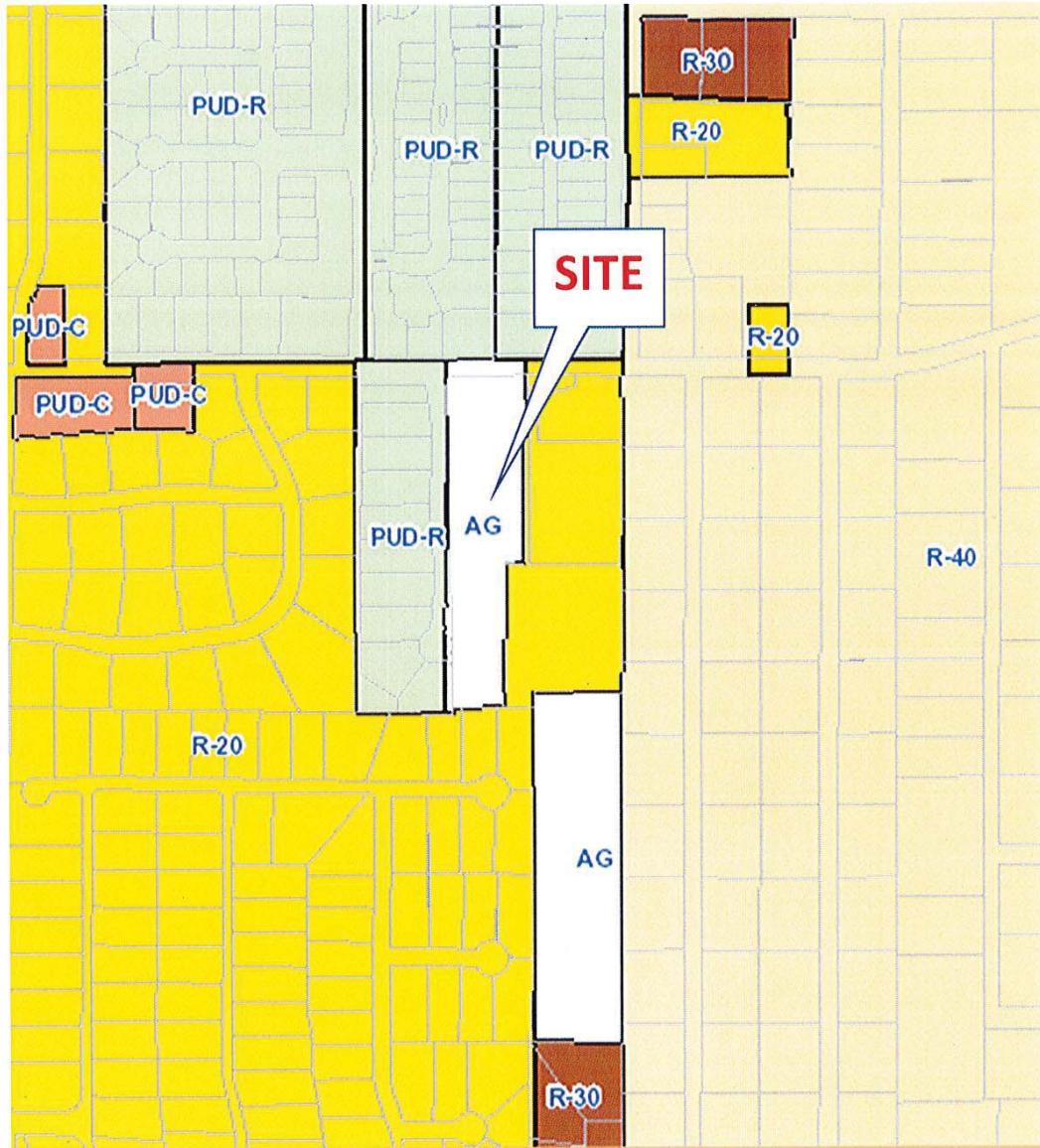
A Traffic Impact Analysis is not required since only five homes are proposed which would fall below the projected generation rate of 1000 vehicle trips per day.

DRAINAGE ANALYSIS

A drainage analysis completed for Carmel Place Estates by Thomas Hoover Engineering, LLC dated 6-23-14 is submitted with the Zoning Application. Carmel Place Estates East land area is included in the drainage area of Carmel Place Estates, thus issues related to drainage impacts have already been assessed. Specific lot drainage for the five lots in Carmel Place Estates East will be a part of the engineering plans and will be consistent with the already submitted drainage analysis.

Statement of Planning Objectives

EXHIBIT A – LOCATION AND ZONING MAP



Statement of Planning Objectives

EXHIBIT B – LEGAL DESCRIPTION

Being a tract of land out of George W. Teeter Survey, Abstract No. 1543 and situated in the City of Colleyville, Tarrant County, Texas, and surveyed by Miller Surveying, Inc. of Hurst, Texas in November 2017, said tract being a portion of the same tract of land described in the deed to Robert Gene Hubbard et ux, Peggy Hubbard recorded in Volume 4069, Page 406 in the Deed Records of Tarrant County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch steel rod found in the southerly right-of-way line of Glade Road (Co. Rd. 3036), said rod being in the northerly boundary line of "Tract No. 1" of said Hubbard Deed and also being the most northerly northwest corner of Lot 1, Block 1, Greener Acres, an addition to the City of Colleyville, Texas according to the plat thereof recorded in Cabinet A, Slide 4936 of the Plat Records of said County;

Thence South 00 degrees 14 minutes 15 seconds East with the westerly boundary line of said Lot 1 a distance of 553.09 feet to a 1/2 inch "MILLER 5665" capped steel rod set for an inner corner thereof;

Thence South 89 degrees 25 minutes 35 seconds West continuing with said westerly boundary line a distance of 58.10 feet to a 1/2 inch steel rod found for an outer point thereof;

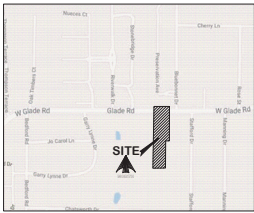
Thence South 00 degrees 12 minutes 14 seconds West continuing with said westerly boundary line a distance of 415.82 feet to a 1/2 inch steel rod found for the southwest corner of said Lot 1, said rod being in the northerly boundary line of Block 1, The Lakes of Somerset, an addition to the City of Colleyville, Texas according to the plat thereof recorded in Cabinet A, Slide 312 of said plat records;

Thence North 89 degrees 46 minutes 39 seconds West with said northerly boundary line a distance of 151.92 feet to a point in a fence post found in the easterly boundary line of Carmel Place Estates, an addition to the City of Colleyville, Texas according to the plat thereof recorded as Instrument No. D217142798 of the Official Public Records of said County;

Thence North 01 degrees 25 minutes 38 seconds West with said easterly boundary line a distance of 985.17 feet to a cross in concrete set for the northwest corner of said Tract 1, said cross being in said southerly right-of-way line;

Thence North 89 degrees 53 minutes 54 seconds East with the northerly boundary line of said Tract 1 and with said southerly right-of-way line a distance of 233.33 feet to the point of beginning and containing 4.3968 acres of land, more or less.

Zoning Exhibit



VICINITY MAP
NOT TO SCALE

Zoning Exhibit - Carmel Place Estates East

1309 Glade Road, Colleyville, TX. 76034

Overall Parcel Gross Area	4.3968 Acres - 191,524 SF
Existing Buildings	Dwelling and out Buildings - all to be removed
Existing Zoning	AG
Street Area Proposed	Not applicable
Sidewalks Proposed	Not applicable
Open Space SF and percent	Not applicable
Proposed Dwelling Lots	5
Proposed Dwellings	1.14 dwellings per acre
Proposed Dwelling Type	Single Family Residential

Metes & Bounds

Tract 1 - 4.3968 ACRES

Being a tract of land out of George W. Teeter Survey, Abstract No. 1543 and situated in the City of Colleyville, Tarrant County, Texas, and surveyed by Miller Surveying, Inc. of Hurst, Texas in November 2017, sold tract being a portion of the same tract of land described in the deed to Robert Gene Hubbard et al, Peggy Hubbard recorded in Volume 4069, Page 406 in the Deed Records of Tarrant County, Texas and being more particularly described by metes and bounds as follows:

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Thence North 89 degrees 53 minutes 54 seconds East with the northerly boundary line of said Tract 1 and with said southerly right-of-way line a distance of 233.33 feet to the point of beginning and containing 4.3968 acres of land, more or less.

PROPERTY OWNER

CENTURION ACQUISITIONS, LLC
1800 Valley View Lane
Suite 300
Farmers Branch, TX 75234
817.584.5982
Contact: Rome Barnes

ENGINEER

ION DESIGN GROUP, LLC F-6701
7075 Twin Hills Ave
Suite 350
Dallas, TX 75231
214.370.3470 Ph
Contact: Bryan Klein

SURVEYOR

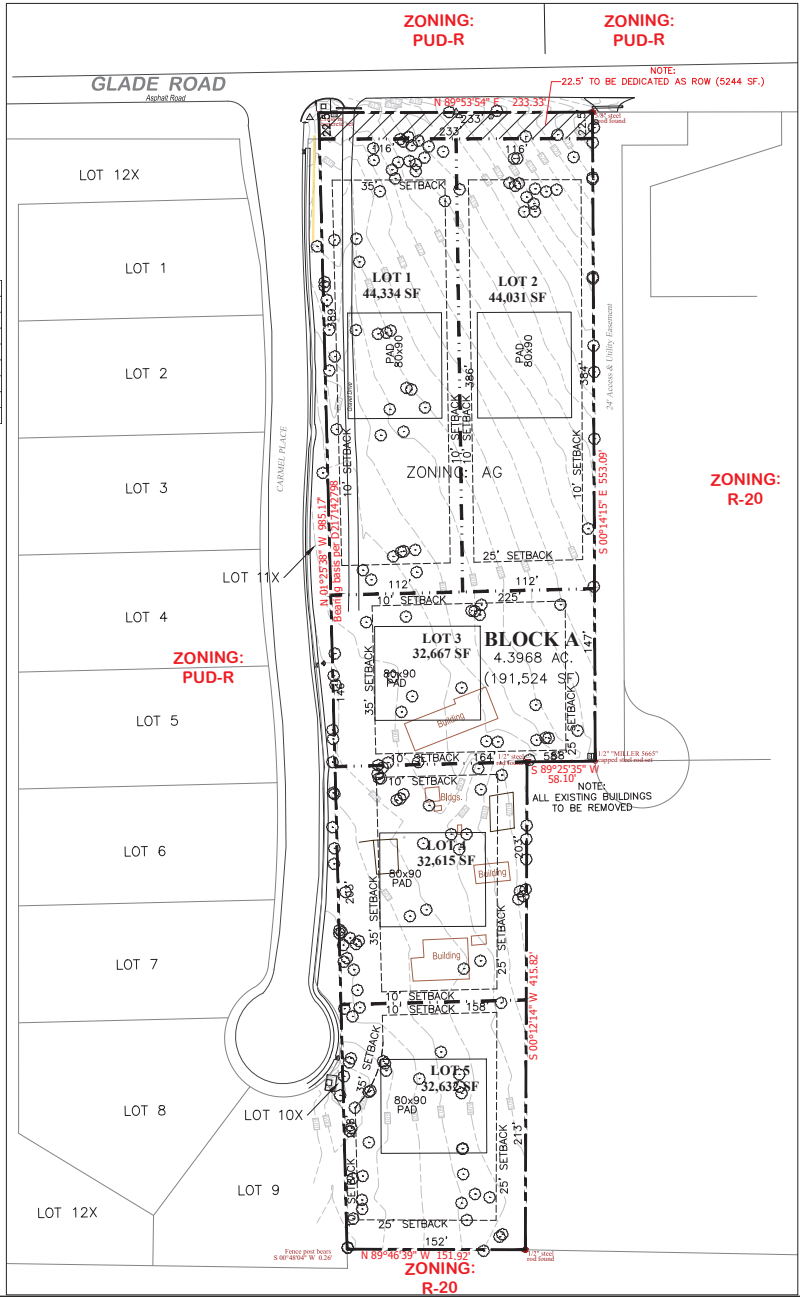
MILLER SURVEYING, INC.
430 Mid Cities Blvd.
Hurst, TX 76054
817.577.1050 Ph
817.577.0972 Fx
Contact: Jason Rawlings

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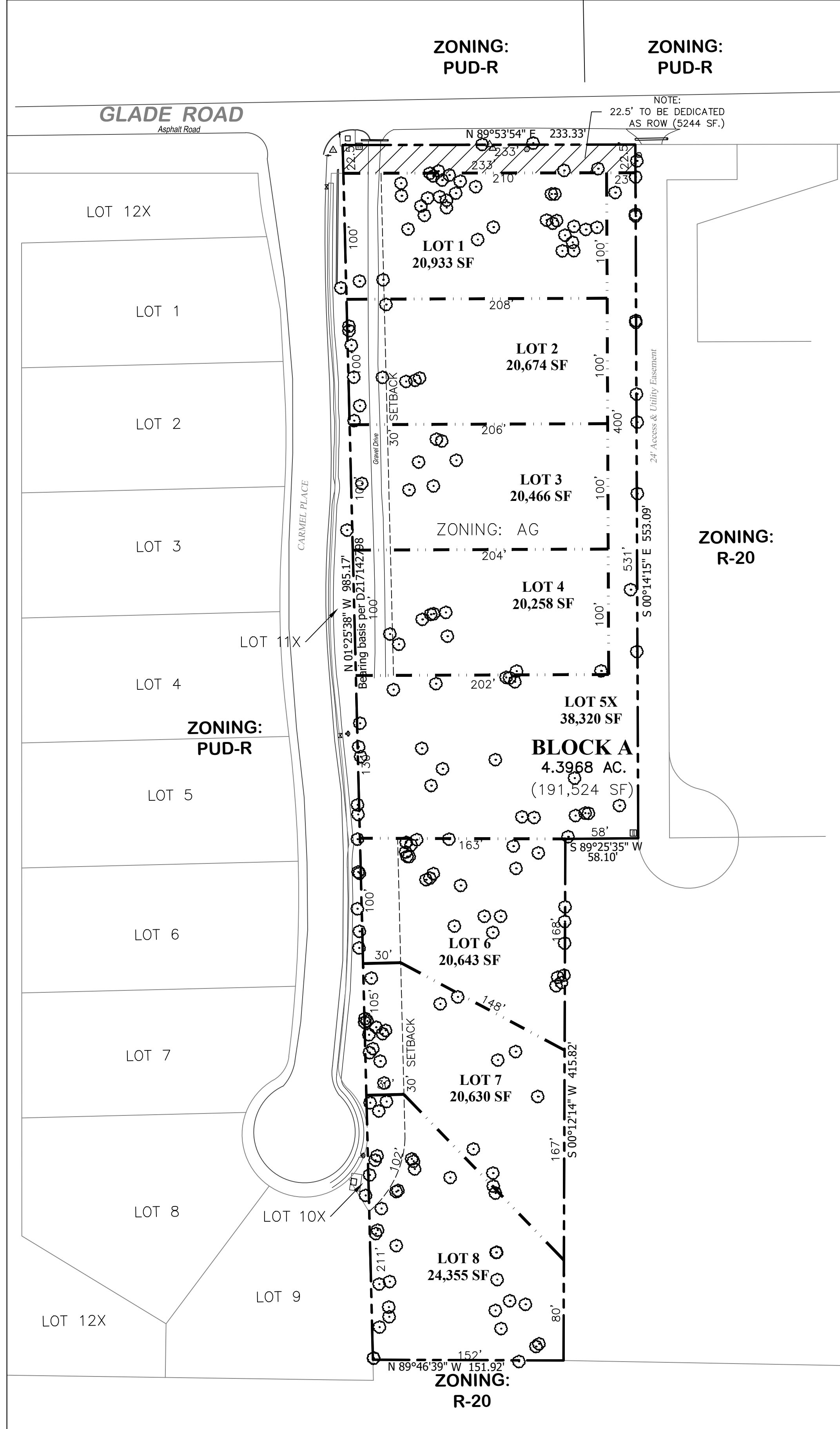


Ion Design Group
7075 Twin Hills Ave
Suite 350
Dallas, Texas 75231
Firm TX F6701
214.370.3470 Ph

Scale: 1" = 50'



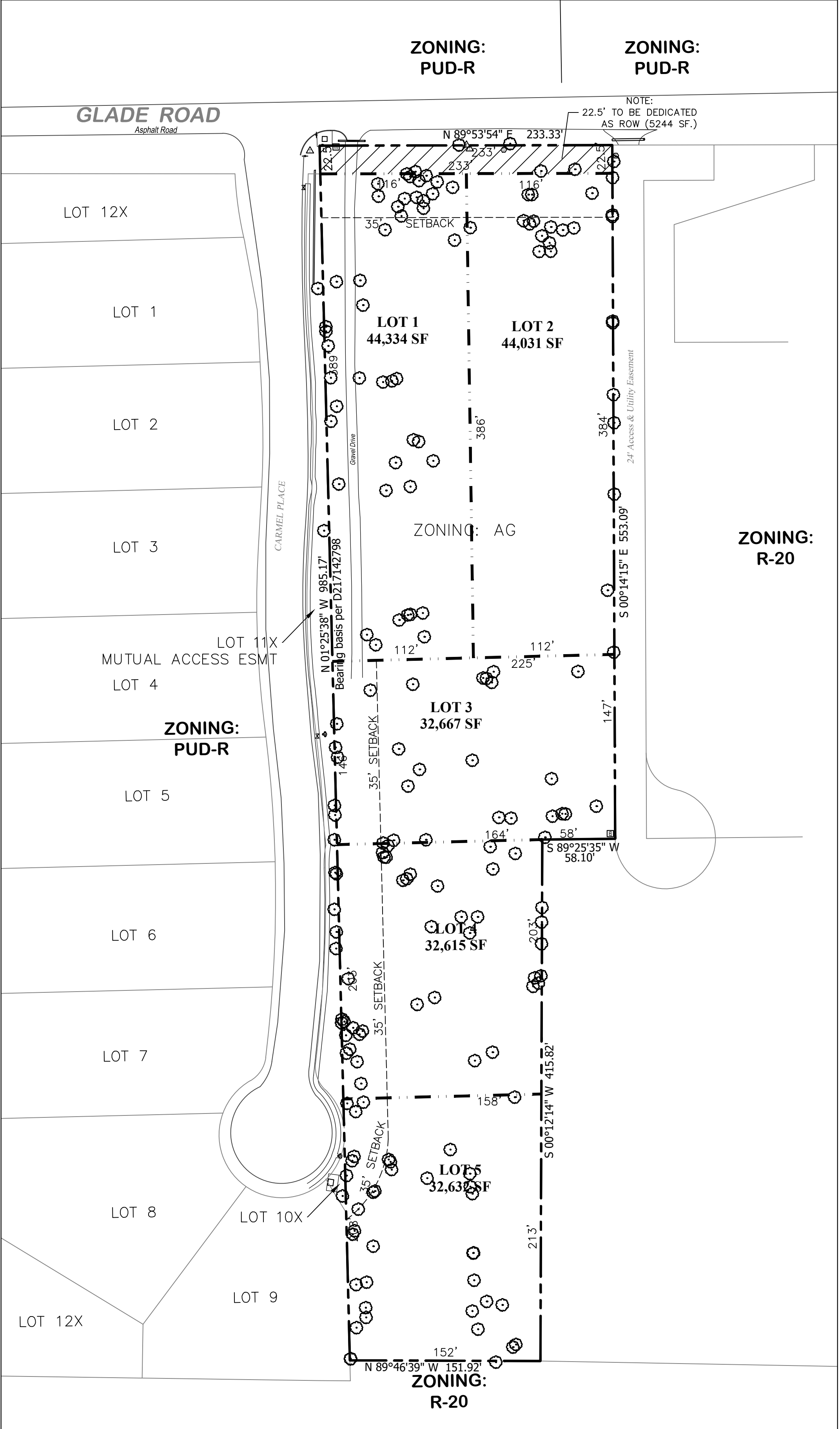
Original Zoning Case



NOTES

1. Zoning not approved.

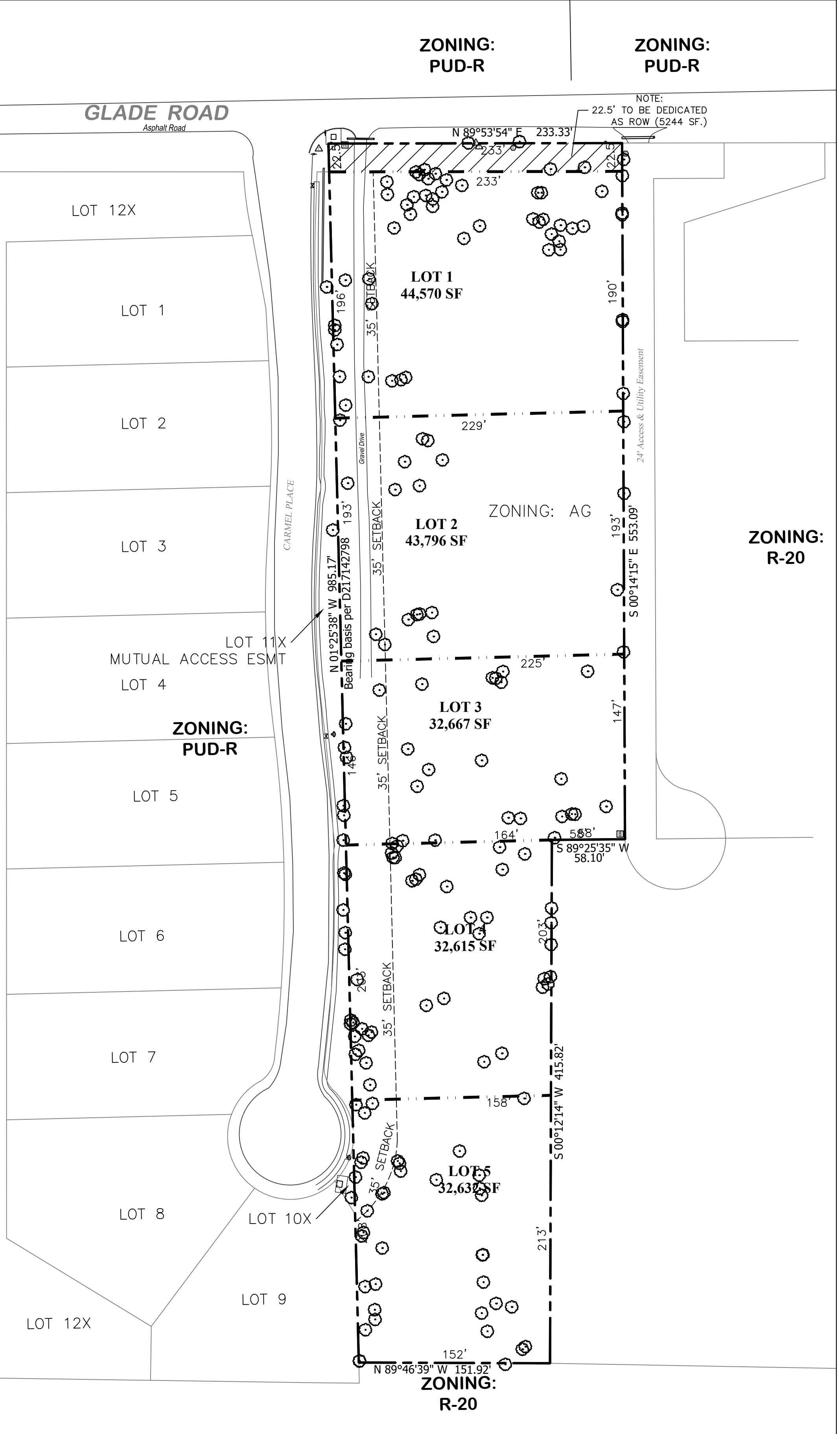
Present Zoning Application



NOTES

1. Needs lot width waiver for Lots 1 & 2.

Alternate Layout



NOTES

1. Needs allowance to front Lots 1 & 2 to Carmel Place.
2. Needs allowance to accept Carmel Place at existing width.

10.01.2018



7075 Twin Hills Ave
Suite 350
Dallas, Texas 75231
Firm TX F6701
214.370.3470 Ph

After recording, return to:
Essex Association Management, L.P.
1221 N. I-35E, Suite 112
Carrollton, Texas 75006

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CARMEL PLACE EAST ESTATES COLLEYVILLE HOMEOWNERS
ASSOCIATION, INC.**

A. The Declarant is the owner of the real property in Tarrant County, Texas, described on **Exhibit A** attached hereto (the “**Property**”). The Declarant has or is developing the Property as an addition to the City of Colleyville and Tarrant County to be known as Carmel Place Estates East Colleyville (the “**Subdivision**”).

B. The Declarant desires to establish a residential community of single family residential detached homes on the Property and, accordingly, has executed this Declaration to impose the covenants, conditions, restrictions, and easements herein described upon the Property.

Section 1.1 Establishment of Covenants, Conditions and Restrictions. The Declarant hereby imposes upon the Property the covenants, conditions, restrictions, liens and easements set forth in this Declaration (the “**Covenants**”) for the purposes of establishing a general scheme for development of the Property, enhancing the value of the Lots and Residences (defined below), and establishing restrictions for residential use for the benefit of the Declarant, Builders (defined below) and the Owners (defined below). The Declarant does not guarantee that all of these purposes will be accomplished through the creation and imposition of the Covenants. The Covenants touch and concern title to the Property, run with the land and shall be binding upon all persons hereafter acquiring any portion of the Property.

Section 1.2 Definitions. The terms set forth below shall have the indicated meanings when used in this Declaration; other terms are defined elsewhere herein and shall have the meaning given to them in this Declaration.

“ACC” shall mean Architectural Control Committee. During the period of Declarant control, the Declarant shall have the sole right to appoint and remove members of the ACC.

“Assessments” means the Maintenance Assessments and Special Assessments provided for in Article 6.

“Association” means the Carmel Place Estates East Colleyville Homeowners Association, Inc., a Texas non-profit corporation, or such other homeowners’ association name selected and available at the time of formation and established as provided in this Declaration.

“Association Documents” means the Certificate of Formation (herein so called) and the Bylaws (herein so called) of the Association, as amended and modified from time to time, and the resolutions and certifications adopted by the Association from time to time. The Declarant and Board of Directors shall have the sole right and discretion to create, amend, and abolish rules and regulations of the Association which shall be accomplished by Resolution and / or majority vote of the Board of Directors or by Declarant acting as the sole authority during the period of Declarant control.

“Board” means the Board of Directors of the Association. During the period of Declarant control, the Declarant shall have the sole right to appoint and remove, with or without cause, the Board of Directors. Declarant shall the right but, not the obligation, to limit the Board’s authority or responsibility during the period of Declarant control. Should the Declarant exercise this right, it shall prepare by Resolution the guidelines by which the Board shall operate during the period of Declarant control.

“Builder” means any homebuilder constructing the initial Residence upon a Lot in the normal course of conducting its business for profit.

“City” means the City of Colleyville, Texas.

“Common Amenities” means the following: (i) any community amenity center or facility constructed on the Property for the use and benefit of the Owners; (ii) any and all entry features (including, without limitation, entry gates and controlled access improvements), Subdivision signage and monuments, landscape areas and screening walls, and all landscape easements, other similar areas within the Subdivision whether or not shown on the Plat (as hereinafter defined), whether within or surrounding or along the boundaries of the Property, including, without limitation, the landscape features installed and screening walls constructed in the entry areas; (iii) any other property or improvements within or immediately surrounding the Subdivision for which the Association is or may hereafter become obligated to maintain, improve or preserve; (iv) any real and/or personal property, fixtures or improvements conveyed or dedicated to the Association for the common use and benefit of Owners within the Subdivision, and/or to be maintained by the Association; and (v) any and all other fixtures, Structures or other improvements installed by Declarant or the Association within the Subdivision, and all equipment, accessories, utilities and machinery used in the operation or

maintenance of any such Common Amenities, and which are not expressly made the responsibility of the Lot Owner pursuant to the provisions of this Declaration. All Common Amenities shall be maintained by the Association. **The Declarant is not obligated to build or provide Common Amenities however; such Amenities may and often are provided for the benefit of the Association. The payment of Assessments is NOT contingent upon the building of or existence of Common Amenities at any time.**

“Common Area” means those portions of the Property depicted or described as such in or on the Plat (defined below) that do not constitute Lots (defined below), including, without limitation, Streets (defined below), roads or other rights-of-way which are not part of a Lot and/or dedicated to and maintained by the City or other governmental authority as a public right-of-way, and/or any real property and/or lot within the Subdivision comprising or on which the Common Amenities are located. The Declarant shall at all times have and retain the right, but without obligation whatsoever, to effect minor redesigns or reconfigurations of the Common Area located on such Declarant’s portion of the Property and to execute any open space declarations applicable to such Common Area which may be permitted in order to reduce property taxes, and to take whatever steps as may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes. All Common Area shall be maintained by the Association.

“Declarant” means CADG Carmel Place, LLC, and its successors or any assignee of Declarant to whom Declarant expressly assigns all of its rights and obligations as Declarant under this Declaration in accordance with Section 8.8 hereof.

“Design Guidelines” shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications set forth on **Exhibit B** attached hereto and incorporated herein by reference, as may be supplemented, amended and/or modified from time to time, and which are applicable to any or all aspects of construction, placement, location, alteration, maintenance and design of any improvements within the Property, together with any interpretations thereof. **The Design Guidelines are an important part of the Declaration and often contain the larger portion of the rules and regulations with regard to construction and other requirements such as fencing, landscape, roofing, exterior materials, and more. Every Builder and Owner should familiarize themselves with the Design Guidelines.**

“Lot” means any of the individual platted building lots reflected, or to be reflected, on the Plat that are to be used for construction of a Residence (defined below) thereon as herein described. In the event any Common Area is conveyed to the Declarant or another third party to be used for construction of a Residence, then such conveyed property shall be included in the definition of a “Lot”.

“Managing Agent” means any Person who has been engaged and designated by the Board to manage the daily affairs and operations of the Association. The Declarant shall have the sole right to determine the Managing Agent during the period of Declarant control. Any contract initiated by the Declarant during the period of Declarant control may have different or stricter term and termination guidelines than other contracts. The Board of Directors shall not have the authority to terminate a contract initiated by the Declarant during the period of Declarant control.

“Owner” means any Person owning fee title to any Lot, but excluding any mortgagee or beneficiary under a deed of trust until such time as it acquires legal title to a Lot.

“Person” means any individual, corporation, limited liability company, partnership or other entity of any kind or type whatsoever.

“Phase” means a particular area of the Property designated by the Declarant for development. The Declarant may impose, as provided in Section 3.3(d), additional or different restrictions on each Phase within such Declarant’s portion of the Property. If the Declarant annexes additional property into the Property as provided in Sections 8.1 and/or 8.2, it may designate the area annexed as a particular Phase, and the Declarant may impose, as provided in Section 3.3(d), additional or different restrictions on such area.

“Plat” means (i) initially, the preliminary plat, and thereafter the final plat, for any Phase of the Property submitted to and approved by the City, or any other applicable governmental entity; (ii) after recordation thereof, the final Plat for any Phase of the Property as recorded in the Records of Tarrant County, Texas; and, (iii) any replat of, or amendment to, the foregoing made by the Declarant in accordance with applicable requirements of the City or other applicable governmental authority. The term “Plat” shall also include the final recorded plat of any additional property annexed into the Property pursuant to Sections 8.1 and/or 8.2. *No Owner may replat his Lot without the express written permission of the Declarant during the period of Declarant control, the ACC or The Board of Directors.*

“Property” shall have the meaning ascribed to such terms as set forth in the recitals of this Declaration.

“Residence” means an attached residence residing upon a Lot in conformance with this Declaration.

“Special Assessments” means collectively, the Special Purpose Assessments and Special Member Assessments, as such terms are defined in Article 6 hereof.

“Street” means any paved road, which is located within a right-of-way of the Subdivision.

“Structure” means any structure (other than a Residence), fence, driveway, sidewalk, planting, landscaping, irrigation system, wall, tennis court, swimming pool, outbuilding, playground equipment, or other improvement of any kind or type.

“Subdivision” shall have the meaning ascribed to such terms as set forth in the recitals of this Declaration.

“Vehicle” means any vehicle of any kind or type whatsoever, including any automobile, truck, motorcycle, boat, mobile home, motor home, boat trailer, or other kind of trailer.

ARTICLE 2

USE PROVISIONS

Section 2.1 Permitted Uses.

(a) **Lots Limited to Residential Use.** Except as otherwise provided in this Declaration, Lots shall be used only for private residential purposes and activities reasonably related thereto. Additional uses for purposes such as schools, churches, or similar activities may not be permitted within the Property, without the prior written approval from the Association and the Declarant.

(b) **Common Area and Common Amenities Uses.** The Common Area designated as the open space and/or to be maintained by the Association on the Plat and any Common Amenities shall be used only for recreational and other similar purposes as approved by the Declarant or the Association. The Common Area consisting of landscaping, maintenance, wall maintenance easements, or similar areas shall be used for such purposes or similar purposes as approved by the applicable Declarant or the Association. The Common Area consisting of sanitary sewer easements, drainage easements, utility easements or similar areas shall be used for such purposes or similar purposes as approved by the applicable Declarant or the Association.

(c) **Sales Offices and Similar Uses.** The Declarant or any Builder may maintain on its Property one or more signs, sales offices, or trailers on Lots for the purpose of facilitating sales of Lots and/or Residences on the Property. The Declarant or the ACC, may by written designation grant to Builder(s) constructing Residences on Lots within the Property the right to conduct their sales and marketing programs for the Property from any permanent or temporary sales buildings or trailers, and conduct improvement work and activities on portions of the Property owned by them and do all things reasonably necessary or convenient as required to expeditiously commence, continue and complete such improvement work, including, but not limited to, the provision of temporary buildings (including, without limitation, trailers), temporary storage of construction materials and equipment and the installation of temporary signage of such types, in such sizes and at such locations on portions of the Property owned by them as they deem appropriate and in accordance with any applicable governmental requirements.

Section 2.2 Prohibited Uses and Activities.

(a) **No Further Subdivision.** No Lot may be further subdivided without the written consent of the Declarant or the ACC; provided, however, this restriction shall not be applicable to Common Area conveyed to the Declarant by the Association. Lots may be combined for the purpose of constructing a single residence on more than one Lot only upon written approval of the Declarant or the ACC. Without regard to any such permitted subdivision or combination, the Lots involved shall continue to be treated as single individual Lots hereunder for all other purposes, including voting in the Association and assessing and collecting Assessments.

(b) **Parking and Vehicle Restrictions.** All Vehicles shall be parked, stored or placed in the garage or upon the driveway. On street parking is **discouraged** except for temporary parking of guests, invitees, vendors, delivery services, and service providers. **The Declarant, ACC, and Board of Directors shall, in their sole discretion, have the authority to determine what constitutes a violation of Parking and Vehicle Restrictions as set forth in this Section.** Vehicles with advertisement shall be allowed **ONLY** in the garage or driveway and must be a vehicle that is regularly used for travel to and from work or connected directly with the Owners business or employment. Oversized work or company vehicles or trucks with a tonnage in excess of one ton will not be allowed at any time. Owners should make provisions for offsite parking of such vehicles. No inoperative or unlicensed Vehicles may be parked or stored anywhere in the community except in a closed garage. The Association shall reserve the right to enforce towing as it is applicable per local city or county law any vehicle which after proper tagging and/or notification by the Association refuses to comply with requests per the guidelines as set forth in this Section of the Declaration. An Owner shall never block a driveway, mailbox, intersection or Common Area at any time. Every Owner shall endeavor to have guests, invitees, vendors, or service providers to park in front of their own home. Any vehicle towed shall be at the sole expense of the Owner. All work on Vehicles (other than routine maintenance) shall be performed only in an enclosed garage. The foregoing provisions shall not restrict the parking of trucks and other Vehicles as necessary in connection with construction of Residences or other permitted Structures on Lots.

(c) **Specific Use Restrictions.** No Lot or improvement shall be used for business, professional, commercial or manufacturing purposes of any kind. No activity, whether for profit or not, shall be conducted on the Property which is not related to single-family residential purposes. No noxious or offensive activity (as determined by the ACC) shall be undertaken on the Property, and nothing shall be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit a Builder's temporary use of a Residence as a sales office until such Builder's last Residence on the Property is sold. Nothing in this subparagraph shall prohibit an Owner's use of a Residence for quiet, inoffensive activities such as tutoring or giving art or music lessons so long as such activities do not materially increase the number of cars parked on the street or interfere with adjoining homeowners' use and enjoyment of their Residences and yards.

(d) **Pet and Animal Restrictions.** Only regular household pets such as cats and dogs shall be permitted on the Property and then only for personal use and not for any business use such as breeding, kennel operations and the like. No other animals of any kind shall be permitted to be maintained upon the Property, including the following: cows, bees, hogs, pot bellied pigs, sheep, goats, poultry, snakes, rats, or skunks. No more than four (4) domesticated household pets are permitted in any Residence. Pets shall not be permitted to run free through the Property. Owners shall clean up after their pets and not allow them to relieve themselves on other Owners property or Common Area grounds. Pets shall be inoculated and shall be kept on leashes at all times when outside the confines of the Owners home or fenced yard. Animals that poses any kind of threat, are excessively noisy, or can be considered to be a nuisance shall upon written notification from the Association, be removed from the Owners premises.

(e) **Outdoor Burning Restrictions.** Outdoor burning of trash, leaves, and other items is prohibited. This restriction shall not be construed as prohibiting outdoor cooking on barbecue grills in connection with use of a Residence.

(f) **Trash/Garbage Disposal.** Trash, garbage and other waste shall at all times be kept in clean, well maintained, sanitary containers for regular scheduled pickup for removal of such items. Trash, garbage or other waste shall not be dumped on the ground of any Lot or in any Common Area. **Containers for trash, garbage and other waste shall be screened from view in accordance with Section 3.4(e)(4) hereof at all times except such containers may be brought to the curbside or other designated pick-up area with respect to a Lot twenty-four (24) hours in advance of scheduled pick-up and such containers must be returned to the screened area within twenty-four (24) hours after the scheduled pick-up time.**

(g) **Occupancy.** Each Lot shall be improved with an attached Residence. No Person shall occupy any garage or other outbuilding as a dwelling unit at any time. No Structure of a temporary character, such as a trailer, basement, tent, shack, barn or other outbuilding, shall be used on any of the Property at any time as a dwelling house; provided, however, that any Builder may maintain and occupy model houses, sales offices and construction trailers during construction periods.

(h) **Projections from Structures.** Window air conditioning units attached to a Residence and other similar projections visible from a street are prohibited. Any projection through the roof of any outbuilding on the Property shall require the prior written approval of the applicable Declarant or the ACC.

(i) **Private Water/Sewer Systems.** Each Residence shall be connected to the City water and sanitary sewer system, and no private water well or water, sanitary or storm sewer system is permitted within the Property unless constructed or caused to be constructed by the Declarant on the Declarant's Property. If the Declarant uses private drainage easements in areas that necessitate or contain a private sub-surface storm sewer drainage system, then such sewer lines are to be kept freely running and unobstructed at all times. If the lines become obstructed, all parties that benefit from their function shall be required to equally and promptly share in the cost of repair or replacement of the lines.

(j) **Changes in Grade.** Except for such changes as are reasonably necessary to facilitate construction of a Residence on a Lot, no Owner shall change the grade of any Lot except in compliance with all applicable laws and the requirements of the grading plan. After the Declarant has developed the Lots on its portion of the Property, the general grading and slope of a Lot may not be altered, and no dams, berms, channels or swales may be constructed or excavated without the prior written approval of the Declarant (or the ACC), the City (if applicable) and other appropriate agencies having authority to grant such approval. Notwithstanding anything to the contrary contained herein, the drainage plan of a Lot shall not be altered in a manner which is inconsistent with the Lot Grading Plan, unless such alteration is first approved by the City in writing.

(k) **Visible Activities - Outdoors.** Outdoor drying of clothes is prohibited. When not in use, lawn mowers, rakes, carts, and other yard equipment shall be stored away from view of

adjoining Lots and Streets. Portable outdoor sports or play equipment including but not limited to bicycles, mini bikes, and motorized skateboards may not be left out when not in use. Items must be neatly and properly stored. Basketball goals may not be weighted down with unsightly materials such as tires, sand bags, bricks, rocks, etc., and must be stored on its side close to the side wall of the home, in the garage or fenced back yard when not in use. Basketball goals should not be positioned in the street or on the sidewalk. No permanent basketball goals shall be attached to the home notwithstanding, a goal may be allowed in the back portion of the home if the yard is fenced and the goal is not visible from any street. Bar-be-que grills used in the front portion of the home must be put away when not use.

(l) **Structures and Storage.** No temporary dwelling, shop, trailer, mobile home or above-ground swimming pools of any kind or any improvement of a temporary character shall be permitted on any Lot, except that a Builder or contractor may have temporary improvements (such as a sales office, parking lot and/or a construction trailer) on a Lot during construction of the Residence on that Lot. Upon approval of the ACC, an Owner may install and place a play structure in the fenced in area behind the Residence on a Lot notwithstanding, no structure may exceed more than two feet (2') over the top of any fence line. Except as otherwise expressly permitted in Section 3.7 hereof, no building material of any kind or character shall be placed or stored upon a Lot until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed only within the property lines of the Lot upon which the improvements are to be erected during construction so long as construction progresses without undue delay. Unless approved in writing by the ACC or the Board, in the absence of the ACC, pursuant to this Declaration, no storage buildings shall be constructed on a Lot. In any event, storage buildings permitted to be constructed on a Lot hereunder or by subsequent written approval by the ACC or Board must match or complement the materials and color of the Residence on the Lot. Storage buildings may be permitted only with the prior written approval of the ACC or Board, in absence of the ACC, and each storage building shall not exceed six to eight feet in height. The ACC or Board shall take into account existing fence height, placement of storage building and visibility of the storage building when considering approval. Any applicable governmental requirements pertaining to the height of such Structure(s), shall be considered. The ACC or Board may make a determination based solely on aesthetic reasons. Approvals may be contingent upon the location of the Owners Lot and may require screening as a condition of approval.

(m) **Recreational Vehicles.** No boat, trailer, marine craft, hovercraft, aircraft, recreational vehicle, travel trailer, motor home, camper body or similar vehicle or equipment may be stored, parked or kept on any driveway, in the front yard or in the Street in front of a Lot for more than 48 hours nor more frequently than two times per month, nor shall any such vehicle or equipment be parked for storage in the side or rear yard of any Residence. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a Residence in the immediate vicinity.

(n) **Transportation of Hazardous Materials.** No vehicle of any size which transports inflammatory or explosive cargo may be kept on the Property at any time.

(o) **Drilling or Mining.** No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted on the surface of the Property. No oil wells, tanks, tunnels, mineral excavations or shafts shall be permitted upon or in any part of the surface of the Property. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the surface of the Property.

(p) **Utilities.** Each Residence situated on a Lot shall be connected to the public water and sanitary sewer lines. No privy, trailer sewage, cesspool or septic tank shall be placed or maintained upon or in any Lot. However, portable toilets will be allowed during building construction. The use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except as reasonably required [not to exceed fifteen pounds] to operate portable gas grills or permanent gas grills which may be installed or used by an Owner to serve a Residence) is prohibited. Except as to street lighting (if any) all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground (except meters, transformers, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities). Electric utility transformers may be installed only in locations designated on the Plat for such purpose or otherwise approved in writing by the ACC, and all improvements on a Lot on which an electric transformer pad easement is located as shown on the Plat must be installed in compliance with all electric company guidelines for separations from pad-mounted transformers.

(q) **Certain Exterior Lighting.** Upon being given notice by the ACC that any exterior lighting is objectionable, as determined by the ACC in its sole and exclusive discretion, the Owner of the Lot on which same is located shall immediately remove any such lighting or shield the same in such a way that it is no longer objectionable to the ACC.

Section 2.3 General. No use shall be permitted on the Property which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments, and other agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. IN SOME INSTANCES REQUIREMENTS UNDER THE GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH REQUIREMENTS UNDER THE GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE

PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL. All Lots shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided.

ARTICLE 3 **CONSTRUCTION PROVISIONS**

Section 3.1 Plan Approval Required. No Residence or Structure shall be constructed within the Property until the plans have been approved in writing by the ACC or the Declarant as provided in this Article 3.

Section 3.2 Establishment of the ACC.

(a) **Initial Appointment.** The ACC shall consist of three (3) members. The initial ACC members shall be those persons appointed by the Declarant during the period of Declarant control. Thereafter, the Board of Directors shall have the sole right to appoint and remove the ACC.

(b) **Term and Subsequent Appointments.** The members of the ACC shall serve until they resign or are removed by the party appointing them to the ACC (which the appointing party may do at any time). Subsequent appointments to the ACC shall be made by the appointing Declarant until such time as the appointing Declarant either relinquishes such power by written notice to the Board, or no longer owns any Lot; thereafter, appointments to and removals from the ACC shall be made by the Board. Both ACC and Declarant, individually or jointly, may engage the services of a third party to review plans and specifications pursuant to this Article.

(c) **Compensation; Fee for Review.** No member of the ACC shall be entitled to compensation for its services; provided that the ACC may charge a reasonable fee (no more than \$200 per submission) to cover its costs in reviewing any plans and inspecting a Lot and/or improvements constructed thereon, which fee shall be paid by an Owner to the Association at the time of submission and/or resubmission of plans to the ACC for review and approval. Notwithstanding the foregoing or anything to the contrary contained herein, Builders shall not be liable for any charges of the ACC under this Section 3.2(c) with respect to the review and approval of the ACC of plans for the initial construction of a home on a Lot by such Builder.

Section 3.3 Approval Process.

(a) **Submission of Plans.** Any party wishing to construct a Residence or any Structure on the Property shall submit at least one (1) copy of complete plans and specifications to the ACC for its approval prior to commencing construction. Such plans and specifications shall include engineering information, landscaping description, and construction plans showing the location and elevations of the proposed Residence or Structure and the materials to be used in constructing the same, all in sufficient detail to enable the ACC to evaluate the proposed Structure or Residence. The ACC may request additional information, including samples of proposed materials to aid it in its decision process. After receipt of a complete set of plans and specifications, the ACC shall promptly review the same and notify the Person submitting

whether it approves the plans or whether it requires changes thereto. Alternately, the ACC may disapprove a set of plans by so noting thereon and returning it to the Person submitting, accompanied by a statement of the reasons for disapproval. No construction shall be commenced on any portion of the Property unless and until the plans for the Residence or Structure in question have been approved in writing by the ACC or the Declarant.

(b) **Time for Review/Approval.** The ACC shall approve or disapprove all plans properly submitted to it for construction within thirty (30) days after the date it receives a complete set of plans and specifications; therefore, **if the ACC fails to specifically approve or disapprove of any plans within such thirty (30) day period, then the ACC shall be deemed to have disapproved the plans submitted.**

(c) **Review Standards.** The ACC, in reviewing and approving plans for construction of Structures or Residences, shall use commercially reasonable efforts to promote and ensure a high level of taste, design quality, aesthetic harmony, and conformity throughout the Property, consistent with the standards established by this Declaration and the Design Guidelines.

(d) **Design Guidelines/Building Standards.** The Declarant or the ACC may, but is not required to, from time to time, establish specific guidelines and building standards in addition to or to modify and amend the Design Guidelines attached hereto as **Exhibit B** and incorporated herein by reference, to assist Persons in determining the type of Structures and Residences which may be constructed on the Property. Pursuant to Sections 8.1 and 8.2, the Declarant may annex additional property to become a part of the Property in accordance with Sections 8.1 and/or 8.2 hereof, and the Declarant may develop its portion of the Property in various Phases. The Declarant may establish differing restrictions, guidelines and building standards for each such Phase of the Property, which may impose more restrictive or less onerous building standards with respect to a particular Phase. The ACC or the Declarant may amend or modify such guidelines or standards from time to time in its sole discretion. Such guidelines or standards shall supplement this Declaration and shall be general guides to permitted construction within the Declarant's Property, but shall not diminish the authority of the ACC and the Declarant to approve plans as otherwise herein provided.

(e) **Failure to Obtain Approval.** The construction, repair, replacement, installation, improvement or placement of any Structure or improvement of any type on a Lot or Residence without the prior written approval from the ACC shall constitute grounds for the imposition by the ACC or the Association of an automatic fine against the Owner of said Lot not to exceed Twenty-Five and No/100 Dollars (\$25.00) per day commencing upon the date on which the unapproved construction, repair, replacement, installation or placement commenced and continuing until the earlier of the date on which such Owner has either (i) obtained ACC approval (or deemed approval) of such construction, repair, replacement, installation or placement of the offending Structure(s), or (ii) removed such offending Structures and restored its Lot to substantially the same condition as existed prior to commencement of such construction, repair, replacement, installation or placement thereof. A fine levied under this Section shall be charged to the Owner's assessment account, payable upon demand and secured by the Assessment Lien created in Article 6.

(f) **Limitation of Liability.** No Declarant, and none of Declarant's officers, directors, partners, agents, employees, representatives, parent or subsidiaries, nor the Association, the Board, or the ACC, including any of its respective members, shall be liable to any Person for any official act of the ACC in connection with submitted plans and specifications. Notwithstanding any approval by the Declarant or the ACC, neither the Declarant nor the ACC shall be responsible or liable to any Person with respect to any loss, liability, claim or expense which may arise by reason of such approval or the construction of a Residence or Structure related thereto. No Declarant, nor the Association, the Board nor the ACC shall be responsible in any way for any defects in any plans or specifications submitted, reviewed or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans or specifications. No approval of any plans by either the ACC or the Declarant shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation, it being the responsibility of the Person submitting any plans to assure compliance with all applicable laws. Conversely, the issuance of a building permit or any approval from any governmental authority shall not, under any circumstance, constitute any evidence that construction of a Residence or a Structure complies with the terms and conditions contained in this Declaration or the Design Guidelines. No Declarant or members of the ACC shall have liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious.

Section 3.4 Specific Construction Provisions.

(a) **Setbacks.** All Residences and other Structures shall be constructed in conformity with the setback requirements of the City and the building lines reflected on the Plat.

(b) **Residence Size and Type.** The minimum square footage of enclosed air-conditioned area of each Residence (exclusive of all porches, garages or breezeways) shall be the greater of (i) 1800 square feet or (ii) the minimum square footage required by the City for each Residence. Each Residence shall be of new construction on a Lot and no mobile homes or manufactured housing shall be permitted on the Property except as authorized by the Declarant on a temporary basis in connection with construction or sales activities on the Declarant's Property.

(c) **Garage Requirements.** Each Residence shall have at least a two (2) car attached or detached garage constructed as a part thereof, in compliance with the minimum applicable requirements established by the City. Each garage must match or complement the materials and color of the Residence on the Lot. Each single-family Residence erected on any Lot shall provide off-street parking space (inclusive of garage space) for a minimum of two (2) automobiles. No garage shall be modified or converted for use as living space or any use other than as a garage, except with regard to model homes or sales offices operated by Builders in the Subdivision for which the garage may be modified or converted to living space or for other uses during periods in which such Residence(s) are being operated as a model home or sales office of a Builder.

(d) **Drive/Walkway Requirements.** All driveways and sidewalks shall conform to applicable City and other governmental specifications and regulations. Each Lot must be accessible to an adjoining Street by a concrete driveway unless other materials are approved in writing by the ACC. If required by the City, concrete sidewalks shall be installed on each Lot by the Builder constructing the initial Residence on any Lot and in conformance with the requirements of the City. No driveway shall be widened without the express written permission of the ACC. No driveway or sidewalk shall be painted or stained without the express written permission of the ACC.

(e) **Ancillary Structure Provisions.** All ancillary Structures (as described below) shall conform to the requirements of this Section:

(1) **Antennas, Aerials and Satellite Dishes.**

(A) Any antenna or satellite dish less than one meter in diameter shall be installed so as to not be visible from any street or the ground level of any adjacent Lot or Common Area, and shall be integrated with the Residence and surrounding landscape.

(B) Any broadcast television antennas and any other antennas and aerials shall be located inside the attic of the Residence constructed on the Lot.

(C) One (1) satellite dish over one meter in diameter shall be permitted per Residence only if it is not visible from any street or the ground level of an adjoining Lot or Common Area, and does not extend above the height of the fence surrounding the Lot on which such satellite dish is located.

(D) With respect to any antenna or satellite dish covered by Section 47 C.F.R. Part I, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time, the provisions of Section 3.4(e)(1)(A) and 3.4(e)(1)(B) shall be applicable only to the extent that the requirements hereof do not (A) preclude reception of an acceptable quality signal, (B) unreasonably delay or prevent installation, maintenance and use of the antenna or satellite dish, or (C) unreasonably increase the cost of installation, maintenance and use of the antenna or satellite dish.

(2) **Fences and Walls.** All fences constructed within the Subdivision shall comply with the Design Guidelines attached hereto as **Exhibit B** and shall in any event be of a design approved by the ACC. No fence shall exceed eight feet (8') in height. Any transition between intersecting fences of differing heights shall occur over a slope a distance of two feet (2') from the point of intersection. No fence shall be constructed on a Lot nearer than five feet (5') from the front corner of the Residence on such Lot. No fences or walls shall be constructed on any lot, other than by the Builder or Declarant, unless approved in writing by the ACC or the Board in the absence of the ACC.

(3) **Outbuildings.** Outbuildings must be approved by the ACC consistent with Section 2.2(l) herein.

(4) **Trash Containers.** All trash containers belonging to a specific residence shall be screened from view from Streets, except during the period commencing 24 hours prior to scheduled pick-up and ending 24 hours after scheduled pick-up as permitted under Section 2.2(f) hereof.

(5) **Hedges.** Hedges shall be maintained at a height that is no higher than twenty-four inches (24") above the height of fences and walls on a Lot. Each owner shall keep and maintain hedges on its Lots in a manner that preserves the structural integrity of the fence and/or wall, and ensures same is not compromised, and in a manner to prevent encroachment of such hedge onto any adjacent Lot. No hedge shall be maintained in a manner that obstructs any sidewalk or the visibility of intersections of Streets.

(6) **Retaining Walls.** No retaining walls shall be constructed on any lot, other than by the Builder or Declarant, unless approved in writing by the ACC or the Board in the absence of the ACC.

(7) **Mailboxes.** Mailboxes shall be of a design as set forth on **Exhibit C** attached hereto and incorporated herein by reference, or other design approved in writing by the ACC or Declarant, and be designed and constructed in accordance with any applicable guidelines and/or requirements of the City and/or United States Postal Service. If cluster mailboxes are used in this subdivision and there is damage sustained which results in the repair or replacement of the cluster box unit the Association shall attempt to identify the person or entity responsible and shall make every effort to obtain the full cost of repair or replacement from that entity or individual notwithstanding, should the Association not be able to identify the person or entity responsible, the costs of repairs or replacement of a cluster mailbox shall be borne as an individual assessment in equal portion by each Owner to whom the cluster mailbox serves as the receptacle for the receipt of U.S. mail or packages.

(8) **Recreational Facilities.** A swimming pool and/or other recreational facilities may be constructed within any Lot provided the plans are approved by the ACC prior to commencement of construction to ensure compliance with the requirements contained in the Design Guidelines with respect to location and screening. Above ground pools are prohibited. All pool service equipment shall be either screened with shrubbery or fenced and located in (A) a side yard between the front and rear boundaries of the Residence, or (B) in the rear yard, or (C) otherwise concealed in a location not visible from any Street, Common Area or adjacent Lot.

(9) **Signage.** No sign or signs of any kind or character shall be displayed to the Streets or otherwise to the public view on any Lot or Common Area, except for the Declarant's signs or Builders' signs approved by the Declarant for such Declarant's Property, and except that:

(A) Any Builder, during the applicable initial construction and sales period, may utilize two (2) professionally fabricated signs (of not more than six

[6] square feet in size) per Lot for advertising and sales purposes, and two (2) professionally fabricated signs (of not more than thirty-two [32] square feet in size) in the Property advertising a model home or advertising the Subdivision, provided that such signs shall first have been approved in writing by the ACC;

(B) A professionally fabricated “for sale” or “for rent” or “for lease” sign (of not more than six [6] square feet in size) may be utilized by the Owner of a Lot for the applicable sale or rent situation, provided that such sign first shall have been approved in writing by the ACC;

(C) Development related signs owned or erected by Declarant (or any builder with Declarant’s prior written consent) shall be permitted;

(D) Signs displaying the name of a security company shall be permitted, provided that such signs are (i) ground mounted, (ii) limited to two (2) in number per Lot (one [1] in the front yard and one [1] in the back yard), and (iii) of a size not in excess of two (2) square feet in size;

(E) Each Owner may display flags on or at a Residence in conformity with the Design Guidelines attached hereto as Exhibit B, and in a manner otherwise consistent with the covenants, conditions and restrictions contained in this Declaration;

(F) Each Residence may display up to two (2) spirit signs or other signs in support of athletic events and/or teams during the applicable sport season which are not otherwise consistent with the covenants, conditions and restrictions contained in this Declaration; and

(G) Each Residence may display seasonal decorations (including lights, lawn ornamentation, flags and banners) for a duration of no longer than six (6) weeks during the applicable season and provided that such decoration is in any event consistent with the covenants, conditions and restrictions contained in this Declaration; and

(H) One (1) sign for each candidate and/or ballot item on advertising such political candidate(s) or ballot item(s) for an election shall be permitted in accordance with Section 202.009 of the Texas Property Code, provided that:

(i) such signs may not be displayed (A) prior to the date which is ninety (90) days before the date of the election to which the sign relates, and (B) after the date which is ten (10) days after that election date;

(ii) such signs must be ground-mounted; and

(iii) such signs shall in no event (A) contain roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component, (B) be attached in any way to plant material, a traffic control device, a light, a

trailer, a vehicle, or any other existing Structure or object, (C) include the painting of architectural surfaces, (D) threaten the public health or safety, (E) be larger than four feet (4') by six feet (6'), (F) violate a law, (G) contain language, graphics, or any display that would be offensive to the ordinary person, or (H) be accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

All signs must be professionally produced and manufactured. Each Owner hereby grants permission to the ACC (or its duly authorized agents) to enter upon a Lot or any part of the Property and remove any sign, billboard or advertising structure that does not comply with the above requirements and, in doing so, the ACC (or its duly authorized agents) shall not be subject to any liability to any Person whatsoever for trespass, conversion, or any claim for damages in connection with such removal. The ACC's cost to remove any sign shall be added to the Owner's assessment account, be payable upon demand and secured by the Assessment Lien created in Article 6.

(f) **Construction Materials.** All construction materials shall conform to the following provisions:

(1) **Exterior Materials.** The exterior walls (excluding doors and windows), below the first floor ceiling plate, of each Residence constructed or placed on a Lot shall have the minimum City required coverage but not less than one-hundred percent (100%) brick or brick veneer, or stone or cast stone, stucco or other masonry material on the front façade of a residence (excluding openings) and shall otherwise be in compliance with the Design Guidelines attached hereto as **Exhibit B**. All chimney and fireplace flues shall be enclosed and finished and portions located above the roof structure and roofing materials shall be finished as required by the Design Guidelines or applicable ordinances of the City, provided that in any event such exterior portions of the chimney shall be finished with an approved exterior grade siding material; exposed pre-fabricated metal flue piping is prohibited. No material on the exterior of any building or other improvement except wood, hardboard or stucco, shall be stained or painted without the prior written approval of the ACC. No materials other than the following may be used in the exterior construction of a Residence and/or other Structures constructed on a Lot (excluding roofing materials, window frames and exterior fixtures): brick, brick veneer, stone, stone veneer, wood, hardboard, stucco and/or masonry siding. All wood, hardboard or stucco used on the exterior of a Residence must be painted or stained in a color compatible with the exterior design and materials used in the exterior construction of such Residence, and as approved by the ACC.

(2) **Roof Materials.** Minimum 5:12 roof pitch, roofing materials shall be architectural grade composition shingles, cement fiber shingles, slate, metal, clay tile, or concrete tile, be thirty (30) year warranty shingle or equivalent is required, with a minimum weight of 220 pounds per square foot (100 square feet). The color of shingles shall be subject to ACC approval. Generally accepted colors shall be weathered brown or gray color. Other roofing material shall not be used without the express written approval of the ACC. All roofing materials must be fireproof and conform to City requirements, and are subject to approval of the ACC. Roof materials shall in any event be in compliance with the Design Guidelines attached hereto as **Exhibit B**. Dormers above

roof structure and roofing materials may be finished with an approved exterior grade siding material.

(3) **Garage Doors.** All garages facing the street adjacent or parallel to the front property line of a Lot shall have sectional garage doors with cedar overlay, as approved in writing by the ACC.

Section 3.5 Height Restrictions. All Residences and other Structures shall conform to the height restrictions of the City.

Section 3.6 Roof Restrictions. All Residences shall have a minimum roof pitch of 5:12 slope, unless otherwise approved in writing by the Architectural Control Committee. The roof pitches of any permanent Structure(s) to be constructed and/or installed on any Lots shall be subject to the Architectural Control Committee's prior written approval.

Section 3.7 Construction Period and Process. All construction activities, temporary Structures, storage of materials and equipment, construction-related parking and temporary security fences shall be confined entirely on such Lot or, if applicable, (a) such other portion of the Property designated by Declarant for such use or (b) such other Lots owned by a Builder which may be used as staging, parking or storage areas with related temporary Structures and fencing thereon for purposes of such Builder's initial construction of homes on Lots owned by it. Each Owner is responsible for, and shall cause, through appropriate contractual provisions, all costs of cleaning up any debris or waste improperly disposed of anywhere on the Property. Each Owner and such Owner's contractors shall use reasonable diligence to maintain an attractive, clean, nuisance-free environment during the period of construction. Each Owner of a Lot on which improvements are being constructed shall keep all Streets reasonably cleared of mud and dirt left by construction vehicles for each Lot. Once commenced, all construction on a Lot of any Residence (including the initial Residence thereon) (a) shall be continued with due diligence and good faith until completion, and (b) shall be completed within twelve (12) months after commencement thereof. Construction of any other Structure shall be completed within the time periods specified in the plan approval process. All areas under construction shall be maintained in a clean, safe condition, and debris, trash, and rubble shall be stored in appropriate containers and promptly removed from the Property.

Section 3.8 Landscaping. Weather permitting, landscaping of a Lot must be completed within thirty (30) days after (a) the date on which any Residence on a Lot is ninety-five percent (95%) complete, with respect to the initial construction of a Residence on a Lot, or (b) the date on which an Owner commenced installation and/or construction of such landscaping improvements with respect to landscaping improvements and work on Lots with existing Residences. In any event, all landscaping requirements for Residences as set forth in the Design Guidelines attached as **Exhibit B** to this Declaration, and as such Design Guidelines may be amended from time to time by the Board, the ACC or the Association pursuant to the terms hereunder, shall be satisfied prior to occupancy of a Residence on a Lot, provided that in any event (i) all front and side yards of a Lot shall comply with Section 1.1 of the Design Guidelines; (ii) all yard areas and required landscape shall be irrigated by a fully automated irrigation system with drip irrigation installed in the front yard planter beds and front yard trees; (iii) each Lot shall

include at least eight (8) trees with a caliper of six inches (6") or greater (measured at breast height) within the front yard of each of the Lots and landscaping that otherwise complies with any requirements of the City or other applicable governmental authorities and the Design Guidelines promulgated by the Board, the ACC or the Association hereunder (collectively, the "**Minimum Landscaping Requirements**"). With respect to each and every fence installed at or near the side Lot line of any corner Lot running parallel to a Street, the Lot Owner shall be obligated to maintain all grass areas between the fence and the Street, as applicable (and if any Owner fails to do so, the Association shall have the right, but not the obligation to maintain same at the Owner's cost, and shall have all other rights and remedies as are provided for in this Declaration).

Section 3.9 Retaining Walls. Retaining walls may be installed to achieve even grades for pools, driveways or Residence foundations or to prevent storm water drainage to flow onto other Lots as required by Section 2.2(j) hereof. Such retaining walls must be constructed of such materials and height, and in a manner and location, approved in writing by the ACC and the City, if applicable. All retaining walls visible from any Street in front of a Lot, and, for corner Lots, from the adjacent side Street, shall be finished with landscape quality rock or stone. Any retaining walls built by Declarant or its affiliates on Common Area to be maintained by the Association shall be conveyed to and maintained by the Association as Common Areas and/or Common Amenities. Any retaining walls located within a Lot shall be maintained and repaired by the Owner of the Lot on which such retaining wall is located. In the event that a retaining wall is located on a shared property line between two Lots, the Owner of the high-side Lot shall be responsible for the maintenance and repair of such retaining wall.

Section 3.10 Right to Waive or Modify Specific Instruction Provisions. The ACC shall have the right, in its discretion, to grant reasonable waivers of the construction provisions set forth in this Declaration, and any such waiver shall not entitle any other Person to a similar waiver and shall only be granted with respect to portions of the Property for which such ACC is responsible in accordance with the terms of this Declaration.

Section 3.11 Declarant Rights. So long as the Declarant owns any Lot, such Declarant may exercise any of the rights of the ACC appointed by such Declarant under this Article 3 and supersede any decision or action of such ACC. Declarant may at any time and from time to time at its sole discretion issue variances. Any variance issued by the Declarant cannot be revoked by the ACC or the Board.

Section 3.12 Repairs, Replacements and Modifications. The provisions of this Article 3 shall apply to any and all repairs, replacements or modifications of any improvements placed upon any Lot and shall not be deemed or construed as being limited to initial or new construction.

ARTICLE 4 **MAINTENANCE PROVISIONS**

Section 4.1 Owner's Obligation to Maintain. Each Owner shall maintain its Lot and the Residence and other Structures thereon in a clean, first class condition at all times. Each Owner shall keep all landscaping and sprinkler system on such Owner's Lot in a neat, orderly and well-maintained condition and shall keep the driveway and sidewalk on or in front of such Owner's Lot in good condition and repair. Each Owner shall regularly mow grass on its Lot so that at all

times such Owner's Lot contains no weeds, grass or unsightly growth exceeding two inches (2") in height. Each Owner shall maintain the exterior of its Residences and Structures in good condition and shall make such repairs and replacements as necessary to maintain good order and the aesthetic harmony of the Property. Fences shall be kept in good repair; any broken or missing pickets must be replaced. Fallen panels must be replaced or up righted. Leans must be corrected. Fence must be kept in good appearance making sure that fence is re-stained whenever necessary to maintain a favorable aesthetic appearance. No Owner shall have only a portion of a fence.

Section 4.2 Damaged Improvements. If any Residence or Structure is damaged in any way, the Owner shall immediately repair such damage.

Section 4.3 Declarant/Association Right to Perform. If any Owner fails to maintain the condition of its Lot, the landscaping thereon, including the prompt removal of rotting or deceased trees and shrubs, or the Residence or other Structures thereon as contemplated by this Article 4 and fails to take action to correct such defect within ten (10) days after the Declarant or the Association has furnished written notice thereof to such Owner, then the Owner of such Lot hereby grants permission to such Declarant or Association (or its duly authorized agents) to enter upon such Lot and perform those duties which the Owner failed to perform without liability whatsoever to such Owner or any Person for trespass, conversion, or any claim for damages. The cost of performing such duties shall be added to the Owner's assessment account and shall bear interest at the maximum rate of interest permitted to be charged under applicable law, and shall be payable upon demand and secured by the Assessment Lien provided for in Article 6.

Section 4.4 Easement Maintenance.

(a) **Generally.** Each Owner grants to the Association, the Board, and the Declarant the right to access, repair, and maintain all facilities and improvements within any wall, entry, fence, landscape, or other similar easement as recorded on any Plat.

(b) **Drainage Easement.** By acquisition of a Lot, each Owner hereby grants, creates and conveys unto the Association, the other adjacent Owners and the Declarant (prior to the establishment of the Association, and thereafter, the Association) a perpetual non-exclusive easement (the "**Drainage Easement**") over (i) all drainage easements within such Owner's lot and shown on the Plat and (ii) an area five feet (5') on both sides of the shared property line of each Lot within the Property for the purpose of (a) access, ingress, egress, as is reasonably necessary to maintain, repair and/or restore the grading and/or drainage improvements serving the Lots and/or the Property, and (b) permitting runoff and/or storm water to drain from other adjacent Lots over, through, under and across the Owner's Lot(s) to the extent such drainage does not adversely affect any Residence; provided, however, in no event shall Declarant and/or the Association be liable to maintain, repair or restore any grading or drainage on or serving any Lot. Neither the Declarant nor Declarant's successors or assigns shall be liable for any loss of, or damage done to, any shrubbery, grass, flowers, improvements, fences, sidewalks, driveways or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters or drainage waters. Notwithstanding any of the foregoing rights of the Association or the Declarant, each Owner

hereby agrees to maintain the Drainage Easement area at such Owner's sole cost and expense. If any structures or other obstructions are constructed, created or placed by any Owner within the Drainage Easement area without the prior written consent of the Association and/or the Declarant, the Declarant or the Association shall have the right to remove such structure or obstruction at the sole cost of such Owner.

ARTICLE 5

OWNERS' ASSOCIATION

Section 5.1 Establishment. The Association has heretofore been or will hereafter be created as a Texas non-profit corporation. Each Owner of a Lot shall be a member of the Association and such membership is appurtenant to and shall not be separated from ownership of a Lot. Upon the transfer of a Lot, the new Owner shall automatically become a member of the Association. The term of existence of the Association and other matters pertaining to its operation are set forth in its Certificate of Formation and the By-Laws. The Association is established to enforce this Declaration and the Covenants, to promote the interests of the Owners as residents of the Property, and to enhance the value of the Lots as part of a harmonious, high quality, residential subdivision.

Section 5.2 Membership; Voting Power.

(a) **Generally; Classes of Members.** Every Owner (including Declarant) shall automatically be and must remain a Member of the Association so long as such Person is an Owner. The membership of a Person in the Association shall terminate automatically whenever such Person ceases to be an Owner, except that such termination shall not release or relieve such Person from any liability or obligation arising under this Declaration during such Person's period of ownership. Any transfer of title to a Lot shall operate automatically to transfer membership in the Association appurtenant to such Lot to the new Owner of such Lot. The Association shall have two classes of voting membership as follows:

(i) **Class A.** The Class A Member shall be all Owners other than the Declarant and shall be entitled to one vote for each Lot owned. If more than one person owns an interest in a Lot, they shall combine their vote in such a way as they see fit, but there shall be no fractional votes, and no more than one vote with respect to any Lot.

(ii) **Class B.** The Class B Member shall be the Declarant, who shall be entitled to ten (10) votes for each Lot owned by such Declarant. Subject to the conditions set forth in the remainder of this paragraph, the Class B membership applicable to the Declarant's Property shall be converted to Class A membership upon the earlier of (i) the total votes outstanding in the Class A membership applicable to the Declarant's portion of the Property equaling the total votes outstanding in the Class B membership applicable to such Declarant's portion of the Property, (ii) ten (10) years from this filing, or (iii) the recording in the Records of Tarrant County, Texas, of a notice signed by the Declarant terminating its Class B membership. In determining the number of Lots owned by the Declarant for the purpose of Class B membership status hereunder, the total number of Lots covered by this Declaration, including all Lots annexed thereto in accordance with

Sections 8.1 and/or 8.2 herein shall be considered. In the event the Class B membership has previously lapsed as provided in (i) above, but annexation of additional property restores the ratio of Lots owned by the Declarant to the number required for Class B membership status, such Class B membership shall be reinstated until it expires pursuant to the terms hereof.

(b) **Members in Good Standing.** A Member shall be considered to be a “**Member in Good Standing**” (herein so called) and eligible to vote on Association related matters if such Member:

(i) Has, at least ten (10) days prior to the taking of any vote by the Association, fully paid all Assessments or other charges levied by the Association, as such Assessments or charges are provided for hereunder;

(ii) Does not have a Notice of Unpaid Assessments filed by the Association against the Lot owned by such Owner;

(iii) Has not received any notice of a violation of this Declaration or any notice of violation of any design guidelines promulgated by the ACC, which violation is continuing and has not been cured by such Member in violation; and

(iv) Has discharged all other obligations to the Association as may be required of Members hereunder or under the Association Documents.

The Board shall have the right and authority, in the Board's sole and absolute discretion, to waive the ten (10) day prior payment requirement in Section 5.2(b)(i) hereof and require only that such payment be made at any time before such vote is taken if the Board shall determine, in the Board's sole and exclusive judgment, that extenuating circumstances exist which have prevented prior payment. Any Member not conforming to the provisions of this Section shall be declared by the Board not to be a Member in Good Standing and any such Member shall not be entitled to vote on matters before the Association until such time as Member in Good Standing status is attained and so declared by the Board. Notwithstanding the foregoing or anything to the contrary contained herein, for as long as required under the Texas Residential Property Owners Protection Act, as amended from time to time (Texas Property Code, Section 209.001 *et seq.*), nothing contained in this Section 5.2(b) shall prohibit a Member (whether or not such Member is a Member in Good Standing) from voting at any meeting of the Members to elect directors of the Board or on matters that affect such Member's rights or responsibilities with respect to the Lot owned by it.

(c) **Board of Directors Election.** The Board shall be elected as provided in the Association Documents. The Board shall act by majority vote as provided in the Association Documents.

(d) **Specific Powers of Board.** Without limiting the authority granted to a board of directors under the Texas Business Organizations Code, the Board shall have the following

specific powers on behalf of the Association. During the period of Declarant control, the Board's authority and/or responsibilities may be limited.

- (1) to enforce the provisions of this Declaration;
- (2) to enter into contracts;
- (3) to retain third parties, as necessary, to assist the Board in carrying on the Association's activities, including engineers, accountants, lawyers, architects, land planners, professional management, and other consultants;
- (4) to take such action as necessary to maintain the Common Area and Common Amenities in good order and condition;
- (5) to acquire property, services and materials to carry out its duties;
- (6) to purchase insurance covering potential liability for use of the Common Area and/or Common Amenities and for other risks;
- (7) to borrow money for Association purposes;
- (8) to initiate and defend litigation, arbitration and other similar proceedings;
- (9) to promulgate reasonable rules and regulations for access to and use of Common Area and/or Common Amenities as well as a policy establishing a schedule and procedures by which the Board may assess fines against Owners for violations of the Covenants or the Design Guidelines;
- (10) to establish and collect reasonable fees for the use of any Common Amenities within or on the Common Area; and
- (11) to establish and collect a reasonable fee for copying and furnishing copies of the Association's governing documents and furnishing a Resale Certificate (as hereinafter defined) as and to the extent required by law. This function and the authority to collect and receive such fees may be delegated or assigned by the Board to the Association's Managing Agent.

Section 5.3 Officers. The Association will have such officers as are set forth in the Association Documents.

Section 5.4 Quorum, Notice and Voting Requirements.

(a) **Generally.** Except as otherwise specifically provided in this Declaration, any action requiring the vote or approval of the Members or the Owners shall require the majority vote of the Members in Good Standing (both classes voting together), represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, at which a "Regular Quorum" or a "Special Quorum" is present. Written notice of a meeting must be given to all Members not less than ten (10) days nor more than forty-five (45) days in advance of any such meeting and shall set forth the purpose(s) of such meeting. No action may be taken at a meeting on any matter that is not described in the applicable meeting notice as being on the agenda for such meeting. Notwithstanding anything herein to the contrary, to the extent permitted by applicable law and in the Association Documents from time to time, any action may be taken by written consent of the Members in lieu of formal meetings.

(b) **Special Quorum.** The quorum (a "**Special Quorum**") required for any action referred to in Section 6.3(b) (maximum increase in Maintenance Assessments) hereof or Section 6.4(a) (Special Purpose Assessments) hereof:

Members in Good Standing, represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, entitled to cast thirty percent (30%) of all of the votes of Members in Good Standing (both classes of Members taken together) shall constitute a Special Quorum. If the required Special Quorum is not present at such meeting, that meeting may be adjourned, and an additional meeting may be called, subject to the notice requirement set forth herein, with the required Special Quorum at such second (2nd) meeting being reduced to one-half (1/2) of the required Special Quorum at the preceding meeting; provided, however, that such second (2nd) meeting must be held not later than thirty (30) days after the first (1st) meeting. Further, if the reduced required Special Quorum is not present at such second (2nd) called meeting, the adjournment of the meeting shall be continued, and one (1) additional meeting may be called, subject to the notice requirement set forth herein, with Declarant alone constituting the required Special Quorum at such third (3rd) meeting; provided that such third (3rd) meeting must be held not later than forty-five (45) days after the first (1st) meeting.

(c) **Regular Quorum.** The quorum (a "**Regular Quorum**") required for any action other than the action referred to in Section 5.4(b) hereof shall be as follows:

Members in Good Standing, represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, entitled to cast ten percent (10%) of all of the votes of Members in Good Standing (both classes of Members taken together) shall constitute a Regular Quorum. If the required Regular Quorum is not present at such meeting, that meeting may be adjourned, and an additional meeting may be called, subject to the notice requirement set forth herein, with the required Regular Quorum at such second (2nd) meeting being reduced to one-half (1/2) of the required Regular Quorum at the preceding meeting; provided, however, that such second (2nd) meeting must be held not later than thirty (30) days after the first (1st) meeting. Further, if the reduced required Regular Quorum is not present at such second (2nd) called meeting, the adjournment of the meeting shall be continued, and one (1) additional meeting may be called,

subject to the notice requirement set forth herein, with Declarant alone constituting the required Regular Quorum at such third (3rd) meeting; provided that such third (3rd) meeting must be held not later than forty-five (45) days after the first (1st) meeting.

(d) **Consent without a Meeting.** As an alternative to the procedure set forth in this Section, any action may be taken without a meeting upon obtaining the assent given in writing and signed by Members in Good Standing who hold more than (i) thirty percent (30%) of the outstanding votes eligible to be cast by Members in Good Standing (both classes of Members taken together) for actions referred to and requiring a Special Quorum as provided in Section 5.4(b) hereof, or (ii) ten percent (10%) of the outstanding votes eligible to be cast by Members in Good Standing (both classes of Members taken together) for actions referred to and requiring a Regular Quorum as provided in Section 5.4(c) hereof.

(e) **Controlling Provisions.** Except as set forth in this Section, the notice, voting and quorum requirements for all action to be taken by the Association shall be as set forth in the Association Documents. In the event a conflict exists between any requirement in of this Section 5.4 and the requirements of any Association Documents, the terms of this Section 5.4 shall prevail.

Section 5.5 Dissolution. So long as the Declarant owns record title to any portion of the Property, the Association shall not be dissolved. Once the Declarant is divested of all ownership interest in the Property, the Association may be dissolved upon the written consent of Owners owning at least sixty-seven percent (67%) of the Lots, provided that (a) the assets of the Association shall be donated to a nonprofit organization selected by a majority of the Board and with purposes similar to the Association, and (b) such nonprofit organization must assume in writing the obligation to maintain the donated assets in accordance with the terms of this Declaration.

ARTICLE 6

ASSESSMENTS

Section 6.1 Power to Establish Assessments. The Association is empowered to establish and collect Assessments as provided in this Article 6 for the purpose of obtaining funds to maintain the Common Area and/or Common Amenities, perform its other duties, and otherwise preserve and further the operation of the Property as a first-class, quality residential subdivision. The purposes for which Assessments may be used include, without limitation, maintaining, operating, managing, repairing, replacing or improving the Common Area, Common Amenities or any improvements thereon; mowing grass and maintaining grades and signs; paying legal fees and expenses incurred in enforcing this Declaration; paying expenses incurred in collecting and administering assessments; paying insurance premiums for liability and fidelity coverage for the ACC, the Board and the Association; and satisfying any indemnity obligation under the Association Documents. The Board may reject partial payments and demand payment in full of all amounts due and owing the Association. The Board is specifically authorized to establish a policy governing how payments are to be applied.

Section 6.2 Commencement of Assessments.

(a) **Owner other than the Declarant.** Unless otherwise provided by separate agreement by and between the Declarant and any Person, the Assessments shall commence, as to each Lot located in the Declarant's Property, upon conveyance of the Lot by the Declarant to any Person that is not an affiliate of the Declarant.

(b) **Declarant.** The Declarant shall not be liable for Assessments for any Lots that it owns. The Declarant may, but shall have no obligation to, subsidize the Association from time to time. In the event the Declarant decides to subsidize the Association and any shortfall in the operating budget of the Association is due in part to the failure of the Association to collect delinquent Assessments, then the Association shall immediately and vigorously pursue collection of such delinquent Assessments through foreclosure, if necessary, and shall reimburse the Declarant the amounts, if any, so collected.

Section 6.3 Regular Annual Maintenance Assessments.

(a) **Annual Budget.** For each calendar year or a part thereof during the term of this Declaration, the Board shall establish an estimated budget of the expenses to be incurred by the Association for the forthcoming year in performing its duties (collectively, the "**Common Expenses**"). Based upon such budget, the Association shall then assess each Lot an annual fee (the "**Maintenance Assessment**") which shall be paid by each Owner in advance as follows: semi-annually on the first day of each January and July, unless the Board determines a different schedule. The Association shall notify each Owner of the Maintenance Assessment for the ensuing year by December 15 of the preceding year, but failure to give such notice shall not relieve any Owner from its obligation to pay Maintenance Assessments. Any Maintenance Assessment not paid within thirty (30) days of the date due shall be delinquent and may at the sole discretion at any time and from time to time, bear interest at the Default Interest Rate (as defined below) as provided in Section 6.5(f). As to any partial year, Maintenance Assessments on any Lot shall be appropriately prorated. Until and unless otherwise determined by the Board, the annual Maintenance Assessment shall be Two Thousand, Five Hundred and NO/100 Dollars (\$2,500) per Lot per year.

(b) **Limits on Maintenance Assessments.** In addition to the right to increase Maintenance Assessments as set forth in Section 6.3(a) above, the Board may increase the Maintenance Assessment annually to meet the anticipated needs of the appropriate budget, but the Maintenance Assessment may not be increased in any year by an amount in excess of twenty-five percent (25%) above the previous year's Maintenance Assessment, unless such increase is approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, where a Special Quorum exists. Notwithstanding the foregoing, in the event that the Board determines that due to unusual circumstances the maximum annual Maintenance Assessment even as increased by twenty-five percent (25.0%) will be insufficient to enable the Association to pay the Common Expenses, then in such event, the Board shall have the right to increase the maximum annual Maintenance Assessment by the amount necessary to provide sufficient funds to cover the Common Expenses without the approval of the Members as provided herein; provided, however, the Board shall only be allowed to make one (1) such increase per calendar year without obtaining approval of a Special Quorum of the Members as provided in this Section 6.3(b).

- (c) **Uniform Assessments.** Maintenance Assessments for all Lots shall be uniform.

Section 6.4 Special Assessments.

(a) **Special Purpose Assessments.** The Association may impose special assessments ("**Special Purpose Assessments**") to make capital improvements to the Common Area and/or Common Amenities, to satisfy its indemnity obligations under the Association Documents, or for other similar purposes. Any Special Purpose Assessment proposed by the Association must be approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, at which a Special Quorum exists. At least fifteen (15) days prior to any meeting of the Association called to consider any Special Assessment, the Board shall notify each Owner thereof by written notice specifying the total amount of the Special Purpose Assessment required, the amount thereof imposed on each Lot (which shall be uniform), the purpose for such Special Purpose Assessment, and the time and method of payment thereof. The time for paying any Special Purpose Assessment (which may be in installments) shall be as specified in the approved proposal.

(b) **Special Member Assessments.** The Board may levy a "**Special Member Assessment**" (herein so called) on any Member, to the extent any directly related insurance proceeds (if any) paid to the Association are not sufficient to pay all such costs, for the purpose of:

(i) Paying the cost of any damage or loss requiring maintenance, repairs or replacement of Common Amenities, which damage or loss has been determined by the Board to have been caused, either directly or indirectly, by the act(s) of such Member, or such Member's agent, employee, occupant or visitor;

(ii) Paying the maintenance costs, construction delay damages and fines imposed for violations of this Declaration, the Design Guidelines or any other rules and/or regulations promulgated thereby or other amounts chargeable to any Owner as otherwise set forth herein; and/or

(iii) Paying costs and expenses incurred by the ACC in connection with its review of a Member's plans and related inspections permitted pursuant to Section 3.2(c) hereof.

Section 6.5 Liability for and Enforcement of Assessments.

(a) **Personal Liability.** Each Owner shall be personally liable for all Assessments imposed against the Owner's Lot during the time it owns a Lot.

(b) **Reservation, Subordination, and Enforcement of Assessment Lien.** Declarant hereby reserves for the benefit of itself and the Association, a continuing contractual lien (the "**Assessment Lien**") against each Lot located on such Declarant's portion of the Property to secure payment of (1) the Assessments imposed hereunder and (2) payment of any amounts expended by such Declarant or the Association in performing a defaulting Owner's obligations as provided for in Section 4.3. THE OBLIGATION TO PAY ASSESSMENTS IN THE

MANNER PROVIDED FOR IN THIS ARTICLE, TOGETHER WITH INTEREST FROM SUCH DUE DATE AT THE DEFAULT INTEREST RATE SET FORTH IN SECTION 6.5(f) HEREOF, THE CHARGES MADE AS AUTHORIZED IN SECTION 6.5(e) HEREOF, ALL VIOLATION FINES AND THE COSTS OF COLLECTION, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, IS SECURED BY A CONTINUING CONTRACTUAL ASSESSMENT LIEN AND CHARGE ON THE LOT COVERED BY SUCH ASSESSMENT, WHICH SHALL BIND SUCH LOT AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES. The continuing contractual Assessment Lien shall attach to the Lots as of the date of the recording of this Declaration in the Official Public Records of Tarrant County, Texas, and such Assessment Lien shall be superior to all other liens except as otherwise provided in this Section 6.5(b). Each Owner, by accepting conveyance of a Lot, shall be deemed to have agreed to pay the Assessments herein provided for and to the reservation of the Assessment Lien. The Assessment Lien shall be subordinate only to the liens of any valid first lien mortgage or deed of trust encumbering a particular Lot. Sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to a first mortgage or deed of trust foreclosure (whether by exercise of power of sale or otherwise) or any proceeding in lieu thereof, shall only extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability and the Assessment Lien for any Assessments thereafter becoming due. The Assessment Lien may be non-judicially foreclosed by power of sale in accordance with the provisions of Section 51.002 of the Texas Property Code (or any successor provision) or may be enforced judicially. Each Owner, by accepting conveyance of a Lot, expressly grants the Association a power of sale in connection with the foreclosure of the Assessment Lien. The Board is empowered to appoint a trustee, who may be a member of the Board, to exercise the powers of the Association to non-judicially foreclose the Assessments Lien in the manner provided for in Section 51.002 of the Texas Property Code (or any successor statute). The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The rights and remedies set forth in this Section 6.5(b) are subject to the Texas Residential Property Owners Protection Act, as amended from time to time (Texas Property Code, Section 209.001 *et seq.*).

(c) **Notices of Delinquency or Payment.** The Association, the Association's attorney or the Declarant may file notice (a "**Notice of Unpaid Assessments**") of any delinquency in payment of any Assessment in the Records of TARRANT County, Texas. THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER'S LOT BY THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH THE TEXAS PROPERTY CODE, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME. Upon the timely curing of any default for which a notice was recorded by the Association, the Association, through its attorney, is hereby authorized to file of record a release of such notice upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and filing a release. Upon request of any Owner, any title company on behalf of such Owner or any Owner's mortgagee, the Board, through its agents, may also issue certificates evidencing the status of payments of Assessments as to any particular Lot (i.e., whether they are current or

delinquent and if delinquent, the amount thereof). The Association or its Managing Agent may impose a reasonable fee for furnishing such certificates or statements.

(d) **Suit to Recover.** The Association may file suit to recover any unpaid Assessment and, in addition to collecting such Assessment and interest thereon, may also recover all expenses reasonably expended in enforcing such obligation, including reasonable attorneys' fees and court costs.

(e) **Late Charges and Collection Fees.** If any Assessment or any part thereof remains unpaid after thirty (30) calendar days from and after the due date established by the Board, a late charge shall be assessed against the non-paying Owner for each month or any part thereof, that any portion of any Assessment remains unpaid. Should any Assessment be payable in installments, the Association is authorized to accelerate the entire Assessment and demand immediate payment thereof. The late charge shall be in the amount of Twenty-five and No/100 Dollars (\$25.00) per month. The Association's Managing Agent shall be entitled to charge an Owner a monthly collection fee to compensate Managing Agent for its administrative costs and efforts to collect and process the late payment of Assessments. A service charge in the amount of Fifteen and No/100 Dollars (\$15.00) shall be charged for each check that is returned because of insufficient funds or any other reason. The amount of late charges and service charges may be adjusted, from time to time, by the Board consistent with any changes in the administrative costs to collect unpaid Assessments or the Association's bank charges. All late charges, collection fees, service charges and attorneys' fees assessed or incurred due to late payment of Assessments shall be charged to an Owner's Assessment account which shall be part of the delinquent Assessment and shall be payable and secured in the same manner as herein provided with regard to Assessments. The Association shall use all applicable collection avenues available based on applicable statute and law.

(f) **Interest on Past Due Amounts.** All Assessments past due more than thirty (30) days, unpaid fines and other amounts owed to the Association by any Owner which are not paid when due shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum, but not in excess of the maximum rate allowed by applicable law (the "**Default Interest Rate**"). Interest charges shall be at the sole discretion of the Board.

(g) **Suspension of Voting Rights.** To the extent permitted under applicable law, no Owner who is delinquent in paying its Assessments shall have the right to vote as a member of the Association while such delinquency continues; an Owner may cure a delinquency at a meeting to regain the right to vote by paying all outstanding amounts (including interest, fines, and penalties) by cashier's or certified check or other good funds acceptable to the Board.

(h) **Suspension of Right to Use Common Area and/or Common Amenities.** In addition to the other powers herein granted, the Board may suspend the right of an Owner to use any of the Common Area and/or Common Amenities during the time that such Owner is delinquent in paying any Assessment.

(i) **Capital Reserve/Improvement Contribution.** Upon sale of record title to a Lot by any Owner other than the Declarant or a Builder, a contribution of \$1,000 shall be made by or on behalf of such Owner to the "**Capital Reserve/Improvement Fund**" (herein so called) of the Association. This amount is not refundable, shall be in addition to, not in lieu of, the

Maintenance Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into escrow and disbursed therefrom to the Association or to the applicable Declarant if the Association is not yet established and shall be used for capital improvements made by the Association pursuant to the terms of this Declaration and the Association Documents. Such amount shall be reviewed yearly and may be increased; however, the increase is restricted to 25% over the previous year. If a cluster mailbox is required by the U.S. Postal Service for this subdivision, the following shall apply. Each builder shall contribute an additional capitalization fee of \$250.00 for the purpose of establishing a mailbox reserve fund. This fund shall be used for the installation of the pad and cluster boxes throughout the subdivision as well as the maintenance and upkeep of the boxes excluding damage resulting in the replacement of a cluster box. Cost associated with the replacement of a cluster mailbox shall be borne by the Owners to whom the cluster mailbox serves as the receptacle for the receipt of U.S. mail or packages.

(j) **Transfer Fees and Fees for Issuance of Resale Certificates.** The Board may, at its sole discretion, enter into a contract with a Managing Agent to oversee the daily operation and management of the Association. The Managing Agent may, and probably will, have fees, which will be charged to an Owner for the transfer of a significant estate or fee simple title to a Lot and the issuance of a "**Resale Certificate**" (herein so called). The Association or its agent shall not be required to issue a Resale Certificate until payment for the cost thereof has been received by the Association or its agent. Transfer fees and fees for the issuance of a Resale Certificate shall in no event exceed the greater of (i) two-thirds (2/3rds) of the current annual rate of Maintenance Assessment applicable at the time of the transfer/sale for each home being conveyed and are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments, and are in addition to the contribution to the Capital Reserve/Improvement Fund in Section 6.5(i) above. This Section does not obligate the Board or any third party to levy such fees.

ARTICLE 7

COMMON AREA AND COMMON AMENITIES

Section 7.1

(a) **Right to Use Common Area.** Each Owner, the members of that Owner's immediate family, and the Owner's guests (provided guests are accompanied by an Owner) shall have the right to use the Common Area and/or Common Amenities for its intended purposes as herein provided. The Declarant and the Association shall have the right to enter on and use the Common Area and/or Common Amenities at all times to exercise their rights or (in the case of the Association) perform its duties hereunder.

(b) **Access Easement Rights.** Each Owner, the members of that owner's immediate family, and the Owner's visitors, invitees, licensees, lessees, tenants, subtenants, and/or guests, are hereby granted an easement for vehicular and pedestrian ingress to, egress from, and access between such Owner's Lot and the public rights-of-way adjacent to the Subdivision over the Streets located within the Subdivision.

Section 7.2 Common Amenities. Common Amenities, if any, to be located in the Common Area shall be determined by the Declarant. The Declarant and the Board may promulgate reasonable rules and regulations for use of these Common Amenities.

EACH OWNER, BY RECORDATION OF A DEED TO ANY LOT IN THE SUBDIVISION, FOR ITSELF AND ITS AGENTS, INVITEES, GUESTS, LICENSEES AND/OR TENANTS, AND EACH OF THEIR RESPECTIVE AFFILIATES, HEIRS, SUCCESSORS AND ASSIGNS, WAIVES ITS RIGHT TO RECOVER FROM AND RELEASES AND FOREVER DISCHARGES THE ASSOCIATION, DECLARANT AND ANY BUILDER, AND EACH OF THEIR RESPECTIVE REPRESENTATIVES, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS, AFFILIATES, HEIRS, SUCCESSORS AND ASSIGNS, FROM ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, PENALTIES, FINES, LIENS, JUDGMENTS, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEY FEES AND DISBURSEMENTS) WHATSOEVER (COLLECTIVELY "CLAIMS") WHETHER AT LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THIS DECLARATION OR RECORDATION OF A DEED CONVEYING ANY LOT IN THE SUBDIVISION, WHICH OWNER HAS OR MAY HAVE IN THE FUTURE, ARISING OUT OF THE FAILURE TO MAINTAIN CONTROLLED ACCESS TO THE SUBDIVISION BY THE ACCESS GATES, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS IN TORT OR CONTRACT AND ANY CLAIM FOR INDEMNIFICATION OR CONTRIBUTION ARISING UNDER ANY FEDERAL, STATE OR LOCAL STATUTE, RULE OR REGULATION (INCLUDING ANY SUBSEQUENT AMENDMENT OR ADDITION THERETO AND JUDICIAL INTERPRETATIONS THEREOF). EACH OWNER, FOR ITSELF AND ITS AGENTS, INVITEES, GUESTS, LICENSEES AND/OR TENANTS, AND EACH OF THEIR RESPECTIVE AFFILIATES, HEIRS, SUCCESSORS AND ASSIGNS UPON ACQUIRING A LOT IN THE SUBDIVISION, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED THE ASSOCIATION, DECLARANT AND ANY BUILDER, AND EACH OF THEIR RESPECTIVE REPRESENTATIVES, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS, AFFILIATES, HEIRS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL MATTERS ARISING OUT OF THE FAILURE TO MAINTAIN CONTROLLED ACCESS TO THE SUBDIVISION BY THE ACCESS GATES.

Section 7.4 Maintenance of Common Area, Common Amenities. The Association shall be solely responsible for all maintenance, repair, replacement, and improvement of the Common Area and Common Amenities, utilizing the Assessments for such purposes as herein provided. The Declarant shall have no responsibility for maintenance, repair, replacement, or improvement of the Common Area or any Common Amenities after initial construction.

Section 7.5 Risk of Loss - Use of Common Area, Common Amenities Each Owner shall be individually responsible and assume all risk of loss associated with its use of the Common Area and/or Common Amenities, and use by its family members and guests. Neither the Association nor the Declarant shall have any liability to any Owner or their family members or guests, or to any other Person, arising out of or in connection with the use, in any manner whatsoever, of the Common Area, Common Amenities or any improvements comprising a part thereof from time to time.

Section 7.6 Conveyance of Common Area to Association. The Declarant shall convey to the Association the Common Area (which conveyance shall include the Common Amenities located thereon) located in Property, free and clear of any liens, claims or encumbrances, not later than sixty (60) days after the Declarant no longer owns a Lot in the Property.

ARTICLE 8

SPECIFIC DECLARANT RIGHTS

Section 8.1 Declarant's Right to Annex Adjacent Property. Declarant hereby reserves for itself and its affiliates and/or any of their respective successors and assigns the right to annex any real property located adjacent to or in the vicinity of the Property owned or subsequently acquired by Declarant (the "**Property Subject to Annexation**") into the scheme of this Declaration as provided in this Article 8. Notwithstanding anything herein or otherwise to the contrary, Declarant and/or such affiliates, successors and/or assigns shall have the exclusive unilateral right, privilege and option (but never an obligation), from time to time, for as long as Declarant owns any portion of the Property or Property Subject to Annexation, to annex (a) all or any portion of the Property Subject to Annexation owned by Declarant, and (b) subject to the provisions of this Declaration and the jurisdiction of the Association, any additional property located adjacent to or in the immediate vicinity of the Subdivision (collectively, the "**Annexed Land**"), by filing in the Official Public Records of Tarrant County, Texas, a Supplemental Declaration expressly annexing any such Annexed Land. Such Supplemental Declaration shall not require the vote of the Owners, the Members of the Association, or approval by the Board or other action of the Association or any other Person. Any such annexation shall be effective upon the filing of such Supplemental Declaration in the Official Public Records of Tarrant County, Texas. Declarant shall also have the unilateral right to transfer to any other Person Declarant's right, privilege and option to annex Annexed Land, provided that such transferee or assignee shall be the developer of at least a portion of the Annexed Land and shall be expressly designated by Declarant in writing to be the successor or assignee to all or any part of Declarant's rights hereunder.

Section 8.2 Procedure for Annexation. Any such annexation shall be accomplished by the execution and filing for record by Declarant (or the other owner of the property being added or annexed, to the extent such other owner has received a written assignment from Declarant of the right to annex hereunder) of a Supplemental Declaration which must set out and provide for the following:

- (i) A legally sufficient description of the Annexed Land being added or annexed;
- (ii) That the Annexed Land is being annexed in accordance with and subject to the provisions of this Declaration, and that the Annexed Land being annexed shall be developed, held, used, sold and conveyed in accordance with, and subject to, the provisions of this Declaration as theretofore and thereafter amended; provided, however, that if any Lots or portions thereof being so annexed are to be treated differently than any of the other Lots (whether such difference is applicable to other Lots included therein or to the Lots now subject to this Declaration), the Supplemental Declaration should specify the details of such differential treatment and a general statement of the rationale and reasons for the difference in

treatment, and if applicable, any other special or unique covenants, conditions, restrictions, easements or other requirements as may be applicable to all or any of the Lots or other portions of Annexed Land being annexed;

- (iii) That all of the provisions of this Declaration, as amended, shall apply to the Annexed Land being added or annexed with the same force and effect as if said Annexed Land were originally included in this Declaration as part of the Initial Property, with the total number of Lots increased accordingly;
- (iv) That an Assessment Lien is therein created and reserved in favor of the Association to secure collection of the Assessments as provided in this Declaration, and as provided for, authorized or contemplated in the Supplemental Declaration, and setting forth the first year Maintenance Assessments and the amount of any other then applicable Assessments (if any) for the Lots within the Annexed Land being made subject to this Declaration; and
- (v) Such other provisions as the Declarant therein shall deem appropriate.

Section 8.3 Amendment. The provisions of this Article 8 may not be amended without the express written consent of Declarant (and Declarant's successors and assigns in accordance with the terms hereof).

Section 8.4 No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property to this Declaration and no owner of the property excluded from this Declaration shall have any right to have such property annexed thereto.

Section 8.5 Effect of Annexation on Class B Membership. In determining the number of Lots owned by the Declarant for the purpose of Class B membership status according to Section 5.2 hereof, the total number of Lots covered by this Declaration and located in such Declarant's portion of the Property, including all Lots acquired by the Declarant and annexed thereto, shall be considered. If Class B membership has previously lapsed but annexation of additional property restores the ratio of Lots owned by the Declarant to the number required by Class B membership, such Class B membership shall be reinstated until it expires pursuant to the terms of Section 5.2.

Section 8.6 Specific Declarant Rights to Amend Declaration. For so long as the Declarant owns any portion of the Property or the Property Subject to Annexation for development and/or sale, the Declarant, without joinder of the Board, the Association, or the other Owners, may unilaterally amend this Declaration without the joinder or vote of any other party for any reason and if such amendment is deemed necessary or desirable, in the Declarant's sole judgment for any purpose, including, without limitation, (i) to bring any provisions of this Declaration into compliance with any applicable governmental statute, rule, regulation or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to purchase, insure, or guarantee mortgage loans on the Lots; (iv) to satisfy the requirements of any local, state or federal governmental agency; or (v) to

correct or clarify errors, omissions, mistakes or ambiguities contained herein. No amendment pursuant to this paragraph, however, shall adversely affect the title to any Lot unless the Owner affected thereby shall consent in writing.

Section 8.7 Easement/Access Right. The Declarant reserves a general easement over all Streets, roads, rights of way, utility, maintenance, landscaping, wall and other easements in the Property and over the balance of the Common Area as reasonably necessary for access for the purpose of finishing development of the Property as a subdivision and as otherwise reasonably necessary to affect each Declarant's rights hereunder. Such easements and rights shall expire at such time as the Declarant no longer owns a Lot.

Section 8.8 Assignment of Declarant Rights. The Declarant may assign its rights to a successor Declarant hereunder by execution of a written document, recorded in the Official Public Records of Tarrant County, Texas, expressly and specifically stating that such Declarant has assigned its rights as such to a designated assignee and declaring such assignee to be a new "Declarant" hereunder. No Person purchasing or otherwise acquiring one (1) or more Lots shall be considered "Declarant" hereunder, unless Declarant makes an express and specific assignment referenced in and accordance with the terms of the immediately preceding sentence.

Section 8.9 Declarant's Right to Install Improvements in Setback and Other Areas. The Declarant, in connection with development of the Property and construction of homes thereon, reserves the right, but shall have no obligation, to install or construct walls, fences, irrigation systems and other improvements in the setback areas (being the area on, along and/or between the boundary line of a Lot and the building or setback lines applicable to such Lot). If the Declarant exercises such right in a setback area, then such wall, fence, irrigation system, or other improvement shall be the property of the Owner(s) of the Lot(s) adjacent to such improvements or upon which such improvements are located, and such Owner(s) shall maintain and repair any such improvement unless the applicable Declarant or the Association, by and through the Board, shall advise the Owner(s) in writing of its intent to assume such maintenance and repair obligations. If the Declarant exercises such above-described right in the non-setback areas, then such wall, fence, irrigation system, or other improvement shall be the property of the Association. So long as it owns any Lot, the Declarant shall have the right, but not the obligation, to maintain and repair any such non-setback area improvements located on such Declarant's portion of the Property; otherwise, the Association shall assume the maintenance and repair or it may abandon such improvements at its discretion. If the City requires the maintenance, repair, or removal of any such non-setback area improvements, the Association shall assume such responsibility at its expense. If the Association so abandons such non-setback area improvements or is properly dissolved, then the Owner(s) of the Lot(s) adjacent to such improvements or on which such improvements are located shall assume maintenance and repair at its expense.

Section 8.10 Replatting or Modification of Plat. From time to time, the Declarant reserves the right to replat its Property or to amend or modify the Plat in order to assure harmonious and orderly development of the Property as herein provided. The Declarant may exercise such rights so long as it owns any Lot and no joinder of any other Owner shall be required to give effect to such rights, each Owner consenting to the Declarant's execution of any replat on such Owner's behalf. However, any such replatting or amendment of the Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for

compliance with any applicable governmental regulation. The Declarant's rights under this Section 8.10 shall expire at such time as the Declarant no longer owns a Lot.

Section 8.11 Limitation of Declarants' Liability. The Declarant shall not be responsible or liable for any deficit in the Association's funds. The Declarant may, but is under no obligation to, subsidize any liabilities incurred by the Association, and the Declarant may, but is not obligated to, lend funds to the Association to enable it to defray its expenses, provided the terms of such loans are on reasonable market conditions at the time.

Section 8.12 Termination of the Declarant's Responsibilities. In consideration of the Declarant's deficit funding of the Association, if any, upon the occurrence of any of the following events: (i) conversion of the Declarant's Class B membership status to Class A membership status; (ii) completion of any facilities in the Common Area by the Declarant; or (iii) assignment of the Declarant's rights hereunder pursuant to Section 8.8, then and in such event the Declarant shall be fully released, relieved and forever discharged from any further duty or obligation to the Association or any of its members as the Declarant by reason of the terms and conditions of this Declaration including any amendments thereof or supplements thereto, save and except the duties and obligations, if any, of the Declarant as a Class A member by reason of the Declarant's continued ownership of one or more Lots, but not otherwise. Further, and without regard to whether or not the Declarant has been released from obligations and duties to the Association, so long as the Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor its Board, nor any member of the Association shall take any action that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the sale of Lots. In the event there is a breach of this Section, it is acknowledged that any monetary award which may be available would be an insufficient remedy and therefore, in addition to all other remedies, the Declarant shall be entitled to injunctive relief restraining the Association, its Board or any member of the Association from further breach of this Section.

ARTICLE 9

MISCELLANEOUS PROVISIONS

Section 9.1 Term and Renewal. These Covenants shall commence on the date hereof and shall continue in effect for a period of thirty (30) years. Thereafter these Covenants shall automatically renew for subsequent periods of (10) years each unless Owners owning at least seventy percent (70%) of the Lots elect to terminate these Covenants by written instrument recorded in the Records of TARRANT County, Texas.

Section 9.2 Enforcement. The terms, provisions and conditions of this Declaration and the Design Guidelines shall be enforceable by the Declarant, the ACC, the Association, and each Owner. The Board shall have the power and authority to impose reasonable fines (which shall not exceed \$500.00 for each separate violation) for violation of this Declaration, the Design Guidelines or any rule or regulation of the Association, which shall constitute a lien upon the Lot of the violating Owner as provided in the Declaration, and to suspend the Owner's right to vote or any Person's right to use of the Common Area and/or Common Amenities. Each day the violation continues to exist shall constitute a separate violation. If any occupant, guest, or invitee of a Lot violates the Declaration, the Design Guidelines or a rule or regulation of the Association

and a fine is imposed, the fine shall be assessed against such Owner, who shall pay the fine upon notice from the Association. No delay or failure on the part of Declarant, the Association or any Owner to invoke any available right, power or remedy with respect to a breach of this Declaration shall be held to be a waiver by that party (or estop that party from asserting) any right, power or remedy available to such party upon the recurrence or continuance of said breach or the occurrence of a different breach. Declarant, the Association and the Owners, shall not be under any obligation to take any action to enforce the terms of this Declaration. The failure by Declarant, the Association or any Owner to enforce any provision of this Declaration shall in no event subject Declarant, the Association or any Owner to any claims, liability, cost or expense; it being the express intent of this Declaration to provide Declarant, the Association or any Owner with the right (such right to be exercised at its sole and absolute discretion), but not the obligation to enforce the terms of this Declaration for the benefit of any Owner(s) of any Lot(s) in the Subdivision.

Section 9.3 General Easement for Encroachments, Access, Maintenance and Utilities.

Each Owner grants to the Association, the Board, the Declarant and the other Owners a general easement as reasonably necessary for the maintenance of any minor encroachments of Common Area and/or Common Amenities over adjoining Lots and for access to and from each Owner's Lot through driveways, rights of way and easements as reflected on the Plat for the purpose of giving effect to the provisions of these Covenants.

Section 9.4 Amendment of Declaration. These Covenants may be amended by the Declarant as provided in Section 8.6. In addition, the Declaration may be amended at any time and in any respect with the affirmative vote or written consent, or any combination thereof, of Members (both classes taken together) representing sixty-seven percent (67%) of the total Class A Member votes and Class B Member votes in the Association; provided, however, that no such amendment shall be effective unless joined in by the Declarant until such time as Declarant no longer owns any portion of the Property or Property Subject to Annexation.

Section 9.5 City Provisions. All construction within the Property shall also comply with all applicable City ordinances and regulations. If any ordinance or regulation imposed by the City imposes more demanding, extensive or restrictive requirements than those set forth in this Declaration, such requirements shall govern. No ordinance or regulations adopted by the City shall lessen the requirements set forth in these Covenants.

Section 9.6 Management of the Association. In the event that the Board elects to contract with a Managing Agent to perform any duties of the Board in accordance with Section 5.2 hereof, the Board shall record or cause to be recorded in each county in which the Subdivision is located a management certificate, signed and acknowledged by an officer or the Managing Agent of the Association in accordance with the requirements of Section 209.004 of the Texas Property Code. An amended management certificate shall be recorded no later than the 30th day after the date on which the Association has notice of a change in any information pertaining to the Managing Agent applicable to the Association. Notwithstanding the foregoing or anything to the contrary contained herein, in no event shall the Declarant, the Association and/or their respective officers, directors, employees, and/or agents, or the Board be subject to liability to any Person for a delay in recording or failure to record a management certificate except as otherwise provided by law.

Section 9.7 Notices. Any notice required to be given to any Owner under the terms of this Declaration shall be deemed to have been properly delivered when deposited with the United States Postal Service, postage prepaid, properly addressed to the addressee. Each Owner's address for purposes of notice hereunder shall be deemed to be the Residence located on its Lot.

Section 9.8 Liability Limitations; Indemnification. No Declarant, Member, director, officer or representative of the Association or the Board or the ACC shall be personally liable for the debts, obligations or liabilities of the Association. The directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or as otherwise expressly provided in the Association Documents. Declarant and directors, officers and ACC members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and **THE ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, SHALL INDEMNIFY AND HOLD HARMLESS DECLARANT, DIRECTORS, OFFICERS AND MEMBERS OF THE ACC FROM ANY AND ALL EXPENSES, LOSS OR LIABILITY TO OTHERS ON ACCOUNT OF ANY SUCH CONTRACT OR COMMITMENT (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS).** IN ADDITION, EACH DIRECTOR AND EACH OFFICER OF THE ASSOCIATION AND EACH MEMBER OF THE ACC SHALL BE INDEMNIFIED AND HELD HARMLESS BY THE ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, FROM ANY EXPENSE, LOSS OR LIABILITY TO OTHERS (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS) BY REASONS OF HAVING SERVED AS SUCH DIRECTOR, OFFICER OR ACC MEMBER AND AGAINST ALL EXPENSES, LOSSES AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE ATTORNEYS' FEES, INCURRED BY OR IMPOSED UPON SUCH DIRECTOR, OFFICER OR ACC MEMBER IN CONNECTION WITH ANY PROCEEDING TO WHICH SUCH PERSON MAY BE A PARTY OR HAVE BECOME INVOLVED BY REASON OF BEING SUCH DIRECTOR, OFFICER OR ACC MEMBER AT THE TIME ANY SUCH EXPENSES, LOSSES OR LIABILITIES ARE INCURRED SUBJECT TO ANY PROVISIONS REGARDING INDEMNITY CONTAINED IN THE ASSOCIATION DOCUMENTS, EXCEPT IN CASES WHEREIN THE EXPENSES, LOSSES AND LIABILITIES ARISE FROM A PROCEEDING IN WHICH SUCH DIRECTOR, OFFICER OR ACC MEMBER IS ADJUDICATED GUILTY OF WILLFUL MISFEASANCE OR MALFEASANCE, MISCONDUCT OR BAD FAITH IN THE PERFORMANCE OF SUCH PERSON'S DUTIES OR INTENTIONAL WRONGFUL ACTS OR ANY ACT EXPRESSLY SPECIFIED IN THE ASSOCIATION DOCUMENTS AS AN ACT FOR WHICH ANY LIMITATION OF LIABILITY SET FORTH IN THE ASSOCIATION DOCUMENTS IS NOT APPLICABLE; **PROVIDED, HOWEVER, THIS INDEMNITY DOES COVER LIABILITIES RESULTING FROM SUCH DIRECTOR'S, OFFICER'S OR ACC MEMBER'S NEGLIGENCE.** Any right to indemnification provided herein shall not be exclusive of any other rights to which a director, officer or ACC member, or former director, officer or ACC member, may be entitled. The Association shall have the right to purchase and maintain, as a Common Expense, directors', officers', and ACC members', insurance on behalf of any Person who is or was a director or officer of the Association or the ACC member against any liability asserted against any such Person and incurred by any such Person in such capacity, or arising out of such Person's status as such.

Section 9.9 Severability. If any of the terms hereof shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of these Covenants, which shall be in full force and effect.

Section 9.10 Acceptance by Owners of Rights and Obligations. By the recording of a deed or other conveyance transferring all or part of an interest in a Lot subject to this Declaration, the person or entity to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all the provisions of the Declaration, the Design Guidelines, the Association Documents, including any rules or regulations adopted or promulgated by the Association, whether or not mention thereof is made in said deed.

Section 9.11 Notice and Hearing. (a) Prior to the imposition of any fine for a violation of this Declaration or the levying of any Special Member Assessment on an Owner, the Association will give notice to the Owner in compliance with Section 209.006 of the Texas Property Code (the "**Property Code**"), as the same may be hereafter amended. Such notice shall be as follows:

- (i) Notice will be delivered by certified mail return receipt requested.
- (ii) The notice must describe the violation or property damage that is the basis for the fine for such violation, and state any amount due the Association from the Owner.
- (iii) The notice must inform the Owner that the Owner is entitled to a reasonable time to cure the violation and avoid the Violation Fine and that the Owner may request a hearing under this Section 9.11 and Section 209.007 of the Property Code on or before the 30th day after the Owner receives the notice.

(b) In compliance with Section 209.007 of the Property Code, if the Owner submits a written request for a hearing, the Association shall hold a hearing not later than the thirtieth (30th) day after the date the Board receives the Owner's request, and shall notify the Owner of the date, time and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. If the hearing is to be held before a committee appointed by the Board, the notice described in Section 9.11(a) hereof shall state that the Owner has the right to appeal the committee's decision to the Board by written notice to the Board.

Section 9.12 Arbitration of Disputes Involving the Declarant.

(a) **Arbitration.** ANY AND ALL DISPUTES ARISING HEREUNDER BETWEEN AN OWNER AND A DECLARANT, SHALL BE SUBMITTED TO BINDING ARBITRATION AND NOT TO A COURT FOR DETERMINATION. ARBITRATION SHALL COMMENCE AFTER WRITTEN NOTICE IS GIVEN FROM EITHER PARTY TO THE OTHER, SUCH ARBITRATION SHALL BE ACCOMPLISHED EXPEDITIOUSLY IN DENTON COUNTY AND SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("**AAA**"). THE ARBITRATION SHALL BE CONDUCTED BY THREE (3) ARBITRATORS, ONE OF WHOM SHALL BE APPOINTED BY THE OWNER AND ONE OF WHOM SHALL BE

APPOINTED BY THE DECLARANT. THE THIRD ARBITRATOR SHALL BE APPOINTED BY THE FIRST TWO ARBITRATORS. THE ARBITRATORS SHALL BE SELECTED FROM A LIST OF ARBITRATORS SUBMITTED BY THE AAA. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. ARBITRATION SHALL NOT COMMENCE UNTIL THE PARTY REQUESTING IT HAS DEPOSITED ONE THOUSAND FIVE HUNDRED AND NO/100 U. S. DOLLARS (\$1,500.00) WITH THE ARBITRATORS AS A RETAINER FOR THE ARBITRATORS' FEES AND COSTS. THE PARTY REQUESTING ARBITRATION SHALL ADVANCE SUCH SUMS AS ARE REQUIRED FROM TIME TO TIME BY THE ARBITRATORS TO PAY THE ARBITRATORS' FEES AND COSTS, UNTIL THE PREVAILING PARTY IS DETERMINED OR THE PARTIES HAVE AGREED IN WRITING TO AN ALTERNATE ALLOCATION OF FEES AND COSTS. EACH PARTY SHALL PAY ITS OWN LEGAL FEES AND COSTS AND ANY OTHER FEES INCURRED IN CONNECTION WITH AN ARBITRATION PROCEEDING WHICH ARISES OUT OF OR RELATES IN ANY WAY TO THIS DECLARATION PROVIDED, HOWEVER, THAT THE ARBITRATION PANEL SHALL AWARD THE ARBITRATORS' FEES AND COSTS TO THE PREVAILING PARTY IN ITS ARBITRATION JUDGMENT.

(b) Notwithstanding the Declarant's and Owner's intent to submit any controversy or claim arising out of or relating to this Declaration to arbitration, in the event that a court of competent jurisdiction shall determine or a relevant law shall provide that a particular dispute is not subject to the arbitration provisions in this Section 9.12, then the parties agree to the following provisions: EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

9.13 Liens/Validity and Severability; Mortgagees. Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one (1) or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which such other provisions and covenants shall remain in full force and effect. No default by an Owner of a Lot under any provision of this Declaration shall affect any existing lien or mortgage on that Lot. A Mortgagee shall not be liable for Assessments made with respect to a Lot during any period in which its only interest in the Lot is that of a Mortgagee.

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CADG Carmel Place, LLC,
a Texas limited liability company

By: CADG Holdings, LLC,
a Texas limited liability company,
Its Sole Member

By: MMM Ventures, LLC,
a Texas limited liability company,
Its Manager

By: 2M Ventures, LLC,
a Delaware limited liability company,
Its Manager

By: _____
Name: Mehrdad Moayedi
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____,
20____, by Mehrdad Moayedi, Manager of 2M Ventures, LLC, as Manager of MMM Ventures,
LLC, as Manager of CADG Holdings, LLC, as Sole Member of CADG Carmel Place, LLC, a Texas
limited liability company on behalf of said company.

Notary Public, State of Texas

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CARMEL PLACE ESTATES COLLEYVILLE HOMEOWNERS ASSOCIATION,
INC.
AN ADDITION TO THE CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS
LEGAL DESCRIPTION AND/OR DEPICTION OF THE PROPERTY**

STATE OF TEXAS
COUNTY OF TARRANT

METES AND BOUNDS DESCRIPTION

CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS

LEGAL DESCRIPTION: Being a tract of land out of George W. Teeter Survey, Abstract No. 1543 and situated in the City of Colleyville, Tarrant County, Texas, and surveyed by Miller Surveying, Inc. of Hurst, Texas in November 2017, said tract being a portion of the same tract of land described in the deed to Robert Gene Hubbard et ux, Peggy Hubbard recorded in Volume 4069, Page 406 in the Deed Records of Tarrant County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch steel rod found in the southerly right-of-way line of Glade Road (Co. Rd. 3036), said rod being in the northerly boundary line of "Tract No. 1" of said Hubbard Deed and also being the most northerly northwest corner of Lot 1, Block 1, Greener Acres, an addition to the City of Colleyville, Texas according to the plat thereof recorded in Cabinet A, Slide 4936 of the Plat Records of said County;

Thence South 00 degrees 14 minutes 15 seconds East with the westerly boundary line of said Lot 1 a distance of 553.09 feet to a 1/2 inch "MILLER 5665" capped steel rod set for an inner corner thereof;

Thence South 89 degrees 25 minutes 35 seconds West continuing with said westerly boundary line a distance of 58.10 feet to a 1/2 inch steel rod found for an outer point thereof;

Thence South 00 degrees 12 minutes 14 seconds West continuing with said westerly boundary line a distance of 415.82 feet to a 1/2 inch steel rod found for the southwest corner of said Lot 1, said rod being in the northerly boundary line of Block 1, The Lakes of Somerset, an addition to the City of Colleyville, Texas according to the plat thereof recorded in Cabinet A, Slide 312 of said plat records;

Thence North 89 degrees 46 minutes 39 seconds West with said northerly boundary line a distance of 151.92 feet to a point in a fence post found in the easterly boundary line of Carmel Place Estates, an addition to the City of Colleyville, Texas according to the plat thereof recorded as Instrument No. D217142798 of the Official Public Records of said County;

Thence North 01 degrees 25 minutes 38 seconds West with said easterly boundary line a distance of 968.78 feet to a cross in concrete set for the northwest corner of said Tract 1, said cross being in said southerly right-of-way line;

Thence North 89 degrees 53 minutes 54 seconds East with the northerly boundary line of said Tract 1 and with said southerly right-of-way line a distance of 233.33 feet to the point of beginning and containing 4.3968 acres of land, more or less.

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EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CARMEL PLACE ESTATES COLLEYVILLE HOMEOWNERS ASSOCIATION, INC.,
AN ADDITION TO THE CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS
DESIGN GUIDELINES

PART ONE: LANDSCAPING, FENCES AND EXTERIOR ELEMENTS

SECTION 1.1 LANDSCAPING:

Upon completion of each Residence, the following landscape elements shall be installed prior to occupancy of the Residence:

- 1.1.1 Sod: Each dwelling shall have full sod installed for the entire front yard and a minimum of ten (10) feet back from the front wall face for each side yard, or to the side yard fence, whichever is greater. Underground irrigation systems are required for all sod areas.
- 1.1.2 Trees: Eight (2) trees with a minimum caliper of six inches (3"), measured at breast height from grade is required for the front yard of each Lot. Should a Street Tree Guideline for the City exist, each Builder and Owner shall be required to comply with applicable Street Tree Guidelines per the City ordinance. Drip irrigation must be provided. Each Owner shall be responsible for maintenance and preservation of trees located on their property and shall promptly replace dead trees within thirty (30) days if favorable weather prevails or ninety (90) days of loss occurrence if unfavorable weather exists.
- 1.1.3 Shrubbery and Planting Beds: Each Dwelling shall have a minimum of twenty (20) three (3) gallon shrubs planted in a mulched planting bed; the planting bed shall have edging materials to separate the sod and bed mulch areas and suitable drip irrigation. The Owner shall be responsible for the maintenance a preservation of the shrubs and planting bed, and shall promptly replace dead plants within thirty (30) days if favorable weather prevails or ninety (90) days of loss occurrence if unfavorable weather exists.

SECTION 1.2 FENCES: Minimum height for all fences shall be six feet (6') and maximum height of all fences shall be eight feet (8').

- 1.2.1 Major Thoroughfares and Corner Lots: All fencing on corner lots and backing up to streets and major thoroughfares will be considered major thoroughfare fencing. Fencing, which shall be of pre stained cedar, board on board with a top cap and running board, and with metal posts installed on the inside so as not to be visible

from any street and wall construction shall comply with the details indicated in Exhibit Attachment 1.2.1.1 and all such fencing facing major thoroughfare shall be stained and preserved as follows. Other colors must be approved in advance in writing by the ACC:

Manufacturer: Sherwin Williams
Color: Banyan Brown – Apply per product installation

Manufacturer: Standard Paint
Color: Sable Brown – Apply per product installation

- 1.2.2 Standard Side and Rear Yard Fences – Interior Lots: For all interior lots, fence and wall construction shall have metal posts and comply with the materials and details indicated in Exhibit Attachment 1.2.2.1. All portions of the fence that are visible from any street shall have metal posts on the inside and shall be stained with the colors specified above at Section 1.2.1.

SECTION 1.3 MAIL BOXES:

- 1.3.1 Standard Mail Boxes: Mail Box construction shall be brick, stone or stucco and must match the material and color used on the primary residence and comply with the materials and details indicated in Exhibit C.
- 1.3.2 Mail Box Location: Mail Box shall be located on the front corner of the lot between the sidewalk and the street approximately one (1) foot inside the property line and situated in such a manner that it is side by side with the mail box to be constructed on the neighboring lot.

SECTION 1.4 FLAGS AND FLAGPOLES

- 1.4.1 The only flags which may be displayed are: (i) the flag of the United States of America; (ii) the flag of the State of Texas; and (iii) an official or replica flag of any branch of the United States armed forces. No other types of flags, pennants, banners, kits or similar types of displays are permitted on a Lot if the display is visible from a street or Common Area.
- 1.4.2 The flag of the United States must be displayed in accordance with 4 U.S.C. Sections 5-10.
- 1.4.3 The flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code.
- 1.4.4 NO freestanding flagpole shall be allowed. Flagpole must be attached to a Residence and shall be constructed of permanent, long-lasting materials. The materials used for the flagpole shall be harmonious with the Residence, and must

have a silver finish with a gold or silver ball at the top. The flagpole must not exceed three (3) inches in diameter. Flags and flagpoles must be kept in good repair at all times.

- 1.4.5 A displayed flag, and the flagpole on which it is flown, shall be maintained in good condition at all times. Any flag that is deteriorated must be replaced or removed. Any flagpole that is structurally unsafe or deteriorated shall be repaired, replaced, or removed.
- 1.4.6 Only one flagpole will be allowed per Residence/ Lot. A flagpole attached to the Residence may not exceed 4 feet in length.
- 1.4.7 Any flag flown or displayed on a flagpole attached to the Residence may be no larger than 3'x 5'.
- 1.4.8 All flagpoles must be equipped to minimize halyard noise. The preferred method is through the use of an internal halyard system. Alternatively, swivel snap hooks must be covered or "Quiet Halyard" Flag snaps installed. Neighbor complaints of noisy halyards are a basis to have flagpole removed until Owner resolves the noise complaint.
- 1.4.9 The illumination of a flag is allowed so long as it does not create a disturbance to other residents in the community. Solar powered light fixtures are preferred as opposed to ground mounted light fixtures. Compliance with all municipal requirements for electrical ground mounted installations must be certified by Owner. Flag illumination may not shine into another Residence. Neighbor complaints regarding flag illumination are a basis to prohibit further illumination until Owner resolves complaint.
- 1.4.10 Flagpoles shall not be installed in Common Area or property maintained by the Association.
- 1.4.11 All flagpole installations must receive prior written approval from the ACC.

SECTION 1.5 GUTTERING, RAIN BARRELS OR RAINWATER HARVESTING SYTEMS

- 1.5.1 All Residences shall be fully guttered. This requirement applies regardless of whether rain barrels or rain water harvesting systems are installed on the Lot.
- 1.5.2 Rain barrels or rain water harvesting systems and related system components (collectively, "**Rain Barrels**") may only be installed after receiving the written approval of the ACC.
- 1.5.3 Rain barrels may not be installed upon or within the Common Areas.

- 1.5.4 Under no circumstances shall rain barrels be installed or located in or on any area within a Lot that is in-between the front of the Owner's Residence and an adjoining or adjacent street.
- 1.5.5 The rain barrel must be of color that is consistent with the color scheme of the Owner's Residence and may not contain or display any language or other content that is not typically displayed on such rain barrels as manufactured.
- 1.5.6 Rain barrels may be located in the side-yard or back-yard of Lot so long as such rain barrel(s) may not be seen from a street, another Lot or any Common Area of the Subdivision.
- 1.5.7 In the event the installation of Rain Barrels in the side-yard or back-yard of an owner's property in compliance with paragraph e above is impossible, the Reviewing Body may impose limitations or further requirements regarding the size, number and screening of Rain Barrels with the objective of screening the Rain Barrels from public view to the greatest extent possible. The owner must have sufficient area on their Lot to accommodate the Rain Barrels.
- 1.5.8 Rain Barrels must be properly maintained at all times or removed by the owner.
- 1.5.9 Rain Barrels must be enclosed or covered.
- 1.5.10 Rain Barrels which are not properly maintained, become unsightly or could serve as a breeding pool for mosquitoes must be removed by the owner from the Lot.

SECTION 1.6 CERTAIN RELIGIOUS DISPLAYS

- 1.6.1 By statute, an Owner is allowed to display or affix on the entry to the Owner's Residence one or more religious items, the display of which is motivated by the Owner's or occupant's sincere religious belief. Such display is limited according to the provisions contained herein.
- 1.6.2 If displaying or affixing of a religious item on the entry to the Owner's or occupant's Residence violates any of the following covenants, the Association may remove the item displayed:
 - (1) threatens the public health or safety;
 - (2) violates a law;
 - (3) contains language, graphics, or any display that is patently offensive to a passerby;
 - (4) is permanently installed in a location other than the entry door or door frame or extends past the outer edge of the door frame of the Owner's or occupant's Residence; or

- (5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches
- 1.6.3 No owner or resident is authorized to use a material or color for an entry door or door frame of the Owner's or occupant's Residence or make an alteration to the entry door or door frame that is not authorized by the Declaration or otherwise expressly approved by the ACC.

PART TWO: DWELLING UNITS

SECTION 2.1 ROOFS

- 2.1.1 Roof Pitch: All Roof Pitches shall have a minimum of 5-in-12 slopes or as approved in writing by the ACC and shall have a minimum thirty (30) year rated warranty shingle or equivalent is required, with a minimum weight of 220 pounds per square foot (100 square feet). The color of shingles shall be subject to ACC approval. Generally accepted colors shall be weathered brown or gray color.
- 2.1.2 Roofing Materials: Roofing materials shall be Architectural grade composition shingles, Cement Fiber shingles, slate, metal, clay tile or concrete tile. Color schemes for roofs should be a weathered brown or gray color. **Other roofing materials shall not be used without prior written approval from the ACC.**
- 2.1.3 Dormers & Above Roof Chimneys: Dormers and chimney chases, above roof structure and roofing materials, may be finished in brick, stucco, stone or as approved by the ACC. All fireplace flues shall be enclosed and finished; exposed pre-fabricated metal flue piping is prohibited.

SECTION 2.2 CERTAIN ROOFING MATERIALS

- 2.2.1 Roofing shingles covered by this Section are exclusively those designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than or equal to those provided by customary composite shingles; or (iii) provide solar generation capabilities (collectively, "**Roofing Shingles**").
- 2.2.2 Roofing Shingles allowed under these Guidelines shall:
 - (1) resemble the shingles used or otherwise authorized for use in Subdivision;
 - (2) be more durable than and are of equal or superior quality to the shingles used or otherwise authorized for use in Subdivision; and
 - (3) match the aesthetics of the property surrounding the property of the owner requesting permission to install the Roofing Shingles.

- 2.2.3 The Owner requesting permission to install the Roofing Shingles will be solely responsible for accrediting, certifying and demonstrating to the ACC that the proposed installation is in full compliance with paragraphs a and b above.
- 2.2.4 Roofing Shingles shall be installed after receiving the written approval of the ACC.
- 2.2.5 Owners are hereby placed on notice that the installation of Roofing Shingles may void or adversely affect other warranties.

SECTION 2.3 SOLAR PANELS – Prior written approval of the ACC is required.

- 2.3.1 Solar energy devices, including any related equipment or system components (collectively, “**Solar Panels**”) may only be installed after receiving the written approval of the ACC.
- 2.3.2 Solar Panels may not be installed upon or within Common Areas or any area which is maintained by the Association.
- 2.3.3 Solar Panels may only be installed on designated locations on the roof of a Residence, on any structure allowed under any Subdivision or Association dedicatory instrument, or within any fenced rear-yard or fenced-in patio of an Owner’s Lot, but only as allowed by the ACC. **Solar Panels may not be installed on the front elevation of the Residence.**
- 2.3.4 If located on the roof of a Residence, Solar Panels shall:
 - (1) not extend higher than or beyond the roofline;
 - (2) conform to the slope of the roof;
 - (3) have a top edge that is parallel to the roofline; and
 - (4) have a frame, support bracket, or wiring that is black or painted to match the color of the roof tiles or shingles of the roof. Piping must be painted to match the surface to which it is attached, i.e. the soffit and wall. Panels must blend with the color of the roof to the greatest extent possible.
- 2.3.5 If located in the fenced rear-yard or patio, Solar Panels shall not be taller than the fence line or visible from any adjacent Lot, Common Area or street.
- 2.3.6 The ACC may deny a request for the installation of Solar Panels if it determines that the placement of the Solar Panels, as proposed by the Owner, will create an interference with the use and enjoyment of any adjacent Lot or Common Area.
- 2.3.7 Owners are hereby placed on notice that the installation of Solar Panels may void or adversely affect roof warranties. Any installation of Solar Panels which voids material warranties is not permitted and will be cause for the Solar Panels to be removed by the Owner.

- 2.3.8 Solar Panels must be properly maintained at all times or removed by the Owner.
- 2.3.9 Solar Panels which become non-functioning or inoperable must be removed by the Owner.

SECTION 2.4 EXTERIOR WALLS

- 2.4.1 Exterior Wall Materials: Exterior walls shall be 100% masonry. The exterior walls (excluding doors and windows), of each Residence constructed or placed on a Lot shall have the minimum City required coverage but not less than the required minimum coverage as set forth below:
- 2.4.1.1 Front Walls: Front wall surfaces for all elevations shall be one-hundred percent (100%) masonry. Siding may only be used for hidden or concealed wall surfaces not directly visible from the Lot front property line. The use of siding shall be strictly limited and must have the prior written approval of the ACC. The Residences constructed are to be 100% masonry consisting of brick, brick veneer, stone, cast stone, stucco or other masonry materials which must obtain the prior written approval of the ACC.
- 2.4.1.2 Side and Rear Walls: Side and rear wall surfaces for all elevations shall be shall be one-hundred percent (100%) masonry. Siding may only be used for hidden or concealed wall surfaces not directly visible from the street or adjoining Lot.
- 2.4.1.3 Chimneys: Chimney wall structures that are a direct extension of an exterior wall shall match the requirement of said wall.
- 2.4.1.4 Required masonry percentages shall be calculated excluding exterior wall areas built on top of a roof

SECTION 2.5 ELEVATION AND BRICK USAGE

- 2.5.1 Exterior Material Area Calculations: All dwelling submittals for the construction of Residences submitted to the ACC for review and approval shall calculate the percentage coverage for each material as follows:

Same Plan with Same Elevation: The repeat of the same floor plan with the same elevation design shall be governed by the following provisions:

- 2.5.1.1 Same Side of Street: When dwelling units, using the same floor plan and same elevation, are constructed on the same side of the street, they shall be separated by a minimum of two (2) lots. A one (1) lot separation will be permitted when a street intersection occurs, the street right-of-way serves as a lot equivalent.

2.5.1.2 Opposite Side of Street: When dwelling units, using the same floor plan and same elevation, are constructed on opposite sides of the street, they shall not be constructed directly or diagonally across from each other.

2.5.2 Repeat Brick Usage and Exterior Material Area Calculations: All Dwelling submittals shall calculate the percentage coverage for each material as follows:

2.5.2.1 Same Side of Street: No combination of brick color, mortar color, and sand color shall be repeated for adjacent dwellings. Street and alley intersections are acceptable separation elements.

2.5.2.2 Opposite Side of Street: There are no restrictions for the use of brick color, mortar color, and sand color for dwelling units on opposing sides of the street.

2.5.2.3 Exterior Material Area Calculations: All Dwelling submittals shall calculate the percentage coverage for each material as shown.

2.5.2.4 Calculation Method: Calculations for material coverage percentages shall include all exposed areas of the wall surface, excluding window and door openings. **Homes located in Waterfront at Forest development shall consist of one-hundred percent (100%) masonry materials on the exterior.**

2.5.2.5 Calculation Format: Calculations shall indicate the area coverage for front, side, and rear wall areas. Calculations shall be submitted in the following format:

Brick Calculations

Overall	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
Front	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
Left	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
Right	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
Rear	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%

**** Openings removed from areas in all calculations**

Following Exhibit Attachment B:

Exhibit Attachment 1.2.1.1 – Fence Detail – Major thoroughfares and Corner Lots

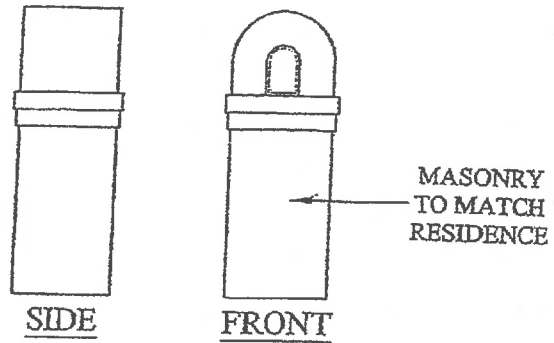
Exhibit Attachment 1.2.2.1 – Fence Detail – Standard Side and Rear Yard Fences

Exhibit C - Standard Brick Mailbox Design

**EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CARMEL PLACE ESTATES COLLEYVILLE HOMEOWNERS ASSOCIATION, INC.,
AN ADDITION TO THE CITY OF COLLEYVILLE, TARRANT COUNTY, TEXAS**

STANDARD BRICK MAILBOX DESIGN

[see attached]



Mailbox shall be approximately 16 brick courses high with the mail box being approximately 36" to 42" above street level.
 All mortar joints shall be 3/16"
 All course joints are cut so no holes are exposed

Attachment Mailbox Design

2
A..

1.1.4 Approved Landscaping. All landscaping installed on a Lot (other than sod) shall be selected from the following is the list of approved trees, shrubs ground cover, vines perennial and annual flowers:

(a) Approved Shade Trees:

Afghan Pine

American Elm

Arizona Cypress

Bald Cypress

Bigelow Oak

Bur Oak

Caddo Maple

Cedar Elm

Chinquapin Oak

Durrand Oak

Lacebrook Elm

Lacy Oak

Live Oak

Pecan

Shumard Oak

Southern Live Oak

Southern Magnolia

Texas Ash

Texas Red Oak

Western Soapberry

(b) Approved Accent trees (range from 10 to 20 feet):

Blackhaw, Rusty

Buckeye, Mexican

Buckthorn, Carolina

Chitalpa

Crab Apple

Crepe Myrtle

Deciduous Holly

Dogwood, Rough-leaf

Flameleaf Sumac

Hawthorn, Downy

Hawthorn, Washington

Maple, Japanese

Mesquite

Persimmon, Texas

Plum, Mexican

Redbud

Smoke tree

Texas Sophora (Eve's Necklace)

Wild Plum

Willow, Desert

Yaupon Holly

(c) Approved Shrubs (range from 3 to 5 feet):

Beautyberry

Dwarf Buford Holly

Dwarf Chinese Holly

Dwarf Crepe Myrtle

Dwarf Yaupon Holly

Fountain Grass

Juniper supp.

Purple Leaf Japanese Barberry

Purple Sage

Sumac species

Yucca, Red

(d) Approved Ground cover (range from 18 inches):

Asian Jasmine

Buffalo Grass

Confederate Star Jasmine

Juniper supp.

Liriope

Monkey Grass

Periwinkle

Thyme, Creeping

Wood Fern

(e) Approved Vines:

Boston Ivy

Carolina Yellow Jasmine (Jessamine)

Coral Honeysuckle

Mandevilla

Virginia Creeper

(f) Approved Perennial and annual flowers:

Caladium

Canna
Chrysanthemum
Copper Leaf
Gayfeather
Iris
Lantana
Marigold
Moss Rose or Portulaca
Periwinkle
Petunia
Plumbago
Salvia
Tulip
Wild Flowers
Zinnia

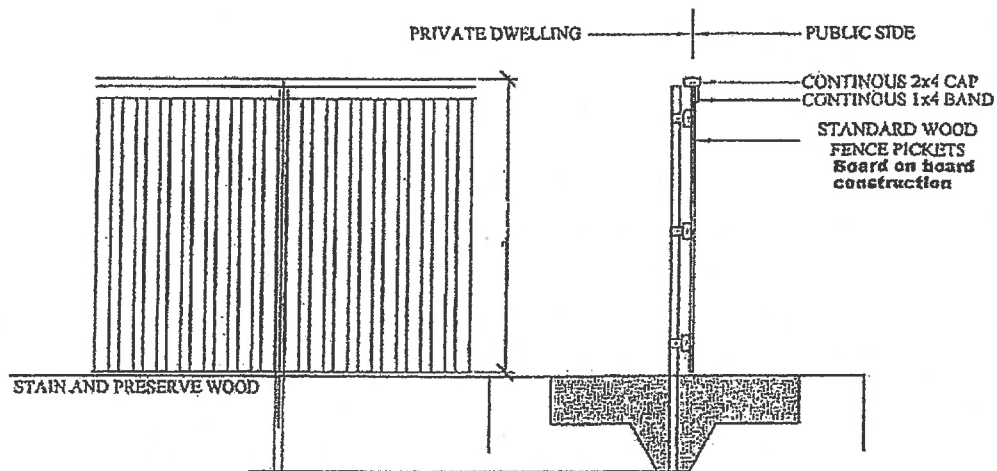
SECTION 1.2 FENCES: Minimum height for all fences shall be six feet (6') and maximum height of all fences shall be eight feet (8').

- 1.2.1 Major Thoroughfares and Corner Lots: All fencing on corner lots and backing up to streets and major thoroughfares will be considered major thoroughfare fencing. Fencing, which shall be of pre stained cedar, board on board with a top cap and running board, and with metal posts installed on the inside so as not to be visible from any street and wall construction shall comply with the details indicated in Exhibit Attachment 1.2.1.1 and all such fencing facing major thoroughfare shall be stained and preserved as follows. Other colors must be approved in advance in writing by the ACC:

Manufacturer:	Sherwin Williams
Color:	Banyan Brown – Apply per product installation

Manufacturer:	Standard Paint
Color:	Sable Brown – Apply per product installation

EXHIBIT ATTACHMENT 1.2.1.1



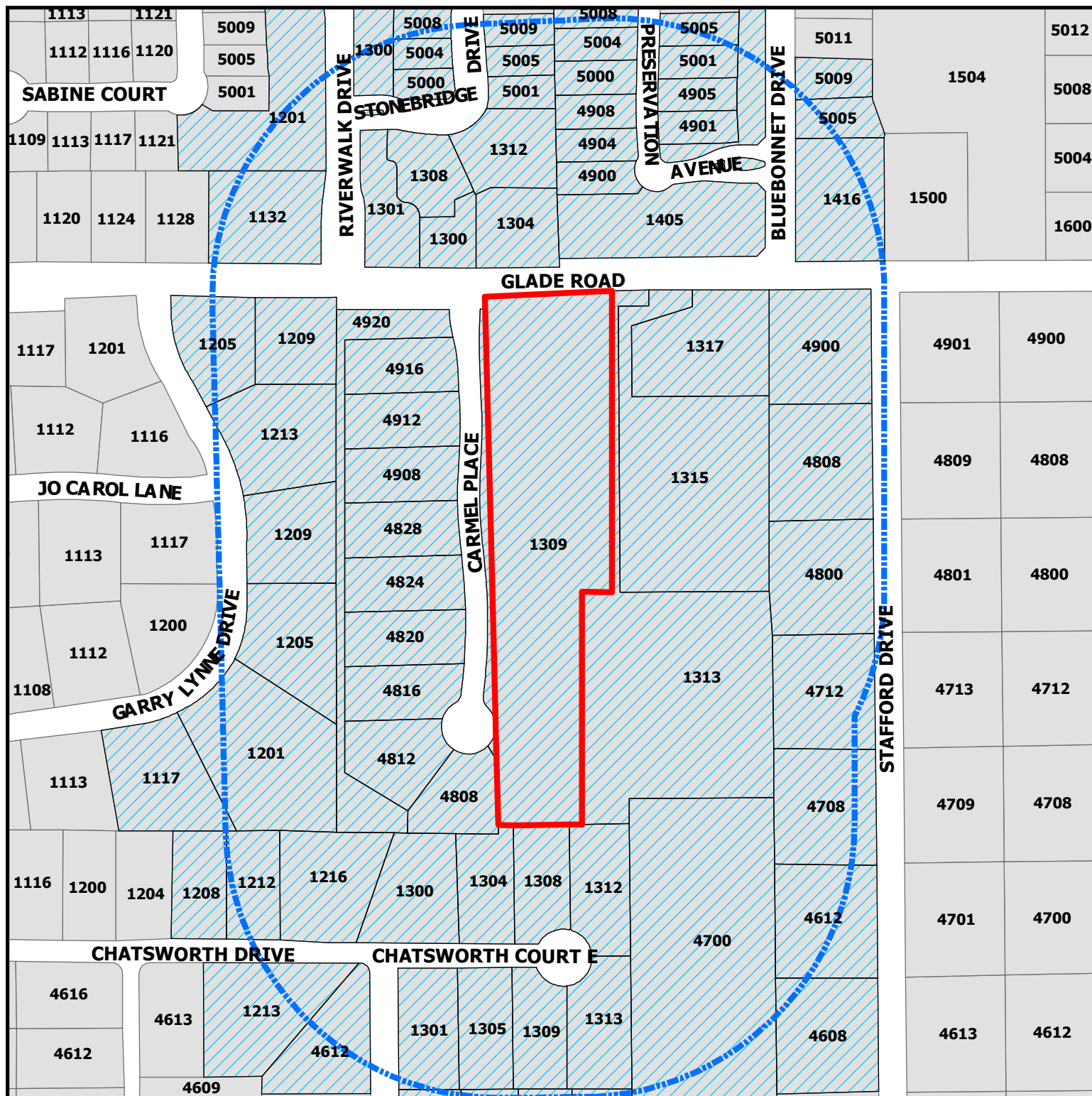
Stain Color:

Manufacturer: Sherwin Williams
Manufacturer Standard Paint

Color: Banyan Brown - Apply per product installation
Color: Sable Brown - Apply per product installation

**Attachment 1.2.1.1
Major Thoroughfare and Corner Lot
Fence Details**

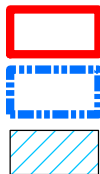
Notification Map



ZC18-023
1309 Glade Road

DISCLAIMER:

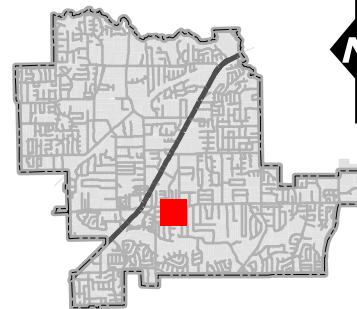
This map and information contained in it were developed exclusively for use by the City of Colleyville. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Colleyville, its officials or employees for any discrepancies, errors, or variances which may exist.



Subject Property

500ft Buffer

Properties within 500ft



Notification List

Owner Name	Owner Address	Owner City	Owner Zip	Situs Address
COLLEYVILLE, CITY OF	100 MAIN ST	COLLEYVILLE, TX	76034	1416 GLADE RD
RIETZ, BARRY	5005 PRESERVATION AVE	COLLEYVILLE, TX	76034	5005 PRESERVATION AVE
FREE, DEBRA J	5005 STONEBRIDGE DR	COLLEYVILLE, TX	76034	5005 STONEBRIDGE DR
ASHRAF, AKBER	5000 PRESERVATION AVE	COLLEYVILLE, TX	76034	5000 PRESERVATION AVE
ARCLAND INVESTMENTS LLC	1300 GLADE RD	COLLEYVILLE, TX	76034	1300 GLADE RD
WINSWORTH, LLOYD A	4900 STAFFORD DR	COLLEYVILLE, TX	76034	4900 STAFFORD DR
MAUNEY, KEITH	1216 CHATSWORTH DR	COLLEYVILLE, TX	76034	1216 CHATSWORTH DR
CALAIS INVESTMENTS I LTD	430 N CARROLL AVE #120	SOUTHLAKE, TX	76092	4916 CARMEL PL
BAXI, MAYUR	1300 ASHFORD CT	COLLEYVILLE, TX	76034	1300 ASHFORD CT
BOYTON, KELLEY	1304 ASHFORD CT	COLLEYVILLE, TX	76034	1304 ASHFORD CT
DEYOUNG, ADAM	1312 ASHFORD CT	COLLEYVILLE, TX	76034	1312 ASHFORD CT
GROSS, ANNA	4904 PRESERVATION AVE	COLLEYVILLE, TX	76034	4904 PRESERVATION AVE
NEWTON, CURTIS	PO BOX 1336	COLLEYVILLE, TX	76034	4905 PRESERVATION AVE
SMITH, DENIS J	1308 CHATSWORTH CT E	COLLEYVILLE, TX	76034	1308 CHATSWORTH CT E
CALAIS INVESTMENTS I LTD	430 N CARROLL AVE #120	SOUTHLAKE, TX	76092	4908 CARMEL PL
CALAIS INVESTMENTS I LTD	430 N CARROLL AVE #120	SOUTHLAKE, TX	76092	4816 CARMEL PL
CALAIS INVESTMENTS I LTD	430 N CARROLL AVE #120	SOUTHLAKE, TX	76092	4828 CARMEL PL
GLENN, MICHAEL	4901 PRESERVATION AVE	COLLEYVILLE, TX	76034	4901 PRESERVATION AVE
KING FISHER LTD	1132 GLADE RD	COLLEYVILLE, TX	76034	1132 GLADE RD
WILLIAMS, JAMES P	4700 STAFFORD DR	COLLEYVILLE, TX	76034	4700 STAFFORD DR
CASILIO LIVING TRUST	4808 STAFFORD DR	COLLEYVILLE, TX	76034	4808 STAFFORD DR
LOGAN, EMORY M	1313 GLADE RD	COLLEYVILLE, TX	76034	1313 GLADE RD
COLLEYVILLE, CITY OF	100 MAIN ST	COLLEYVILLE, TX	76034	1209 GLADE RD
CADG CARMEL PLACE LLC	1800 VALLEY VIEW LN STE 300	FARMERS BRNCH, TX	75234	4804 CARMEL PL
HAUTANEN, OSMO A	1304 CHATSWORTH CT E	COLLEYVILLE, TX	76034	1304 CHATSWORTH CT E
EMLER LIVING TRUST	1300 CHATSWORTH CT E	COLLEYVILLE, TX	76034	1300 CHATSWORTH CT E
LEONARD TRUSTEE, IRENE	5004 PRESERVATION AVE	COLLEYVILLE, TX	76034	5004 PRESERVATION AVE
HARMS, STEWART	5009 STONEBRIDGE DR	COLLEYVILLE, TX	76034	5009 STONEBRIDGE DR
MEZANAZI, MICHAEL	4612 ALEXANDRA DR	COLLEYVILLE, TX	76034	4612 ALEXANDRA DR
HICKSON, HEATHER J	1315 GLADE RD	COLLEYVILLE, TX	76034	1317 GLADE RD
THE BRIDGES @ RIVERWALK HOA	PO BOX 1183	COLLEYVILLE, TX	76034	1304 STONEBRIDGE DR
BONNIE STANFIELD TRUST	1001 TUCKER ST	MC KINNEY, TX	75069	5009 BLUEBONNET DR
HUBBARD, ROBERT GENE	PO BOX 575	ALBA, TX	75410	1309 GLADE RD
DILL, ALLEN	5001 STONEBRIDGE DR	COLLEYVILLE, TX	76034	5001 STONEBRIDGE DR
FRANKLIN, BRENT	2800 HIGHLAND PARK CT	COLLEYVILLE, TX	76034	4912 CARMEL PL
PRESERVATION HOA INC	101 CLARIDEN RANCH RD	SOUTHLAKE, TX	76092	1405 BLUEBONNET DR
CALAIS INVESTMENTS I LTD	430 N CARROLL AVE #120	SOUTHLAKE, TX	76092	4808 CARMEL PL
BONNIE STANFIELD TRUST	209 W 2ND ST # 377	FORT WORTH, TX	76102	5005 BLUEBONNET DR
LASATER, JANICE N	4900 PRESERVATION AVE	COLLEYVILLE, TX	76034	4900 PRESERVATION AVE
XING, YIHAN	5008 PRESERVATION AVE	COLLEYVILLE, TX	76034	5008 PRESERVATION AVE
MAHAN, ROY	4712 STAFFORD DR	COLLEYVILLE, TX	76034	4712 STAFFORD DR
GALLAGHER, ROBERT W	1301 CHATSWORTH CT E	COLLEYVILLE, TX	76034	1301 CHATSWORTH CT E
SCOTT, DONALD R	1213 CHATSWORTH DR	COLLEYVILLE, TX	76034	1213 CHATSWORTH DR
STEPHENSON, MARK	5001 PRESERVATION AVE	COLLEYVILLE, TX	76034	5001 PRESERVATION AVE
BURGDORF, JEFF	4608 STAFFORD DR	COLLEYVILLE, TX	76034	4608 STAFFORD DR
IDOL INVESTMENTS LLC	1304 GLADE RD	COLLEYVILLE, TX	76034	1304 GLADE RD
HICKSON, STEVEN A	1315 GLADE RD	COLLEYVILLE, TX	76034	1315 GLADE RD
SNYDER, JOHN	1701 ROYAL LN #1202	DALLAS, TX	75229	4812 CARMEL PL
				1301 STONEBRIDGE DR
HASLER MARK R & MARY K HASLER	5000 STONEBRIDGE DR	COLLEYVILLE, TX	76034	5000 STONEBRIDGE DR
DUNHAM, MICHAEL G	4800 STAFFORD DR	COLLEYVILLE, TX	76034	4800 STAFFORD DR
GRISIO, TERENCE R	3505 MEADOWLARK LN	COLLEYVILLE, TX	76034	1205 GLADE RD
PRESERVATION HOA INC	101 CLARIDEN RANCH RD	SOUTHLAKE, TX	76092	1400 BLUEBONNET DR
GROOM, DOROTHY DEE	4708 STAFFORD DR	COLLEYVILLE, TX	76034	4708 STAFFORD DR
NORTON, BOB	5004 STONEBRIDGE DR	COLLEYVILLE, TX	76034	5004 STONEBRIDGE DR
CADG CARMEL PLACE LLC	1800 VALLEY VIEW LN STE 300	FARMERS BRNCH, TX	75234	4800 CARMEL PL
THE BRIDGES @ RIVERWALK HOA	PO BOX 1183	COLLEYVILLE, TX	76034	1300 STONEBRIDGE DR
PRESERVATION HOA INC	101 CLARIDEN RANCH RD	SOUTHLAKE, TX	76092	1408 BLUEBONNET DR
CHELIND LLC	1312 GLADE RD	COLLEYVILLE, TX	76034	1312 GLADE RD
RIVERWALK OWNERS ASSN	PO BOX 260997	PLANO, TX	75026	1201 RIVERWALK CT
COOLEY, JAMES W	1305 CHATSWORTH CT E	COLLEYVILLE, TX	76034	1305 CHATSWORTH CT E
PRICE, GARY W	5008 STONEBRIDGE DR	COLLEYVILLE, TX	76034	5008 STONEBRIDGE DR
MCKEE, WILLIAM	4908 PRESERVATION AVE	COLLEYVILLE, TX	76034	4908 PRESERVATION AVE
PRESERVATION HOA INC	101 CLARIDEN RANCH RD	SOUTHLAKE, TX	76092	1404 BLUEBONNET DR
ROSEN, VINCENT F	1313 CHATSWORTH CT E	COLLEYVILLE, TX	76034	1313 CHATSWORTH CT E
STUCKEMAN, WILLIAM	1309 CHATSWORTH CT E	COLLEYVILLE, TX	76034	1309 CHATSWORTH CT E
QAMAR, ASIA	2428 MACLAY AVE	BRONX, NY	10461	1205 GARRY LYNNE DR
HSV RETREAT LLC	5013 PRESERVATION AVE	COLLEYVILLE, TX	76034	1308 GLADE RD
ROACH, ALISHA	1312 CHATSWORTH CT E	COLLEYVILLE, TX	76034	1312 CHATSWORTH CT E
RODGERS, CONRAD B	1213 GARRY LYNNE DR	COLLEYVILLE, TX	76034	1213 GARRY LYNNE DR
HEWITT, SHARA	1308 ASHFORD CT	COLLEYVILLE, TX	76034	1308 ASHFORD CT
				4920 CARMEL PL
CALAIS INVESTMENTS I LTD	430 N CARROLL AVE #120	SOUTHLAKE, TX	76092	4820 CARMEL PL
CALAIS INVESTMENTS I LTD	430 N CARROLL AVE #120	SOUTHLAKE, TX	76092	4824 CARMEL PL
THOMPSON, DAVID S	4612 STAFFORD DR	COLLEYVILLE, TX	76034	4612 STAFFORD DR
WHITTEN, HAROLD	1209 GARRY LYNNE DR	COLLEYVILLE, TX	76034	1209 GARRY LYNNE DR
VALENTINE, NICHOLAS	1208 CHATSWORTH DR	COLLEYVILLE, TX	76034	1208 CHATSWORTH DR
SWINDELL, MITCHELL	1212 CHATSWORTH DR	COLLEYVILLE, TX	76034	1212 CHATSWORTH DR
NEAL, JANIS CAROL TR	1117 GARRY LYNNE DR	COLLEYVILLE, TX	76034	1117 GARRY LYNNE DR
GRAY, DOUGLAS M	1201 GARRY LYNNE DR	COLLEYVILLE, TX	76034	1201 GARRY LYNNE DR
BRIDGES AT RIVERWALK ADDITION	P.O. Box 1183	COLLEYVILLE, TX	76034	COURTESY NOTICE
LAKES OF SOMERSET, THE	1104 Chatsworth Court West	COLLEYVILLE, TX	76034	COURTESY NOTICE
RIVERWALK AT COLLEYVILLE	P.O. Box 1031	COLLEYVILLE, TX	76034	COURTESY NOTICE
GRAPEVINE COLLEYVILLE ISD	3051 IRA E WOODS AVE	GRAPEVINE, TX	76051	STATE REQUIRED
BARNES, ROME	1800 VALLEY VIEW LN STE 300	FARMERS BRNCH, TX	75234	APPLICANT

Public hearing notices were mailed on August 24, 2018 by Araceli Botello



NOTICE OF PUBLIC HEARING

Zoning Case Number: ZC18-023
Applicant: Rome Barnes
Owner: CADG Carmel Place, LLC
Location: 1309 Glade Road
Property Description: Tract 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey
Present Zoning: AG Agricultural
Request: Consideration of a zoning change from the AG Agricultural district to the R-30 Single Family Residential district. The purpose is to allow for development of 5 new single-family residential lots.

The City of Colleyville has scheduled public hearings concerning the above referenced request on the following dates and location:

Planning and Zoning Commission Meeting: Monday, September 10, 2018 at 7:00 p.m.
City Council Meetings: Tuesday, October 1, 2018 & Tuesday, October 16, 2018 at 7:30 p.m.
3rd floor of City Hall, 100 Main Street, Colleyville, Texas

This notice has been sent to all owners of real property within 500 feet of the request as such ownership appears on the last approved tax roll and all homeowners associations within 1000 feet. Approval by the Planning and Zoning Commission serves as a recommendation to the City Council and is not a final action on the request. Denial of the proposal by the Commission is final, unless the applicant submits a written notice of appeal within 10 days from the date of action by the Commission. If appealed, the request will be placed on the next available City Council agenda as listed above. Rezoning requests, zoning amendments and conditions recommended by the Commission for approval by the City Council may be more restrictive than those described in this notice.

All interested persons are encouraged to attend the public hearing and express their opinions on the zoning change request. If you are unable to attend, but wish to have your opinions made a part of the public record, please submit written comments prior to the public hearing, to the address below:

Community Development Department
City of Colleyville
100 Main Street
Colleyville, TX 76034

If the property owners of 20% or more of the land within the 200 foot notification area file a written protest prior to the public hearing, State law provides that the approval of the zoning change request shall require the approval of a super majority vote by City Council.

The application is on file for public examination in the Community Development Department at 100 Main Street, Colleyville, Texas. A brief project description can be found online on the Active Development Case map: <https://www.colleyville.com/zoning.html>. For additional information, please contact the Community Development Department at 817.503.1052. Please reference the zoning case number when requesting information.

Ben Bryner
Director of Community Development
bbryner@colleyville.com

ORDINANCE O-18-2064

AMENDING THE ZONING ORDINANCE AND THE OFFICIAL ZONING MAP OF THE CITY OF COLLEYVILLE, TEXAS, BY CHANGING THE ZONING ON 4.369 ACRES, BEING TRACTS 2A01 & 2A02, ABSTRACT 1543, IN THE GEORGE W TEETER SURVEY, LOCATED AT 1309 GLADE ROAD, FROM THE AG AGRICULTURAL DISTRICT TO THE R-30 SINGLE FAMILY RESIDENTIAL DISTRICT; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Colleyville has received an application for rezoning under Case ZC18-023; and

WHEREAS, the City of Colleyville deems it necessary, for the purpose of promoting the health, safety, morals, or general welfare of the City to enact a new zoning ordinance; and

WHEREAS, the City Council has appointed a Planning and Zoning Commission to recommend the boundaries of the various original zoning districts and appropriate regulations be enforced therein and to recommend a new zoning ordinance; and

WHEREAS, the Planning and Zoning Commission has divided the City into districts and has prepared regulations pertaining to such districts in accordance with a comprehensive plan designed to lessen congestion in the streets; and to secure safety from fire, panic, and other dangers; to promote health, general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and

WHEREAS, the Planning and Zoning Commission, has given reasonable consideration to, among other things, the character of the districts and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, the Planning and Zoning Commission of the City of Colleyville and the City of Colleyville City Council, in compliance with the Charter of the City of Colleyville, and State Law with reference to changes to zoning classifications under the Zoning Ordinance Regulations and Zoning Map, having given the requisite notices

by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally, and to the persons interested and situated in the affected area and in the vicinity thereof, the governing body of the City of Colleyville is of the opinion that said change in zoning should be made.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

- Sec. 1. THAT all the foregoing premises and findings are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety.
- Sec. 2. THAT the Comprehensive Zoning Ordinance of the City of Colleyville, Texas, be, and the same is hereby amended by changing the zoning on 4.369 acres, being Tracts 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey, located at 1309 Glade Road, from the AG Agricultural district to the R-30 Single Family Residential district, as depicted in the attached Exhibit "A" and Exhibit "B".
- Sec. 3. THAT the above described tract of land shall be used only in the manner and for the purposes provided by the Comprehensive Zoning Ordinance of the City of Colleyville as heretofore amended, and as amended herein.
- Sec. 4. THAT any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Colleyville, and upon conviction shall be punishable by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.
- Sec. 5. THAT if any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be judged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any portion thereof other than that portion so decided to be invalid or unconstitutional.

Sec. 6. THAT in addition to and accumulative of all other penalties, the City shall have the right to seek injunctive relief for any and all violations of this ordinance.

Sec. 7. THAT it has been found that there has been a change in conditions in the above described property, it is now necessary that it be given the above zoning classification in order to permit its proper development and in order to protect the public interest, comfort and general welfare, and requires that this ordinance shall take effect immediately from and after its passage.

AND IT IS SO ORDERED.

The first reading and public hearing being conducted on the 16th day of October 2018.

Tabled November 5, 2018.

The second reading and public hearing being conducted on the 20th day of November 2018.

PASSED AND APPROVED BY A VOTE OF ____ AYES, ____ NAYS, AND ____ ABSTENTIONS ON THIS THE 20TH DAY OF NOVEMBER 2018.

Mayor Richard Newton	_____	Mayor Pro Tem Bobby Lindamood	_____
Place 1, Tammy Nakamura	_____	Place 5, Chuck Kelley	_____
Place 3, Kathy Wheat	_____	Place 6, Callie Rigney	_____
Place 4, George Dodson	_____		

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
City Secretary

Richard Newton
Mayor

APPROVED AS TO FORM AND LEGALITY:

Whitt L. Wyatt
City Attorney

Exhibit "A"- Zoning Map



ZC18-023
1309 Glade Road

DISCLAIMER:
 This map and information contained in it were developed exclusively for use by the City of Colleyville. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Colleyville, its officials or employees for any discrepancies, errors, or variances which may exist.

 Subject Property

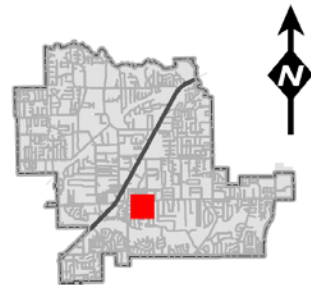


Exhibit "B"- Metes & Bounds Description

Tract 1 – 4.3968 ACRES

Being a tract of land out of George W. Teeter Survey, Abstract No. 1543 and situated in the City of Colleyville, Tarrant County, Texas, and surveyed by Miller Surveying, Inc. of Hurst, Texas in November 2017, said tract being a portion of the same tract of land described in the deed to Robert Gene Hubbard et ux, Peggy Hubbard recorded in Volume 4069, Page 406 in the Deed Records of Tarrant County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch steel rod found in the southerly right-of-way line of Glade Road (Co. Rd. 3036), said rod being in the northerly boundary line of "Tract No. 1" of said Hubbard Deed and also being the most northerly northwest corner of Lot 1, Block 1, Greener Acres, an addition to the City of Colleyville, Texas according to the plat thereof recorded in Cabinet A, Slide 4936 of the Plat Records of said County;

Thence South 00 degrees 14 minutes 15 seconds East with the westerly boundary line of said Lot 1 a distance of 553.09 feet to a 1/2 inch "MILLER 5665" capped steel rod set for an inner corner thereof;

Thence South 89 degrees 25 minutes 35 seconds West continuing with said westerly boundary line a distance of 58.10 feet to a 1/2 inch steel rod found for an outer point thereof;

Thence South 00 degrees 12 minutes 14 seconds West continuing with said westerly boundary line a distance of 415.82 feet to a 1/2 inch steel rod found for the southwest corner of said Lot 1, said rod being in the northerly boundary line of Block 1, The Lakes of Somerset, an addition to the City of Colleyville, Texas according to the plat thereof recorded in Cabinet A, Slide 312 of said plat records;

Thence North 89 degrees 46 minutes 39 seconds West with said northerly boundary line a distance of 151.92 feet to a point in a fence post found in the easterly boundary line of Carmel Place Estates, an addition to the City of Colleyville, Texas according to the plat thereof recorded as Instrument No. D217142798 of the Official Public Records of said County;

Thence North 01 degrees 25 minutes 38 seconds West with said easterly boundary line a distance of 985.17 feet to a cross in concrete set for the northwest corner of said Tract 1, said cross being in said southerly right-of-way line;

Thence North 89 degrees 53 minutes 54 seconds East with the northerly boundary line of said Tract 1 and with said southerly right-of-way line a distance of 233.33 feet to the point of beginning and containing 4.3968 acres of land, more or less.



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 9a
Type Resolution
Department Engineering

Agenda Date 11/20/2018

Number Resolution R-18-4327

Title

Consideration of a waiver request to the sidewalk requirements and subsequent refund, on Lot 1R, Block 1, of the Van Oaks addition located at 201 Van Oaks Drive

Strategic Plan

C4- Provide mobility enhancements that complement neighborhoods

Explanation

Reading and Public Hearing

The Land Development Code Section 9.21(A) establishes the requirement that a sidewalk must be constructed for all lots that front an existing City street. The Land Development Code Section 9.12.(F) establishes the criteria to place in escrow the amount necessary to construct a sidewalk in lieu of construction.

On November 1, 2018, the applicant, Greg Fitzgerald and Tracy Rector, paid \$2,200 of escrow monies into the sidewalk fund. The applicant is hereby requesting a waiver to the Land Development Code Section 9.12(F) and Section 9.21(A) and is requesting a full refund of the escrow monies.

Applicant's Request. The applicant submitted a waiver request letter (see attachment) stating reasons for a full waiver request:

1. Van Oaks is a dead end street of minimal width that is not conducive to the construction of a sidewalk.
2. For this reason, I am aware that other homeowners on Van Oaks have previously been accommodated by the city and that the sidewalk escrow has been waived.
3. Further, a waiver of the escrow requirement for this lot is consistent with past decisions of the city for like situated properties.

Current Land Development Code Requirements. The Land Development Code, Section 9.21(A.1), states, "Any variance to the sidewalk construction requirements described above shall be considered by the City Council." If the applicant is not granted a waiver to this requirement they would be required to construct the sidewalk or they would have the opportunity to escrow funds in an amount sufficient to pay for the construction of a sidewalk at some future date. The escrow amount is \$2,200. The escrowed funds would follow the criteria established in the Land Development Code,

Section 9.12(F.4), which allows for the use of the escrowed funds within the City limits. The escrow funds may be used for future sidewalks within the City limits.

Summary. As a result of the new home being constructed at 201 Van Oaks Drive, the Land Development Code, Section 9.21(A.1) requires a sidewalk along the frontage of the lot. Since the subject property is within an established neighborhood that does not currently have sidewalks and there are no immediate plans to construct new sidewalks within the neighborhood, the escrow provision, Land Development Code, Section 9.21(A.3), would be allowed for the subject property. The applicant would be able to meet the requirements of the code by constructing the required sidewalk, or by escrowing funds in the amount sufficient to pay for the construction of a sidewalk in the City at some future date.

The applicant has requested a waiver to the sidewalk construction and escrow requirements. In accordance with the Land Development Code, Section 9.21(A.1), all variance requests to this code requirement shall be considered by the City Council. If the City Council approves the waiver request, the applicant will not have to construct a new sidewalk or place funds in escrow prior to the completion of the home construction. In accordance with Resolution R-18-4282 (approved 7/2/2018) which establishes a "new policy" for sidewalks, it is clear that when a waiver is granted, payment shall be collected in-lieu of the sidewalk value. In such cases "the City shall use said funds for the maintenance and installation of pedestrian sidewalks and trails throughout the community." Since the proposal does not meet the requirements of the Land Development Code and in keeping with the aforementioned policy, staff recommends denial of the request.

Financial Impact

There is no financial impact to the City if the waiver request is approved. If the waiver and escrow refund is denied, \$2,200 would remain in the sidewalk escrow fund account.

Recommendation

Denial

Attachments

1. Waiver Request Letter
2. Escrow Receipt
3. Chapter 9 Land Development Code
4. Resolution R-18-4327

LAW OFFICES OF GREG FITZGERALD, P.C.

413 Harwood Road
Bedford, TX 76021

Telephone: (817) 281-0044
Fax: (817) 281-9455
www.gregfitzgeraldlaw.com

Board Certified,
Civil Trial Law
Personal Injury Trial Law
Board of Legal Specialization
State Bar of Texas
Civil Trial Advocate
National Board of Trial Advocacy

November 1, 2018

Mr. Robert C. Saucedo P.E

City Engineer

City of Colleyville

100 Main St. 2nd Floor

Colleyville, Texas 76034

Re: 201 Van Oaks-Sidewalk Escrow

Dear Mr. Saucedo,

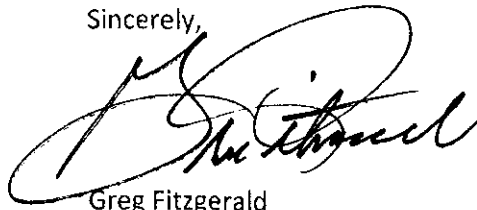
Please accept this letter as my formal request to the City of Colleyville that the sidewalk escrow be waived for the above described property. I request that this matter be considered administratively, and that it be presented for consideration before the appropriate individuals.

Van Oaks is a dead end street of minimal width that is not conducive to the construction of a sidewalk, and it is reasonable to assume that no effort shall ever be made by the city to construct such a sidewalk on this street. For this reason, I am aware that other homeowners on Van Oaks have previously been accommodated by the city and that the sidewalk escrow has been waived. Further, a waiver of the escrow requirement for this lot is consistent with past decisions of the city for like situated properties.

Please advise if further information is required. I will be more than happy to meet with any city representatives to discuss this matter further.

Thank you for consideration in this regard and for all courtesies extended.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Fitzgerald", written over a large, stylized circular flourish.

Greg Fitzgerald



Building Inspection Department
City of Colleyville
100 Main Street
Colleyville, Tx 76034

INVOICE #
INV-383
Date Due: 11/24/2018

- REPRINT -

RECTOR, TRACY T

Invoice Date: 10/25/2018

Record #	Record Type	Fee Group	Fee Description	Quantity	Amount	Paid	Receipt
ESCROW1705-010	ESCROW	SIDEWALK DISTRICT 6		0	\$2,200.00	\$2,200.00	R25859
					\$2,200.00		

Invoice Total: \$2,200.00

Payment Summary:

Payment Method	Paid Amount	Receipt #
CHECK	\$2,200.00	R25859
Total Paid:	\$2,200.00	
Total Due:	\$0.00	

Please send your payment to this address: 100 Main Street, Colleyville, Texas 76034, ATTN: Community Development Department

Chapter 9

Subdivision Design & Public Facilities

Rev. 09/04/2018

Section 9.1 Purpose of This Chapter

The purpose of this Chapter is to establish design guidelines necessary for proper layout of a subdivision and to establish the public improvement requirements for the development of a subdivision, but more specifically to:

1. ensure that public facilities and services are available to all subdivisions in the City; and
2. establish reasonable standards of design for public facilities.

Section 9.2 Authorization for Adoption of This Chapter

The regulations contained in this Chapter have been adopted under the following authority:

1. *Chapter 212 – Municipal Regulation of Subdivisions and Property Development of the Texas Local Government Code*, which authorizes a municipality to adopt rules governing plats and subdivisions of land within the municipality's jurisdiction.
2. *Chapter 51 – General Powers of Municipalities of the Texas Local Government Code*, which authorizes a municipality to adopt ordinances, rules, or police regulations that are for the good government, peace, or the trade and commerce of the municipality.
3. *The Home Rule Charter of the City of Colleyville*, which authorizes the City Council to exercise all powers granted to municipalities by the Constitution or the laws of the State of Texas.

Section 9.3 Variances and Appeals

Any person seeking approval of a development as required by this Land Development Code may request a waiver from a requirement contained in this Chapter, or appeal a decision of an Administrative Official by submitting a request using the procedures described in *Chapter 1 – General Provisions* of this Land Development Code.

Section 9.4 Definitions

Definitions applicable to this Chapter may be found in *Chapter 2 – Definitions* of this Land Development Code.

Section 9.5 Subdivision Design Guidelines

Every subdivision plat shall be reviewed for conformance with the design guidelines contained in this Land Development Code. The City recognizes that suitability characteristics vary from site to site and when approving a subdivision plat the following guidelines shall be used for interpretation, application and enforcement of the design guidelines contained in this Land Development Code:

1. It is the intention of these subdivision design guidelines to encourage new and creative ways to develop subdivisions. Developers and city officials are encouraged to utilize new and innovative ways to improve safety, economy, tax yield, maintenance cost, response time, drainage, vehicular access, and pedestrian passage.

2. Whenever a developer can demonstrate an alternative method of meeting the requirements of this Land Development Code, it shall be incumbent upon the city staff, the Planning and Zoning Commission, and the City Council to review the proposed variations and approve, approve with modifications, or disapprove the proposed alternatives as appropriate for the conditions.

Section 9.6 Blocks

- A. General Design – Blocks should have sufficient depth to provide for two (2) tiers of lots of appropriate depths, except that blocks adjacent to major streets, railroads or waterways shall have only one tier of lots.
- B. Block Lengths & Widths – Residential and industrial blocks generally shall be no longer than sixteen hundred (1,600) feet and business blocks no longer than one thousand (1,000) feet. Where long blocks in the vicinity of a school, park or shopping center are proposed, the City Council may require a public walkway near the middle of long blocks or opposite a street that terminates between the streets at the ends of the block.

Section 9.7 Lots

- A. Lot Arrangement – Lots shall be arranged to provide access to lots from approved streets and to avoid foreseeable difficulties due to topography and natural physical features inherent to the property.
- B. Lot Area and Dimensions – Lot area and dimensions shall be consistent with the minimum requirements of the applicable zoning district and the following:
 1. *Special Lot Width Requirement* - The width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than eighty (80) percent of the required lot width. In the case of lots on the turning circle of a cul-de-sac, the width may be less than eighty (80) percent of the required lot width.
 2. The City may approve a plat which contains a lot that does not meet the minimum requirements when special conditions exist.
- C. Frontage on Public Access Required – All lots shall have frontage on a public street, except a non-residential lot may be approved when the proposed public access has been determined by City to be adequate to meet the intent of this requirement. The lot line common to the street right-of-way line shall be the front line; except that a lot may have more than one lot line common to a street right-of-way line.
- D. Access from Major Thoroughfares
 1. Residential Lots - No residential lot shall front on or derive access directly from an existing or proposed collector street, or larger, as shown on the Master Thoroughfare Plan, except where the proposed subdivision meets all the following criteria:
 - a. Where the only street frontage which may be provided to the residential lot is from a collector street due to the shape, topography, or other physical condition of the property;
 - b. The Director of Public Works or designee has provided favorable recommendation; and
 - c. Where the residential lot is designed and dimensioned to permit loop driveways or on-site turnaround facilities so that vehicles head into the collector street.
 2. Non-residential Lots – Non-residential lots which have frontage onto or derive access directly from an existing or proposed collector street, or larger, as shown on the Master Thoroughfare Plan, shall have driveway locations which *comply with the spacing requirements established elsewhere in Chapter 14 – Engineering Design Standards* of this Land Development Code.

- E. Buildable Area – Every lot shall contain a buildable area that is adequate in size for the proposed development. The buildable area shall be situated out of the 100 year flood plain.
- F. Flag Lots Prohibited – It is the policy of the City to prohibit the creation of flag lots unnecessarily, and to discourage the creation of any lot which, by virtue of its relatively great depth in relation to its width, is likely to facilitate future requests for re-subdivision to create a flag lot.
- G. Building Lines – Front building lines shall be shown on all lots in the subdivision. Building lines shall be shown along each street-facing of corner lots and through-lots. The building line shall be consistent with the requirements of the applicable zoning district, however, the City may approve a building line which differs from the zoning requirements when special conditions exist.
- H. Side Lot Lines – Where possible, all side lot lines shall be at right angles to straight street lines and radial to curved street lines.
- I. Lot Drainage and Grading
 - 1. Grading and drainage of all lots shall be designed in a manner which will allow one lot to drain across an adjacent lot and into a permanent structure, such as a concrete flume, lined channel, or proper inlet to an adequate drainage facility, or to a street right-of-way. If an approved drainage structure is not present, it will be required of the developer to construct the necessary facilities. (O-00-1261 / 12-19-00)
 - 2. Sheet flow techniques shall be used for lot to lot drainage where possible. (O-00-1261 / 12-19-00)
 - 3. Single lots shall accommodate their own drainage into an approved structure where topographic elevations allow this to occur. (O-00-1261 / 12-19-00)
 - 4. For lots that an approved engineered grading plan does not exist, the developer of the site shall submit a grading plan prepared by a licensed Professional Engineer.

Section 9.8 Waterbodies and Water Courses

If a tract being subdivided contains a water body, or portion thereof, lot lines shall be drawn so as to distribute the entire ownership of the water body among the adjacent lots. The City may approve an alternate plan provided the ownership of and responsibility for maintenance of the water body is so placed that it will not become a City responsibility. Where a watercourse separates the buildable area of a lot from the street by which it has access, provision shall be made for installation of a culvert or other structure, of design approved by the City. Any lot which includes a water body and contains a building site, shall contain a buildable area that is not less than the minimum buildable area for the applicable zoning district.

Section 9.9 Street Names

The developer shall submit all existing and proposed street names on any proposed subdivision plat. New street names shall be sufficiently different in sound and in spelling from other road names in the city so as to not cause confusion to the general public or for emergency response. A road which is, or planned, as a continuation of an existing road shall bear the same name.

Section 9.10 Reserve Strips and Common Areas

The creation of reserve strips shall not be permitted adjacent to a proposed street or to adjacent property in such a manner as to deny access from adjacent property to the street. No common areas shall be allowed in a subdivision except where notation has been placed on the plat to prohibit development on the common area.

Section 9.11 Double Frontage Lots

Double frontage lots shall be avoided except where necessary to provide separation of residential development from a collector street or to overcome specific disadvantages of topography and orientation. The City shall require that a notation be placed on the plat to limit the facing of main structures or to limit driveway access from a collector street or arterial street as shown on the Master Thoroughfare Plan.

Section 9.12 General Infrastructure Policy

(03-03-09 / O-09-1712)

- A. General Requirement – The developer of a subdivision shall install all water, sewer, street, sidewalk and drainage improvements, and any other facilities required by this Land Development Code, which are necessary for the proper development of the subdivision. The design, construction and inspection of any public facilities shall be a cost to the developer, unless the City has entered into an agreement for cost sharing. All such facilities shall be designed and constructed in accordance with the criteria contained in this Land Development Code and be in conformance with the general layout of the City of Colleyville Master Land Use Plan and Capital Improvements Plan. The public facility requirement of this section shall be applicable to the upgrading of any existing facilities which do not meet current standards.
- B. Apportionment of Infrastructure Costs – As a condition of the approval of a development, the developer's portion of the costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the projected impact of the proposed development, as determined by a professional engineer, licensed in the State of Texas, and who is retained by the City of Colleyville.
 - 1. In making the rough proportionality determination, consideration shall be given to the availability of adequate and minimum levels of public facilities and accessibility to the site for delivery of emergency services.
 - 2. The professional engineer making the proportionality determination may rely on categorical findings from comparable public improvement projects for establishing a cost basis. The basis used for determining estimated costs shall be revised annually on July 1 by the Colleyville Engineering Department.
 - 3. A developer who disputes the determination by said professional engineer may appeal to the City Council and present testimony and evidence in support of the appeal. The appeal shall be written and filed with the City Secretary within ten (10) days after the date action taken by the Planning and Zoning Commission on the development proposal. The developer shall not be required to waive the right to appeal as a condition of approval of the development project.
- C. Optional Escrow Provision – Where, in the opinion of the City, construction of a required public improvement should be deferred to a future date, the developer shall place in escrow with the City via Letter of Credit or cash, an amount equal to the estimated cost of the improvements, as determined by the Director of Public Works or designee. The City Council may consider an alternate arrangement when appropriate. Any escrow related to the construction of sidewalks shall adhere to the requirements set forth in Section F.
- D. City Participation in Over-Sizing – Where over-sizing of a public improvement is required by the Comprehensive Master Plan, Thoroughfare Plan, Water or Sewer Capital Improvements Plan or other planning document adopted by the City, City participation shall be in accordance with the provisions of any applicable Impact Fee Ordinance or City-Developer Agreement, which has been approved by the City Council.
- E. Public Easements – All public improvements shall be constructed within easements or rights-of-way that have been dedicated for public use. The width of an easement or right-of-way shall be in accordance with the specifications contained elsewhere in this Land Development Code.
- F. Escrow Policy for Sidewalks

1. Request for Escrow

Whenever these regulations require a property owner to construct a sidewalk for a dwelling unit, the property owner may petition the City for deposit of an escrowed amount, as established in this Section, in lieu of the required construction of a sidewalk. The Director of Public Works or designee shall determine whether the escrow is reasonable in lieu of the obligation to construct the improvement. If an escrow request is denied, then the applicant may appeal that denial to the City Council if a written request for appeal is received by the Director of Public Works or designee within ten (10) days of the denial.

2. Deposit with the City

Whenever the City agrees to accept escrow deposits in lieu of construction by the owner of the property under these regulations, the property owner or developer shall deposit an amount equal to his share of the costs of design and construction in escrow with the City. This amount shall be paid prior to release of construction plans by the Director of Public Works. The obligations and responsibilities of the property owner shall become those of the property owner's transferees, heirs, successors, and assigns; and the liability therefore shall be joint and several.

3. Determination of Escrow Amount

The amount of the escrow shall be determined by using the average of the comparable bids awarded by the City in the preceding six (6) months for sidewalk design and construction or, if none exist, then current market value of the design and construction of a sidewalk in the City, to be determined by the Director of Public Works. The determination shall be based on reasonable current market value made as of the time the escrow is due.

4. Use of Escrow Funds

Funds escrowed pursuant to this chapter shall be expended on design and construction of pedestrian sidewalks and trails located throughout the community and in keeping with the City's Master Plan.

Section 9.13 Water System Requirements

- A. Water Lines – The developer of a subdivision shall be required to install, at no cost to the City, a water distribution system adequate for domestic supply and for fire protection needs which serves each lot. The water system shall be connected to the municipal water system and be designed, sized and constructed in accordance with the city design standards and specifications contained in this Land Development Code.
- B. Fire Hydrants – The developer of a subdivision shall be required to install, at no cost to the City, a sufficient number of fire hydrants to provide fire protection to every lot in the subdivision. All structures in residential areas shall have fire hydrants within 500 feet and a 600-foot hose-lay. All structures in commercial areas shall have fire hydrants within 300 feet and a 500-foot hose-lay. The design and construction of the fire hydrant system shall be in accordance with the city design standards and specifications contained in this Land Development Code. The layout of the fire hydrant coverage shall be approved by the Fire Marshal and be in accordance with the standards of the Texas State Board of Insurance requirements. (O-00-1261 / 12-19-00)

Section 9.14 Sewage System Requirements

- A. Sewage Collection Lines – The developer of a subdivision shall be required to install, at no cost to the City, a sewage collection system adequate which shall serve each lot. The sewage collection system shall be connected to the municipal sewage system and be designed, sized and constructed in accordance with the city design standards and specifications contained in this Land Development Code.

- B. Private Sewage Treatment Systems – Private sewage treatments systems, including septic tanks, shall be prohibited except where approved by the Director of Public Works or designee and the Tarrant County Health Department.

Section 9.15 Storm Water Facility Requirements

- A. Drainage Improvement Requirements – The developer shall provide for the design of storm water management in the proposed subdivision and shall be required to furnish, install, construct, or extend, at his own expense, all storm sewers and drainage structure facilities necessary for the proper development of the subdivision. Storm water facilities shall conform to the storm water drainage master plan and shall be designed in accordance with the design standards and specifications contained in this Land Development Code. Alternate earthen channels may be approved when in accordance with the criteria established in *Chapter 14 – Engineering Design Standards*.
- B. Drainage Easements – All public drainage facilities shall be constructed within a public drainage easement or drainage right-of-way as required by the City. The following statement of restriction shall be placed in the dedication instrument of the subdivision plat:

Drainage Easement Restriction: No construction or filling, without the written approval of the City of Colleyville shall be allowed within a drainage easement, and then only after detailed engineering plans and studies show that no flooding will result, that no obstruction to the natural flow of water will result, and subject to all owners of the property affected by such construction becoming a party to the request. Where construction is permitted, all finished floor elevations shall be a minimum of two feet above the 100-year flood elevation.

- C. Development of Flood Plain – Land within the 100-year flood plain shall be subject to the Colleyville Flood Plain Ordinance. Any land which in the natural state is subject to a 100-year flood or which cannot be properly drained shall not be subdivided, re-subdivided, or developed until receipt of evidence that the construction of specific improvements proposed by the developer can be expected to yield a usable building site. Thereafter, the Planning and Zoning Commission and City Council may recommend approval of the plat. However, construction upon such land shall be prohibited until the specific improvements have been planned and construction completed.

D. Floodway Easements

1. Floodway easements shall be provided along natural drainage-ways and lakes reservations. Floodway easements shall encompass all areas beneath the water surface elevation of the base flood, plus such additional width as may be required to provide ingress and egress to allow maintenance of the banks and for the protection of adjacent property, as determined and required by the Director of Public Works or designee.
2. The following statement of restrictions shall be placed in the dedication instrument of the subdivision plat:

Floodway Easement Restriction: No construction shall be allowed within a floodway easement without the written approval of the City of Colleyville, and then only after detailed engineering plans and studies show that no flooding will result.

- E. Off-Site Drainage – The following provisions shall be applicable to off-site drainage of new subdivisions:
1. The developer shall accept and be responsible for all runoff from properties upstream of the proposed development. The proposed improvements shall be designed for fully developed conditions.
 2. Where a drainage study indicates that additional runoff from the developing property will overload downstream drainage facilities and result in hazardous conditions, the City may withhold approval of

the development until appropriate provisions have been made. These provisions shall include any drainage design or construction plans necessary to accommodate the off-site drainage problem.

Section 9.16 Street Improvement Requirements

- A. General Requirement – The developer shall construct, at his expense, street facilities necessary for the proper development of the subdivision. The street system shall provide access to every lot in the subdivision and be designed and constructed in accordance with the criteria contained in this Land Development Code.
- B. Improvements to Existing Unimproved Streets and Utilities – This section is applicable to a proposed development situated adjacent to an existing street or municipal utility, which does not meet the standards contained in the Land Development Code. (O-06-1562 / 02-07-06)

1. *Improvements Required* – If a proposed subdivision is situated adjacent to an existing street or municipal utility, which does not meet the standards contained in this Land Development Code, the developer shall bear the cost for constructing the infrastructure improvements required by this Land Development Code in accordance with the General Infrastructure Policy contained elsewhere in the Land Development Code.

For the purpose of this regulation, the calculation used for estimating the reconstruction costs for an unimproved street shall include all street paving, curb and gutter, sidewalks, hike and bike trails, water and sewer utilities, and drainage improvements. The improvements shall be sized in accordance with the most recently approved Master Thoroughfare Plan or Capital Improvements Plan, which is applicable.

2. *Escrow* – The Administrative Official may recommend approval of a subdivision plat to the Approving Body conditioned upon the deposit in escrow, via Letter of Credit or cash, of the estimated costs of the adjacent unimproved street and utility improvements in-lieu of the actual construction of said facilities. Any escrow, without interest, shall be applied against any assessment for improvements levied on such property, but shall not be deemed to release such property from liability for any future costs assessed which exceed the escrow.
3. *One and Two Lot Residential Subdivisions* – If a proposed residential subdivision contains only one or two lots and the developer does not own any contiguous property, in lieu of actual construction, the developer shall pay the applicable perimeter street costs in accordance with the General Infrastructure Policy contained elsewhere in this Land Development Code for the initial one hundred feet of street frontage. The applicable perimeter street costs shall be reduced 0.2% per linear foot of frontage in excess of one hundred feet, not to exceed fifty percent of the applicable additional street frontage.

Exemption: A lot platted under this Section that contains an existing single-family dwelling at the time a subdivision plat application is filed with the City and the lot is situated within a zoning district that allows single-family residential uses, said lot shall have an automatic exemption from the perimeter street costs, provided that existing perimeter street facilities are sufficient to assure the safe, effective and orderly movement of traffic in and about the subdivision and utility services are adequate to serve the development. The following notation shall be placed on the plat: *“Any future divisions of these lots will require full compliance with the unimproved street requirements applicable at the time of any subsequent re-platting.”*

Section 9.17 Street Design Criteria

- A. Street Functional Classification – All streets shall be designed in accordance with the functional classification shown on the most recent version of the Master Thoroughfare Plan and the following:

Functional Classification of Streets	
Street Classification	Functions - Uses
Local	Carries traffic from residential and commercial areas to collector streets and interconnects individual sites. Local streets carry light traffic volumes and trips are of a short duration.
Collector Major Minor	Carries traffic from local streets to arterial streets. Uses served would include medium and high density residential, limited commercial facilities, elementary schools, some small offices and as direct access within industrial parks. Collector streets also carry heavy traffic to major commercial and industrial facilities from arterial streets. Uses would include office parks, industrial parks, and community level commercial facilities.
Arterial Major Minor	The main function of an arterial is to carry traffic from one urban area to another. The arterial streets serve the major activity centers of urbanized areas. An arterial street is used for longer urban trips and carries a high portion of the total traffic with a minimum of mileage.

B. Street Design

1. *In-General* – Streets shall be designed with due regard to topography, with due consideration of the abutting uses, and the anticipated destination of traffic and traffic volumes at full development of the neighborhood. Where necessary to prevent traffic congestion and to ease the movement of vehicles to and from principal traffic generators, additional right-of-way width or other special design shall be provided. Where topographical conditions make other treatment necessary to secure the best overall design, these standards may be modified by the Director of Public Works or designee..
2. *Street Continuity* – The street layout shall provide for the continuation of the collector street system as shown on the Master Thoroughfare Plan. Streets shall provide connection to streets in adjacent subdivisions, but local streets shall be designed so as to discourage use by through traffic and to require the minimum number of streets necessary for convenient and safe access to property.
3. *Curvilinear Streets Encouraged* - The developer is encouraged to consider curvilinear, cul-de-sac, and loop street designs where such use would result in a more functional layout and not necessarily adhere to a rigid rectangular street pattern.
4. *Right-of-way Widths* – Every subdivision plat shall dedicate sufficient right-of-way to comply with the requirements of the Master Thoroughfare Plan. The right-of-way widths shall be designed for the intended use and anticipated traffic volume at optimum development of the area served. Additional right-of-way may be required at street intersections and to provide for left and right turn lanes at high-volume intersections.
5. *Cul-de-sac Lengths* – No street shall be designed as a permanent dead-end street, but shall be designed to incorporate a cul-de-sac which complies with this Section. (O-00-1261 / 12-19-00)
 - a. *Diameter* – A cul-de-sac street shall be provided at the closed end with a minimum property line right-of-way diameter of one hundred feet, and a pavement turn-around with a minimum outside diameter of eighty feet (80'). (O-00-1261 / 12-19-00)
 - b. *Length* – No cul-de-sac street shall exceed six hundred feet (600') in length, unless additional right-of-way width and additional pavement width are provided as required in this Section. Furthermore, no cul-de-sac street shall exceed the maximum length of one-thousand two hundred feet (1,200'). For purpose of this regulation, cul-de-sac length shall be measured along the centerline of the cul-de-sac from the intersecting street right-of-way line to the center point of the cul-de-sac. (O-00-1261 / 12-19-00)
 - c. *Width* – A cul-de-sac street shall have a minimum right-of-way width of fifty feet (50') and a minimum pavement width of thirty-one feet (31'), back-to-back of curb. However, a cul-de-sac street which exceeds six-hundred feet (600') in length shall have a minimum right-of-way width of fifty-six feet (56') and minimum pavement width of thirty-six feet (36'), back-to-back of curb. (O-00-1261 / 12-19-00)

- d. *Maximum Number of Lots* – The maximum number of single-family lots served on a cul-de-sac street shall be as shown in the following table: (O-00-1261 / 12-19-00)

Maximum SF Residences Served on Cul-de-sac	
District	Max. Number of Lots Served
AG	5
RE	5
R-40	10
R-30	10
R-20	12
R-15	12
PUD-R	12

- e. *Temporary Turn-Around* – A temporary turn-around is required when a street is temporarily dead-ended and is longer than one-hundred and fifty (150) feet, as measured from the intersecting street right-of-way line. The temporary turn-around shall be within a temporary easement and constructed of asphalt or concrete. (O-00-1261 / 12-19-00)
6. *Temporary Dead-End Streets* - Temporary dead-end streets shall have provision for future extension of the street and utilities and, if a temporary cul-de-sac is utilized, a reversionary right to the land abutting the turnaround for excess right-of-way shall be provided.
7. *Stub-outs for Future Extensions* - Permanent dead-end roads shall not be allowed. The street layout shall be extended to the tract boundary to provide for future access into adjoining tracts to assure adequate neighborhood circulation unless: 1) prevented by topography or other physical conditions; or 2) the City Council determines that the extension is not necessary for future development of adjacent tracts. In general, these extensions should be not more than one thousand (1,000) feet apart.
8. *Pavement Required* - All street surfaces within or abutting the proposed subdivision shall be paved, with curbs and gutters installed, and constructed in accordance with the standards and specifications contained elsewhere in this Land Development Code.
9. *Frontage Access Road* - Where a subdivision abuts or contains an existing or proposed collector street or railroad right-of-way or abuts a commercial or industrial land use, the City may require a frontage street approximately parallel to and on each side of such right-of-way to separate through and local traffic, or reverse frontage with screen planting contained in a non-access reservation along the rear property line, deep lots with rear service alleys, or equivalent treatment as may be necessary for adequate protection of residential properties.
10. *Half Streets* - Half streets shall be prohibited, except where essential to the reasonable development of the subdivision in conformity with the other requirements of these regulations, and where the City Council finds it will be practicable to require the dedication of the other half when the adjoining land is subdivided, the other half of the street shall be platted within such tract.
11. *Number of Subdivision Entryways* – Every subdivision shall be designed to provide sufficient access into the development to accommodate anticipated traffic demands and to provide for emergency public services using the criteria contained in this Section. (O-01-1280 / 08-08-01)
- a. Where a proposed subdivision, or cul-de-sac street, contains more than twelve (12) lots, the development shall provide for two entryways as follows:

- i. The development shall provide one street entryway and one emergency access easement. The emergency access easement shall be located on an adjacent or opposite side of the subdivision from the main entryway. The widths of the right-of-way and driving surfaces of the street entryway and the emergency access easement shall be in accordance with the standards contained elsewhere in this Land Development Code, or
 - ii. The development shall provide two street entryways separated not less than one-hundred feet between the centerlines of the driving surfaces. The widths of the right-of-way and driving surfaces of the two entryways shall be in accordance with the standards contained elsewhere in this Land Development Code, or
 - iii. The development shall provide a divided entryway and one emergency access easement. The driving surfaces of the divided entryway shall be separated by a median not less than ten (10) feet in width and provide for one-way traffic. The widths of the right-of-way and driving surfaces of the divided entryway shall be in accordance with the standards contained elsewhere in this Land Development Code. The emergency access easement shall be located on an adjacent or opposite side of the subdivision from the main entryway and be constructed in accordance with the standards contained elsewhere in this Land Development Code.
- b. If it is physically impractical or otherwise impossible to provide two entryways or to incorporate an emergency access easement into the development in accordance with the above stated requirements, the following alternative may be considered by the approving body:
 - i. A single pavement width of forty-one (41) feet shall be constructed. Said pavement shall extend back from the intersecting street right-of-way a minimum distance of one-hundred (100') feet. All residences within the subdivision shall contain automatic fire-sprinkler systems.
- c. If it is physically impractical or otherwise impossible to comply with the above-stated requirements, an alternative design may be submitted to the City Council for consideration. The approving body may approve the alternate design if it finds that the above-stated requirements can not be satisfied and that all efforts have been made by the developer to comply with said requirements.

12. *Reverse Curves* - Between reverse curves there shall be a tangent section of centerline not less than one hundred feet (100') long.

C. Intersections

1. Streets shall be laid out so as to intersect as nearly as possible at right angles. A proposed intersection of two (2) new streets at an angle of less than seventy-five (75) degrees shall not be acceptable.
2. Proposed new intersections along one side of an existing street shall, wherever practicable, coincide with any existing intersections on the opposite side of such street. Not more than two (2) streets shall intersect at any one point unless specifically approved by the City.
3. Street jogs with centerline offsets of less than one hundred thirty-five (135) feet shall not be permitted.
4. Local streets intersecting a collector street or larger shall have a tangent section of centerline at least fifty (50) feet in length measured from the right-of-way line of the collector street; however, no such tangent is required when the minor street curve has a centerline radius greater than four hundred (400) feet with the center located on the collector street right-of-way line.
5. At local street intersections, the property line corner shall be rounded by an arc having a radius of twelve (12) feet. This radius shall be increased when the smallest angle of intersection is less than eighty (80) degrees. At intersections of streets with major and collector streets the property line corners shall be rounded by an arc having a radius of twenty-five (25) feet. The Director of Public Works or designee may approve comparable cut-offs or cords in place of rounded corners.

6. Where practical, spacing of intersections along collector streets shall be at least 500 feet apart.
- D. Alleys – Alleys shall be provided in commercial and industrial districts and at the rear of multifamily residential building sites for adequate circulation. Where approved by the Fire Marshal, an emergency access easement not less than twenty-four feet (24') in width shall be provided for emergency vehicle access in lieu of any alley. Alleys should intersect streets at right angles or radially to curved streets where sharp changes in alignment cannot be avoided. Property line corners shall be cut off fifteen feet (15') on each side to permit safe vehicular movement. Dead-end alleys shall be prohibited except where prior development of land adjoining the subdivision permits no other reasonable design; under such circumstances alleys shall be provided with turnaround or back-around facilities at the dead-end adequate to permit clear maneuvering of sanitation trucks, utility service vehicles and emergency vehicles. Alleys shall be not less than the following widths:
1. Twenty feet (20') where residential building sites are provided on both sides;
 2. Twenty-two feet (22') wherever residential development abuts commercial or industrial areas;
 3. Twenty-four feet (24') where commercial or industrial development abuts on both sides.

Section 9.18 Easements

- A. Easements – Easements for drainage and utility construction, service, and maintenance shall be provided in locations approved by the City and affected utilities according to the following standards:
1. Easement for the use of public utilities of not less than seven and one-half (7.5') feet in width shall be provided on each lot and extend along the entire length of the rear property line. Easements shall connect with easements already established on adjoining properties or extend to connect with a public right-of-way. No lot shall be shown with an easement which prevents proper development and full utilization of the lot as a suitable building site for the intended zoning district.
 2. For lots of more than two hundred (200) feet deep, the utility easement shall be not less than sixteen (16) feet wide.
 3. The width of any drainage easement shall be determined by the Director of Public Works or designee or in accordance with the need for drainage improvements established by any drainage study.
 4. All utility easements shall be dedicated as utility and/or drainage easements.
 5. When an easement is granted for public purposes as a separate instrument, the following statement of restrictions shall be placed in dedication instrument:

Utility Easements

Any public utility, including the City of Colleyville, shall have the right to move and keep moved all or part of any building, fences, shrubs, other growths or improvements which in any way endanger or interfere with the construction, maintenance, or efficiency of its respective systems on any of the easements shown on the plat; and any public utility, including the City of Colleyville, shall have the right at all times of ingress and egress to and from and upon said easements for the purpose of construction, reconstruction, inspection, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity at any time of procuring the permission of anyone.

- B. Easements Adjacent to State Highways – When a proposed water or sewer line or drainage facility will be placed adjacent to a public road maintained by the Texas Department of Transportation, a separate specific use easement shall be provided for each utility or drainage facility.
- C. Emergency Access Easements – Emergency access easements shall have a clear unobstructed width to accommodate a pavement section of not less than twenty-four (24) feet in width. The emergency access easement shall connect at each end to a dedicated public street or shall have a suitable size turnaround at

the dead-end, and appropriate turning space at inside corners to permit free movement of emergency vehicles. An emergency access easement may be used as a driveway to gain access to parking or loading spaces, but shall not be used for parking. All emergency access gates shall provide for an opening of not less than twenty four (24) feet wide by fourteen (14) feet in height and include a locking and opening mechanism acceptable to the Fire Department. (03-20-07 / O-07-1613)

D. Mutual Access Easements (O-02-1336 / 04-16-02)

1. *Purpose* – The purpose of this requirement is to provide public access to adjacent properties by reducing the number of driveway cuts and potential traffic accidents on adjacent streets.
2. *Applicability* – This Section shall be applicable to properties abutting and that may derive access from a Collector Street or Arterial Street as shown on the Master Thoroughfare Plan.
3. *Requirement* – The City shall require the dedication of a mutual access easement to provide cross access to adjacent properties or shared use of a driveway to conform with the minimum driveway standards contained in Chapter 14 of this Land Development Code.
4. *Easement Dimensions* – Easements for shared driveways shall be 16 feet in width and 35 feet in length, but may vary given the shape of the particular tract. Easements extending across the entire width of the property shall not be less than 24 feet in width.

Section 9.19 Private Utilities

A. Newly Installed Utilities Required to be Underground (O-17-2015 / 08-15-17)

1. All newly installed gas, electric, telephone utilities, street lighting, cable television, and fiber lines shall be underground except where conditions do not warrant underground installations and as approved by the City Council.
2. All electric, telephone, cable, and fiber utilities shall be placed in the rear easement. Mechanical equipment, transformers, and other visible installations will not be permitted in the front yards of any lots.
3. All support equipment (transformers, amplifiers, switching devices, etc.) necessary for underground installations shall be pad mounted or placed underground. Nothing in this section shall restrict or prohibit the placement, erection, or construction of street lighting poles or standards above ground, provided all lines and wires used to provide such lighting are placed underground.
4. All above ground equipment shall be screened from public view, in such a manner that the ground equipment cannot be seen from a public right-of-way. Said screening shall be completed at the time of installation by the utility company and/or developer.
5. Where existing overhead service or lateral/distribution utilities lines are located within the land proposed for development and the lines must be relocated to accommodate the development, the developer is responsible for relocation and placement of the lines underground.
6. All new service lines shall be placed underground.
7. Overhead services will not be permitted to cross public rights-of-way. All such crossings of a right-of-way will be required to be completed by methods as approved by the city.
8. Temporary construction service may be provided by overhead electric lines and facilities without obtaining a variance or exception, provided that when the underground utility service to any portion of a subdivision is completed, such overhead electric lines and facilities are promptly removed.

Section 9.20 Traffic Impact Analysis

When a proposed subdivision plat is estimated to generate more than 1,000 vehicle trips per day, a traffic impact analysis shall be required with the earliest submittal of a plat application. The traffic impact analysis shall be prepared in accordance with the requirements of the Director of Public Works or designee. The purpose of the traffic impact analysis is to determine the need for traffic mitigation measures which may include, but are not limited to, dedication of additional right-of-way, construction of turning lanes, or construction of traffic control facilities. This requirement may be waived when a traffic impact analysis was submitted at the time the current zoning was adopted and the traffic impact analysis is less than one year old. Any mitigating measures required shall be the responsibility of the developer, unless a cost-sharing agreement is approved by the City.

Section 9.21 Sidewalks

A. General Sidewalk Requirement

1. Sidewalks shall be constructed prior to completion of any primary structure for all lots that: (1) are required as part of a Planned Unit Development or Special use Permit; or; (2) front on a new street dedicated in conjunction with a subdivision plan; or, (3) front on an existing City Street. Other than properties zoned as Planned Unit Developments or containing Special Use Permits with specific sidewalk provisions, sidewalks shall be required to be constructed prior to the final inspection. Any variance to the sidewalk construction requirements described above shall be considered by the City Council.
2. The sidewalks shall be constructed adjacent to and within the public street right-of-way and include curb ramps where applicable. Where no public right-of-way exists, the sidewalk shall be located within a public access easement that provides accommodation of the future street right-of-way dedication. When a subdivision is proposed with a masonry or other permanent perimeter screening wall adjacent to a street, the sidewalk shall be constructed by the developer at the same time as the screening wall. All sidewalks shall conform to the standards and specifications contained in this Land Development Code.
3. When circumstances exist wherein it is not practical to construct a sidewalk, the developer may be afforded the opportunity to escrow funds in an amount sufficient to pay for the construction of a sidewalk at some future date.
4. The issuance of a building permit is contingent on the written commitment of the applicant to construct a sidewalk or pay the required escrow amount.

- B. Trails System Sidewalks – When a proposed sidewalk coincides with the general location of a future sidewalk shown in the most recently approved Colleyville Trails System Plan, the sidewalk shall be constructed in accordance with the design standards for a trails system sidewalk. The standards and specifications for a trails system sidewalk are contained elsewhere in this Land Development Code. The developer shall be required to provide additional street right-of-way dedication or a public access easement of sufficient width to accommodate the trails system sidewalk. Where the trails system sidewalk will be located at the rear or to the side of a lot, such as within a green-belt or similar open space, the developer shall provide sufficient right-of-way or public access easement to accommodate the sidewalk.

Section 9.22 Street Lighting

- A. General Requirements – The developer shall be required to install, at no cost to the City, a street lighting system at all street intersections, at the end of all cul-de-sac streets, and at additional locations in accordance with the criteria contained elsewhere in *Chapter 14 – Engineering Design Standards* of this Land Development Code. All City Lighting shall be consistent with standard light pole ONCOR Texas Style Pole D with Luminaire F with a Finial Band. Any variance from this standard requires written approval from the Director of Public Works or designee.

Section 9.23 Amendments to This Chapter

Ord. Number	Date	Subject
O-00-1261	12/19/00	Cul-de sac street lengths
O-00-1261	12/19/00	Lot Drainage and Grading
O-00-1261	12/19/00	Fire Hydrants
O-00-1261	12/19/00	Divided Entryways
O-00-1280	08/08/01	Number of Subdivision Entryways
O-00-1214	12/18/01	Existing Unimproved Street Requirements
O-02-1336	04/16/02	Mutual Access Easements
O-06-1562	02/07/06	General Infrastructure Policy
O-07-1613	03/20/07	Emergency Access Gates
O-09-1712	03/03/09	Amendment to sidewalk regulations – Sections 9.12 and 9.19
O-12-1860	01/08/13	Amendment to sidewalk regulations adding appeal process to the City Council from the P&Z
O-14-1907	02/18/14	Amendment to Sidewalk Regulations & General Update
O-17-2015	08/15/17	Underground Utility Requirement
O-18-2057	9/04/2018	Several amendments as part of a total LDC review

RESOLUTION R-18-4327

A RESOLUTION APPROVING A REQUEST FOR A WAIVER FROM THE CONSTRUCTION AND ESCROW REQUIREMENTS AND APPROVING A REQUEST FOR A REFUND OF THE SIDEWALK ESCROW FEES IN THE AMOUNT OF \$2,200.00, FOR LOT 1R, BLOCK 1, OF THE VAN OAKS ADDITION, LOCATED AT 201 VAN OAKS DRIVE

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

- Sec. 1. THAT the sidewalk construction and escrow requirement for Lot 1R, Block 1, of the Van Oaks Addition, located at 201 Van Oaks Drive, is hereby waived.
- Sec. 2. THAT a refund in the amount of \$2,200.00 is hereby granted to Greg Fitzgerald, 201 Van Oaks Drive, Colleyville, Texas.

AND IT IS SO RESOLVED.

APPROVED BY A VOTE OF _ AYES, _ NAYS AND _ ABSTENTIONS ON THIS THE 20TH DAY OF NOVEMBER 2018.

Mayor Richard Newton
Place 1, Tammy Nakamura
Place 4, George Dodson
Place 6, Callie Rigney

_____	Mayor Pro Tem Bobby Lindamood	_____
_____	Place 3, Kathy Wheat	_____
_____	Place 5, Chuck Kelley	_____

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
City Secretary

Richard Newton
Mayor



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 9b

Agenda Date 11/20/2018

Number Resolution R-18-4328

Type Resolution

Department City Secretary

Title

Consideration of appointments to the Colleyville Community Garden Advisory Committee

Strategic Plan

1.2 Develop future community leaders

Explanation

Reading and Public Hearing

By attached Resolution R-17-4208, approved by City Council on December 5, 2017, a Colleyville Community Garden Advisory Committee was established, four members were appointed, and responsibilities of the Committee were outlined.

Section 1 of Resolution R-17-4208 provided for up to nine members to serve on the Committee. There are currently three members serving the Committee: Natalie Genco, Pam Buie, and Mary Ramatowski, with terms expiring December 2019.

At the direction of the City Council, vacancies were advertised and applications for appointment accepted through November 9, 2018. The applications for appointment are attached and were received from:

Rich Hendler	Uma Lal	Linda Newton
Amy Putnam	Sam van Bever	

This item provides for City Council to consider making appointments to the Colleyville Community Garden Advisory Committee and appointing a Chair.

Financial Impact

There is no financial impact to the City.

Recommendation

Approve

Attachments

1. Resolution R-17-4208
2. Colleyville Community Garden Committee Applications for Appointment
3. Resolution R-18-4328

RESOLUTION R-17-4208

A RESOLUTION ESTABLISHING A COLLEYVILLE COMMUNITY GARDEN ADVISORY COMMITTEE, APPOINTING MEMBERS, AND ASSIGNING COMMITTEE RESPONSIBILITIES

WHEREAS, the City Council desires to offer the citizens of Colleyville interactive community experiences; and

WHEREAS, the City Council desires to promote the development and operation of a community garden to be located in the City of Colleyville at McPherson Park; and

WHEREAS, the City Council seeks to involve citizens in the development of a community garden by creating a citizen advisory committee to liaison with the Colleyville Community Garden, a 501(c)3 organization ("CCG"), to enhance and promote coordination between the two entities in the creation and development of the community garden; and

WHEREAS, the City Council desires to establish the Colleyville Community Garden Advisory Committee with the passage of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

Sec. 1. THAT a new citizens advisory committee entitled the "Colleyville Community Garden Advisory Committee" ("Committee"), which may consist of up to nine (9) members, is hereby established.

Sec. 2. THAT the following citizens are hereby appointed to the initial Colleyville Community Garden Advisory Committee:

- Natalie Genco
- Nancy Cook
- Pam Buie
- Mary Ramatowski
- _____

Sec. 3. THAT additional members may be appointed by the City Council from time to time.

Sec. 4. The purpose of the Committee will be to act as liaison between the City Council and the CCG regarding the establishment and administration of a community garden to be located at

McPherson Park. The initial responsibilities of the Committee may include:

- a. Recommending the structure of the City of Colleyville's financial and administrative participation in the community garden.
- b. Evaluating and bringing forth the recommended needs of the CCG, to include development of a fee structure for the CCG's administration of the community garden.
- c. Establishing evaluation criteria for the design, maintenance, and success of a community garden.
- d. Administering the building, funding, and general operation of the community garden.
- e. Periodically reporting, generally quarterly, to the City Council recommendations of the Committee.

Sec. 5. The Committee may establish its own rules of procedure until or unless, standard bylaws, approved by the City Council, are adopted, subject to the following:

- a. A quorum of the initial five (5) member Committee shall be three (3) members.
- b. The City Council shall appoint a chair who shall be a voting member of the Committee.
- c. All actions of the Committee must be approved by a majority of the membership of the Committee.
- d. The chair shall preside over all meetings.
- e. The Committee shall elect from its membership a vice-chair, who shall preside over meetings of the Committee in the absence of the chair, and a secretary, who shall be responsible for maintaining the minutes of the meetings, and provide same to the City of Colleyville City Secretary
- f. The Committee may appoint from its membership such subcommittees as it deems necessary.

- Sec. 6. The City Manager is hereby authorized to provide such City resources as may be reasonable and necessary to support the operations of the Committee.
- Sec. 7. The Committee shall exist perpetually unless such term is amended or abolished by the City Council; provided that, the members of the Committee shall serve two (2) year terms and shall be appointed by resolution in accordance with the City of Colleyville Charter.
- Sec. 8. THAT this resolution shall take effect immediately upon passage.

AND IT IS SO RESOLVED.

APPROVED BY A VOTE OF 5 AYES, 2 NAYS, AND 0 ABSTENTIONS ON THIS THE 5TH DAY OF DECEMBER 2017.

Mayor Richard Newton	<u>AYE</u>	Mayor Pro Tem Bobby Lindamood	<u>AYE</u>
Place 1, Tammy Nakamura	<u>AYE</u>	Place 3, Kathy Wheat	<u>AYE</u>
Place 4, George Dodson	<u>AYE</u>	Place 5, Nancy Coplen	<u>NAY</u>
Place 6, Mike Taylor	<u>NAY</u>		

ATTEST:

Christine Loven, TRMC
City Secretary

CITY OF COLLEYVILLE

Richard Newton
Mayor



Application for Appointment

Planning and Zoning Commission and Zoning Board of Adjustment applicants are required to file Financial Disclosure and Business Conflict of Interest forms two (2) business days after the application deadline. These forms are available by contacting the City Secretary at 817.503.1130. [Download the financial disclosure form here.](#)

Board, Commission, or Committee Preference: (only those with current openings)

1. COLLEYVILLE COMMUNITY GARDEN COMMITTEE
2. CLICK TO VIEW AND CHOOSE
3. CLICK TO VIEW AND CHOOSE

Name: Ms. Mrs. Mr. Richard Hendler

Address: 2100 Highland Meadows Colleyville

Home Phone: _____ Work Phone: 817-821-0005

E-mail Address: rjhen52@gmail.com

Fax: _____

- ☒ I understand attendance and active support is required for each appointee.
- ☒ I understand I am required to comply with the Texas Open Meetings Act training.
- ☒ I understand I must bring my own device to meetings to view packet information.
- ☒ By checking this line, I consent to the City's use and release of all information provided in this application, to include the address, telephone, and email address provided.
- ☒ Additional materials attached.

1. **City service and experience, civic organizations, knowledge, experience, or education applicable to Board, Commission, or Committee function:**
Lots, Parks & Rec Adv Board , City Council , lots more
2. **What do you perceive your role will be in serving on a board, commission, or committee?**
Active , energetic and thoughtful
3. **In your opinion, what policies/programs/assets of Colleyville are working well?**
Most
4. **What are some issues in Colleyville that may require change?**
Past decisions on Hwy 26
5. **If you could influence the City in just one way, what would that be?**
Build a more communicative and appreciative community
6. **Please share with us your vision for the City of Colleyville.**
Great city that can improve !

Signature: Richard J. Hendler Date: 10/12/2018

All information provided is public pursuant to the Texas Public Information Act. Please return completed application to: City Secretary, 100 Main Street, Colleyville, TX 76034 Office: 817.503.1130 Fax: 817.503.1139; cloven@colleyville.com or kseiger@colleyville.com.



Application for Appointment

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Board, Commission, or Committee Preference: (only those with current openings)

1. COLLEYVILLE COMMUNITY GARDEN COMMITTEE
2. CLICK TO VIEW AND CHOOSE
3. CLICK TO VIEW AND CHOOSE

Name: Ms. Mrs. Mr. Mrs Uma Giri Lal
Address: 4704 Bill Simmons Rd
Home Phone: 817-545-4245 Work Phone: Cell 817-908-9097
E-mail Address: Umaglal@hotmail.com Fax: _____

- ☒ I understand attendance and active support is required for each appointee.
- ☒ I understand I am required to comply with the Texas Open Meetings Act training.
- ☒ I understand I must bring my own device to meetings to view packet information.
- ☒ By checking this line, I consent to the City's use and release of all information provided in this application, to include the address, telephone, and email address provided.
- ____ Additional materials attached.

1. **City service and experience, civic organizations, knowledge, experience, or education applicable to Board, Commission, or Committee function:**
I have a bachelors degree in Computer Engineering. I have worked for about 20 yrs with several different Company. Last 15 yrs I have been taking care of my home and children. My both kids are in college now. I am very active in the Colleyville Garden Club and enjoy outdoors and gardening.
2. **What do you perceive your role will be in serving on a board, commission, or committee?**
Have lived in Colleyville since 2002. Love the community. Would like to make Colleyville more beautiful and get involve in the community. I am not very involved in the city part but would like to be. Since I enjoy gardening and have a lot of experience in gardening would love to get involved in the Community Garden.
3. **In your opinion, what policies/programs/assets of Colleyville are working well?**
Love the convenience of having everything in our small city.
4. **What are some issues in Colleyville that may require change?**
I am not sure if anything needs to be changed. I would like to get involved more and learn more what is happening in our city.
5. **If you could influence the City in just one way, what would that be?**
Keep Colleyville beautiful. Love the rural feel lets keep it that way.
6. **Please share with us your vision for the City of Colleyville.**
Lower our Property Tax. Keep the community Safe.

Signature: Umaglal Date: 11-12-18

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Application for Appointment

Planning and Zoning Commission and Zoning Board of Adjustment applicants are required to file Financial Disclosure and Business Conflict of Interest forms two (2) business days after the application deadline. These forms are available by contacting the City Secretary at 817.503.1130. [Download the financial disclosure form here.](#)

Board, Commission, or Committee Preference: (only those with current openings)

1. COLLEYVILLE COMMUNITY GARDEN COMMITTEE

2. CLICK TO VIEW AND CHOOSE

3. CLICK TO VIEW AND CHOOSE

Name: Ms. (Mrs.) Mr. Linda G. Newton

Address: 1208 Holly Lane, Colleyville, TX 76034

Home Phone: 817-329-0100

Work Phone: _____

E-mail Address: lindagates@verizon.net

Fax: _____

- ☒ I understand attendance and active support is required for each appointee.
☒ I understand I am required to comply with the Texas Open Meetings Act training.
☒ I understand I must bring my own device to meetings to view packet information.
☒ By checking this line, I consent to the City's use and release of all information provided in this application, to include the address, telephone, and email address provided.
☒ Additional materials attached.

1. City service and experience, civic organizations, knowledge, experience, or education applicable to Board, Commission, or Committee function:

Please see attachment

2. What do you perceive your role will be in serving on a board, commission, or committee?

To familiarize myself with the purposes of the board, the directions of the city council & staff, and to listen to citizen input. To assist in planning & implementing those goals & objectives.

3. In your opinion, what policies/programs/assets of Colleyville are working well?

As far as I know, all are currently working well.

4. What are some issues in Colleyville that may require change?

I'm not aware of any at this time.

5. If you could influence the City in just one way, what would that be?

To instill a spirit of cooperation and volunteerism in citizens, and to encourage those in leadership roles to remain open to input and suggestions from all citizens.

6. Please share with us your vision for the City of Colleyville.

Retain to the degree possible - our heritage of land preservation through density & open space regulations. Continue to develop programs & activities that promote community involvement and events.

Signature: Linda G. Newton

Date: 11-8-18

EDUCATION

Masters of Business Administration/Public Administration, University of Texas at Arlington
B.B.A., Finance, University of Texas at Arlington
Graduate of Grapevine High School

COMMUNITY ACTIVITIES

CITY OF COLLEYVILLE

Councilperson, 1989 - 1993

Mayor Pro Tem, 1992 - 1993

Planning and Zoning Commission, 1982 - 1984

Corridor Study Committee Chairman, 1994

Community Center Committee, 1993 - 1994

Sesquicentennial Committee Chairman, 1985 – 1986

Celebrate Colleyville Committee, 2001-2002

UNITED WAY

Steering Committee, United Way - Northeast

Member, Metroplatan Tarrant County United Way Community Investment Division Board

Chairman, Family Focus Committee

THE PARENTING CENTER

Member, Board of Directors

Member, Executive Board

Chairmen, Public Relations Committee

GRAPEVINE RELIEF AND COMMUNITY EXCHANGE (GRACE)

Member, Board of Director

Member, Evaluation Committee

COLLEYVILLE AREA CHAMBER OF COMMERCE

Board of Directors, 1984 - 1986

First Vice President, 1982 - 1983

Outstanding Service Award, 1984

Community Service Award, 1988

Co-founder/chair, Leadership Colleyville

Leadership Colleyville Planning Committee, 2018

GRAPEVINE-COLLEYVILLE I.S.D.

Bransford Elementary Excellence Committee, 1993 - 1995

Citizens Advisory Committee, 1986 – 1987

GCISD Walk of Honor Board, 2017-2018

JUNIOR ACHIEVEMENT

Project Business Volunteer Teacher, 1987 - 1989



Application for Appointment

Planning and Zoning Commission and Zoning Board of Adjustment applicants are required to file Financial Disclosure and Business Conflict of Interest forms two (2) business days after the application deadline. These forms are available by contacting the City Secretary at 817.503.1130. Download the financial disclosure form here.

Board, Commission, or Committee Preference: (only those with current openings)

COLLEYVILLE COMMUNITY GARDEN COMMITTEE

1. _____
2. CLICK TO VIEW AND CHOOSE _____
3. CLICK TO VIEW AND CHOOSE _____

Name: Ms. (Mrs) Mr. Amy Putnam
Address: 7301 Chanel Ct Colleyville TX 76034
Home Phone: 817) 9915889 Work Phone: _____
E-mail Address: amy.putnam@verizon.net Fax: _____

- ☒ I understand attendance and active support is required for each appointee.
☒ I understand I am required to comply with the Texas Open Meetings Act training.
☒ I understand I must bring my own device to meetings to view packet information.
☒ By checking this line, I consent to the City's use and release of all information provided in this application, to include the address, telephone, and email address provided.
____ Additional materials attached.

1. City service and experience, civic organizations, knowledge, experience, or education applicable to Board, Commission, or Committee function:

Masters in Education - counseling, taught 5th grade in 2 districts, PTA board, Booster leader for GHS Tennis Team

2. What do you perceive your role will be in serving on a board, commission, or committee?

To help bring education & beauty to Colleyville - work with KISD & GCISD to have students experience gardening & science in a real world application

3. In your opinion, what policies/programs/assets of Colleyville are working well?

Transparency - communication with our citizens, protecting taxpayers with sound and common sense approach to city taxes and services such as water

4. What are some issues in Colleyville that may require change?

Finish the roads - people will be happy

5. If you could influence the City in just one way, what would that be?

Keep our leaders transparent & communicating with all citizens -

6. Please share with us your vision for the City of Colleyville.

A rural feel in the heart of hustle & bustle - the Garden would enhance this

Signature: Amy Putnam Date: Oct 22, 2018

All information provided is public pursuant to the Texas Public Information Act. Please return completed application to: City Secretary, 100 Main Street, Colleyville, TX 76034 Office: 817.503.1130 Fax: 817.503.1139; cloven@colleyville.com or kseiger@colleyville.com.



Application for Appointment

Planning and Zoning Commission and Zoning Board of Adjustment applicants are required to file Financial Disclosure and Business Conflict of Interest forms two (2) business days after the application deadline. These forms are available by contacting the City Secretary at 817.503.1130. [Download the financial disclosure form here.](#)

Board, Commission, or Committee Preference: (only those with current openings)

1. COLLEYVILLE COMMUNITY GARDEN COMMITTEE ☐
2. CLICK TO VIEW AND CHOOSE
3. CLICK TO VIEW AND CHOOSE

Name: Ms. Mrs. Mr. Samuel L. van Bever

Address: 4105 Crest Court

Home Phone: 817-427-4105 Work Phone: 972-764-6727

E-mail Address: slv4105@gmail.com Fax: _____

- ☒ I understand attendance and active support is required for each appointee.
☒ I understand I am required to comply with the Texas Open Meetings Act training.
☒ I understand I must bring my own device to meetings to view packet information.
☒ By checking this line, I consent to the City's use and release of all information provided in this application, to include the address, telephone, and email address provided.
☐ Additional materials attached.

1. **City service and experience, civic organizations, knowledge, experience, or education applicable to Board, Commission, or Committee function:**
Planning and Zoning
Water Rates Commission
2. **What do you perceive your role will be in serving on a board, commission, or committee?**
Any duties as assigned: Organization of the Committee, getting it going, assistance with administration
3. **In your opinion, what policies/programs/assets of Colleyville are working well?**
All of them. Particularly stewardship of city revenues and assets, citizen oriented approach, accessibility of staff, council and the mayor.
4. **What are some issues in Colleyville that may require change?**
I think we may have more work in beautification and standardization of residential codes. To bring consistency to the enforcement of city codes.
5. **If you could influence the City in just one way, what would that be?**
Generate pride in what we have here. Citizen awareness of what we need to do to keep it that way.
6. **Please share with us your vision for the City of Colleyville.**
A world class bedroom community with top notch schools, housing and general ambience. We already have so much in terms of public safety, fire, responsiveness of city staff.

Signature: Samuel L. van Bever Date: 10-15-2018

All information provided is public pursuant to the Texas Public Information Act. Please return completed application to: City Secretary, 100 Main Street, Colleyville, TX 76034 Office: 817.503.1130 Fax: 817.503.1139; cloven@colleyville.com or kseiger@colleyville.com.

RESOLUTION R-18-4328

**A RESOLUTION APPOINTING MEMBERS TO THE
COLLEYVILLE COMMUNITY GARDEN ADVISORY COMMITTEE**

WHEREAS, six (6) positions on the Colleyville Community Garden Advisory Committee are vacant.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF COLLEYVILLE, TEXAS:**

Sec. 1. THAT the Colleyville City Council hereby appoints the following persons to serve a two-year term, expiring December 2020:

- Rich Hendler
- Uma Lal
- Linda Newton
- Amy Putnam
- Sam van Bever

Sec. 2. THAT the Colleyville City Council hereby appoints _____ as Chair.

AND IT IS SO RESOLVED.

APPROVED BY A VOTE OF _ AYES, _ NAYS, AND _ ABSTENTIONS ON THIS
THE 20TH DAY OF NOVEMBER.

Mayor Richard Newton	_____	Mayor Pro Tem Bobby Lindamood	_____
Place 1, Tammy Nakamura	_____	Place 5, Chuck Kelley	_____
Place 3, Kathy Wheat	_____	Place 6, Callie Rigney	_____
Place 4, George Dodson	_____		

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
City Secretary

Richard Newton
Mayor



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 10a

Agenda Date 11/20/2018

Number Resolution R-18-4323

Type Resolution

Department Community Development

Title

Consideration of a combination Preliminary/Final Plat for Carmel Place Estates East on Tracts 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey, located at 1309 Glade Road, Case PC18-012

Strategic Plan

4.1 Protect Colleyville's semi-rural residential character

Explanation

Reading and Public Hearing

This item was tabled at the November 5, 2018 City Council meeting. The applicant has reoriented the front 2 lots to face Carmel Place per the recommendation of the Planning & Zoning Commission. With the change, a plat waiver to allow 14 lots on a cul-de-sac street will be required. The previously approved PUD-R for Carmel Place Estates authorized the length of the cul-de-sac to exceed 600 feet in length without the requirement for widening the right-of-way and street pavement widths.

Rome Barnes, the applicant, has submitted a request for a Preliminary/Final Plat on Tracts 2A01 & 2A02, Abstract 1543, in the George W Teeter Survey, being approximately 4.369 acres, and zoned AG Agricultural. The purpose is to allow for development of five new single-family residential lots.

Existing Conditions/Background: The subject property, 1309 Glade Road, is located on the east side of Carmel Place across from an existing Planned Unit Development – Residential (PUD-R) subdivision called Carmel Place. The property currently has Agricultural zoning (AG) and remains undeveloped, except for a single house on the property, which is planned to be removed.

Surrounding Development: All of the surrounding property has developed with single family residences, using a variety of zoning classifications, which include R-20 and PUD-R (Planned Unit Development – Residential).

Drainage: A drainage analysis was completed for Carmel Place Estates and the area for Carmel Place Estates East was included in the analysis. Specific lot drainage for the five lots will be part of the engineering plans and consistent with the already submitted drainage analysis.

Analysis: The requested Preliminary/Final Plat allows the applicant to develop the lots

in a manner complementary to the approved PUD-R on the west side of Carmel Place while also being compatible with the neighborhood surrounding it.

Plat waivers are needed for the lot widths of Lots one (1) and two (2), which are shown as 116.43 feet because a 125' lot width is required for R-30 zoning.

Fees: Park Land Dedication fees are required in the amount of \$1,802 per residential lot. Park Land Dedication fees are due prior to filing the plat for record. Impact Fees are also required per Chapter 13 (Impact Fees) of the Land Development Code and are due prior to the issuance of a Building Permit.

Tree Preservation: Any subdivision of the subject property must comply with Chapter 5 (Tree Preservation) of the Land Development Code. Where any tree is slated for removal, no site grading, dirt disturbance or new construction may occur on the property until a Tree Removal Permit has been issued that is associated with an approved Tree Preservation Plan.

In addition to the requirements for submittal of a Tree Removal Permit and Tree Preservation Plan, future development on the site must maintain the minimum existing protected tree canopy coverage as required in Chapter 5.

Comprehensive Plan: The City's comprehensive plan, *Destination Colleyville*, identifies the subject property for single-family residential development. The proposed R-30 zoning does not conflict with any portion of the comprehensive plan. The proposed R-30 zoning facilitates the maximum desired residential density of 1.45 units per net acre.

Staff Recommendation: The proposed Preliminary/Final Plat will meet the requirements of the Land Development Code if the zoning is approved. Staff recommends approval with a plat waiver to lot width for Lots 1 and 2.

Planning & Zoning Commission Recommendation: The Planning & Zoning Commission recommended approval of the Preliminary/Final Plat with a condition that Lots 1 & 2 be oriented to face Carmel Place at their September 10, 2018 meeting by a vote of 4-0.

Financial Impact

There is no financial impact to the City.

Recommendation

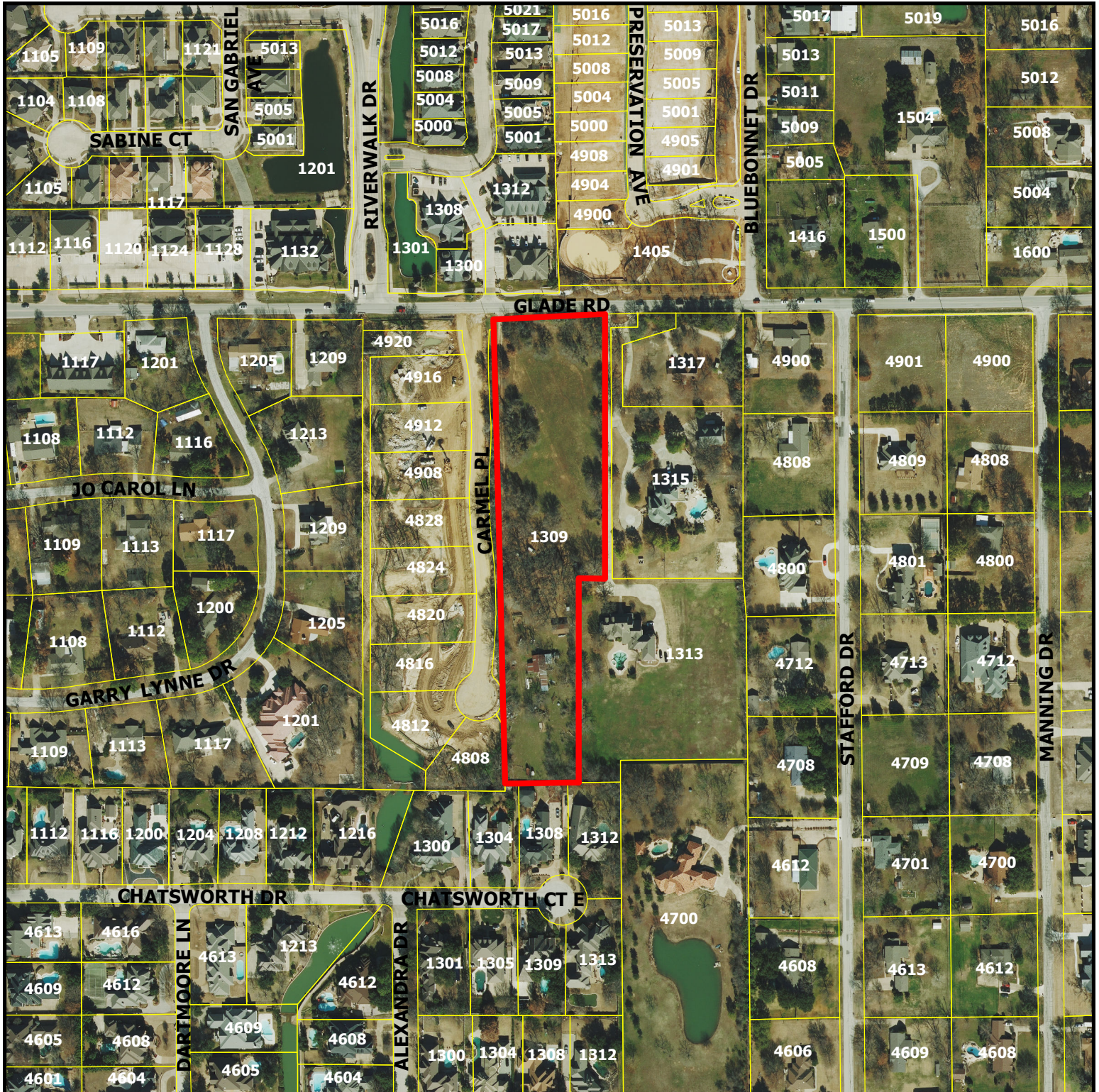
Approve

Attachments

1. Aerial Map
2. Zoning Map

3. Future Land Use Map
4. Original Plat Exhibit
5. Layout Exhibit
6. Updated Plat Exhibit 11.01.18
7. Resolution R-18-4323

Aerial Map



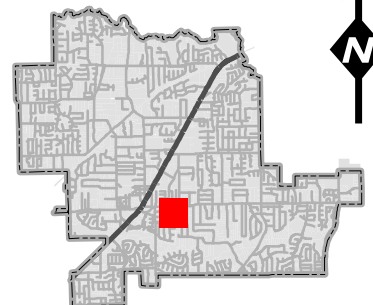
PC18-012

1309 Glade Road

DISCLAIMER:
This map and information contained in it were developed exclusively for use by the City of Colleyville. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Colleyville, its officials or employees for any discrepancies, errors, or variances which may exist.



Subject Property



Zoning Map



PC18-012

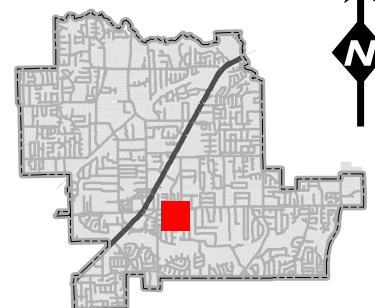
1309 Glade Road

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Subject Property



Future Land Use Map

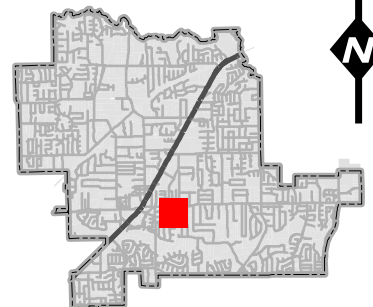


PC18-012

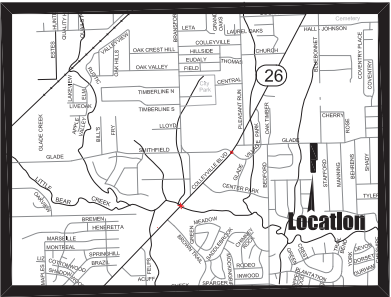
1309 Glade Road

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 Subject Property



Plat Exhibit



OWNER:
CADG CARMEL PLACE, LLC
1800 VALLEY VIEW LANE, SUITE 300
FARMERS BRANCH, TEXAS 75234
CONTACT: MEHRDAD MOAYEDI

ENGINEER/APPLICANT:
ION DESIGN GROUP, INC.
7075 TWIN HILLS AVENUE, SUITE 350
DALLAS, TX 75231
CONTACT: BRYAN KLEIN/JASON TRAFTON, PE
214-370-3470

STATE OF TEXAS
COUNTY OF TARRANT

OWNER'S DEDICATION AND CERTIFICATE

WHEREAS CADG Carmel Place, LLC, acting by and through the undersigned agent thereof, is the owners Being a tract of land out of the George W. Teeter Survey, Abstract No. 1543 and situated in the City of Colleyville, Tarrant County, Texas, and surveyed by Miller Surveying, Inc. of Hurst, Texas in November 2017, said tract being a portion of the same tract of land described in the deed to Robert Gene Hubbard et ux, Peggy Hubbard recorded in Volume 4008, Page 406 in the Deed Records of Tarrant County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch steel rod found in the southerly right-of-way line of Glade Road (Co. Rd. 3036), said rod being in the northerly boundary line of "Tract No. 1" of said Hubbard Deed and also being the most northerly northwest corner of Lot 1, Block 1, Greener Acres, an addition to the City of Colleyville, Texas according to the plat thereof recorded in Cabinet A, Slide 4936 of the Plat Records of said County;

Thence South 00 degrees 14 minutes 15 seconds East with the westerly boundary line of said Lot 1 a distance of 553.09 feet to a 1/2 inch "MILLER 5665" capped steel rod set for an inner corner thereof;

Thence South 89 degrees 25 minutes 35 seconds West continuing with said westerly boundary line a distance of 58.10 feet to a 1/2 inch steel rod found for an outer point thereof;

Thence South 00 degrees 12 minutes 14 seconds West continuing with said westerly boundary line a distance of 415.82 feet to a 1/2 inch steel rod found for the southwest corner of said Lot 1, said rod being in the northerly boundary line of Block 1, The Lakes of Somerset, an addition to the City of Colleyville, Texas according to the plat thereof recorded in Cabinet A, Slide 312 of said plat records;

Thence North 89 degrees 46 minutes 39 seconds West with said northerly boundary line a distance of 151.92 feet to a point in a fence post found in the easterly boundary line of Carmel Place Estates, an addition to the City of Colleyville, Texas according to the plat thereof recorded as Instrument No. 0217142798 of the Official Public Records of said County;

Thence North 01 degrees 25 minutes 38 seconds West with said easterly boundary line a distance of 968.78 feet to a cross in concrete set for the northwest corner of said Tract 1, said cross being in said southerly right-of-way line;

Thence North 89 degrees 53 minutes 54 seconds East with the northerly boundary line of said Tract 1 and with said southerly right-of-way line a distance of 233.33 feet to the point of beginning and containing 4.3968 acres of land, more or less.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That CADG Carmel Place, LLC, acting by and through the undersigned agent thereof, do hereby adopt this plat designating the hereinbefore described property as **CARMEL PLACE ESTATES EAST**, an addition to the City of Colleyville, Tarrant County, Texas, and do hereby dedicate fee simple to the public use forever all streets, rights-of-way, and alleys shown thereon, and do hereby reserve the easements shown on this plat for the mutual use and accommodation of all public utilities desiring to use or using the same. Any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs or other improvements or growths in which any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of these easements, and any public utility shall at all times have the right of ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, and patrolling, without the necessity at any time of procuring the permission of anyone. This plat approved subject to all platting ordinances, rules regulations, and resolutions of the City of Colleyville, Texas.

Witness my hand this ____ day of _____, 20____.

CADG Carmel Place, LLC

STATE OF TEXAS §
COUNTY OF TARRANT §

Before me, the undersigned, a Notary Public in and for said County and State on this date appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purpose and considerations therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 20____.

Notary Public for the State of Texas

PLANNING AND ZONING COMMISSION APPROVAL

WHEREAS The Planning and Zoning Commission of the City of Colleyville, Texas voted affirmatively on this the ____ day of _____, 20____, to approve this Plat.

Chairman, Planning and Zoning Commission _____

Attest: Secretary, Planning and Zoning Commission _____

Preliminary Plat

LOTS 1 THRU 5, BLOCK A
CARMEL PLACE ESTATES EAST
an addition to the City of Colleyville, Tarrant County, Texas

Consisting of 5 lots and being 4.3968 acres of land out of the
GEORGE W. TEETER SURVEY, ABSTRACT NO. 1543
Surveyed in March of 2018

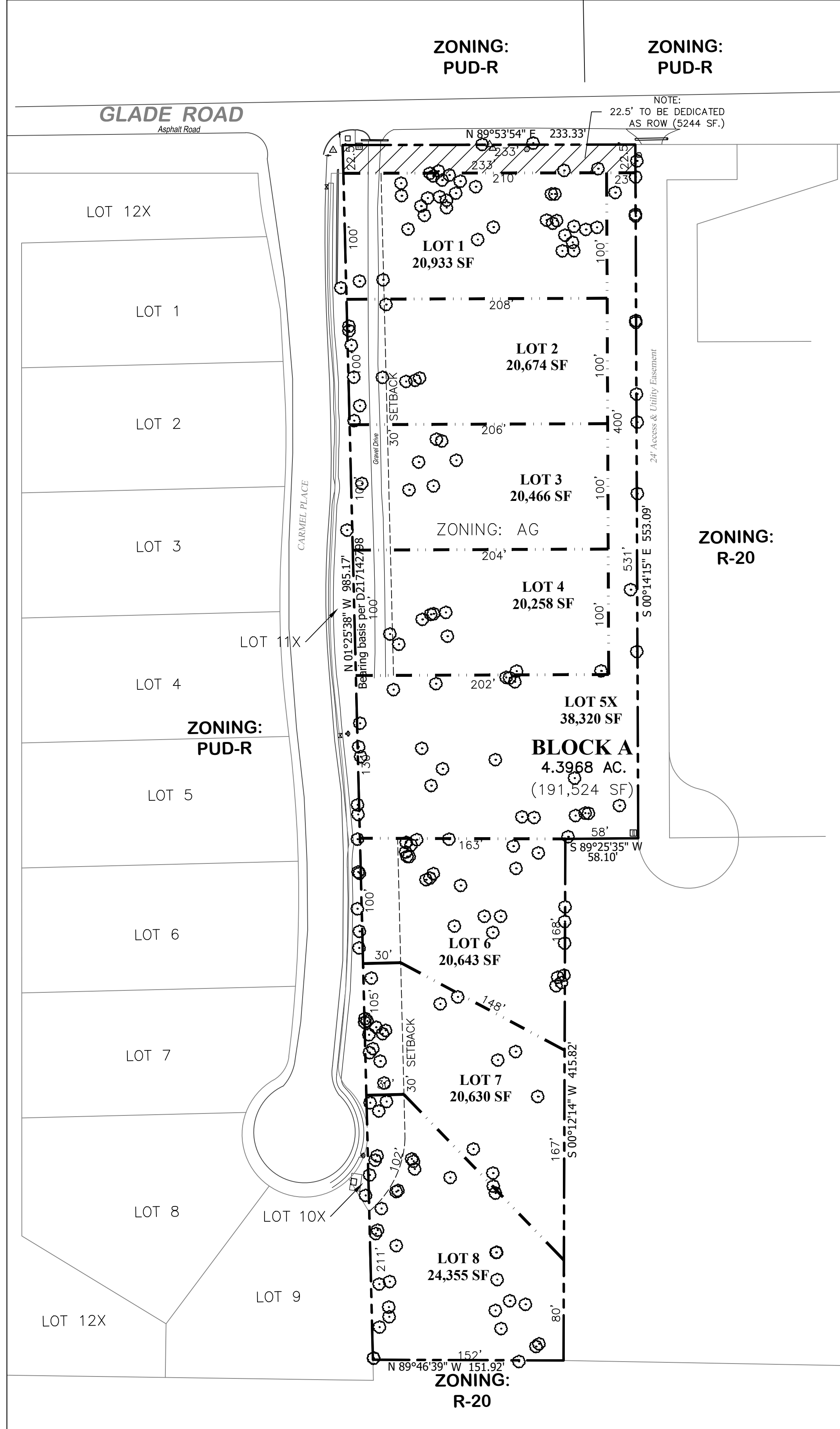
KNOW ALL MEN BY THESE PRESENTS:

That I, Jason B. Rawlings, Registered Professional Land Surveyor No. 5665 licensed in the State of Texas, do hereby certify that this Plat is true and correct and was prepared from an actual survey made under my supervision on the ground. Further, this survey conforms to the general rules of procedures and practices of the most current Professional Land Surveying Practices Act.

Jason B. Rawlings Date _____

MILLER
Surveying, Inc.
Commercial • Residential • Municipal
430 Mid Cities Blvd. 817-577-1052
Hurst, Texas 76054 TxLSF No. 10100400
miller@survey.net

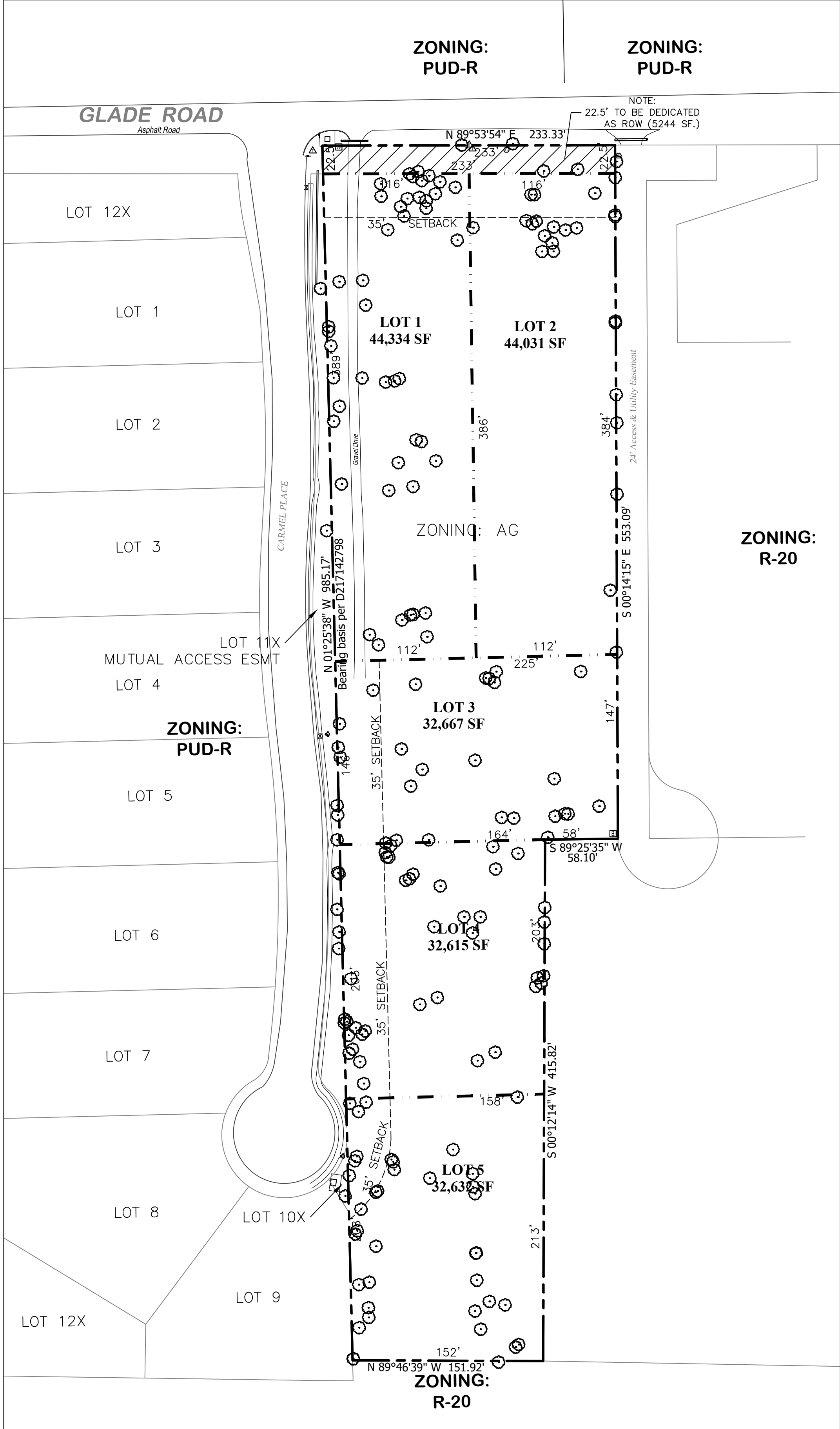
Original Zoning Case



NOTES

1. Zoning not approved.

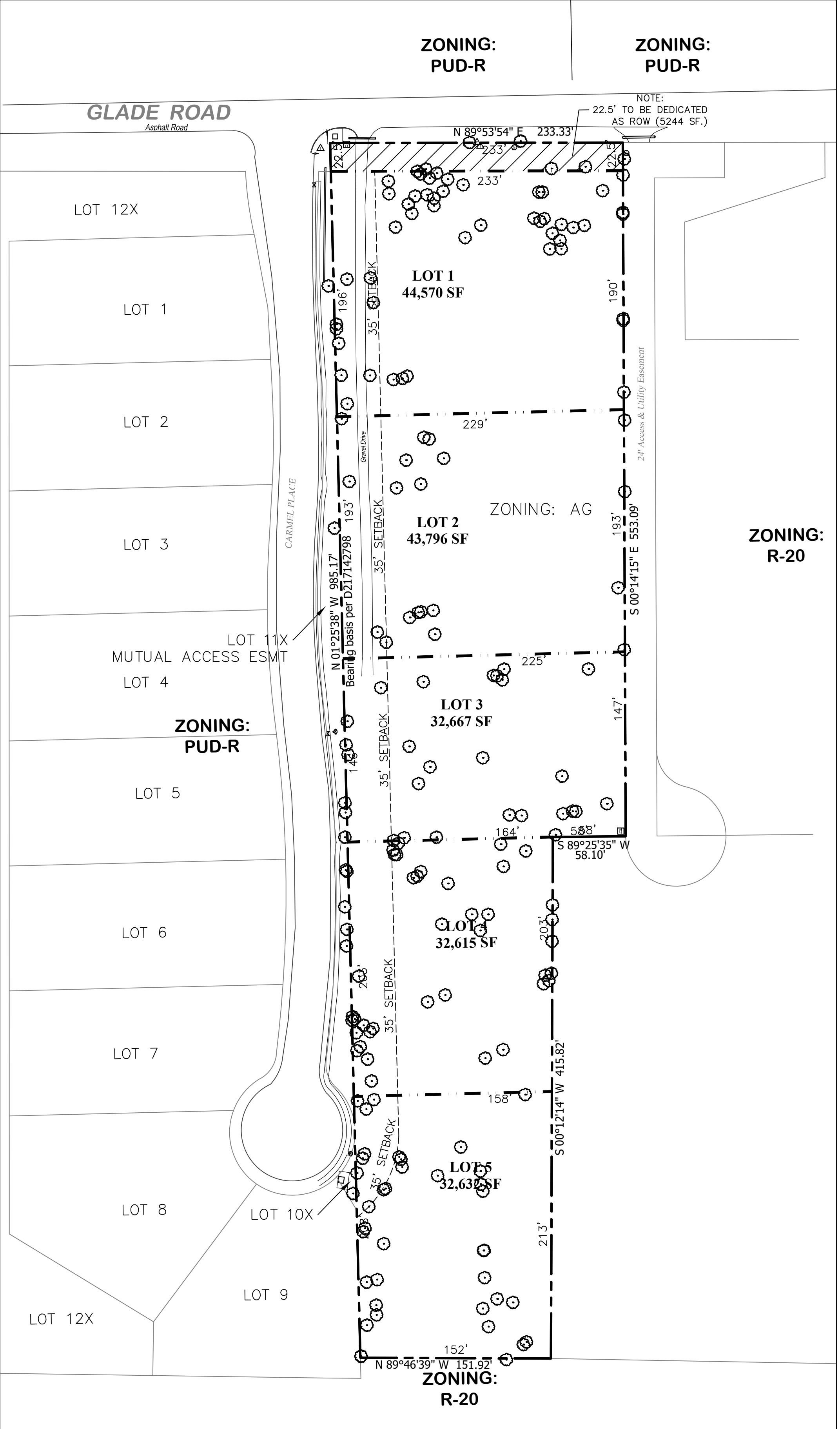
Present Zoning Application



NOTES

1. Needs lot width waiver for Lots 1 & 2.

Alternate Layout



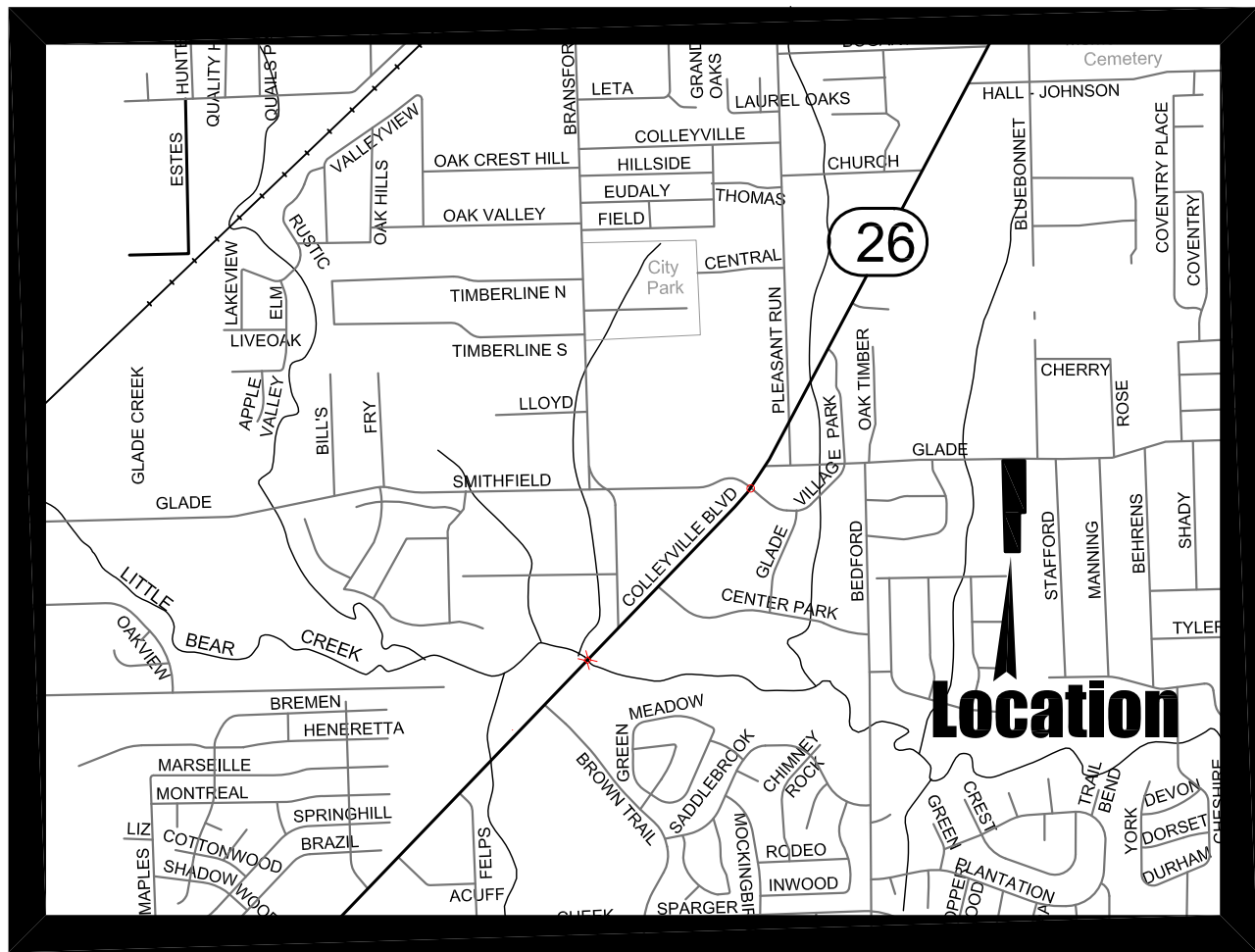
NOTES

1. Needs allowance to front Lots 1 & 2 to Carmel Place.
2. Needs allowance to accept Carmel Place at existing width.

10.01.2018



7075 Twin Hills Ave
Suite 350
Dallas, Texas 75231
Firm TX F6701
214.370.3470 Ph



STATE OF TEXAS
COUNTY OF TARRANT

OWNER'S DEDICATION AND CERTIFICATE

WHEREAS CADG Carmel Place, LLC, acting by and through the undersigned agent thereof, is the owners Being a tract of land out of the George W. Teeter Survey, Abstract No. 1543 and situated in the City of Colleyville, Tarrant County, Texas, and surveyed by Miller Surveying, Inc. of Hurst, Texas in November 2017, said tract being a portion of the same tract of land described in the deed to Robert Gene Hubbard et ux, Peggy Hubbard recorded in Volume 4069, Page 406 in the Deed Records of Tarrant County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch steel rod found in the southerly right-of-way line of Glade Road (Co. Rd. 3036), said rod being in the northerly boundary line of "Tract No. 1" of said Hubbard Deed and also being the most northerly northwest corner of Lot 1, Block 1, Greener Acres, an addition to the City of Colleyville, Texas according to the plat thereof recorded in Cabinet A, Slide 4936 of the Plat Records of said County;

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Witness my hand this ____ day of _____, 20____.

CADG Carmel Place, LLC

STATE OF TEXAS §
COUNTY OF TARRANT §

Before me, the undersigned, a Notary Public in and for said County and State on this date appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purpose and considerations therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 20____.

Notary Public for the State of Texas

PLANNING AND ZONING COMMISSION APPROVAL

WHEREAS The Planning and Zoning Commission of the City of Colleyville, Texas voted affirmatively on this the ____ day of _____, 20____, to approve this Plat.

Chairman, Planning and Zoning Commission

Attest: Secretary, Planning and Zoning Commission

OWNER:
CADG CARMEL PLACE, LLC
1800 VALLEY VIEW LANE, SUITE 300
FARMERS BRANCH, TEXAS 75234
CONTACT: MEHRDAD MOAYEDI

ENGINEER/APPLICANT:
ION DESIGN GROUP, INC.
7075 TWIN HILLS AVENUE, SUITE 350
DALLAS, TX 75231
CONTACT: BRYAN KLEIN/JASON TRAFTON, PE
214-370-3470

Preliminary Plat

LOTS 1 THRU 5, BLOCK A CARMEL PLACE ESTATES EAST

an addition to the City of Colleyville, Tarrant County, Texas

Consisting of 5 lots and being 4.3968 acres of land out of the

GEORGE W. TEETER SURVEY, ABSTRACT NO. 1543

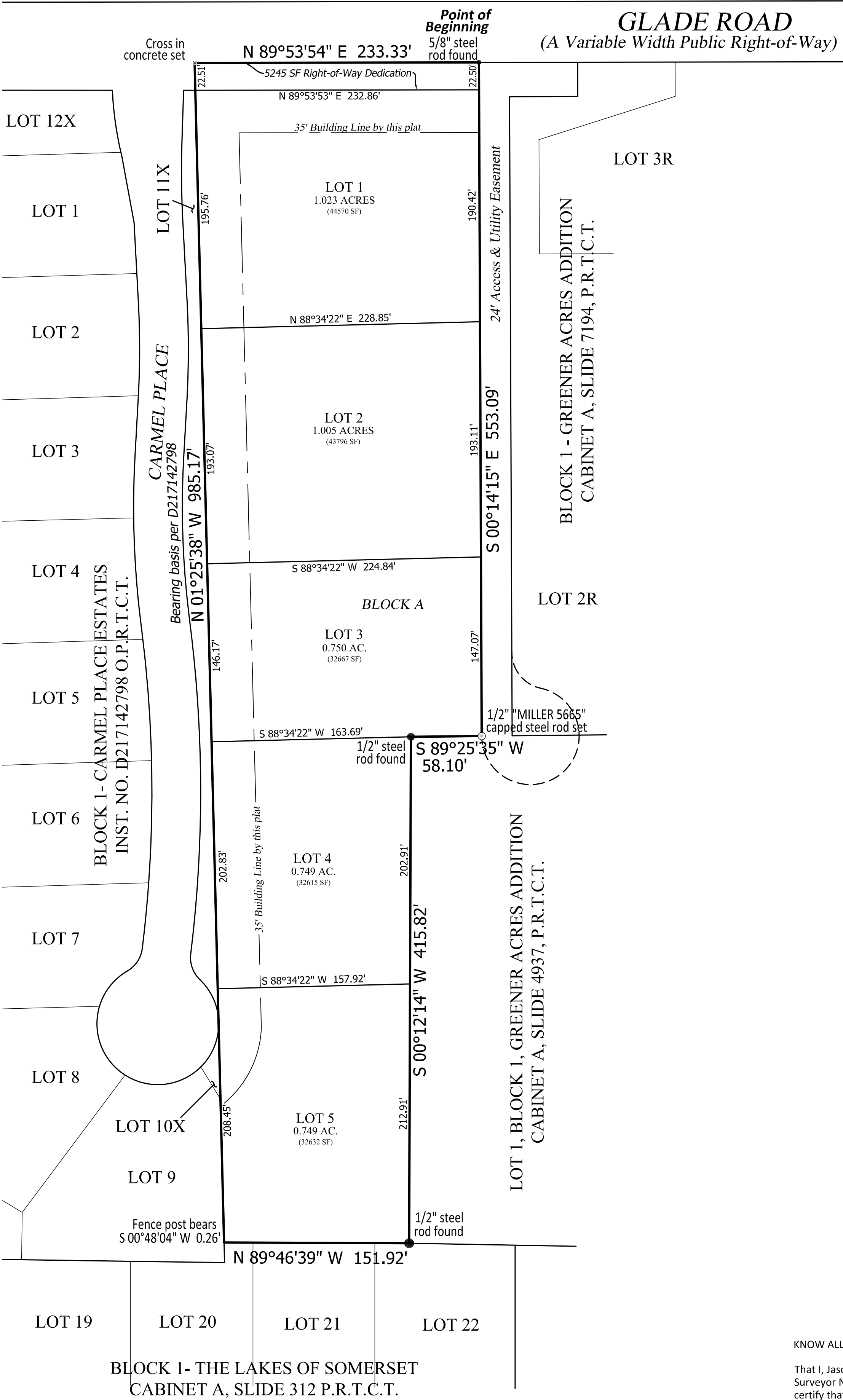
Surveyed in March of 2018

MILLER
Surveying, Inc.
Commercial • Residential • Municipal
430 Mid Cities Blvd. 817-577-1052
Hurst, Texas 76054 TxLSF No. 10100400
millersurvey.net

KNOW ALL MEN BY THESE PRESENTS:

That I, Jason B. Rawlings, Registered Professional Land Surveyor No. 5665 licensed in the State of Texas, do hereby certify that this Plat is true and correct and was prepared from an actual survey made under my supervision on the ground. Further, this survey conforms to the general rules of procedures and practices of the most current Professional Land Surveying Practices Act.

Jason B. Rawlings Date



RESOLUTION R-18-4323

A RESOLUTION APPROVING A PRELIMINARY/FINAL PLAT FOR LOTS 1 - 5, BLOCK A, OF THE CARMEL PLACE ESTATES EAST ADDITION

WHEREAS, the Planning and Zoning Commission recommended approval of the Preliminary/Final Plat for Lots 1-5, Block A, of the Carmel Place Estates East Addition on September 10, 2018 with a condition that Lots 1 and 2 be oriented to face Carmel Place.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

Sec. 1. THAT the Preliminary/Final Plat for Lots 1-5, Block A, of the Carmel Place Estates East Addition on approximately 4.396 acres, attached as Exhibit "A" - Plat Exhibit, is hereby approved with the following plat waivers:

1. Cul-de-sac Street Design: The cul-de-sac shall be allowed as currently constructed in regard to pavement width and shall allow for a total of 14 lots with all lots facing Carmel Place.

AND IT IS SO RESOLVED.

APPROVED BY A VOTE OF ____ AYES, ____ NAYS, AND ____ ABSTENTIONS ON THIS THE 20th DAY OF NOVEMBER 2018.

Mayor Richard Newton _____
Place 1, Tammy Nakamura _____
Place 3, Kathy Wheat _____
Place 4, George Dodson _____

Mayor Pro Tem Bobby Lindamood _____
Place 5, Chuck Kelley _____
Place 6, Callie Rigney _____

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
City Secretary

Richard Newton
Mayor

[illegible]



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 10b

Agenda Date 11/20/2018

Number Resolution R-18-4294

Type Resolution

Department Community Development

Title

RESOLUTION R-18-4294 - Consideration of a final plat for Lots 1, 2, and 3X, Block 1, Old Grove Addition, Phase II, located at 105 and 103 John McCain Road and 7189 Cast Iron Forest Trail, Case PC17-004

Strategic Plan

There is no Strategic Plan connection for this item.

Explanation

This item remained tabled at the November 5, 2018 City Council meeting.

This item remained tabled at the October 16, 2018 City Council meeting.

This item remained tabled at the October 1, 2018 City Council meeting.

This item remained tabled at the September 18, 2018 City Council meeting.

This item remained tabled at the September 4, 2018 City Council meeting.

This item remained tabled at the August 21, 2018 City Council meeting.

This item was tabled at the August 7, 2018 City Council Meeting.

Reading and Public Hearing

Kevin Kessler, the applicant, requests approval of a final plat for Lots 1, 2, and 3X, Block 1, Old Grove Addition on approximately 2.20 acres, located at 105 and 103 John McCain Road and 7189 Cast Iron Forest Trail. The applicant proposes to combine and redevelop 2 lots, an old right-of-way area, and an open space lot into 2 single-family residential lots and an open space lot. The old right-of-way area will be abandoned as part of the plat.

Existing Conditions/Background: The subject property is currently zoned PUD-R Planned Unit Development – Residential district and is a combination of Lots 1 & 2, Block 1, Neidholt Addition, and old right-of-way area, and Lot 2X, Block E, Old Grove Addition. The property is generally located east of Cast Iron Forest Trail and southwest of John McCain Road as it turns north. The property is currently undeveloped. The plat up for consideration proposes to combine and redevelop the property for future

residential development on 2 lots and an open space lot.

Lot Dimensions and Setbacks:

Per Ordinances O-04-1475, Lot Requirements and Setbacks, the PUD zoning regulations require the following standards:

- Minimum Lot Area: 13,000 square feet
- Average Lot Area: 16,000 square feet
- Minimum Lot Width: 90 feet
- Minimum Lot Depth: 120 feet
- Minimum Front Yard Setback: 25 feet
- Minimum Side Yard Setbacks: 10 feet
- Minimum Rear Yard Setback: 25 feet

As submitted, the proposed plat meets all of the requirements of the PUD-R zoning and the Land Development Code.

Surrounding Development: The properties to the north, south, and west are zoned PUD-R Planned Unit Development – Residential district and primarily developed with single family homes. The property to the east is zoned R-30 Single Family Residential district and developed with a single family home. There is a large retention/detention pond adjacent to the south.

Analysis: The property is located at the northeast side of the Old Grove neighborhood. The PUD-R zoning approved in 2004 originally planned for 4 lots. The proposal has reduced the lot number to 2 lots for single-family residential development.

The proposed Final Plat also includes a small open space lot adjacent to an existing Emergency Access Easement and drive lane.

Finally, an old right-of-way area is currently unused with no improvements existing. The approval of the Final Plat will include the abandonment of the right-of-way and the area incorporated into the lot area of the proposed area of Lot 1.

Fees: Park Land Dedication fees are required in the amount of \$1,802 per residential lot. Park Land Dedication fees are due prior to filing the plat for record. Impact Fees are also required per Chapter 13 (Impact Fees) of the Land Development Code and are due prior to the issuance of a Building Permit.

Tree Preservation: Any subdivision of the subject property must comply with Chapter 5 (Tree Preservation) of the Land Development Code. Where any tree is slated for removal, no site grading, dirt disturbance or new construction may occur on the property until a Tree Removal Permit has been issued that is associated with an approved Tree Preservation Plan.

In addition to the requirements for submittal of a Tree Removal Permit and Tree Preservation Plan, future development on the site must maintain the minimum existing protected tree canopy coverage as required in Chapter 5.

Public Notification: Staff mailed notices to all property owners within 200 feet of the subject property on Friday, March 23, 2018. Notice was published in the Fort Worth Star-Telegram as required by State law and the Land Development Code on Saturday, March 24, 2018. To date, three correspondences in opposition have been received for this item.

Staff Recommendation: The proposed Final Plat meets the requirements of the Land Development Code, staff recommends approval.

Planning & Zoning Commission Recommendation: The Planning & Zoning Commission recommended approval at their July 9, 2018 meeting by a vote of 5-0.

Financial Impact

There is no financial impact to the City.

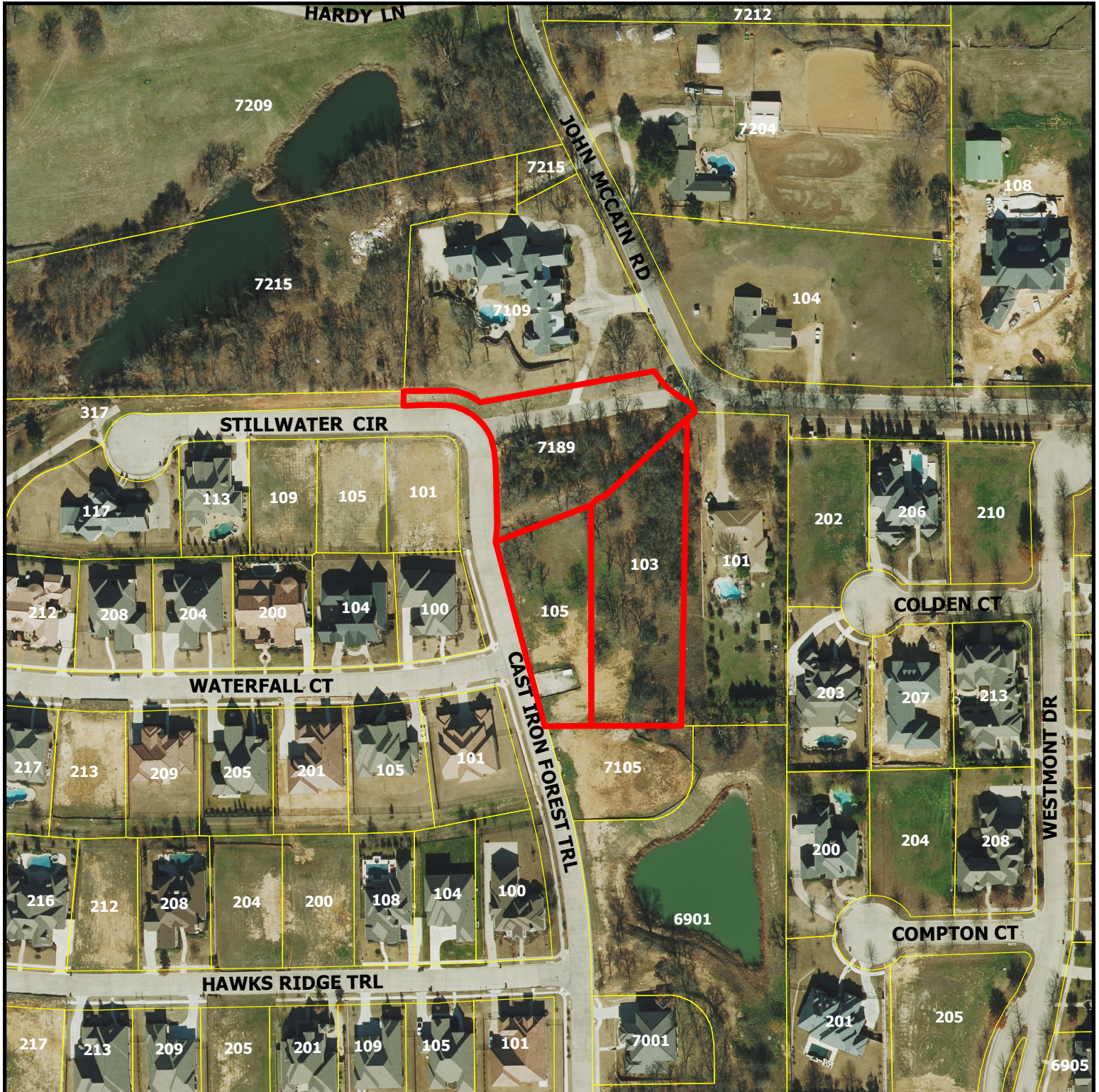
Recommendation

Approve

Attachments

1. Aerial Map
2. Zoning Map
3. Future Land Use Map
4. Plat Exhibit
5. Ordinance O-04-1475
6. Notification Map
7. Notification List
8. Property Owner Notification Letter
9. Letters of Opposition
10. Resolution R-18-4294

Aerial Map

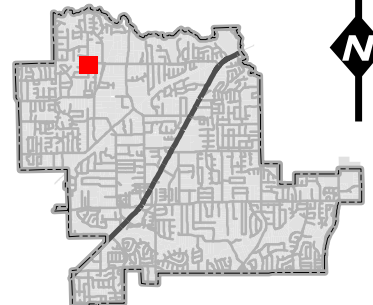


PC17-004

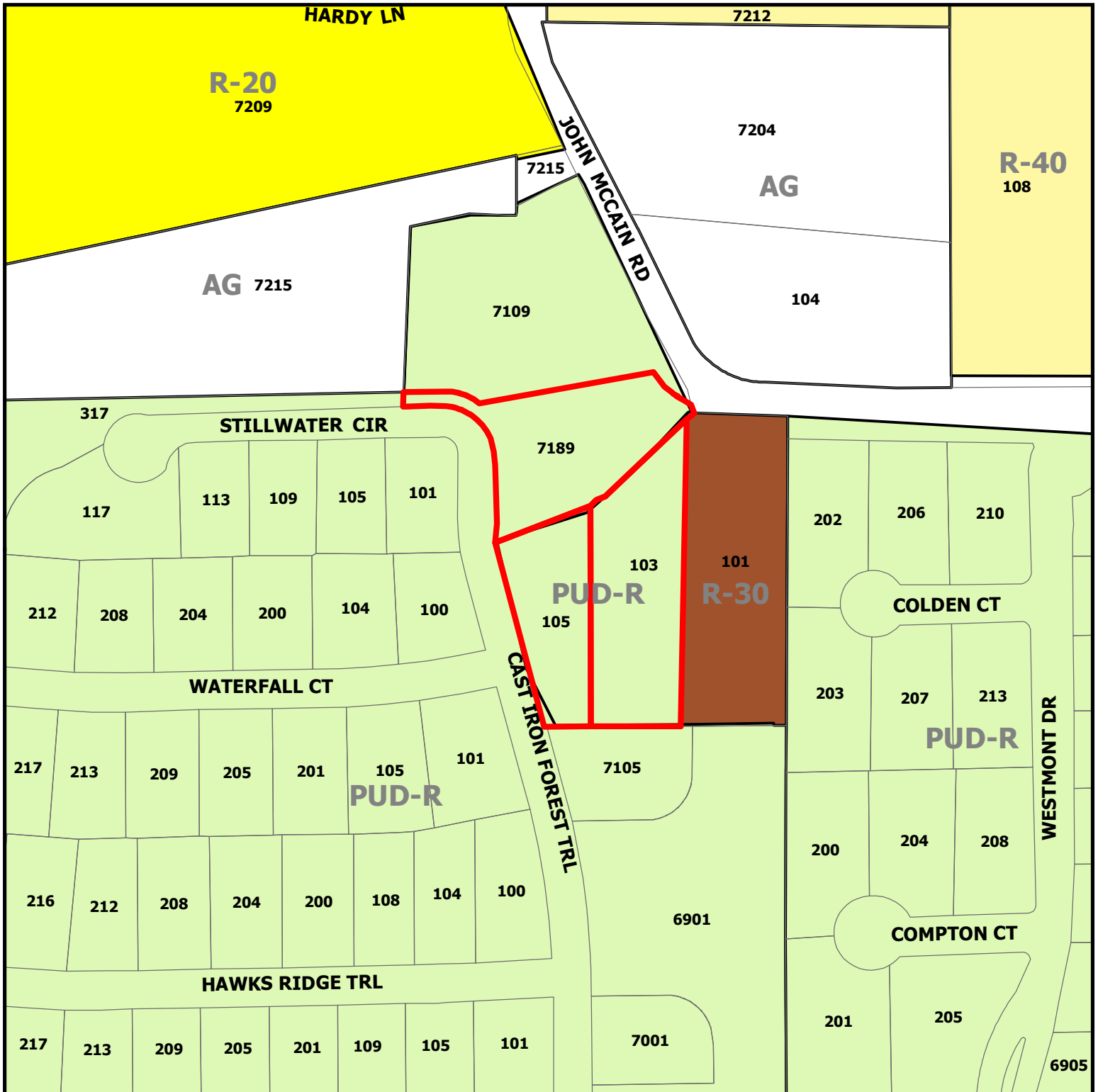
**105 & 103 John McCain Rd and
7189 Cast Iron Forest Trl**

DISCLAIMER:
This map and information contained in it were developed exclusively for use by the City of Colleyville. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Colleyville, its officials or employees for any discrepancies, errors, or variances which may exist.

 Subject Property



Zoning Map



PC17-004

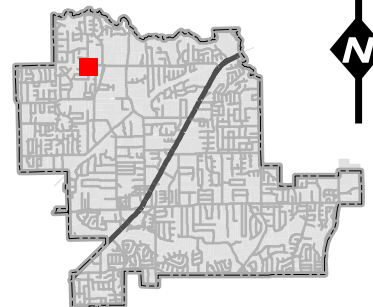
105 & 103 John McCain Rd and 7189 Cast Iron Forest Trl

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Subject Property



Future Land Use Map

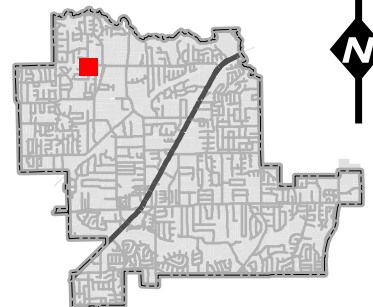


PC17-004

**105 & 103 John McCain Rd and
7189 Cast Iron Forest Trl**



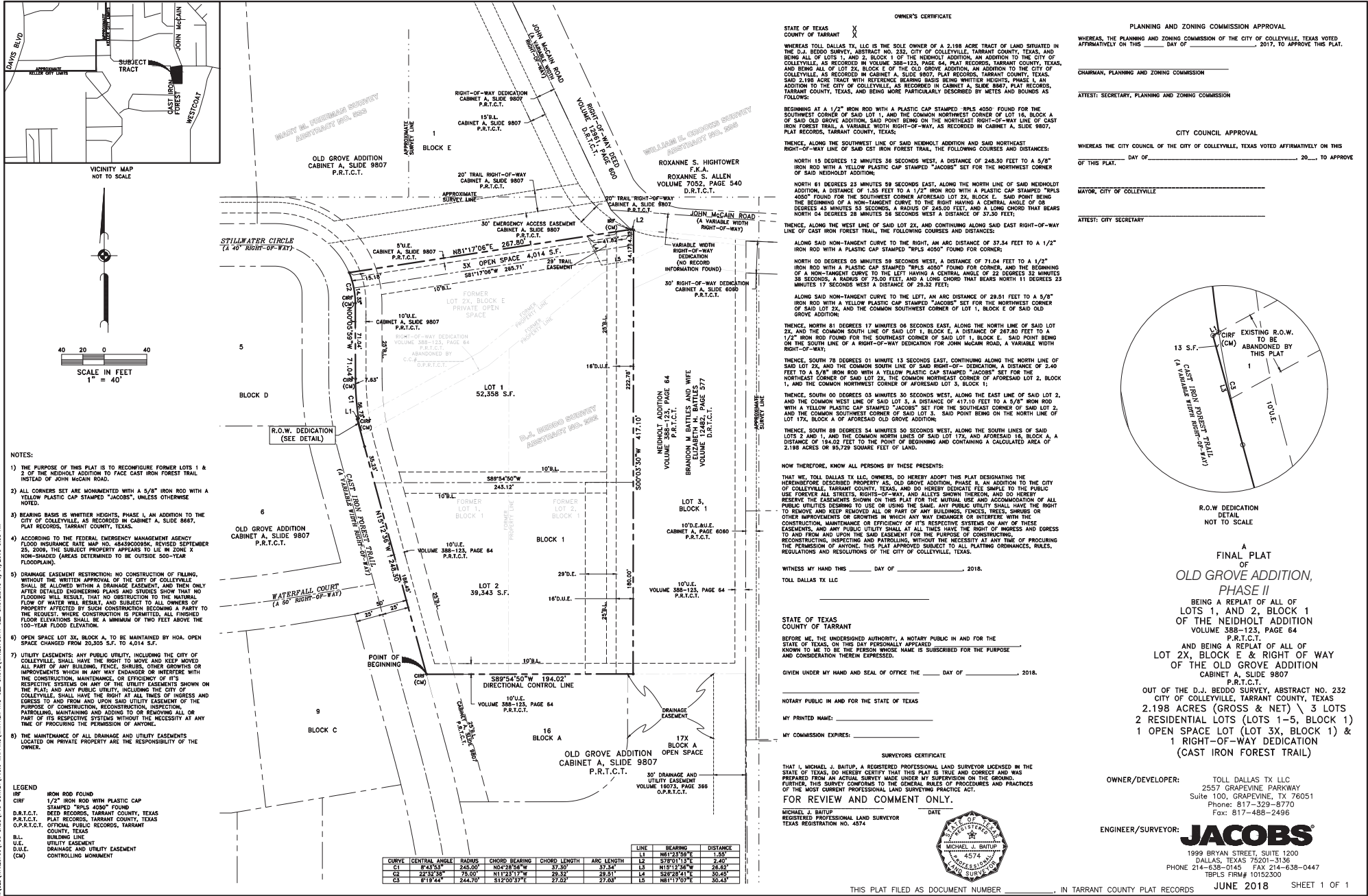
Subject Property



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Plat Exhibit



- NOTES:
- 1) THE PURPOSE OF THIS PLAT IS TO RECONFIGURE FORMER LOTS 1 & 2 OF THE NEIDHOLT ADDITION TO FACE CAST IRON FOREST TRAIL INSTEAD OF JOHN MCCAIN ROAD.
 - 2) ALL CORNERS SET ARE MONUMENTED WITH A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "JACOBS", UNLESS OTHERWISE NOTED.
 - 3) BEARING BASIS IS WHITTIER HEIGHTS, PHASE I, AN ADDITION TO THE CITY OF COLLEEVILLE, AS RECORDED IN CARNET A, SLIDE 8887, PLAT RECORDS, TARRANT COUNTY, TEXAS.
 - 4) ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP NO. 484900080R, REVISED SEPTEMBER 25, 2009, THE SUBJECT PROPERTY APPEARS TO LIE IN ZONE X NON-SHADED (AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN).
 - 5) DRAINAGE EASEMENT RESTRICTION: NO CONSTRUCTION OF FILLING, WITHOUT THE WRITTEN APPROVAL OF THE CITY OF COLLEEVILLE, SHALL BE ALLOWED WITHIN A DRAINAGE EASEMENT, AND THEN ONLY AFTER DETAILED ENGINEERING PLANS AND STUDIES SHOW THAT NO FLOODING WILL RESULT, THAT NO OBSTRUCTION TO THE NATURAL FLOW OF WATER WILL RESULT, AND SUBJECT TO ALL OWNERS OF PROPERTY AFFECTED BY SUCH CONSTRUCTION BECOMING A PARTY TO THE RESOLVE. WHERE CONSTRUCTION IS PERMITTED, ALL FINISHED FLOOR ELEVATIONS SHALL BE A MINIMUM OF TWO FEET ABOVE THE 100-YEAR FLOOD ELEVATION.
 - 6) OPEN SPACE LOT 3X, BLOCK A, TO BE MAINTAINED BY HOA. OPEN SPACE CHANGED FROM 20,000 S.F. TO 4,014 S.F.
 - 7) UTILITY EASEMENTS: ANY PUBLIC UTILITY, INCLUDING THE CITY OF COLLEEVILLE, SHALL HAVE THE RIGHT TO MOVE AND KEEP MOVED ALL PART OF ANY BUILDING, FENCE, SHRUBS, OTHER GROWTHS OR IMPROVEMENTS WHICH IN ANY WAY ENDANGER OR INTERFERE WITH THE CONSTRUCTION, MAINTENANCE, OR EFFICIENCY OF ITS RESPECTIVE SYSTEMS ON ANY OF THE UTILITY EASEMENTS SHOWN ON THIS PLAT, AND ANY PUBLIC UTILITY, INCLUDING THE CITY OF COLLEEVILLE, SHALL HAVE THE RIGHT AT ALL TIMES OF INGRESS AND EGRESS TO AND FROM UPON SAID UTILITY EASEMENTS FOR THE PURPOSE OF CONSTRUCTION, RECONSTRUCTION, INSPECTION, PATROLLING, MAINTAINING AND TENDING TO OR REMOVING ALL OR PART OF ITS RESPECTIVE SYSTEMS WITHOUT THE NECESSITY AT ANY TIME OF PROCURING THE PERMISSION OF ANYONE.
 - 8) THE MAINTENANCE OF ALL DRAINAGE AND UTILITY EASEMENTS LOCATED ON PRIVATE PROPERTY ARE THE RESPONSIBILITY OF THE OWNER.

- LEGEND
- IRON ROD FOUND
 - 1/2" IRON ROD WITH PLASTIC CAP STAMPED "RPLS 4050" FOUND
 - D.R.T.C.T. DEED RECORDS, TARRANT COUNTY, TEXAS
 - P.L.T.C.T. PLAT RECORDS, TARRANT COUNTY, TEXAS
 - O.P.R.T.C.T. OFFICIAL PUBLIC RECORDS, TARRANT COUNTY, TEXAS
 - B.L. BUILDING LINE
 - U.E. UTILITY EASEMENT
 - D.U.E. DRAINAGE AND UTILITY EASEMENT
 - (CM) CONTROLLING MONUMENT

CURVE	CENTRAL ANGLE	RADIUS	CHORD BEARING	CHORD LENGTH	ARC LENGTH
C1	8°49'53"	245.00'	N64°28'56"W	37.30'	37.34'
C2	22°33'38"	75.00'	N11°23'17"E	25.32'	25.32'
C3	8°18'44"	244.70'	S12°00'37"E	27.02'	27.03'

LINE	BEARING	DISTANCE
L1	N11°23'58"E	1.53'
L2	S78°01'13"E	2.40'
L3	N15°12'36"W	28.82'
L4	S66°24'41"E	30.45'
L5	N81°17'07"E	30.43'

OWNER'S CERTIFICATE

STATE OF TEXAS
COUNTY OF TARRANT

WHEREAS TOLL DALLAS TX, LLC IS THE SOLE OWNER OF A 2.198 ACRE TRACT OF LAND SITUATED IN THE D.J. BEDDO SURVEY, ABSTRACT NO. 232, CITY OF COLLEEVILLE, TARRANT COUNTY, TEXAS, AND BEING ALL OF LOTS 1, AND 2, BLOCK 1 OF THE NEIDHOLT ADDITION, AN ADDITION TO THE CITY OF COLLEEVILLE, AS RECORDED IN CARNET A, SLIDE 8887, PLAT RECORDS, TARRANT COUNTY, TEXAS, AND BEING ALL OF LOT 2X, BLOCK E OF THE OLD GROVE ADDITION, AN ADDITION TO THE CITY OF COLLEEVILLE, AS RECORDED IN CARNET A, SLIDE 8887, PLAT RECORDS, TARRANT COUNTY, TEXAS, SAID 2.198 ACRE TRACT WITH REFERENCE BEARING BASIS BEING WHITTIER HEIGHTS, PHASE I, AN ADDITION TO THE CITY OF COLLEEVILLE, AS RECORDED IN CARNET A, SLIDE 8887, PLAT RECORDS, TARRANT COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD WITH A PLASTIC CAP STAMPED "RPLS 4050" FOUND FOR THE SOUTHWEST CORNER OF SAID LOT 1; AND THE COMMON NORTHWEST CORNER OF LOT 16, BLOCK A OF SAID OLD GROVE ADDITION, SAID POINT BEING ON THE NORTHWEST CORNER OF CAST IRON FOREST TRAIL, A VARIABLE WIDTH RIGHT-OF-WAY, AS RECORDED IN CARNET A, SLIDE 8807, PLAT RECORDS, TARRANT COUNTY, TEXAS;

THENCE, ALONG THE SOUTHWEST LINE OF SAID NEIDHOLT ADDITION AND SAID NORTHEAST RIGHT-OF-WAY LINE OF SAID CAST IRON FOREST TRAIL, THE FOLLOWING COURSES AND DISTANCES:

NORTH 15 DEGREES 12 MINUTES 36 SECONDS WEST, A DISTANCE OF 248.30 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "JACOBS" SET FOR THE NORTHWEST CORNER OF SAID NEIDHOLT ADDITION;

NORTH 61 DEGREES 25 MINUTES 59 SECONDS EAST, ALONG THE NORTH LINE OF SAID NEIDHOLT ADDITION, A DISTANCE OF 1.25 FEET TO A 1/2" IRON ROD WITH A PLASTIC CAP STAMPED "RPLS 4050" FOUND FOR THE SOUTHWEST CORNER OF SAID LOT 2X, BLOCK E; SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 08 DEGREES 38 MINUTES 53 SECONDS, A RADIUS OF 248.00 FEET, AND A LONG CHORD THAT BEARS NORTH 54 DEGREES 28 MINUTES 56 SECONDS WEST A DISTANCE OF 37.30 FEET;

THENCE, ALONG THE WEST LINE OF SAID LOT 2X, AND CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE OF CAST IRON FOREST TRAIL, THE FOLLOWING COURSES AND DISTANCES:

ALONG SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 37.34 FEET TO A 1/2" IRON ROD WITH A PLASTIC CAP STAMPED "RPLS 4050" FOUND FOR CORNER;

NORTH 00 DEGREES 05 MINUTES 59 SECONDS WEST, A DISTANCE OF 71.04 FEET TO A 1/2" IRON ROD WITH A PLASTIC CAP STAMPED "RPLS 4050" FOUND FOR CORNER, AND THE BEGINNING OF A 1/2" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "JACOBS" SET FOR THE NORTHEAST CORNER OF SAID LOT 2X, AND THE COMMON SOUTHWEST CORNER OF AFORESAID LOT 2, BLOCK 1; AND THE COMMON NORTHWEST CORNER OF AFORESAID LOT 3, BLOCK 1;

THENCE, NORTH 81 DEGREES 17 MINUTES 08 SECONDS EAST, ALONG THE NORTH LINE OF SAID LOT 2X, AND THE COMMON SOUTH LINE OF SAID LOT 1, BLOCK E, A DISTANCE OF 267.80 FEET TO A 1/2" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID LOT 1, BLOCK E; SAID POINT BEING ON THE SOUTH LINE OF A RIGHT-OF-WAY DEDICATION FOR JOHN MCCAIN ROAD, A VARIABLE WIDTH RIGHT-OF-WAY;

THENCE, SOUTH 79 DEGREES 01 MINUTE 13 SECONDS EAST, CONTINUING ALONG THE NORTH LINE OF SAID LOT 2X, AND THE COMMON WEST LINE OF SAID LOT 3, A DISTANCE OF 417.10 FEET TO A 1/2" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "JACOBS" SET FOR THE NORTHEAST CORNER OF SAID LOT 2X, THE COMMON NORTHEAST CORNER OF AFORESAID LOT 2, BLOCK 1, AND THE COMMON NORTHWEST CORNER OF AFORESAID LOT 3, BLOCK 1;

THENCE, SOUTH 40 DEGREES 03 MINUTES 30 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 2, AND THE COMMON WEST LINE OF SAID LOT 3, A DISTANCE OF 417.10 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "JACOBS" SET FOR THE SOUTHWEST CORNER OF SAID LOT 2, AND THE COMMON SOUTHWEST CORNER OF SAID LOT 3, SAID POINT BEING ON THE NORTH LINE OF LOT 17X, BLOCK A OF AFORESAID OLD GROVE ADDITION;

THENCE, SOUTH 88 DEGREES 54 MINUTES 50 SECONDS WEST, ALONG THE SOUTH LINES OF SAID LOTS 2 AND 1X, AND THE COMMON NORTH LINES OF SAID LOT 17X, AND AFORESAID LOT 16, BLOCK A, A DISTANCE OF 194.02 FEET TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 2.198 ACRES OR 95,729 SQUARE FEET OF LAND.

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

THAT WE, TOLL DALLAS TX, LLC, OWNERS, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINBEFORE DESCRIBED PROPERTY AS, OLD GROVE ADDITION, PHASE II, AN ADDITION TO THE CITY OF COLLEEVILLE, TARRANT COUNTY, TEXAS, AND DO HEREBY DEDICATE THE SAME TO THE PUBLIC USE FOREVER ALL STREETS, RIGHTS-OF-WAY, AND ALLEYS SHOWN THEREON, AND DO HEREBY RESERVE THE EASEMENTS SHOWN ON THIS PLAT FOR THE MUTUAL USE AND ACCOMMODATION OF ALL PUBLIC UTILITIES DESIRING TO USE OR USING THE SAME. ANY PUBLIC UTILITY SHALL HAVE THE RIGHT TO REMOVE AND KEEP REMOVED ALL OR PART OF ANY BUILDINGS, FENCES, TREES, SHRUBS OR OTHER IMPROVEMENTS OR GROWTHS IN WHICH ANY WAY ENDANGER OR INTERFERE WITH THE CONSTRUCTION, MAINTENANCE OR EFFICIENCY OF ITS RESPECTIVE SYSTEMS ON ANY OF THESE EASEMENTS; AND ANY PUBLIC UTILITY SHALL AT ALL TIMES HAVE THE RIGHT OF INGRESS AND EGRESS TO AND FROM UPON AND UNDER SAID EASEMENTS FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, INSPECTING AND PATROLLING, WITHOUT THE NECESSITY AT ANY TIME OF PROCURING THE PERMISSION OF ANYONE, THE RIGHT TO ATTACH AND SEAL TO ALL PLATTING ORDINANCES, RULES, REGULATIONS AND RESOLUTIONS OF THE CITY OF COLLEEVILLE, TEXAS.

WITNESS MY HAND THIS _____ DAY OF _____, 2018.

TOLL DALLAS TX LLC

STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED _____ KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THE _____ DAY OF _____, 2018.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

MY PRINTED NAME: _____

MY COMMISSION EXPIRES: _____

SURVEYORS CERTIFICATE

THAT I, MICHAEL J. BANTUP, A REGISTERED PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION AND ORIGIN. FURTHER, THIS SURVEY CONFORMS TO THE GENERAL RULES OF PROCEDURES AND PRACTICES OF THE MOST CURRENT PROFESSIONAL LAND SURVEYING PRACTICE ACT.

FOR REVIEW AND COMMENT ONLY.

MICHAEL J. BANTUP
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 4574

DATE _____



PLANNING AND ZONING COMMISSION APPROVAL

WHEREAS, THE PLANNING AND ZONING COMMISSION OF THE CITY OF COLLEEVILLE, TEXAS VOTED AFFIRMATIVELY ON THIS _____ DAY OF _____, 2017, TO APPROVE THIS PLAT.

CHAIRMAN, PLANNING AND ZONING COMMISSION _____

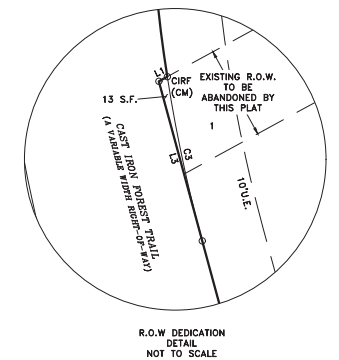
ATTEST: SECRETARY, PLANNING AND ZONING COMMISSION _____

CITY COUNCIL APPROVAL

WHEREAS THE CITY COUNCIL OF THE CITY OF COLLEEVILLE, TEXAS VOTED AFFIRMATIVELY ON THIS _____ DAY OF _____, 20____, TO APPROVE OF THIS PLAT.

MAYOR, CITY OF COLLEEVILLE _____

ATTEST: CITY SECRETARY _____



A
FINAL PLAT
OF
OLD GROVE ADDITION,
PHASE II
BEING A REPLAT OF ALL
LOTS 1, AND 2, BLOCK 1
OF THE NEIDHOLT ADDITION
VOLUME 388-123, PAGE 64
P.R.T.C.T.
AND BEING A REPLAT OF ALL
LOT 2X, BLOCK E & RIGHT OF WAY
OF THE OLD GROVE ADDITION
CARNET A, SLIDE 9807
P.R.T.C.T.
OUT OF THE D.J. BEDDO SURVEY, ABSTRACT NO. 232
CITY OF COLLEEVILLE, TARRANT COUNTY, TEXAS
2.198 ACRES (GROSS & NET) \ 3 LOTS
2 RESIDENTIAL LOTS (LOTS 1-5, BLOCK 1)
1 OPEN SPACE LOT (LOT 3X, BLOCK 1) &
1 RIGHT-OF-WAY DEDICATION
(CAST IRON FOREST TRAIL)

OWNER/DEVELOPER: TOLL DALLAS TX LLC
2557 GRAPEVINE PARKWAY
Suite 100, GRAPEVINE, TX 76051
Phone: 817-329-8770
Fax: 817-488-2496

ENGINEER/SURVEYOR: JACOBS
1999 BRYAN STREET, SUITE 1200
DALLAS, TEXAS 75201-3136
PHONE 214-638-0145 FAX 214-638-0447
TOLL FREE 1-800-300-3000

ORDINANCE O-04-1475

AN ORDINANCE AMENDING CHAPTER 3, LAND USE OF THE LAND DEVELOPMENT CODE OF THE CITY OF COLLEYVILLE, TEXAS, BY AMENDING THE OFFICIAL ZONING MAP AND CHANGING THE ZONING OF LOTS 1 AND 2, BLOCK 1, NEIDHOLT ADDITION, FROM THE R30 SINGLE FAMILY RESIDENTIAL DISTRICT TO THE PUD-R PLANNED UNIT DEVELOPMENT RESIDENTIAL DISTRICT; PROVIDING FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE; AUTHORIZING PUBLICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, an application for a zoning change was filed by Old Grove Limited Partnership on July 6, 2004, under Case No. Z-04-026; and

WHEREAS, the City of Colleyville has complied with the notification requirements of the Texas Local Government Code and the Colleyville Land Development Code; and

WHEREAS, the Planning and Zoning Commission has held a public hearing and made a recommendation on the proposed zoning amendment; and

WHEREAS, the City Council has determined that the proposed zoning amendment is in the best interests of the City of Colleyville.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEYVILLE, TEXAS:

Sec. 1. THAT the Master Plan, the Land Development Code of the City of Colleyville, Texas, and the Official Zoning Map are hereby amended insofar as they relate to certain land located in Colleyville, Texas, as shown on the Zoning Map attached as Exhibit "A", and described by metes and bounds description attached as Exhibit "B", by changing the zoning of said property from the R30 Single Family Residential district to the PUD-R Planned Unit Development Residential district, as shown on the attached Exhibit "C", including any other conditions and restrictions imposed and approved by the City Council, which are incorporated herein.

Sec. 2. THAT the PUD-R shall be subject to the following conditions:

1. GENERAL

- a. The purpose of the PUD-R area is for single-family residential development.

- b. This property is subject to all the regulations contained in the Colleyville Land Development Code, except where amended by this Ordinance.

2. PERMITTED USES

- a. Single family residences, detached
- b. Open space

3. RESIDENTIAL LOT REQUIREMENTS AND SETBACKS

- a. Residential lot requirements and setbacks shall comply with the following provisions:

(1) Minimum Lot Size	13,000 square feet
(2) Minimum Lot Width	90 feet
(3) Minimum Lot Depth	120 feet
(4) Front Building Line	25 feet
(5) Side Building Line	10 feet
(6) Rear Building Line	25 feet

- b. The average lot size 16,000 square feet and shall be calculated over the combined acreage of Whittier Heights Phase I, Old Grove Phase I, Whittier Heights Phase II, and Old Grove Phase II.

4. OPEN SPACE

- a. The PUD-R area shall provide a minimum of twenty percent (20%) of the residential project area as common open space for the leisure and recreational use of the development's residents. The open space shall be calculated over the combined acreage of Whittier Heights Phase I, Old Grove Phase I, Whittier Heights Phase II, and Old Grove Phase II. The open space shall comply with the provisions contained in the Land Development Code.
- b. The common open space may be utilized for storm water detention purposes.

5. CONCEPTUAL SITE PLANS AND PLATTING

- a. The residential lot layout of the PUD-R area shall be generally consistent with the conceptual site plan attached as Exhibit "C", which shall be considered the preliminary plat. The actual street and lot arrangement may differ from that shown on Exhibit "C" to accommodate physical, topographic, drainage or other conditions.

- b. Prior to the issuance of any development permits on the subject property and as a condition to the development of the subject property, the developer shall obtain approval of a final plat of the property in accordance with the procedures and requirements of the Colleyville Land Development Code. In approving the final plat, the approving body shall exercise reasonable discretion with respect to changes from the Preliminary Plat in roadway design, lot sizes, lot shape, building line, setback lines, open space and all other aspects of the plat.
- c. The average residential density is permitted to be 1.8 dwelling units per acre over the combined acreage of Whittier Heights Phase I, Old Grove Phase I, Whittier Heights Phase II, and Old Grove Phase II.

6. STREETS AND SIDEWALKS

- a. Each homebuilder shall construct sidewalks along lot frontages. All sidewalks shall be constructed in accordance with the requirements of the Colleyville Land Development Code.

7. OTHER

- a. This development shall be subject to all impact fees as of the date of approval of the final plat.
- b. No water or sewer extensions are required to be made to adjacent property.
- c. The provisions of the Colleyville Pathways plan shall be incorporated in the project. Pathways shall be designated on the preliminary plan and final plat in a dedicated public right-of-way. Pathways shall be constructed by the developer.

- Sec. 3. THAT any person, firm, or corporation violating any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed Two Thousand Dollars (\$2,000.00). Each and every day such violation continues shall constitute a separate offense and shall be punishable as such.
- Sec. 4. THAT the Land Development Code of the City of Colleyville, Texas, shall remain in full force and effect, except where amended by this ordinance.
- Sec. 5. THAT the City Secretary is hereby authorized and directed to cause publication of the descriptive caption and penalty clause hereof as an alternative method of publication provided by law.

Sec. 6. THAT this ordinance shall become effective immediately upon publication.

AND IT IS SO ORDERED.

The first reading and public hearing being conducted on the 17th day of August 2004.

The second reading and public hearing being conducted on the 7th day of September 2004.

ATTEST:



Cynthia Singleton, TRMC
City Secretary

CITY OF COLLEYVILLE:



Joe Hocutt
Mayor

APPROVED AS TO FORM AND LEGALITY:



Ross T. Foster
City Attorney

[illegible]

EXHIBIT B – METES AND BOUNDS DESCRIPTION

BEING a tract of land in the D.J. Beddo Survey, Abstract No. 232, situated in the City of Colleyville, Tarrant County, Texas and being all of Lot 1 and Lot 1, Block 1, of the final plat of Lots 1, 2, & 3, Block 1, Neidholt Addition, an addition to the City of Colleyville, Tarrant County, Texas as recorded in Volume 388-123, Page 64, Plat Records, Tarrant County, Texas (PRTCT), and being a portion of an unnamed right-of-way dedication as set out by aforesaid plat, and being a portion of that tract of land as described in deed to Old Grove Limited Partnership, recorded in Volume 1469, Page 37, Deed Records, Tarrant County, Texas, and being more particularly described as follows:

COMMENCING at a ½-inch rebar found at the southeast corner of Lot 3, Block 1, the said final plat of Lots 1, 2, & 3, Block 1, Neidholt Addition, being an angle point in the west line of Westmont, an addition to the City of Colleyville, Tarrant County, Texas, as recorded in Cabinet A, Slide 6060, PRTCT, being the most easterly northeast corner of said Old Grove tract;

THENCE South 89 degrees 54 minutes 50 seconds West, departing the west line of said Westmont, along the south line of said Neidholt Addition and a reentrant line of said Old Grove tract, a distance of 105.60 feet to southwest corner of said Lot 3 and the southeast corner of said Lot 2, being the POINT OF BEGINNING of the herein described tract of land;

THENCE South 89 degrees 54 minutes 50 seconds West, continuing along the south line of said Neidholt Addition and a reentrant line of said Old Grove tract, at a distance of 116.83 feet passing a 5/8 inch rebar found, said point being 0.25 feet to the south of line, at a distance of 194.00 feet passing a ½ inch rebar capped set at the southwest corner of said Neidholt Addition and a reentrant corner of said Old Grove tract, thereafter traversing said Old Grove tract, continuing a total distance of 199.18 feet to a ½ inch rebar capped set at the southwest corner of the herein described tract of land;

THENCE traversing said Old Grove tract, as follows:

North 15 degrees 12 minutes 36 seconds West, a distance of 220.16 feet to a ½ inch rebar capped set at the point of curvature of a circular curve to the right, having a radius of 250.00 feet;

Northwesterly, along said curve, having a central angle of 15 degrees 05 minutes 37 seconds, an arc distance of 65.86 feet and a chord that bears North 07 degrees 39 minutes 47 seconds West, 65.6 feet to a ½ inch rebar capped set;

North 89 degrees 53 minutes 01 seconds East, non tangent to said curve, a distance of 5.00 feet to a ½ inch rebar capped set;

North 00 degrees 06 minutes 59 seconds West, a distance of 71.04 feet to a ½ inch rebar capped set at the point of curvature of a circular curve to the left having a radius of 75.00 feet;

Northwesterly, along said curve, having a central angle of 22 degrees 32 minutes 37 seconds, an arc distance of 29.51 feet and a chord that bears North 11 degrees 23 minutes 17 seconds West, 29.32 feet to a ½ inch rebar capped set at the northwest corner of the herein described tract;

North 81 degrees 17 minutes 06 seconds East, non tangent to said curve, a distance of 267.80 feet to a ½ inch rebar found in the southwesterly line of John McCain Road (County Road No. 3036, variable width right-of-way), from which a 3/8 inch rebar found bears South 76 degrees 32 minutes 02 seconds West, 6.00 feet;

THENCE South 78 degrees 29 minutes 15 seconds East, along the southwesterly line of said John McCain Road, a distance of 2.40 feet to the northeast corner of the herein described tract;

THENCE South 00 degrees 30 minutes 30 seconds West, departing the southwesterly line of said John McCain Road, at a distance of 27.55 feet passing the northwest corner of said Lot 3 and the northeast corner of said Lot 2, continuing along the west line of said Lot 3 and the east line of said Lot 2, a total distance of 417.12 feet to the POINT OF BEGINNING and containing 97,138 square feet or 2.230 acres of land, more or less.

Notification Map

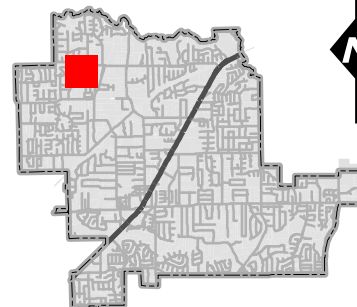


PC17-004

**105 & 103 John McCain Rd and
7189 Cast Iron Forest Trl**

DISCLAIMER:
This map and information contained in it were developed exclusively for use by the City of Colleyville. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Colleyville, its officials or employees for any discrepancies, errors, or variances which may exist.

-  Subject Property
-  200ft Buffer
-  Properties within 200ft



Notification List

Owner Name	Owner Address	Owner City	Owner Zip	Situs Address
JOHNSON, MARK	203 COLDEN CT	COLLEYVILLE, TX	76034	203 COLDEN CT
BATTLES, BRANDON	101 JOHN MCCAIN RD	COLLEYVILLE, TX	76034	101 JOHN MCCAIN RD
TOLL DALLAS TX LLC	250 GIBRALTAR RD	HORSHAM, PA	19044	105 STILLWATER CIR
ALLEN, LEROY	101 STILLWATER CIR	COLLEYVILLE, TX	76034	101 STILLWATER CIR
TOLL DALLAS TX LLC	250 GIBRALTAR RD	HORSHAM, PA	19044	105 JOHN MCCAIN RD
FREIG, JOSE	104 HAWKS RIDGE TRL	COLLEYVILLE, TX	76034	104 HAWKS RIDGE TR
BOLTON, JONATHON	202 COLDEN CT	COLLEYVILLE, TX	76034	202 COLDEN CT
HA, THANH THUC	100 HAWKS RIDGE TR	COLLEYVILLE, TX	76034	100 HAWKS RIDGE TR
LAW, JAMES	109 STILLWATER CIR	COLLEYVILLE, TX	76034	109 STILLWATER CIR
RAU, SUSAN	7105 CAST IRON FOREST TRL	COLLEYVILLE, TX	76034	7105 CAST IRON FOREST TR
TOLL DALLAS TX LLC	250 GIBRALTAR RD	HORSHAM, PA	19044	103 JOHN MCCAIN RD
ALLEN, CARL E	200 COMPTON CT	COLLEYVILLE, TX	76034	200 COMPTON CT
KELLY, JOHN	105 WATERFALL CT	COLLEYVILLE, TX	76034	105 WATERFALL CT
CLARK, EDWARD D	104 WATERFALL CT	COLLEYVILLE, TX	76034	104 WATERFALL CT
TOLL DALLAS TX LLC	250 GIBRALTAR RD	HORSHAM, PA	19044	7189 CAST IRON FOREST TR
HIGHTOWER, ROXANNE S	104 JOHN MCCAIN RD	COLLEYVILLE, TX	76034	104 JOHN MCCAIN RD
ETTA, ANITA B	101 WATERFALL CT	COLLEYVILLE, TX	76034	101 WATERFALL CT
OLD GROVE MAINTENENCE ASSN	1800 PRESTON PARK BLVD STE 101	PLANO, TX	75093	6901 CAST IRON FOREST TR
RIACH, STEVEN E	7109 JOHN MCCAIN RD	COLLEYVILLE, TX	76034	7109 JOHN MCCAIN RD
DAWSON, WESLEY	406 PECAN DR	IRVING, TX	75061	7215 JOHN MCCAIN RD
WESTMAN, GARY A	2812 COTSWOLD CT	KELLER, TX	76248	100 WATERFALL CT
OLD GROVE MAINTENENCE ASSN	1800 PRESTON PARK BLVD STE 101	PLANO, TX	75093	317 OLD GROVE RD
OLD GROVE ADDITION	P.O. Box 1481	COLLEYVILLE, TX	76034	COURTESY NOTICE
WESTMONT ADDITION	5751 KROGER DRIVE	KELLER, TX	76244	COURTESY NOTICE
KELLER ISD	350 KELLER PARKWAY	KELLER, TX	76248	STATE REQUIRED
GRAPEVINE-COLLEYVILLE ISD	3051 IRA E. WOODS AVE	GRAPEVINE, TX	76051	STATE REQUIRED
KESSLER, KEVIN	1999 BRYAN STREET, SUITE 1200	DALLAS, TX	75201	APPLICANT



NOTICE OF PUBLIC HEARING

Zoning Case Number: PC17-004

Owner: Toll Dallas TX LLC

Applicant: Kevin Kessler

Location: 105 & 103 John McCain and 7189 Cast Iron Forest Trail

Property Description: Lots 1 and 2, Block 1, of the Neidholt Addition, Lot 2X, Block E, of the Old Grove Addition, and existing dedicated Right of Way

Present Zoning: PUD-R Planned Unit Development Residential District

Request: Consideration of a Final Plat for Lots 1, 2, and 3X, Block 1, Old Grove Addition, Phase II, located at 105 & 103 John McCain Road and 7189 Cast Iron Forest Trail. The purpose of the plat is to combine the 3 properties into 2 Single Family Residential lots and 1 open space lot.

The City of Colleyville has scheduled public hearings concerning the above referenced request on the following dates and location:

Planning and Zoning Commission Meeting: Monday, April 9, 2018 at 7:00 p.m.
City Council Meeting: Tuesday, May 1, 2018 at 7:30 p.m.
3rd floor of City Hall, 100 Main Street, Colleyville, Texas

This notice has been sent to all owners of real property within 200 feet of the request as such ownership appears on the last approved tax roll and all homeowners associations within 500 feet. Action by the Planning and Zoning Commission serves as a recommendation to the City Council and is not a final action on the request.

The application is on file for public examination in the Community Development Department at 100 Main Street, Colleyville, Texas. A brief project description can be found online on the Active Development Case map: <https://www.colleyville.com/zoning.html>. For additional information, please contact the Community Development Department at 817.503.1056. Please reference the zoning case number when requesting information.

Felix Landry
Principal Planner
flandry@colleyville.com

Opposition to Final Plat for Lots 1, 2 and 3X, Block 1, Old Grove Addition, Phase II

Jennifer Johnson [REDACTED]

T Kathy

o **Wheat** kwheat@colleyville.com, **rnewton** rnewton@colleyville.com, **blindamood** blindamood@colleyville.com, **tnakamura** tnakamura@colleyville.com, **gdodson** gdodson@colleyville.com, **ckelley** ckelley@colleyville.com, **crigney** crigney@colleyville.com

CMark ICE: Johnson [REDACTED] **Susan Rau/ Psa** [REDACTED], **Richard**
c Freitag [REDACTED] **Beth Battles** [REDACTED]

All,

My husband, Mark and I have spoken at two of the P&Z meetings, voicing our opposition to the Toll Brothers plans for the two lots on Cast Iron Forest Trail in the Old Grove subdivision. We will be out of town during the next City Council meeting, so wanted to send in our written opposition.

We are very concerned about the proposed dry retention pond and the risk to the health of neighboring homeowners and their property if the dry retention pond is not maintained. We are all at the mercy of the homeowner to maintain the pond, with no recourse if they do not. The drainpipe for this pond will be 18" wide, in the retaining wall at the back of the property, and needs to be left open to ensure correct water flow. If the homeowner has small children, or pets, this will be a safety issue, and we are very concerned they will put fencing over the hole to keep their pets/children safe.

Our second opposition to this plan is that there are large oak trees along both the HOA easement (East/West) (below left photo), and a 100 year old Post Oak in our backyard (below right photo) within the easement (North/South) and planned drainage area that will have roots damaged when the drainage pipes are installed. During the 5 years we have owned our house, we have spent over \$2,000 treating our Post Oak, as it was very sick when we bought the lot. I don't think it can survive having a good portion of its' root structure damaged.

Lastly, and I mentioned this when I spoke at the P&Z meeting in July, Toll Brothers as not been a good partner to your citizens during this process. On two separate occasions Greg Powell with Toll Brothers told my husband and I that they had no obligation to us during this process, because they were allowed to use the easement. Other representatives from Toll Brothers have since indicated that they will replace our fence, substantial bushes along the fence line, and a portion of our driveway; however given how we were initially treated, we are very concerned to what extent our property will be restored.

Thank you for your consideration.

Jennifer and Mark Johnson
203 Colden Court
Colleyville TX 76034

Opposition to Final Plat for Lots 1, 2 and 3X, Block 1, Old Grove Addition, Phase II

Beth Battles

T **kwheat** kwheat@colleyville.com, **rnewton** rnewton@colleyville.com, **blindamood** blindamood@colleyville.com, **tnakamura** tnakamura@colleyville.com, **gdodson** gdodson@colleyville.com, **ckelley** ckelley@colleyville.com, **crigney** crigney@colleyville.com

Crauprofit

Jennifer Johnson

Dear Mayor Newton and Members of the City Council,

My husband, Brandon, and I live at 101 John McCain Rd., the property adjacent to the proposed final plat of two lots in Old Grove. We want to voice our opposition to the replat proposal because we are opposed to the proposed drainage plan. These two lots slope towards our property.

We have had drainage problems across our property since Old Grove was constructed. Our lot was initially one lot in the three-lot Neidholdt subdivision. The other two lots were owned by single family, sold to David Bagwell, and replatted into Old Grove. Against our vehement opposition, the Council at the time approved the replatting, based in some measure on some verbal promises from David Bagwell of fencing along our western property line, a gate in the front, and enhanced landscaping. None of that, of course, came to be.

We learned only recently that when Old Grove was approved by the council, the land in question never had final plat approval, so no drainage plan was considered by the city. It is clearly very difficult to find a solution to appropriate drainage for these lots. Since the rest of Old Grove has been developed, the drainage for these two lots must be retrofitted into the design, and we are skeptical of the proposed solution.

We share the concern of our neighbors about the health and maintenance issues of the proposed dry detention pond and to the significant tree damage that will result in completing this drainage plan. Trees will be removed and damaged in constructing the drainage pipe across the easement of Old Grove that runs behind (on the south edge) of our proper (top picture below). Our neighbors, the Johnsons, reference a Post Oak on their property that we saved when the sewer line was constructed by allowing David Bagwell to put the manhole on the southeast corner of our property. It would be a shame to save the tree only to lose it now. If the development is approved, existing old oak trees on the property are at risk due to residential over-watering of landscapes.

We did have discussions with Toll Brothers about possible solutions to mitigate the tree loss and damage by running a drainage easement across our property, but ultimately felt that such an easement would limit our own use of our lot as well that of future owners.

We hope that you will oppose this plan. The area in question is a lovely, wild place that would best serve the citizens living in and around Old Grove to remain as a park or wild space.

Thank you for your consideration,

Beth and Brandon Battles
101 John McCain Rd.
Colleyville, TX 76034

Opposition to Final Plat for Lots 1, 2 and 3X, Block 1, Old Grove Addition, Phase II

Susan Rau

Tkwheat kwheat@colleyville.com, rnewton rnewton@colleyville.com, blindamood blindamood@colleyville.com, tnakamura tnakamura@colleyville.com, gdodson gdodson@colleyville.com, ckelley ckelley@colleyville.com, crigney crigney@colleyville.com

C Ben Bryner bbryner@colleyville.com rauprofit
Johnson j Beth Battles

Jennifer
Richard Freitag

Dear Mayor Newton & Colleyville City Council Members:

My husband, Dick Freitag and I live at 7105 Cast Iron Forest Trail in Colleyville. Our home was built by Toll Brothers and we closed in July 2016. Dick and I were unable to attend the Council's meeting on August 7. I was at Mayo Clinic in Minnesota, where I am undergoing treatment.

Dick and I reviewed the video of the Council's meeting. Given the very long meeting and very full agenda, the Council noted that the members had not reviewed our Memo of Opposition in the Council packet. We previously submitted the same memo to the P&Z Committee; the salient points of which we addressed orally at two P&Z meetings.

This email attempts to summarize the points raised in our previously submitted Memo of Opposition. **By copy of this email, we are asking Ben Bryner to ensure that our email and the emails sent to the City Council by our neighbors Beth & Brandon Battles and Jennifer and Mark Johnson are included in the Council's Agenda packet for the August 21 meeting. To expedite the process, the three emails are attached in PDF format.**

We share the concerns of our neighbors and the Old Grove and Westmont communities about the re-plat being proposed by Toll Brothers. Despite several productive meetings with the Toll Brothers representatives and follow up discussions, our opposition is primarily related to the proposed drainage and grading plan. In addition, we oppose the building pad site on the land immediately adjacent to our property insofar as the pad is very close to the minimal easement, which is in contrast to other pad sites in the area.

Summarizing our opposition to the plans submitted by Toll Brothers to the City staff and City Council:

1. In turning the lots to face Cast Iron Forest Trail, Toll Brothers is proposing to handle storm water run-off by way of a "dry" detention pond. The stated reason for this approach is that the large existing retention pond on Cast Iron Forest Trail cannot handle the storm water from the two building lots that would result from the proposed re-plat.
 1. The detention pond would abut our property and run alongside the Battles and Johnson's properties. This is an inappropriate solution in a suburban development insofar as this would be the ONLY lot in Old Grove with a detention pond on private property. Thus, unlike the large retention pond, there would be no City or HOA oversight.
 2. The construction of the drainage field and pipes will eliminate large oak trees, spruce trees, tree roots on several properties, resulting in potential damage or death of these large mature trees. Nesting wildlife including Harper's and Red-tail hawks, owls, bluebirds, blue jays, cardinals, finches and bees will be displaced.

Opposition to Final Plat for Lots 1, 2 and 3X, Block 1, Old Grove Addition, Phase II

2. A careful review of the approved drainage plans for Old Grove and for Westmont shows that the lots in question plus the lot with the Battles home were not included in the approved plans for either subdivision.
 1. But, the fact that these lots were not included does not mean that the retention pond cannot handle the water from the new lots. It simply means that the lots (currently facing John McCain) were omitted from the plans submitted by David Bagwell and then adopted by Toll Brothers.
 2. Clearly the developers anticipated building on these lots but why and how they were omitted from the submission to the City and the resulting approved drainage plans may never be fully understood.
3. The story that the large existing pond cannot handle more storm water has been repeated so often that Toll Brothers represents this as fact. This assertion is just that--an assertion. We ask the City Council to require a full feasibility study with the goal of determining how the existing retention pond can be modified to handle the runoff from these two new lots.
 1. Yes, the study may be expensive and, yes, the work that may need to be done on the large existing retention pond may be considerable and expensive, but the solution being proposed by Toll Brothers is overly complex, destroys significant vegetation, displaces nesting wildlife and places the burden of maintenance on a single homeowner within a subdivision, which is contrary to the City's best practices.
 2. Toll has already built intakes from Stillwater Court such that some of the infrastructure might be used to add these new lots if/when the large retention pond is reconfigured to take more water.
4. Toll Brothers and City staff have pointed out, correctly, that the natural flow of water runs down and across the backyard of the Battles property, but this should not be construed to mean that the only way to handle the flow is through a dry detention pond.
 1. Our lot, prior to being developed, also drained downhill and roughly in the direction of the rear of the Battles property and along the edge of the Johnson property in the general direction of the Westmont storm sewer.
 2. When we built and installed a pool and landscaping, the City required us to reroute the runoff so as to have it drain into the large retention pond (in other words, contrary to the natural flow).
 3. We were required to "plumb" as opposed to a dry detention pond or French drains. Having lived for many years in a rural area where we had numerous dry detention ponds on our property we were acutely aware of the maintenance required and knew that this type of solution, while certainly cheaper, is inappropriate for a subdivision lot.
 4. Although the drainage solution cost us in excess of \$100,000, it was the right solution. We simply ask that the City Council vote to apply the same standards to the lots next to us.
5. In recent years, Colleyville has seldom approved a dry detention pond on a small lot within a subdivision. Such detention ponds have usually been approved when constructed on the common areas of a subdivision. This is for good reason. Within common areas, the burden of maintenance and restrictions on access that might pose a threat to public health becomes the responsibility of the HOA with oversight from the City; this is the way the large existing retention pond is handled today.
 1. A casual drive around Colleyville readily shows that even when a well designed dry detention pond is used on large or rural residential lots outside of a subdivision, there can be significant health and safety risks when the homeowner fails to properly maintain the pond.

Opposition to Final Plat for Lots 1, 2 and 3X, Block 1, Old Grove Addition, Phase II

2. Even an untrained observer can see examples within Colleyville and surrounding towns of "dry" detention ponds where the egress is blocked with tree roots, grass clippings or other debris, where standing water and muck are readily visible and provide a breeding ground for mosquitoes and where the safety of children and pets is threatened.

Regarding the health and safety risks of a dry detention pond, at its last meeting the Council asked why we purchased a lot next to a large retention pond but now are objecting to the proposed dry detention pond directly adjacent to our property. Simply put, the extent of my health issues was not yet apparent. Once we became aware of my illness, we could not back out of the purchase and had to devise plans to ensure that our property is shielded from storm water, lawn and garden chemicals (fertilizers, pesticides, insecticides, weed killers etc.) and insects, including but not limited to mosquitoes. In addition to the extensive drainage work we've done, we have also installed synthetic turf in some areas and an extensive vacuum system to rid the property of all flying insects.

Yes, we may be somewhat more aware of the health and safety risks of the drainage plan being proposed by Toll Brothers, but this is driven by direct experience with such detention ponds and only tangentially by current health issues. For all the reasons outlined here and the details in our Memo of Opposition shared with the P&Z Committee and the City Council previously, we oppose the Toll Brothers request for a re-plat of the lots in its current form.

Unless or until the solutions being offered are reconsidered and replaced by a below ground drainage solution, we cannot in good conscience allow this proposal to go forward without asking that our City government and its elected officials consider our objections and those raised by our neighbors. We ask for a fair hearing on the matter and rely on the wisdom of our City Council to reject the proposal in its current form. With additional work, we hope that a solution can be found that is fair to all.

Susan E. Rau & Richard Freitag
7105 Cast Iron Forest Trail
Colleyville TX 76034

RESOLUTION R-18-4294

**A RESOLUTION APPROVING A FINAL PLAT FOR LOTS 1, 2, AND 3X,
BLOCK 1, OF THE OLD GROVE ADDITION, PHASE II**

WHEREAS, the Planning and Zoning Commission recommended approval of the Final Plat for Lots 1, 2, & 3X, Block 1, of the Old Grove Addition, Phase II on July 9, 2018.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF COLLEYVILLE, TEXAS:**

Sec. 1. THAT the Final Plat for Lots 1, 2, & 3X, Block 1, of the Old Grove Addition, Phase II on approximately 2.20 acres, attached as Exhibit "A" - Plat Exhibit, is hereby approved.

AND IT IS SO RESOLVED.

APPROVED BY A VOTE OF ____ AYES, ____ NAYS, AND ____ ABSTENTIONS ON THIS
THE 18TH DAY OF SEPTEMBER 2018.

Mayor Richard Newton	_____	Mayor Pro Tem Bobby Lindamood	_____
Place 1, Tammy Nakamura	_____	Place 5, Chuck Kelley	_____
Place 3, Kathy Wheat	_____	Place 6, Callie Rigney	_____
Place 4, George Dodson	_____		

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
Assistant City Secretary

Richard Newton
Mayor



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number

Agenda Date 11/20/2018

Type Report

Department City Manager

Title

Annual activity report of the Colleyville Economic Development Corporation

Explanation

The Colleyville Economic Development Corporation Bylaws require that the Board make an annual report by February 1 to the City Council, *"reviewing the accomplishments of the Corporation for the preceding year and the activities of the Corporation for the budget year."* Attached is the annual report that was reviewed by the Colleyville Economic Development Corporation Board at the August 24, 2017 meeting. The only change to the report is the sales tax revenue collected for FY 2018, as year-end actual numbers are now available.

Attachments

1. Annual activity report of the Colleyville Economic Development Corporation

FY 2018 ANNUAL REPORT
OF THE COLLEYVILLE ECONOMIC DEVELOPMENT CORPORATION

Accomplishments and activities for FY 2018 are described below.

Revenues:

Sales tax revenue from a half-cent sales tax approved by Colleyville voters in 1996 is the primary source of revenue for the Colleyville Economic Development Corporation (CEDC). The FY 2018 budgeted sales tax revenue was \$1,850,000, but actual collections totaled \$1,946,868, which is up 3.97% from the prior year.

Operating Expenditure/Activities:

In FY 2018, the CEDC provided funding for the following operating expenditures and activities.

- Debt service for FY 2018 of \$594,704
- The special events supported with CEDC funding include Red, White, & Sousa, Haunted Trail Fest, and the Christmas Tree Lighting Celebration.
- Funding for economic development promotional activities has provided for marketing of City events and activities.
- In FY 2018, the CEDC provided funding for 13 part-time library positions, a recreation specialist for the senior center, and partial funding for the marketing coordinator position.
- Technology costs for the Library, Senior Center, and Colleyville Center including software licenses, computer replacements, and network switches

Capital Expenditure/Activities:

In FY 2018, the CEDC provided funding for the following capital expenditures and activities.

- Plumbing repairs in the men's restroom at the Colleyville Center
- Pleasant Run trail construction and park improvements
- Completion of the Parks Master Plan update, which began in FY 2017
- Drainage improvements at L.D. Lockett Park, which were completed in-house for approximately \$55,000, a savings of \$75,000 compared to the budgeted amount for the project
- Dredging of the Kimzey Park Pond, to remove accumulated silt and improve plant and aquatic life
- Professional services in preparation for the Webb House project, which will include repairs to the building and site improvements intended to make the property more usable and welcoming for community enjoyment. Construction will occur in FY 2019.

- The spatial reconfiguration project at the Colleyville Public Library, a portion of which will occur in FY 2018, with completion in early FY 2019. The project includes a reconfiguration of areas on the first and second floors, to better meet the community's needs and utilization trends.



City of Colleyville City Council Agenda Briefing

City Hall
100 Main Street
Colleyville, Texas 76034
www.colleyville.com

Agenda Number 12b
Type Report
Department City Manager

Agenda Date 11/20/2018

Number

Title

Quarterly Performance Management Report

Strategic Plan

1.3 Assure convenient access to public information

1.4 Communicate thoroughly and strategically

Explanation

The purpose of this item is to report on performance of the programs and services identified in the City's strategic plan and the general operations of the City through the use of performance measures. In addition to performance measures, additional metrics called vital statistics are included in the report. Performance measures are measures of efficiency or effectiveness and represent outcomes that can be directly influenced by staff. Vital statistics represent data that is important to track for overall understanding of how a program is performing and for decision making, but is not necessarily a reflection of efficiency or effectiveness, and is not something that staff has significant control over. The presentation of both performance measures and vital statistics provides a well-rounded look at performance and trends in programs and services, while also furthering the City's efforts of accountability and transparency to those we serve.

The attached spreadsheet includes the fourth quarter of actual data for FY 2018. For performance measures, the FY 2018 year-end (YTD) actual numbers are compared to the FY 2018 target that was established by the responsible department and are color coded as listed below. Vital statistics do not have a FY 2018 target and are therefore not color coded, as those metrics represent information that is important to track, but are not necessarily appropriate to set targets for.

Gray - Data not available at this time

Green - Performance met or exceed the target

Yellow - Performance near the target, but did not meet it

Red - Performance did not meet the target, or come close to meeting it

Dashboard reports are also included and offer a more visual presentation of highlighted performance measures and vital statistics.

Attachments

1. FY 2018 Q4 Performance Management Report

PUBLIC SAFETY

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Target	FY 2018 Actuals
Performance Measures	Percentage of code violations located proactively	Code Enforcement	Safeguard Colleyville's identity	69%	80%	69%	70%	79%	≥ 50%	75%
	Number of UCR Part 1 Crimes	Police Administration	Deliver high quality core services	175	160	141	158	146	≤ 180	162
	Percentage of UCR Part 1 Offenses cleared	Criminal Investigations	Deliver high quality core services	20%	30%	31%	28%	29%	≥ 20%	41%
	Percentage of crime victims contacted by investigators within 3 days	Criminal Investigations	Deliver high quality core services	92%	98%	100%	100%	97%	≥ 95%	99%
	Average Priority 1 response time (call dispatch to arrival)	Police Patrol	Deliver high quality core services	4:11	4:03	3:12	3:25	3:36	≤ 5:00	3:42
	Fire/Ambulance average response time	Fire and EMS Operations	Deliver high quality core services	(Previously reported percentage of response times under 6 minutes)			4:43	4:40	≤ 6:00	5:23
	Percentage of plans reviewed within 48 hours	Fire Prevention / Investigations	Deliver high quality core services	100%	100%	99%	99%	99%	≥ 98%	99%
	Percentage of fire investigations cleared within 30 days	Fire Prevention / Investigations	Deliver high quality core services	100%	100%	100%	100%	100%	≥ 95%	100%
	Percentage of inspections performed within 48 hours of request	Fire Prevention / Investigations	Deliver high quality core services	100%	100%	100%	100%	100%	≥ 95%	98%

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Actuals
Vital Statistics	Injury accidents per 1,000 population	Police Patrol	Deliver high quality core services	2.84	2.76	3.04	3.4	3.04	2.92
	Number of self-initiated calls for service (proactive, community policing)	Police Patrol	Operate Transparently	54,231	50,897	43,781	35,652	37,273	33,765
	Total number of outstanding warrants in system since 1/1/03	Warrant Officer	Deliver high quality core services	3,971	4,056	3,657	3,006	2,457	2,103
	Number of warrants served	Warrant Officer	Deliver high quality core services	1,452	2,767	2,610	2,350	2,874	1,789
	Fire Related Responses	Fire Operations	Deliver high quality core services	381	500	542	566	610	758
	Fire Related Responses - Mutual Aid	Fire Operations	Deliver high quality core services	New measure	New measure	New measure	New measure	New measure	120
	Service Related Responses	Fire Operations	Deliver high quality core services	357	127	152	180	191	308
	Service Related Responses - Mutual Aid	Fire Operations	Deliver high quality core services	New measure	New measure	New measure	New measure	New measure	79
	EMS Related Responses	EMS Operations	Deliver high quality core services	829	950	959	1037	967	999
	EMS Related Responses - Mutual Aid	EMS Operations	Deliver high quality core services	New measure	New measure	New measure	New measure	New measure	25
	Ambulance billing revenue	EMS Operations	Deliver high quality core services	\$323,672	\$399,312	\$354,239	\$388,803	\$318,738	\$354,284
	Percentage of billed services recovered	EMS Operations	Deliver high quality core services	30%	32%	29%	31%	59%	68%
	Total number of volunteer hours from CFAAA and Rehab Team	Fire Administration	Operate Transparently	900	418.5	672.5	491.75	482	475
	Community Fire Prevention Events	Fire Prevention / Operations	Operate Transparently	N/A	116	125	122	118	140
	Average hours of training per employee	Fire Operations	Deliver high quality core services	160.9	160.99	134.77	166	170	170

DEVELOPMENT

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Target	FY 2018 Actuals
Performance Measures	Percentage of residential plan reviews completed in seven days or less (was 5 through FY16)	Building Inspection	Enable Responsible Development	21%	41%	77%	75%	84%	≥ 75%	45%
	Percentage of commercial plan reviews completed in seven days or less (was 10 through FY16)	Building Inspection	Enable Responsible Development	44%	55%	77%	80%	80%	≥ 75%	51%
	Percentage of inspections performed within 24 hours	Building Inspection	Enable Responsible Development	97%	98%	99%	98%	98%	≥ 95%	90%
	Retail occupancy rate	Economic Development	Enable Responsible Development	88%	90%	90%	96%	97%	≥ 90%	95.2%
	Office occupancy rate	Economic Development	Enable Responsible Development	89%	89%	90%	92%	93%	≥ 90%	93%
	Percentage growth in sales tax revenue (General Fund)	Economic Development	Enable Responsible Development	7.6%	9.0%	3.1%	8.0%	0.50%	≥ 1.05%	4.18%
Vital Statistics		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Actuals	
	Number of Inspections Performed	Building Inspection	Enable Responsible Development	6,832	4,621	7,194	9,977	9,978	11,981	

LEISURE

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Target	FY 2018 Actuals
Performance Measures	Percentage of competitive athletic fields meeting departmental maintenance standards	Athletic Field Maintenance	Safeguard Colleyville's identity	New Measure	80%	80%	85%	100%	≥ 85%	89%
	Percentage of park inspections meeting standards	Park Maintenance	Safeguard Colleyville's identity	87%	80%	95%	96%	96%	≥ 85%	96%
	Percentage of library materials requests filled within 30 days	Library Services	Deliver high quality core services	86%	96%	93%	94%	98%	≥ 80%	91%
	Percentage of library patrons who come to the library looking for items and find them	Library Services	Deliver high quality core services	79%	80%	81%	83%	83%	≥ 80%	82%
	Children's program attendance	Library Services	Safeguard Colleyville's identity	21,955	18,363	17,173	18,888	19,471	≥ 18,000	20,995
	Adult and teen program attendance	Library Services	Safeguard Colleyville's identity	910	795	651	800	1,113	≥ 650	821
	Children's summer reading program participation	Library Services	Safeguard Colleyville's identity	1,182	1,188	987	1,278	1,127	≥ 1,000	1,249
	Adult and teen summer reading program participation	Library Services	Safeguard Colleyville's identity	118	114	84	148	228	≥ 100	197
	Library patron visits	Library Services	Safeguard Colleyville's identity	123,211	134,314	133,076	120,202	94,649	≥ 90,000	114,678
	Library patron visits - In Person	Library Services	Safeguard Colleyville's identity	New Measure	New Measure	New Measure	New Measure	New Measure	New Measure	109,764
	Library patron visits - Online	Library Services	Safeguard Colleyville's identity	New Measure	New Measure	New Measure	New Measure	New Measure	New Measure	4,914
	Reference questions answered	Library Services	Deliver high quality core services	35,048	34,073	25,025	28,717	33,280	≥ 25,000	36,530
	Circulation of the library materials collection	Library Services	Deliver high quality core services	250,737	234,667	228,160	222,123	227,252	≥ 220,000	237,124
	Percentage of offered classes/programs held	Recreation	Safeguard Colleyville's identity	65%	71%	73%	77%	79%	≥ 60%	78%
	Number of participants	Senior Center	Safeguard Colleyville's identity	1,751	3,734	3,767	4,574	4,148	≥ 1,500	3,875
	Percentage of resident membership visits	Senior Center	Safeguard Colleyville's identity	58%	60%	59%	51%	50%	≥ 60%	51%
	Percentage of cost recovery	Colleyville Center	Deliver high quality core services	66%	81%	75%	62%	65%	≥ 70%	52%
	Percentage of customer satisfaction ratings of "excellent"	Colleyville Center	Deliver high quality core services	96.3%	96.4%	97.3%	98%	97%	≥ 97%	98%
	Number of events held	Colleyville Center	Safeguard Colleyville's identity	386	412	452	376	405	≥ 400	314

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Actuals
Vital Statistics	Percentage of Colleyville households with at least one active library card holder	Library Services	Safeguard Colleyville's identity	50%	50%	50%	50%	50%	64%
	Library materials collection size	Library Services	Safeguard Colleyville's identity	69,736	74,525	77,664	80,452	82,182	71,188
	Number of staff hours dedicated to athletic field maintenance and game preparation	Athletic Field Maintenance	Safeguard Colleyville's identity	4,884	3,697	4,032	4,007	3,804	3,358
	Number of youth sports participants	Athletic Field Maintenance	Safeguard Colleyville's identity	4,063	4,315	4,434	4,302	4,517	4,386
	Percentage of non-resident youth sports participants	Athletic Field Maintenance	Safeguard Colleyville's identity	49%	52%	52%	59%	49%	49%
	Percentage of revenue recovery	Athletic Field Maintenance	Deliver high quality core services	12%	12%	20%	18%	18%	18%
	Number of classes/programs offered	Senior Center	Safeguard Colleyville's identity	151	212	191	172	179	158
	Average membership visits per month	Senior Center	Safeguard Colleyville's identity	534	544	827	1,019	913	878
	Number of Metroport Meals on Wheels participants	Senior Center	Safeguard Colleyville's identity	1,727	1,607	1,695	1,553	1,284	1,229
	Percentage of Meals on Wheels participants who are residents	Senior Center	Safeguard Colleyville's identity	52%	49%	47%	43%	45%	43%
	Percentage of resident class participants	Recreation	Safeguard Colleyville's identity	49%	42%	44%	43%	43%	42%
	Revenue generated from bookings	Colleyville Center	Deliver high quality core services	\$246,797	\$230,793	\$226,901	\$209,919	\$230,612	\$171,524
	Percentage of events generating economic impact for local business	Colleyville Center	Safeguard Colleyville's identity	57%	59%	59%	60%	70%	71%
	Percent of total events held: Colleyville residents	Colleyville Center	Safeguard Colleyville's identity	9%	10%	11%	23%	13%	10%
	Percent of total events held: Non-residents	Colleyville Center	Safeguard Colleyville's identity	41%	36%	30%	25%	34%	29%
	Percent of total events held: Non-profits	Colleyville Center	Safeguard Colleyville's identity	44%	47%	50%	45%	46%	54%
	Percent of total events held: City departments	Colleyville Center	Safeguard Colleyville's identity	6%	7%	9%	7%	7%	7%
	Percent of revenue: Colleyville residents	Colleyville Center	Deliver high quality core services	N/A	N/A	N/A	18%	20%	10%
	Percent of revenue: Non-residents	Colleyville Center	Deliver high quality core services	N/A	N/A	N/A	61%	53%	63%
	Percent of revenue: Non-profits	Colleyville Center	Deliver high quality core services	N/A	N/A	N/A	20%	27%	26%
	Percent of revenue: City departments	Colleyville Center	Deliver high quality core services	N/A	N/A	N/A	1%	0%	0%

PUBLIC WORKS

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Target	FY 2018 Actuals
Performance Measures	Percent of internal customers satisfied with facility environment	Building Services	Deliver high quality core services	89%	84%	86%	96%	92%	≥ 90%	92%
	Percentage of work orders responded to within one business day	Building Services	Deliver high quality core services	78%	51%	83%	89%	91%	≥ 90%	90%
	Percent of scheduled lane miles of public streets swept	Stormwater Management	Assure adequate infrastructure	98%	99%	99%	94%	100%	≥ 98%	100%
	Percent of storm drain inlets inspected	Drainage Maintenance	Assure adequate infrastructure	New Measure	20%	51%	55%	50%	≥ 50%	51%
	Percentage of storm sewer lines inspected	Drainage Maintenance	Assure adequate infrastructure	New Measure	<1%	<1%	<1%	<1%	≥ 10%	0%
	Meter reading accuracy	Utility Support	Deliver high quality core services	99%	99%	98%	99%	98%	≥ 98%	98%
	Percentage of total waste water lines cleaned annually	Waste Water Collection	Assure adequate infrastructure	93%	78%	91%	94%	93%	≥ 95%	96%
	Percentage of water valves exercised	Water Distribution	Assure adequate infrastructure	New Measure	12%	0.05%	15%	34%	≥ 20%	11%
	Percentage of water meters replaced	Utility Support	Deliver high quality core services	New Measure	New Measure	New Measure	New Measure	New Measure	≥8%	2%
	Average age of street and traffic signs	Street Maintenance	Deliver high quality core services	New Measure	New Measure	New Measure	New Measure	New Measure	≤10 Years	N/A
	Average age of long line pavement markings	Street Maintenance	Deliver high quality core services	New Measure	New Measure	New Measure	New Measure	New Measure	≤5 Years	N/A
	Percent of street and traffic signs replaced	Street Maintenance	Deliver high quality core services	12%	15%	15%	7%	5.00%	≥ 10%	5%
	Percentage of pavement markings renewed	Street Maintenance	Deliver high quality core services	New Measure	20%	4%	15%	12.2%	≥ 20%	23%

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Actuals
Vital Statistics	Percentage of monthly water samples testing negative for coliform bacteria	Water Distribution	Deliver high quality core services	99.36%	99%	98%	100%	100%	100%
	Percentage of fleet time available	Fleet Maintenance	Deliver high quality core services	98%	98%	98%	99%	99%	99%
	Ratio of scheduled maintenance to unscheduled repairs	Building Services	Deliver high quality core services	68%	41%	68%	50%	51%	49%
	Number of infrastructure repairs needed within two- year maintenance bond period	Engineering Services	Assure adequate infrastructure	0	0	0	0	2	0
	Value of newly-constructed public infrastructure in place	Engineering Services	Assure adequate infrastructure	New Measure	\$5.82M	\$17.3M	\$11.7 M	\$19.4M	\$12.8M
	Percentage of construction time with City staff present	Engineering Services	Assure adequate infrastructure	New Measure	18%	23%	30%	25%	23%
	Percentage of time preventative maintenance is completed on schedule	Fleet Maintenance	Assure adequate infrastructure	New Measure	95%	96%	96%	99%	97%
	Water loss ratio	Water Distribution	Assure adequate infrastructure	4.33%	4.34%	3.08%	2.50%	2.96%	N/A

ADMINISTRATION

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Target	FY 2018 Actuals
Performance Measures	City-initiated news leads	Communications	Operate transparently	31	23	29	31	52	≥ 30	60
	Number of public information campaigns	Communications	Operate transparently	6	4	6	6	9	≥ 8	8
	Achieve GFOA's Distinguished Budget Award	City Manager's Office	Deliver high quality core services	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Percentage of board, commission, and committee members that have completed Texas Open Meeting Act training	City Secretary	Operate transparently	< 50%	89%	91%	86%	94%	≥ 95%	96%

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Actuals
Vital Statistics	Tax rate per hundred dollars of valuation	City Council	Deliver high quality core services	\$0.3559	\$0.3559	\$0.3559	\$0.3559	\$0.33913	\$0.32080
	Number of household hazardous waste collections (at Fort Worth ECC and Clean Sweep event)	City Manager's Office	Deliver high quality core services	572	553	658	752	702	639
	Visits to Colleyville.com	Communications	Operate transparently	300,605	318,759	317,793	321,567	294,099	298,736
	E-newsletter subscribers	Communications	Operate transparently	1,679	2,621	2,839	3,225	3,819	4,074
	Social Media Followers on City of Colleyville Government	Communications	Operate transparently	New Measure	New Measure	1,000	1,836	2,546	4,755
	Number of public information requests	City Secretary	Operate transparently	217	260	283	296	255	226
	Number of citizen survey responses	City Manager's Office	Operate transparently	N/A	1,323	N/A	N/A	907	N/A

INTERNAL SERVICES

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Target	FY 2018 Actuals
Performance Measures	Percentage turnover (per fiscal year)	Human Resources	Deliver high quality core services	22%	15%	17%	14%	14%	≤ 15%	18%
	Percentage of annual performance evaluations completed on time	Human Resources	Deliver high quality core services	25%	98%	73%	99%	95%	≥ 90%	97%
	Percentage of employees who participate in wellness program	Human Resources	Deliver high quality core services	78%	86%	85%	92%	91%	≥ 80%	94%
	Workers' compensation experience modification factor (actual losses compared to expected losses)	Human Resources	Deliver high quality core services	0.48	0.45	0.83	0.84	0.84	≤ 0.85	0.58
	Medical and pharmacy loss ratio (paid claims divided by premiums)	Human Resources	Deliver high quality core services	66%	75.8%	87.4%	75.5%	102.4%	≤ 85%	82.7%
	Percentage of product requests completed on time	Graphical Information Services (GIS)	Deliver high quality core services	82%	88%	93%	93.4%	92%	≥ 85%	93.406%
	Percentage of broadcast uptime	Network/Desktop Services	Deliver high quality core services	99.82%	99.86%	99.88%	99.99%	99.999%	≥ 99%	99.998%
	Percentage of work orders completed on time	Network/Desktop Services	Deliver high quality core services	87%	78%	87%	92.9%	91%	≥ 95%	96.531%
	Percentage of network data and telecommunications uptime	Network/Desktop Services	Deliver high quality core services	99.83%	99.73%	99.80%	99.99%	99.997%	≥ 99%	99.998%
	Percentage of IT work plan projects completed on time	Network/Desktop Services	Deliver high quality core services	100%	97%	94%	95%	100%	= 100%	100%
	Percentage of data backup success	Network/Desktop Services	Deliver high quality core services	91%	91%	92%	94.2%	97%	= 100%	97.802%
Vital Statistics		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Actuals	
	Total number of equipment pieces maintained by department	Network/Desktop Services	Deliver high quality core services	419	569	589	609	609	629	

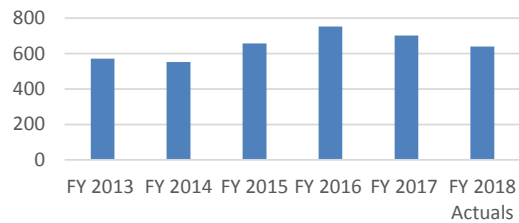
FINANCE

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Target	FY 2018 Actuals
	Achieve GFOA's Certificate of Achievement for Excellence in Financial Reporting	Finance	Deliver high quality core services	Yes	Yes	Yes	Yes	Yes	Yes	N/A
	Percentage warrants issued within 10 day (formerly 8 day) period after due date or court date	Municipal Court	Deliver high quality core services	New Measure	97%	99%	99%	99.0%	≥ 97%	99.9%
	Billing accuracy rate	Utility Billing	Deliver high quality core services	99.0%	98.6%	99.8%	99.9%	99.6%	≥ 99.5%	99.0%

		Program	Goal	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Actuals
Vital Statistics	Percent of ACH payments to total accounts payable	Finance	Deliver high quality core services	New Measure	16%	26%	26%	28%	30%
	Number of citations filed per FTE	Municipal Court	Deliver high quality core services	4,268	4,610	4,609	4,220	4,268	3,098
	Number of citations going into warrant	Municipal Court	Deliver high quality core services	New Measure	New Measure	New Measure	New Measure	New Measure	883
	Percentage of automatic draft customers/total customers	Utility Billing	Deliver high quality core services	15%	19%	16%	17%	19%	21%
	Percentage of customers paying before cutoff	Utility Billing	Deliver high quality core services	97%	97%	97%	97%	96%	99%
	Uncollectible accounts written off at year end (water & sewer)	Utility Billing	Deliver high quality core services	\$30,500	\$26,080	\$27,178	\$19,150	\$22,069	N/A

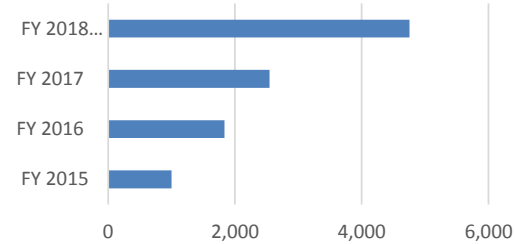
Solid Waste & Recycling

Number of household hazardous waste collections (at Fort Worth ECC and Clean Sweep event)



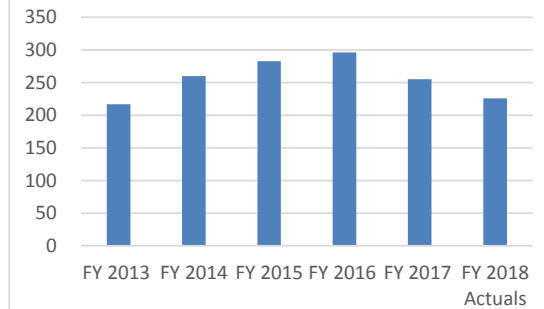
Communications

Social Media Followers on City of Colleyville Government



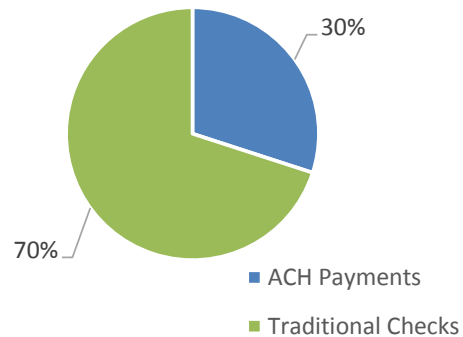
City Secretary

Number of public information requests



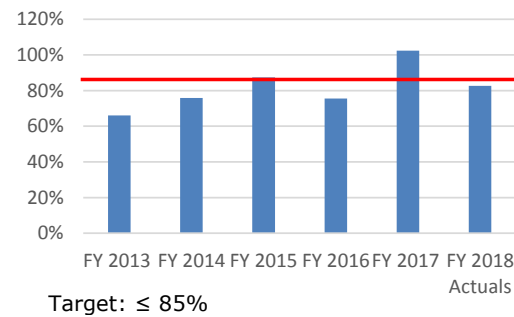
Finance

Percent of ACH payments to total accounts payable



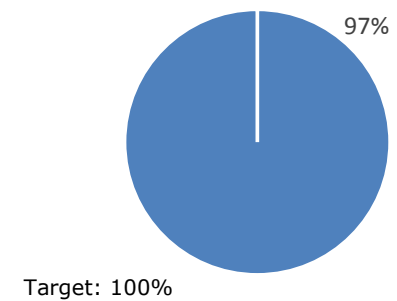
Human Resources

Medical and pharmacy loss ratio (paid claims divided by premiums)

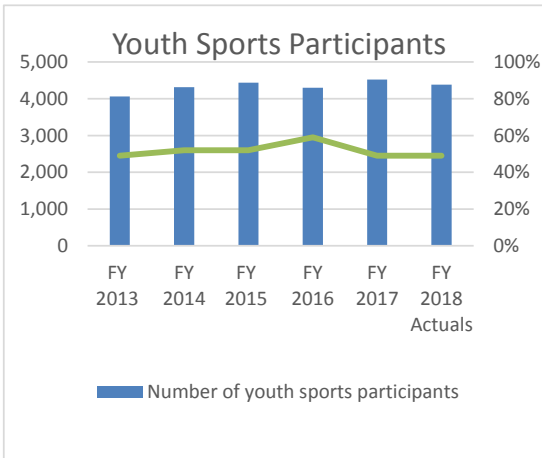


Technology

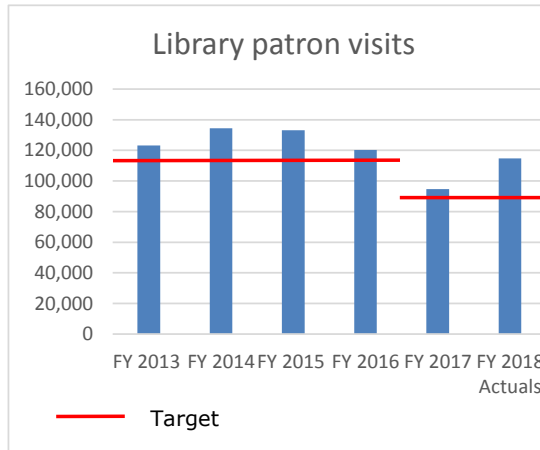
Percentage of data backup success



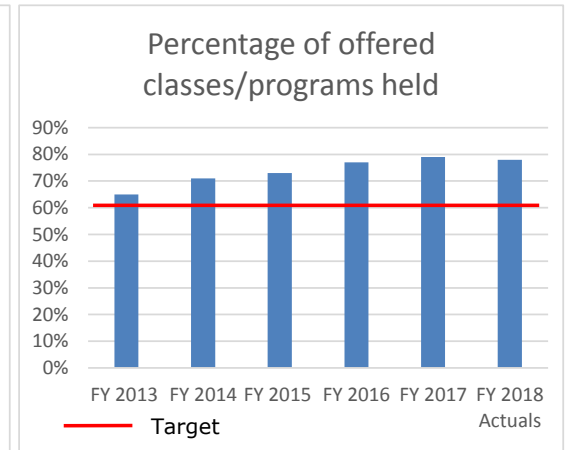
Parks



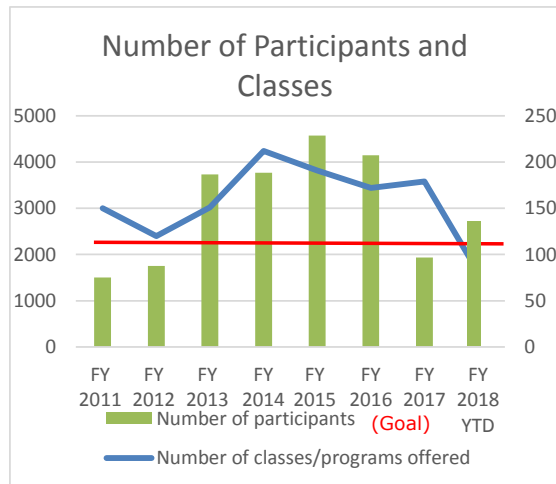
Library



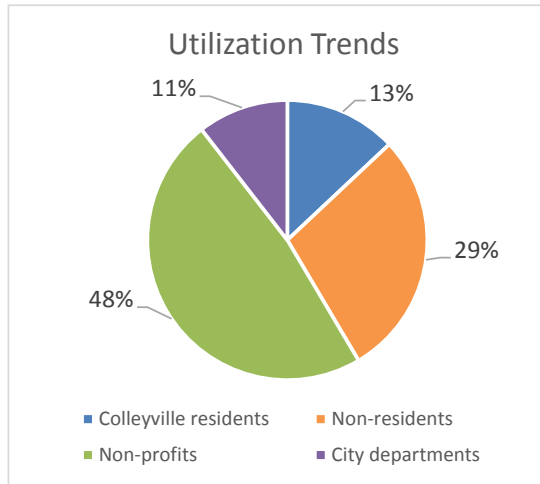
Recreation



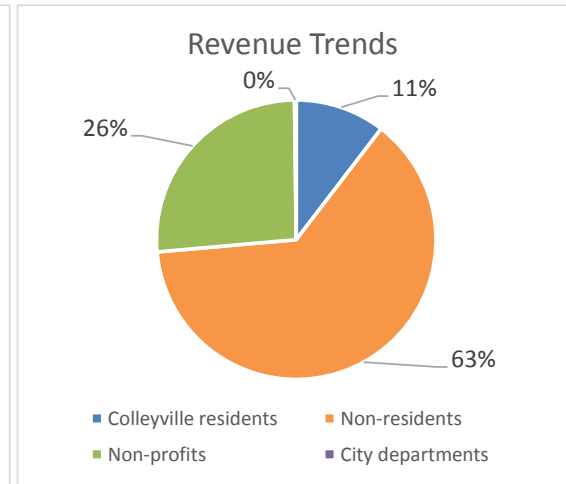
Senior Center



Colleyville Center

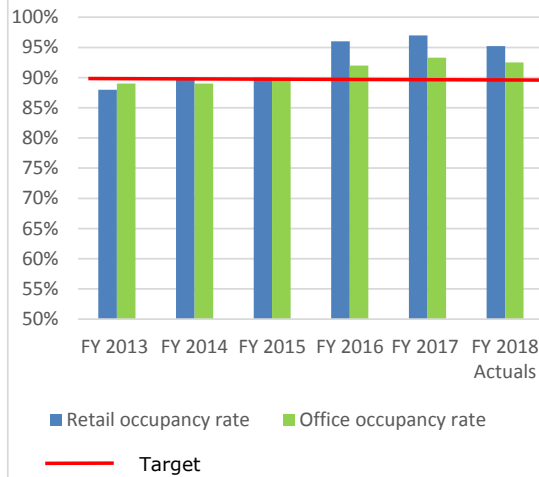


Colleyville Center

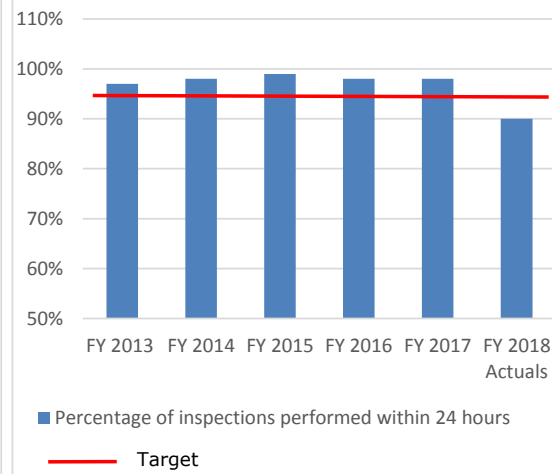


Dashboard: Development & Infrastructure FY 2018 Q4

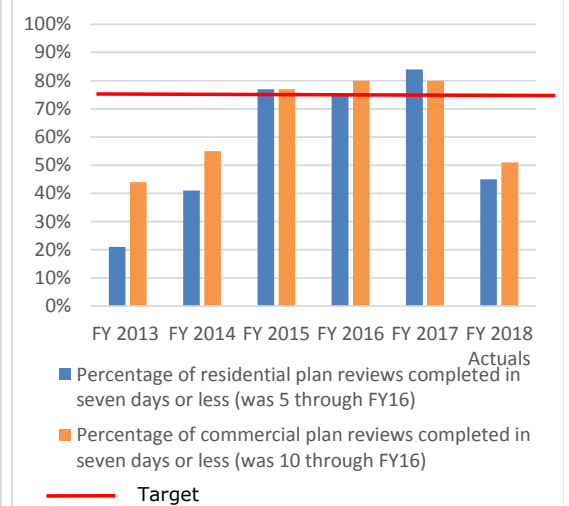
Retail & Office Occupancy Rate



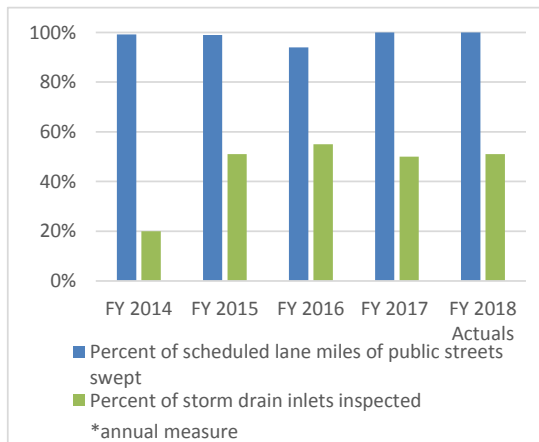
Inspections Performed within 24 hours



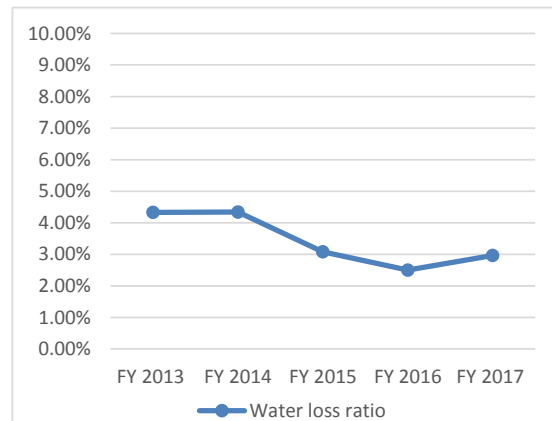
Plan Review & Inspections Timeliness



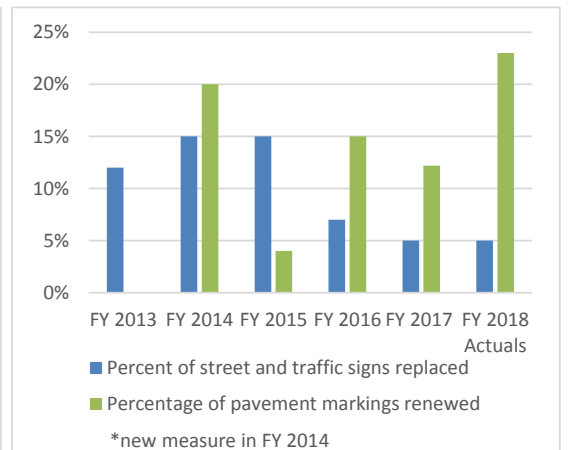
Stormwater & Drainage



Water Loss Ratio

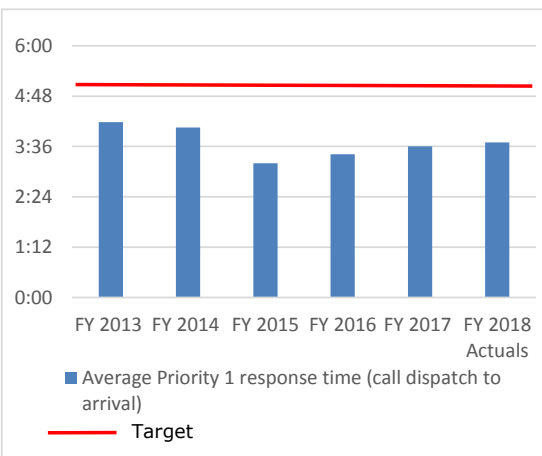


Street Maintenance

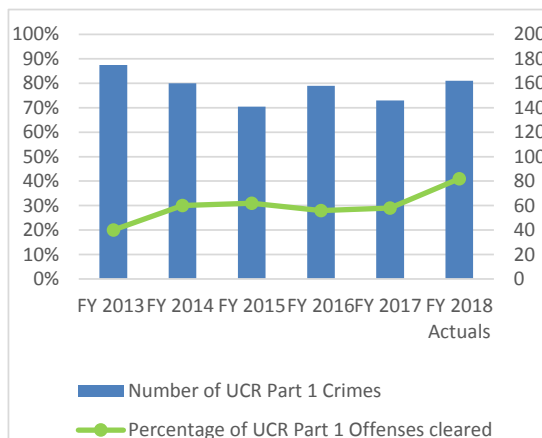


Dashboard: Public Safety FY 2018 Q4

Police Response Time

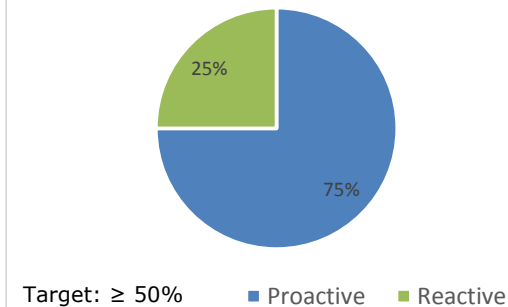


UCR Part 1 Crimes

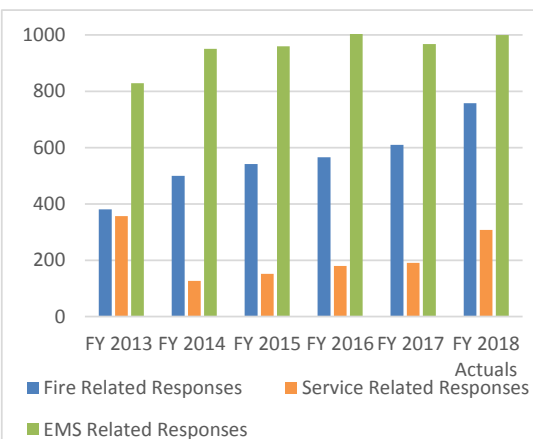


Code Enforcement

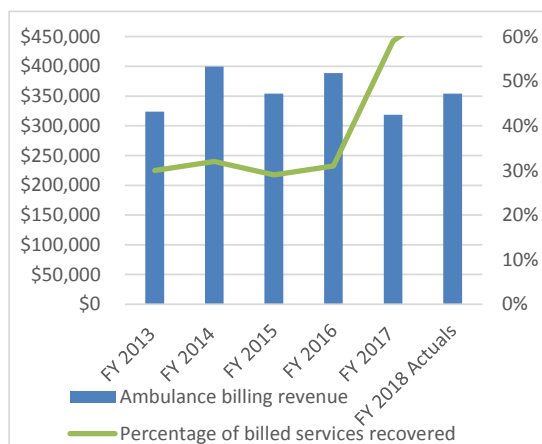
Percentage of code violations located proactively



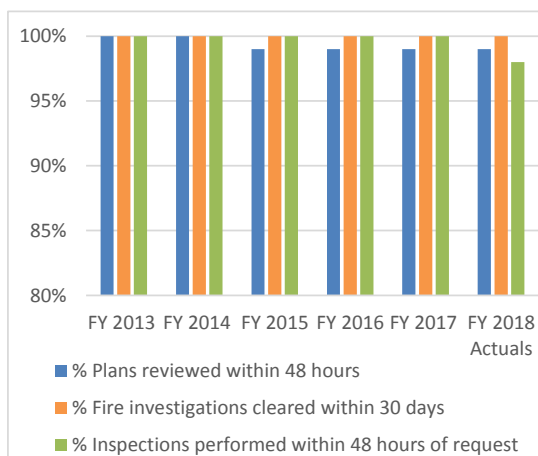
Fire & EMS Responses



Ambulance Billing



Fire Prevention/Investigation



RESOLUTION R-18-4329

**A RESOLUTION APPROVING CITY COUNCIL ACTION
UNDER BUSINESS AT THE REGULAR CITY COUNCIL MEETING OF
NOVEMBER 20, 2018**

WHEREAS, City Council has taken action on certain items on the agenda under Business.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF COLLEYVILLE, TEXAS:**

a. THAT

AND IT IS SO RESOLVED.

APPROVED BY A VOTE OF _ AYES, _ NAYS AND _ ABSTENTIONS ON THIS
THE 20TH DAY OF NOVEMBER 2018.

Mayor Richard Newton	_____	Mayor Pro Tem Bobby Lindamood	_____
Place 1, Tammy Nakamura	_____	Place 3, Kathy Wheat	_____
Place 4, George Dodson	_____	Place 5, Chuck Kelley	_____
Place 6, Callie Rigney	_____		

ATTEST:

CITY OF COLLEYVILLE

Christine Loven, TRMC
City Secretary

Richard Newton
Mayor