



**SEAGOVILLE, TEXAS  
CITY COUNCIL MEETING AGENDA  
MONDAY, AUGUST 6, 2018**

**City Council Chambers, City Hall  
702 N. Hwy 175  
Seagoville, Texas 75159**

**WORK SESSION – 6:00 P.M.**

**Call to Order**

**A. Discuss Planned Development Regulations**

**Adjourn**

**REGULAR SESSION - 7:00 P.M.**

**ROUTINE ANNOUNCEMENTS, RECOGNITIONS, and PROCLAMATIONS**

**Call to Order**

**Invocation**

**Pledge of Allegiance**

**Mayor's Report**

**Citizens Public Comment Period-** *This portion of the meeting is to allow each speaker up to six (6) minutes to address the council on items not posted on the current agenda. Council may not discuss these items but may respond with factual data or policy information, or place the item on a future agenda. Citizens wishing to speak on posted agenda items will be called upon at that time. Anyone wishing to speak shall submit a Speaker Request Form to the City Secretary.*

**CONSENT AGENDA-** The Consent Agenda contains items which are routine in nature and will be acted upon in one motion.

- 1. Consider approving City Council Meeting minutes for July 23, 2018 (City Secretary)**
- 2. Discuss and consider calling a public hearing on August 20, 2018 and August 21, 2018 to receive citizen input on the proposed FY 2018-2019 budget and tax rate (Finance Director)**

**REGULAR AGENDA-**

- 3. Discuss and consider a Resolution of the City of Seagoville, Texas, accepting the Certified Tax Roll of Dallas and Kaufman County Appraisal Districts; and providing an effective date (Finance Director)**
- 4. Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas, accepting the proposed property tax rate for fiscal year 2018-2019; accepting the calculation of the effective tax rate; and providing for the publication as provided by the Texas Property Tax Code (Finance Director)**
- 5. Discuss and consider an Ordinance of the City of Seagoville, Dallas and Kaufman Counties, Texas, amending the Comprehensive Zoning Ordinance and map of the City of Seagoville, Kaufman County, Texas, as heretofore amended, by granting a change in zoning from Planned Development-13-01-Amended 1 (PD-13-01-A1) to Planned Development-13-01-Amended 2 (PD-13-01-A2) for the property located at 1706 South U.S. Highway 175, Seagoville, Kaufman County, Texas, and being more particularly described as Lots 1, 2A, 2B, and 3, Block A, of the Sudduth Addition and being legally described in Exhibit "A", attached hereto and incorporated herein; providing for amended development regulations; providing a repealing clause; providing a severability clause; providing a savings clause; providing a penalty of fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and providing an effective date (Community Development Director)**
- 6. Discuss service dogs in restaurants and stores (Councilmember Hernandez)**
- 7. Conduct a public hearing on a zoning request Z2018-11 to change zoning from R-5 (Residential-5 Single Family) to C (Commercial) on two (2) tracts of land being a combined total of approximately 0.4-acres of real property described as Lot 17 and Lot 18, Block A, of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 209 and 211 Avenue B (Community Development Director)**
- 8. Discuss and consider an Ordinance of the City of Seagoville, Dallas and Kaufman Counties, Texas, amending the Comprehensive Zoning Ordinance and map, as heretofore amended, by granting a change in zoning from R-5 (Residential-5 Single Family) to C (Commercial) on two (2) tracts of land being a combined total of approximately 0.4-acres of real property described as Lot 17 and Lot 18, Block A, of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 209 and 211 Avenue B, Seagoville, Dallas County, Texas, as described and depicted in Exhibit "A", which is attached hereto and incorporated herein; providing for the repealing of all Ordinances in conflict; providing for a repealing clause; providing for a savings clause; providing for a severability clause; providing for a penalty of fine not to exceed Two Thousand Dollars (\$2,000.00) for each offense; and providing for an effective date (Community Development Director)**

**9. Conduct a public hearing on a zoning request Z2018-12 to change zoning from R-5 (Residential-5 Single Family) to C (Commercial) on three (3) tracts of land being a combined total of approximately 0.7- acres of real property described as Lot 8, Lot 9 and Lot 9A, Block B, of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 208, 210 and 212 Avenue B (Community Development Director)**

**10. Discuss and consider an Ordinance of the City of Seagoville, Dallas and Kaufman Counties, Texas amending the Comprehensive Zoning Ordinance and map, as heretofore amended, by granting a change in zoning from R-5 (Residential-5 Single Family) to C (Commercial) on three (3) tracts of land being a combined total of approximately 0.7- acres of real property described as Lot 8, Lot 9 and Lot 9A, Block B, of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 208, 210 and 212 Avenue B, Seagoville, Dallas County, Texas as described and depicted in Exhibit "A", which is attached hereto and incorporated herein; providing for the repealing of all Ordinances in conflict; providing for a repealing clause; providing for a savings clause; providing for a severability clause; providing for a penalty of fine not to exceed Two Thousand Dollars (\$2,000.00) for each offense; and providing for an effective date (Community Development Director)**

**11. Receive Councilmember Reports/Items of Community Interest - as authorized by Section 551.0415 of the Texas Government Code.**

**12. Future Agenda Items – Council to provide direction to staff regarding future agenda items. These items will not be discussed and no action will be taken at this meeting.**

**13. Executive Session**

**A. § 551.074 Personnel, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee to wit: Economic Development Director**

**B. §551.075. Deliberation regarding the purchase, exchange, lease, or value of real property located on Simonds Road**

**14. Reconvene Into Regular Session**

**Council will reconvene into open session, and take action, if any, on matters discussed in Executive Session.**

**Adjourn**

Posted Thursday, August 2, 2018 by 5:00 P.M.

*Kandi Jackson*

Kandi Jackson, City Secretary



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As authorized by Section 551.071(2) of the Texas Government Code, this meeting may be convened into closed executive session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.

The City of Seagoville does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. If you have a request for services that will make this program accessible to you, please contact the City of Seagoville at least 72 hours in advance at (972) 287-6819. (TDD access 1-800-RELAY-TX)

**DATES TO REMEMBER**

- **Monday, August 20, 2018 Regular City Council Meeting.**



WORK SESSION 08/06/2018

## PLANNED DEVELOPMENT ZONING DISTRICTS

During recent conversations with various individuals, it has come to our attention that not everyone has an understanding of what a Planned Development is or the purpose of the same. Therefore, we wanted to start with the City Council and create a packet of information that would provide education on Planned Developments.

A publication from the American Planning Association, Texas Chapter, entitled "A Guide to Urban Planning in Texas Communities" provides in Chapter 4 (Zoning Regulations in Texas) the following for Planned Developments:

"Planned Development District (PD) or Planned Unit Development (PUD) - A zoning classification that provides flexible development regulations to allow the construction of a unified development concept which may not conform entirely to the standard zoning regulations. Often these types of development include mixed uses, protection of environmentally significant features, preservation of and provision for open space, interconnection of uses, modified development standards, and special design guidelines and landscaping requirements. Because the authority and limitations for planned development districts are set forth in a city's zoning code, it is necessary to review those portions of the city's code to determine to what extent a planned development district may be used."

As you are aware, staff has brought several planned developments to you over the last few months. We believe that bringing forth Planned Developments allows the governing body the opportunity to have input on each new subdivision within the City as set forth above. This is possible because Planned Developments provide flexible development regulations not permitted by straight zoning.

For further explanation on Planned Developments, we have provide you with the following:

- City of Seagoville Zoning Ordinance – Division 22. Planned Developments
- Planning & Zoning presentation by attorney Joseph J. Gorfida, Jr. of the law firm of NICHOLS, JACKSON, DILLARD, HAGER & SMITH, LLP
- Introduction to Planned Development Zoning presentation by Frank F. Turner, FAICP (Fellowship of the American Institute of Certified Planners) and attorney Terry D. Morgan with the law firm of MORRIS & SCHORSCH, PC.
- Planned Development Districts, Special Use Permits and Site Plan Approval presentation by attorney Myron D. Dornic with the firm of JACKSON WALKER L.L.P.

Please note that some of the presentations do provide regulations and information on zoning districts other than Planned Developments. Therefore, for your convenience, we have highlighted for you those areas that are specifically applicable to Planned Development Zoning Districts.

## **Division 22. PD Planned Development District Regulations\***

### **Sec. 25.02.531 General purpose and description**

(a) The city council, after public hearing and proper notice to all parties affected and after recommendation from the planning and zoning commission, may authorize the creation of a Planned Development (PD) overlay district.

(b) The Planned Development (PD) District is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., single-family, multifamily, duplex, etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A Planned Development district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts in this article, to ensure the compatibility of land uses, and to allow for the adjustment of changing demands to meet the current needs of the community by meeting one or more of the following purposes:

- (1) To provide for a superior design on [of] lots or buildings;
- (2) To provide for increased recreation and open space opportunities for public use and enjoyment;
- (3) To provide amenities or features that would be of special benefit to the property users or to the overall community;
- (4) To protect or preserve natural amenities and environmental assets such as trees, creeks, ponds, floodplains, slopes, viewsapes, or wildlife habitats;
- (5) To protect or preserve existing historical buildings, structures, features or places;
- (6) To provide an appropriate balance between the intensity of development and the ability to provide adequate supporting public facilities and services; and
- (7) To meet or exceed the standards of this article.

(c) While greater flexibility is given to allow special conditions or restrictions that would not otherwise allow the development to occur, procedures are established herein to ensure against misuse of increased flexibility.

(Ordinance 27-05, sec. 1, 12/15/05)

  **Sec. 25.02.532 Permitted uses**

(a) An application for a PD district shall specify the base zoning district(s) upon which the PD is based, and the use or the combination of uses proposed (particularly if any of the proposed uses are not allowed by right in the base zoning district). PD designations shall not be attached to SUP requirements. Specific use permits allowed in a base zoning district(s) are allowed in a PD only if specifically identified as allowable by SUP at the time of PD approval, and if specifically cited as an “additional use” (i.e., to those allowed by right in the PD) in the ordinance establishing the PD. Any use that is not specifically cited as permitted (by right or by SUP) in the applicable base zoning district(s) or the PD ordinance shall be prohibited unless the PD ordinance is amended using the procedures set forth in this article and in division 36 of the zoning ordinance.

(b) In the case of residential PD districts, the proposed lot sizes shall be no smaller than the lot sizes allowed in the base zoning district for each type of housing (e.g., single-family, duplex, etc.) except for minor changes in a small percentage of the lots in order to provide improved design, or to provide flexibility in the layout of the subdivision or diversity in lot size choices.

(Ordinance 27-05, sec. 1, 12/15/05)

  **Sec. 25.02.533 Planned development requirements**

(a) Any development requirements for a particular PD district that deviate from those of the base zoning district(s) shall be set forth in the amending ordinance granting the PD district. These shall include, but may not be limited to: allowed or additional (i.e., SUP) uses, density, lot area, lot width, lot depth, yard depths and widths, building height and size, building exterior construction, lot coverage, floor area ratio, parking, access, screening, landscaping, accessory buildings, signs, lighting, project phasing or scheduling, property management associations, and other requirements as the city council and planning and zoning commission may deem appropriate.

(b) In the PD district, uses and development standards shall conform to the standards and regulations of the base zoning district(s) unless specifically stated otherwise in the PD ordinance. The base zoning district(s) shall be stated in the PD granting ordinance. All applications to the city shall list all requested deviations from the standard requirements for the base zoning district(s) as set forth throughout the zoning ordinance as applicable to each base zoning district (applications without this list will be considered incomplete). The PD district shall conform to all other regulations of the

applicable base zoning district(s), as well as all other applicable regulations of the zoning ordinance, unless specifically changed or excluded in the ordinance establishing the PD. A PD that is based upon more than one base zoning district shall also include a legal (i.e., metes and bounds) description and graphic exhibit describing/showing the proposed boundaries of each respective area and its base zoning district (e.g., shown as “Proposed PD-R-2”, “Proposed PD-LR”, etc.).

(c) The ordinance granting a PD district shall include a statement as to the purpose and intent of the PD district granted therein, as well as a general statement citing the reason for the PD request.

(d) The minimum acreage for a planned development request shall be as follows:

- (1) Residential development (R-1 through 5, D or TH): 20 contiguous acres.
- (2) Multifamily development (A or MHP): Ten contiguous acres.
- (3) Nonresidential development (O, LR, C, LM, HM, H/O): Ten (10) contiguous acres.
- (4) Mixed Use (residential and nonresidential): 30 contiguous acres.

(e) The minimum acreages for a planned development request cited in subsection D above may be reduced, or waived altogether, by city council upon approval and adoption of the PD ordinance (with such acreage reduction or waiver specifically cited in the PD ordinance) if the city council makes a finding that at least one of the following special circumstances exist for a specific land parcel:

- (1) The property is located entirely, or at least 75 percent within, the Downtown Redevelopment Overlay District;
- (2) The property is located along U.S. 175, and has at least 200 feet of frontage along U.S. 175; or
- (3) The property is surrounded on at least 75 percent of its perimeter by property that has already been developed (i.e., has been final platted and has significant development improvements, such as roads, utilities, storm drainage structures, fire lanes and hydrants, and other similar development improvements, either under active construction or already completed on it).

(Ordinance 27-05, sec. 1, 12/15/05)

  **Sec. 25.02.534 Concept plan and site plan requirements for a PD**

In establishing a planned development district in accordance with this article, the city council shall approve and file as part of the amending ordinance appropriate plans and standards for each PD district. To facilitate understanding of the request during the review and public hearing process, the concurrent submission of a concept plan shall be required along with the PD zoning application. A preliminary/construction plat may be submitted in lieu of the concept plan for a single- or two-family PD (see the Subdivision Ordinance for submission and other requirements) if the applicant prefers to do so, and if the applicant wishes to expend the resources and funds necessary to prepare a complete preliminary/construction plat submission.

(1) Concept plan. This plan shall be submitted by the applicant at the time of the planned development request. The plan shall show the applicant's intent for the use of the land within the proposed PD district in a graphic manner and, as may be required, supported by written documentation of proposals and standards for development. The city may prepare application form(s) that further describe and explain the following requirements:

(A) Residential PD concept plan. A concept plan shall be submitted with any residential PD zoning request for a development comprised of single-family or two-family (duplex) dwellings on individually platted lots, and shall show general uses, phasing of the development, access, thoroughfares, alleys (if proposed), preliminary lot arrangements, proposed densities, proposed screening, landscaped or private amenity areas, project scheduling, and other pertinent development data. (See the Subdivision Ordinance for additional information on concept plan submission as it relates to the platting of land.)

(i) For a single- or two-family PD (or portion of a PD) - A preliminary/construction plat (see the Subdivision Ordinance) shall be submitted for approval within one year from the approval date of the concept plan for all or some portion of the PD covered by the overall PD concept plan. If a preliminary/construction plat is not submitted within one year, then the PD concept plan shall expire in which case the property owner must submit a new zoning application for approval of a new PD concept plan (along with a zoning application to amend the PD ordinance and its accompanying concept plan) must be submitted for review and approval, in accordance with the procedures set forth in this article, prior to preliminary/construction plat review/approval (and any

subsequent issuance of a building permit) for any portion of the PD district.

(B) Nonresidential or multifamily PD concept plan. A concept plan shall be submitted with any nonresidential, multifamily, single-family attached, or manufactured (mobile) home PD zoning request, and shall clearly show all pertinent aspects of the type and nature of the proposed development. The concept plan shall show the types of use(s) proposed; access, topography and boundaries of the PD area; existing physical features of the site; existing and proposed streets, alleys, easements and lot lines; location of existing or proposed public facilities; building heights and locations; parking areas and ratios; fire lanes; screening and landscaped areas; project phasing and scheduling; and other pertinent development data to adequately describe the proposed development (see division 23 of the zoning ordinance for concept plan requirements and procedures).

(i) For a nonresidential, multifamily, single-family attached, or manufactured (mobile) home PD (or portion of a PD) - A detailed site plan shall be submitted for approval (in accordance with subsection (2) below, and with division 23 of the zoning ordinance) within one (1) year from the approval date of the concept plan for all or some portion of the PD covered by the overall PD concept plan. If a detailed site plan is not submitted within one (1) year, then the PD concept plan shall expire in which case the property owner must submit a new zoning application for approval of a new PD concept plan (along with a zoning application to amend the PD ordinance and its accompanying concept plan) must be submitted for review and approval, in accordance with the procedures set forth in this article, prior to detailed site plan review/approval (and any subsequent issuance of a building permit) for any nonresidential, multifamily, single-family attached, or manufactured (mobile) home portion of the PD district.

(2) PD site plan (detailed). Submission and approval of the detailed PD site plan shall be in accordance with division 23 of the zoning ordinance, and shall accompany an application for a nonresidential, multifamily, single-family attached, or manufactured (mobile) home planned development zoning if the applicant prefers to submit the detailed site plan in lieu of the required PD concept plan. The detailed PD site plan will establish the final plans for development of the planned development district (or any portion thereof), and it shall substantially conform to the site layout and development data

approved on the PD concept plan (adopted along with the PD ordinance). If a PD concept plan was previously approved for the overall PD district, then a detailed PD site plan (along with the required engineering/architectural site construction plans and preliminary/construction plat) may be submitted for only the sections or lots that are proposed for immediate development rather than for the entire PD. If no concept plan was approved with the ordinance establishing the PD, then a concept plan for the entire PD must be submitted and approved prior to approval of a detailed site plan (along with the required engineering/architectural site construction plans and preliminary/construction plat) for only the portion(s) of the PD that are proposed for immediate development.

For any single- or two-family residential district (A, R-1 through 5 or Duplex), a preliminary/construction plat shall qualify as the site plan.

(3) Lapse, extension or reinstatement of PD concept plan or PD site plan shall be in accordance with the provisions above and the provisions in division 23 of the zoning ordinance.

(Ordinance 27-05, sec. 1, 12/15/05)

  **Sec. 25.02.535 Approval process and procedures**

(a) The procedure for establishing a planned development zoning district shall follow the procedures for zoning amendments as set forth in division 36 of the zoning ordinance. This procedure shall be expanded to include concurrent consideration and approval (or denial) of the concept plan that is submitted along with the PD zoning request application. The public hearings conducted for, and the subsequent actions taken upon, the PD zoning request shall also include the accompanying concept plan, and if the PD is approved then the concept plan shall become a part of the ordinance establishing the PD district.

(b) The ordinance establishing the planned development zoning district shall not be approved (or adopted) until the accompanying concept plan is approved by the city council, and until all other procedural requirements set forth in division 36 and division 23 of the zoning ordinance are satisfied.

(c) When a zoning request for a planned development district is being considered, a written report from the city manager (or his/her designee) discussing the project's impact upon planning, engineering, water utilities, electric, sanitation, building inspection, tax, police, fire and traffic, as well as written comments from applicable

public agencies (such as the applicable school district and/or utility companies), may be submitted to the planning and zoning commission prior to the commission making any recommendations to the city council. In the event written comments and advisement are not forthcoming in a reasonable amount of time, the commission may, at its discretion, make a recommendation to the city council without said comments or advisement.

(Ordinance 27-05, sec. 1, 12/15/05)

  **Sec. 25.02.536 Designation of PDs on the zoning map**

All planned development zoning districts approved in accordance with the provisions of this article, as may be amended, shall be prefixed by a “PD” designation and assigned a unique identification number (e.g., PD-1, PD-2, PD-3, and so on), and shall also be referenced on the zoning district map. A list of such planned development districts, showing the uses permitted and any other special stipulations of each PD district, shall be maintained as part of this article. (Ordinance 27-05, sec. 1, 12/15/05)

  **Sec. 25.02.537 Prior planned development ordinances remaining in effect**

Prior to adoption of the ordinance codified in this article, the city council previously established certain planned development districts, some of which are to be continued in full force and effect. The ordinances or parts of ordinances approved prior to the ordinance codified in this article, specified in Appendix A-1, shall be carried forth in full force and effect and are the conditions, restrictions, regulations and requirements which apply to the respective planned development districts shown on the zoning district map as of the effective date of the ordinance codified in this article. Each prior PD ordinance is hereby assigned a unique identification number (e.g., PD-1, PD-2, PD-3, and so on) as shown in Appendix A-1, and subsequent PD ordinances adopted after the effective date of the ordinance codified in this article shall be similarly numbered for identification purposes. (Ordinance 27-05, sec. 1, 12/15/05)

**Editor's note**—Appendix A-1 to Ord. 27-05, referred to in section 7 above, is not printed herein.

  **Secs. 25.02.538–25.02.550 Reserved**

  **Division 23. Concept Site Plan And Site Plan Review Process**

  **Sec. 25.02.551 Purpose**

This article establishes a site plan review process for proposed nonresidential, mixed-use and higher density residential developments. The purpose of the review is to ensure efficient and safe land development, harmonious use of land, compliance with the comprehensive plan and other appropriate design standards, safe and efficient vehicular and pedestrian circulation, adequate parking and loading, and adequate water supply, drainage and stormwater management, sanitary facilities, coverage, and other utilities and services. (Ordinance 27-05, sec. 2, adopted 12/15/05)

### **Sec. 25.02.552    Applicability**

(a) Site plan review and approval shall be required for all nonresidential, mixed-use, townhouse, single-family attached, and multifamily residential projects and structures, and for any planned development district or specific use permit (public hearings may also be required, see [division 22](#) and [division 26](#) of the zoning ordinance). Nonresidential structures within a residential zoning district (e.g., church, school, day care facility, private recreation facility, etc.) are subject to the site plan review and approval requirements of this article.

(b) No building permit shall be issued for any of the above developments until a site plan and all other required engineering/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the site plan and engineering/construction plans, as approved by the city. The site plan review process shall include up to four steps:

- (1) Preapplication conference;
- (2) Concept plan review (voluntary, except for planned developments or specific use permits);
- (3) Site plan review/approval; and
- (4) Construction of project (after city approval of required site plan and other associated plans, including preliminary/construction plat and engineering plans).

(Ordinance 27-05, sec. 2, adopted 12/15/05)

### **Sec. 25.02.553    Exemptions and exceptions**

Site plan review shall not be required for single-family (detached) or two-family residential developments, unless the proposed subdivision will include a private amenity or facility (such as a private recreation/swimming facility, clubhouse, etc.) or

a golf course. In these instances, site plan submission and approval (in accordance with this article) will be required for the private amenity or facility, or the golf course clubhouse/hospitality area (also see subsection 4(A)10. below). (Ordinance 27-05, sec. 2, adopted 12/15/05)

### **Sec. 25.02.554 Concept/site plan submission requirements**

An application for concept plan (voluntary except for planned developments or specific use permits) or site plan approval shall be comprised of the following (all required items/information must be received by the city manager, or his/her designee, in order for a concept plan or site plan application to be considered complete (see section 6 below) - incomplete submissions will not be reviewed until all deficient items and information have been received):

(1) An application form (format provided by the city) with notarized signatures of the owner or his/her designated representative if the applicant is not the owner of the subject property;

(Ordinance 27-05, sec. 2, adopted 12/15/05)

(2) Filing fee established by resolution of the city council. (Ordinance 26-15 adopted 12/14/15)

(3) Verification that all taxes and assessments on the subject property have been paid (see section 5 below).

(4) Copies of the concept plan or site plan (on 24" x 36" sheet, and drawn to a known engineering scale that is large enough to be clearly legible), and other required information, the quantity of which shall be determined by the city manager (or his/her designee).

(5) General layout for the required public improvements (water, wastewater, grading/storm drainage, streets, water quality, fire lanes and hydrants, screening and landscaping, etc.), the quantity of which shall be determined by the city manager, or his/her designee.

(6) Reduced copies (11" x 17") of the site plan as required by the city manager, or his/her designee.

(7) Landscaping and irrigation plans (with site plan; not required with concept plan), the quantity of which shall be determined by the city manager, or his/her designee.

(8) Building facade (elevation) plans (with site plan; not required with concept plan) drawn to scale, the quantity of which shall be determined by the city manager, or his/her designee.

(9) Any additional information/materials (such as plans, maps, exhibits, legal description of property, information about proposed uses, etc.) as deemed necessary by the city manager, or his/her designee, in order to ensure that the development request is understood.

(10) If the application is for a single-family subdivision, a preliminary/construction plat may qualify as a site plan, notwithstanding other information contained herein that may still be deemed as required with the application.

(Ordinance 27-05, sec. 2, adopted 12/15/05)

  **Sec. 25.02.555 Payment of all indebtedness attributable to subject property**

No person who owes delinquent taxes, fees, delinquent paving assessments, development fees, or any other delinquent debts or obligations to the city, and which are directly attributable to a piece of property shall be allowed to submit an application for concept plan or site plan approval until the taxes, fees, assessments, debts, or obligations directly attributable to said property and owed by the owner or previous owner thereof shall have been first fully paid, or until an arrangement satisfactory to the city has been made for the payment of such debts or obligations. It shall be the applicant's responsibility to provide evidence or proof that all taxes, debts and obligations have been paid. (Ordinance 27-05, sec. 2, adopted 12/15/05)

  **Sec. 25.02.556 Official submission date and completeness of application**

(a) For the purpose of these regulations, the “official submission date” shall be the date upon which a complete application for approval of a concept plan or site plan (that contains all elements and information required by this article) is submitted to the city manager (or designee). No application shall be deemed officially submitted until the city manager (or designee) determines that the application is complete and a fee receipt is issued by the city. Failure by the city manager (or designee) to make a determination of incompleteness within ten (10) calendar days following the date on which the application was first received by the city, shall result in the application being deemed complete, and the “official submission date” shall become the 11th calendar day following initial receipt of the application by the city. In no event shall determination

of the submission date act as a waiver or estoppel to any of the requirements under this article.

(b) Concept plan and site plan applications which do not include all required information and materials (as outlined below and per other city development review policies which may change from time to time) will be considered incomplete, shall not be accepted for official submission by the city, and shall not be scheduled on a planning and zoning commission agenda until the proper information is provided to city staff.

(Ordinance 27-05, sec. 2, adopted 12/15/05)

#### **Sec. 25.02.557 Supplemental requirements**

The city's staff may require other information and data for specific concept plans/site plans. This data may include but is not limited to geologic information, water yields, flood data and/or hydrological studies, environmental information, traffic impact analysis, road capacities, market information, economic data for the proposed development, hours of operation, elevations and perspective drawings, lighting, and similar information. Approval of a concept plan or site plan may establish conditions for construction based upon such information. (Ordinance 27-05, sec. 2, adopted 12/15/05)

#### **Sec. 25.02.558 Principles and standards for concept plan and site plan review and evaluation**

The following criteria have been set forth as a guide for evaluating the adequacy of proposed development within the city, and to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances.

The city manager, or his/her designee, shall review the concept plan or site plan for compliance with all applicable city ordinances and with the Comprehensive Plan; for harmony with surrounding uses and with long-range plans for the future development of Seagoville; for the promotion of the health, safety, order, efficiency, and economy of the city; and for the maintenance of property values and the general welfare.

Concept plan or site plan review and evaluation by the city manager, or his/her designee, shall be performed with respect to the following:

- (1) The plan's compliance with all provisions of the zoning ordinance, subdivision ordinance, and other applicable ordinances of the city.

- (2) The impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood.
- (3) The relationship of the development to adjacent uses in terms of harmonious design, facade treatment, setbacks, building materials, maintenance of property values, and any possible negative impacts.
- (4) The provision of a safe and efficient vehicular and pedestrian circulation system.
- (5) The design and location of off-street parking and loading facilities to ensure that all such spaces are usable and are safely and conveniently arranged.
- (6) The sufficient width and suitable grade and location of streets designed to accommodate prospective traffic and to provide access for firefighting and emergency equipment to buildings.
- (7) The coordination of streets so as to arrange a convenient system consistent with the Thoroughfare Plan of the city, as amended.
- (8) The use of landscaping and screening to provide adequate buffers to shield lights, noise, movement, or activities from adjacent properties when necessary, and to complement and integrate the design and location of buildings into the overall site design.
- (9) Exterior lighting to ensure safe movement and for security purposes, which shall be arranged so as to minimize glare and reflection upon adjacent properties.
- (10) The location, size, accessibility, and configuration of open space areas to ensure that such areas are suitable for intended recreation and conservation uses.
- (11) Protection and conservation of soils from erosion by wind or water or from excavation or grading.
- (12) Protection and conservation of watercourses and areas that are, or that may be, subject to flooding.

(13) The adequacy of water, drainage, sewerage facilities, solid waste disposal, and other utilities necessary for essential services to residents and occupants.

(14) Consistency with the Comprehensive Plan of the city, as amended.

(Ordinance 27-05, sec. 2, adopted 12/15/05)

  **Sec. 25.02.559 Approval process and revisions**

(a) Preapplication conference. The applicant(s) should avail themselves of the advice and assistance of the city officials, and should consult early and informally with the city manager, the public works director, the city's planner, the city's engineer, and other applicable administrative officers before preparing a concept plan (a voluntary plan, except for planned developments or specific use permits) or a site plan in order to save time, money and to avoid potential unnecessary delays.

Prior to formal application for approval of any concept plan or site plan, the applicant(s) shall request and attend a preapplication conference with the city manager (or designee), the city's planner, the city's engineer, the public works director, and any other pertinent city official(s) in order to become familiar with the city's development regulations and the development process. At the preapplication conference, the developer may be represented by his/her land planner, engineer and/or surveyor.

(b) City staff review. Upon official submission of a complete application for concept plan or site plan approval, the city shall commence technical review of the development proposal by forwarding a copy of the application to development review team members (such as the city manager, city engineer, city planner, public works director, fire chief, etc.). Development review team members shall review the application and shall ascertain its compliance with these and other applicable city regulations. Following city staff review of the plan and supporting documents, and following discussions with the applicant on any revisions deemed advisable and the kind and extent of improvements to be installed, the applicant shall resubmit additional copies of the corrected plan to the city manager (or designee) no later than seven (7) calendar days prior to the planning and zoning commission meeting. Failure to resubmit corrected copies of the plan back to the city in time shall be cause for the city manager (or designee) to forward the plan application to the commission as it was originally submitted rather than the corrected version (corrected copies of the plan resubmitted to the city less than seven days prior to the meeting date shall not be accepted or forwarded to the commission). If, upon resubmission of the corrected plan to the city, the city manager (or designee) determines that the application is still incomplete or not correct (i.e., not ripe for consideration), the plan application shall be subject to denial.

(c) Action by the planning and zoning commission. All concept plan and site plan applications shall be reviewed by the planning and zoning commission, and if in conformance with the provisions of this article and all other applicable regulations and codes of the city, they shall be approved by the commission.

The city manager, or his/her designee, shall schedule consideration of the concept plan or site plan on the regular agenda of the planning and zoning commission within thirty (30) calendar days after the submission is received (or, in the case of an incomplete submission, after the submission is deemed complete). The planning and zoning commission shall review the concept plan or site plan and shall approve, approve subject to certain conditions, or disapprove the concept plan or site plan. If the planning and zoning commission disapproves a plan application, the commission shall state such disapproval and the reasons therefor. The applicant or property owner may appeal such decision to city council by filing a written notice of appeal in the office of the city manager (or designee) no later than ten (10) calendar days after the date upon which the commission denied the application. The Notice of Appeal shall set forth in clear and concise fashion the basis for the appeal. The city council shall consider the appeal at a public meeting no later than thirty (30) calendar days after the date upon which the Notice of Appeal was filed. The city council may change the decision of the commission only by a three-quarters (3/4) vote of the full city council. The city council may also, where appropriate, remand the concept plan or site plan application back to the commission for reconsideration if it believes that there is a compelling reason to do so (such as the introduction of significant new facts or testimony, etc.). The planning and zoning commission shall determine final approval or disapproval of all concept plan or site plan applications unless a disapproval is appealed to the city council, in which case the city council shall be the final authority approving or disapproving the plan application.

(d) Revisions to the approved site plan:

(1) Minor revisions/amendment. It is recognized that final architectural and engineering design may necessitate minor changes in the approved site plan. In such cases, the city manager, or his/her designee, shall have the authority to approve minor modifications to an approved site plan (which shall be submitted as an “amended site plan” which substantially conforms to the previously approved site plan), provided that such modifications do not significantly change traffic circulation, building location(s) on the site, proximity of building(s) to nearby residential areas, increase the size or height of building(s), or any other conditions specifically attached as part of the planning and zoning commission's (or city council's, if the plan was appealed) approval of the site plan. Submission materials and requirements for approval of an amended site plan shall be as determined by the city manager, or his/her

designee. If the city manager, or his/her designee, refuses to approve an amended site plan, then the applicant shall resubmit the amended site plan as a “revised site plan” as described in subsection 9(D)2 below, whereupon the revised site plan shall be scheduled for consideration by the planning and zoning commission.

(2) Major revisions. In the event of revisions that are more extensive in nature (i.e., do not conform to the description for minor amendments above), a “revised site plan” must be resubmitted, reviewed by the city manager (or his/her designee), and reconsidered by the planning and zoning commission in accordance with the site plan review and approval procedures set forth in this article.

  **Sec. 25.02.560 Lapse of concept plan or site plan approval**

The approval of a concept plan or site plan shall be effective for a period of six (6) months (i.e., 183 calendar days) beyond the date that the plan was approved by the planning and zoning commission (or by the city council, in the event of an appeal) except as provided herein. By 12:01 a.m. on the 184th day following commission approval of the plan, the applicant must have completed a city-required “progress benchmark” as set forth below. If this is not accomplished, then the approved concept plan or site plan shall be deemed to have expired and shall become null and void. The series of “progress benchmarks” for a project, pursuant to the provisions of this paragraph, are as follows:

Approved Plan	Next “Progress Benchmark”
Concept Plan (voluntary, except with PDs and SUPs)	Approval of the final site plan (per zoning ordinance) and approval of the prelim./construction plat (per subdiv. ordinance) within six months following approval of the concept plan; also, continued active engineering review of the engineering/construction plans (which were submitted along with the preliminary/construction plat and final site plan).
Site Plan	Engineering release and commencement of construction of public improvements, and application for a building permit for at least one of the buildings on the approved site plan, within six months following approval of the site plan.

(Ordinance 27-05, sec. 2, adopted 12/15/05)

  **Sec. 25.02.561 Extension and reinstatement procedure**

(a) Prior to the lapse of approval for a concept plan or site plan, the applicant may petition the city (in writing) to extend the plan approval. Such petition shall be considered at a public meeting before the planning and zoning commission, and an extension may be granted by the commission at such meeting. If no petition for extension of concept plan or site plan approval is submitted, then the plan shall be deemed to have expired and shall become null and void. Any new request for concept plan or site plan approval shall be deemed a “new project”; shall be submitted with a new application form, with a new filing fee, and with new plans and materials in accordance with the procedures set forth in this article; and shall be reviewed for compliance with the ordinances and regulations in effect at the time the new application is made.

(b) In determining whether to grant a request for extension, the planning and zoning commission shall take into account the reasons for the lapse, the ability of the property owner to comply with any conditions attached to the original approval, and the extent to which development regulations would apply to the concept plan or site plan at that point in time. The commission shall either extend the concept plan or site plan or deny the request, in which instance the originally approved plan shall be deemed null and void. The property owner must thereafter submit a new concept plan or site plan application for approval as a “new project”, and shall conform to the zoning and development regulations then in effect.

(Ordinance 27-05, sec. 2, adopted 12/15/05)

## **Sec. 25.02.562 Concept plan requirements**

(a) Applicability. Submission and approval of a concept plan (a voluntary plan except for planned development or specific use permit zoning requests, and except for the types of developments outlined below) can be the first step in the approval process for a development project (either residential or nonresidential) if the applicant prefers to do so. City review and approval of a concept plan has many benefits for both the city and the applicant. The applicant benefits in that he/she gains preliminary review and scrutiny (as well as input and suggestions) on the overall conceptual layout of the proposed development from the city's development review team. Approval of a concept plan may also offer the applicant some level of confidence that subsequent plan submissions will be favorably received and approved with few major changes to the project's design and layout provided that the project complies with city regulations. For example, once the site plan and preliminary/construction plat (and corresponding engineering plans) are submitted for a nonresidential project, unforeseen changes in site layout can prove to be expensive in terms of design and engineering costs and time lost due to major plan revisions. The city benefits in that it is allowed to become familiar

with and involved in the project early in the development process (which is particularly important for large-scale developments and subdivisions). This allows the city to plan for and closely coordinate the provision of public facilities and services, thereby potentially avoiding future problems such as undersized utility lines, inadequate roadway capacities, unanticipated shortfalls in public services, and fiscal inefficiencies resulting from lack of planning and coordination.

Submission and approval of a concept plan is mandatory for a zoning request for a planned development or specific use permit. Submission and approval of a concept plan is also required in the following circumstances:

- (1) In conjunction with a zoning or rezoning request for a property that is five (5) acres or larger that is intended for development or redevelopment either at that time or in the future;
  - (2) Prior to submission of an application for a site plan (and preliminary/construction plat) for a property that is five (5) acres or larger that is intended for development; or
  - (3) In conjunction with any project where any type of public road is to be established, constructed, improved and/or realigned.
- (b) Purpose. The purpose of a concept plan is to allow opportunity for the planning and zoning commission to preview various development-related aspects of the project, including proposed major thoroughfare and collector street patterns; land use patterns and trends; environmental issues and constraints; building orientation and massing; conformance to the comprehensive plan, zoning ordinance (if the subject property is within the city's corporate limits), subdivision ordinance, future land use plan, thoroughfare plan and other applicable plans and guidelines; and the property's relationship to adjoining subdivisions or properties. Review of a concept plan would also assist the city in evaluating the possible impacts of the proposed development in terms of provision of essential public facilities and services, respecting and preserving important natural features and the environment, provision of open space and recreational opportunities, and protecting the general health, safety and welfare of the community.
- (c) Extent of area that should be included in a concept plan. When the overall development project is to be developed in phases, the concept plan area shall include the entire zoned property from which the phases are being developed, as well as an approximate development schedule. Where significant natural or man-made features, such as thoroughfares or creeks, make inclusion of the entire property in the concept plan unnecessary to adequately review the items to be shown on a concept plan, the plan

may include a smaller study area. Boundaries such as major thoroughfares (existing or proposed), creeks, political subdivisions, or other such natural or man-made features may be used to delineate the smaller study area.

(d) Procedures and submission requirements for concept plan approval. Submission of an application for concept plan approval shall be preceded by a preapplication conference with the city (see subsection 9(A) above). The concept plan shall be prepared by a qualified civil engineer, land planner, architect or surveyor, at a scale no smaller than one inch equals two hundred feet (1" = 200') and on sheets 24 inches by 36 inches (24" x 36"), and it shall show/include the following:

(1) A title block within the lower right-hand corner of the concept plan with the proposed name of the project/subdivision, the name and address of the owner/developer and the land planner, engineer architect or surveyor responsible for the design or survey, the scale of the drawing (both written and graphic scale), the date the drawing was prepared, total site acreage, and the location of the property according to the abstract and survey records of Dallas or Kaufman County, Texas (as applicable);

(2) A vicinity or location map that shows the location of the proposed development within the city (or its ETJ) and in relationship to existing roadways;

(3) The boundary survey limits of the tract and scale distances with north clearly indicated;

(4) The names of adjacent subdivisions (or the name of the owners of record and recording information for adjacent parcels of unplatted land), including parcels on the other sides of roads, creeks, etc., and any existing developments (including buildings, driveways, parking areas, etc.) on all surrounding properties within 200 feet of the subject property. The concept plan shall include a depiction of all contiguous holdings of the subject property's owners, the existing/proposed uses of the subject property, a general arrangement of future land uses, including the approximate number of lots and any residential uses anticipated, and a generalized circulation plan for the subject property;

(5) The existing zoning, existing/proposed uses, existing natural features, and existing development layouts on all surrounding properties within 200 feet of the subject property; the location, width and names of all existing or platted streets or other public ways within or adjacent to the tract; any existing easements (with recording information); existing buildings and driveways;

railroad rights-of-way; topography (contours at five-foot intervals) with existing drainage channels or creeks (including the 100-year floodplain, if applicable); any other important natural features (such as rock outcroppings, caves, wildlife habitats, etc.); all substantial natural vegetation; and adjacent political subdivisions, corporate limits, and/or school district boundaries;

(6) Proposed strategies for tree preservation (showing individual trees or tree masses that will [be] preserved, and the techniques that will be used to protect them during construction);

(7) The layout and width (right-of-way lines) of existing and proposed thoroughfares, collector streets and/or intersections, and a general configuration of proposed streets, lots and blocks, including proposed median openings and left turn lanes on future divided roadways (existing and planned driveways on the opposite side of divided roadways must also be shown for coordination and sharing of future median openings);

(8) A general arrangement of land uses and buildings on the subject property, including but not limited to proposed nonresidential and residential densities; building heights, square footages, massing, orientation, loading/service areas, recycling containers, compactors and dumpster enclosures, pedestrian walkways, and parking areas; any proposed sites for parks, schools, public facilities, public or private open space; floodplains/drainageways; and other pertinent development related features; and

(9) The phasing of development (the anticipated order of development for the overall property).

(e) Effect of review. The concept plan shall be used only as an aid to show the anticipated layout of the proposed development, and to assess the adequacy of public facilities or services that will be needed to serve the proposed development. Any proposed use or development depicted on the concept plan shall not be deemed formal authorization or approval by the city until a final site plan is approved for the development (concept plan approval is to be thought of as a general acknowledgment by the city that the proposed layout generally conforms to the city's zoning regulations, and that the proposed development can be adequately served by required public facilities or services). If the applicant chooses to construct only the initial phase(s) of a multi-phase project designated in the concept plan, a new concept plan may be required for site plan approval of subsequent phases, if the proposed development layout, character, or other conditions affecting the development substantially change from one phase to the next.

The approved concept plan shall be valid for a period of six (6) months (i.e., 183 calendar days) from the date of concept plan approval by planning and zoning commission (see Section 10).

(Ordinance 27-05, sec. 2, adopted 12/15/05)

  **Sec. 25.02.563 Site plan review**

(a) Applicability and purpose. Submission and city approval of a site plan is required as stated in section 2. The purpose of final site plan approval is to ensure that a development project is in compliance with all applicable city ordinances and guidelines prior to commencement of construction. Approval of the site plan, preliminary/construction plat, landscape plan, building facade plan, and engineering plans are required prior to site construction.

(b) Extent of area that should be included in a site plan. When the overall development project is to be developed in phases, the site plan area shall include only the portion of the overall property that is to be developed/constructed.

(c) Procedures and submission requirements for site plan approval. Submission of an application for site plan approval shall be preceded by a preapplication conference with the city (see section 9(A)). The site plan shall be prepared by a qualified civil engineer, land planner, architect or surveyor, at a scale no smaller than one inch equals one hundred feet (1" = 100') and on sheets 24 inches by 36 inches (24" x 36"), and it shall clearly show in detail how the site will be constructed (such as paving, buildings, landscaped areas, utilities, etc.). The site plan shall include, but not be limited to the following:

(1) A title block within the lower right-hand corner of the site plan with the proposed name of the project/subdivision, the name and address of the owner/developer and the land planner, engineer architect or surveyor responsible for the plan, the scale of the drawing (both written and graphic scale), the date the drawing was prepared, total site acreage, and the location of the property according to the abstract and survey records of Dallas or Kaufman County, Texas (as applicable);

(2) A vicinity or location map that shows the location of the proposed development within the city (or its ETJ) and in relationship to existing roadways;

(3) The boundary survey limits of the tract (and each proposed lot) and scale distances with north clearly indicated;

(4) The names of adjacent additions or subdivisions (or the name of the owners of record and recording information for adjacent parcels of unplatted land), including parcels on the other sides of roads, creeks, etc.;

(5) The existing zoning, existing/proposed uses, existing natural features, and existing development layouts on all surrounding properties within two hundred feet (200') of the subject property; the location, width and names of all existing or platted streets or other public ways within or adjacent to the tract; any existing easements (with recording information); existing buildings and driveways; railroad rights-of-way; topography (contours at two-foot intervals) with existing drainage channels or creeks (including the 100-year floodplain, if applicable); any other important natural features (such as rock outcroppings, caves, wildlife habitats, etc.); all substantial natural vegetation; and adjacent political subdivisions, corporate limits, and/or school district boundaries;

(6) Proposed strategies for tree preservation (showing individual trees or tree masses that will [be] preserved, and the techniques that will be used to protect them during construction);

(7) The layout and width (right-of-way lines and curblines) of existing and proposed thoroughfares, collector streets and/or intersections, and specific configuration of proposed streets, lots and blocks, proposed driveways (show driveway widths and distances between driveways, edge-to-edge), and proposed/future median openings and left turn lanes on future divided roadways (existing and planned driveways on the opposite side of divided roadways must also be shown for coordination and sharing of future median openings and alignment of driveways across non-divided roads);

(8) Specific locations and footprints of buildings, including but not limited to proposed nonresidential and residential densities; building heights, square footages (for multitenant or multipurpose buildings, show square footage for each intended use), massing, orientation, loading/service areas (including proposed screening), recycling containers, compactors and dumpster enclosures (including proposed screening), pedestrian walkways, and parking areas (including parking ratio calculations); any proposed sites for parks, schools, public facilities, public or private open space; floodplains/drainageways; all proposed and existing utilities and easements; drainage structures; retention/detention ponds with proposed aesthetic treatments; screening walls; fences; signage; fire lanes and fire hydrants; lighting; visibility easements; and other pertinent development related features; and

(9) A landscape plan showing turf areas, tree types and sizes, screening walls, ornamental plantings, planting schedule (including species, planted height, spacing, container/caliper size, numbers of each plant material, etc.) any existing wooded areas, trees to be planted, and irrigation plans (if required).

(10) Building facade (elevation) plans showing elevations with any attached (wall-mounted) signage to be used, as determined appropriate by the city manager, or his/her designee.

Provision of the above items shall conform to the principles and standards of this article and the Comprehensive Plan. To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for site plan review applications. Upon periodic review, the city manager (or his/her designee) shall have the authority to update such requirements for site plan and development review applications. It is the applicant's responsibility to be familiar with, and to comply with, these requirements.

(d) Effect of Review. The site plan shall be considered authorization to proceed with construction of the site provided all other required city approvals are obtained (such as preliminary/construction plat, engineering plans, landscape plan, building facade plans, building permits, etc.). The approved site plan shall be valid for a period of six months (i.e., 183 calendar days) from the date of approval by the planning and zoning commission (also see section 10).

(Ordinance 27-05, sec. 2, adopted 12/15/05)

  **Secs. 25.02.564–25.02.580 Reserved**

**PRESENTED AT**  
**2017 LAND USE FUNDAMENTALS**

**April 5, 2017**  
**Austin, Texas**

**PLANNING & ZONING**

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Mr. Gorfida currently serves as the City Attorney for DeSoto, Hutchins, Lucas, Midlothian and Sachse and, as General Counsel for Denton County Transportation Authority and Dallas Central Appraisal District. He also acts as Assistant City Attorney for Allen, Farmers Branch and Richardson, and as police legal advisor for Richardson.

Mr. Gorfida's practice focuses on municipal law, including planning and zoning, contracts, public works and procurement, open government, employment law and personnel matters, and litigation. He serves as special counsel for several cities for the purpose of assisting with complex land development issues, including annexation, planning and zoning, drafting telecommunications license agreements, and development agreements. Mr. Gorfida is also a frequent speaker on land development and employment-related issues.

Mr. Gorfida earned his B.A. from the University of South Carolina; and, his J.D. from the University of Tulsa, College of Law. Prior to joining Nichols, Jackson, Dillard, Hager & Smith, L.L.P., Mr. Gorfida served as an Assistant City Attorney with the City of Plano, Texas.

## **I. INTRODUCTION**

The authority of a municipality to impose land use controls and regulations ultimately derives from its constitutional police power. This is the source of authority from which municipal zoning ordinances are justified for the protection and preservation of communities. Statutory authority is found in Chapter 211 of the Texas Local Government Code (referred to as the “Zoning Enabling Act”). The powers granted by Chapter 211 are for the purpose of promoting the public health, safety, morals, or general welfare and for the preservation of places and areas of historical, cultural, or architectural importance or significance.

Municipalities are empowered to regulate the height, number of stories and size of buildings, the percentage of a lot that may be occupied, the size of yards and open spaces, population density, and the location and use of buildings, structures and land for residential, commercial and industrial purposes.

Zoning ordinances fall within two broad categories: 1) zoning regulations and 2) zoning district boundaries. The former addresses the regulations (typically use, density, and structural requirements) applicable within specified zoning districts. The latter addresses the imposition of those regulations within specified districts, areas or lots. Zoning regulations must be uniform within each district.

Under Section 211.004 of the Local Government Code, zoning regulations must be adopted in accordance with a comprehensive plan (see, Chapter 213, TEX. LOCAL GOV'T CODE) and must be designed to lessen traffic congestion, secure safety from fire, panic and other dangers, promote health and general welfare, provide adequate light and air, prevent overcrowding and avoid undue concentration of population, and facilitate the adequate provision of transportation, utilities, schools, parks and other public requirements. Zoning regulations must be uniform within each district and should be adopted with reasonable consideration for the character of the area, its suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land within the city.

A zoning ordinance must bear a substantial relationship to the public health, safety, morals or

general welfare and must not be arbitrary or unreasonable. The Texas Supreme Court, in *Pharr v. Tippet*, 616 S.W.2d 173 (Tex. 1981), set forth four basic criteria that should be used in reviewing zoning ordinances: 1) respect for the approved comprehensive plan, 2) the nature and degree of adverse impact on neighboring properties, 3) the suitability of the tract as presently zoned, and 4) the existence of a substantial relationship between the amendatory ordinance and the public health, safety, morals or general welfare. *Pharr*, 616 S.W.2d at 176. It has been written that “[t]he concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.” *Village of Belle Terre v. Boraas*, 416 US 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974), citing, *Berman v. Parker*, 348 US 26, 32-33 (1954).

Despite the discretion afforded to zoning authorities, the application of a zoning regulation to specific property must at least substantially advance legitimate state interests and must not deprive the owner of all economically viable uses of the land. *Agins v. City of Tiburon*, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980). Zoning ordinances carry a strong presumption of validity; the burden of establishing the invalidity of a zoning ordinance falls on the party contesting its validity and the burden is a high one. *Pharr v. Tippet*, 616 S.W.2d 173 (Tex. 1981). Since zoning decisions are an exercise of a city council’s legislative authority, public officials involved in the zoning process possess legislative immunity for zoning decisions.

## **II. CONDUCTING THE MEETING**

### **Robert’s Rules of Order**

Robert’s Rules provide general guidance on the conduct of meetings. Compliance with the Rules will assist in maintaining protocol and preserving the dignity of the meeting. However, the Rules are used only as guidance; a departure from strict compliance will not invalidate formal action (state law generally requires that the official minutes reflect a majority vote in compliance with the Open Meetings Act, regardless of the mechanics in which that majority vote was reached).

## **Role of the Chairperson**

The chairperson, as presiding officer, has the primary responsibility for seeing to it that the Commission's rules of procedure are followed and for maintaining the dignity of the meetings. The chairperson calls the meeting to order, and confines the discussion to the agreed order of business. He or she recognizes members for motions and statements, and allows audience participation at appropriate times. The chairperson sees to it that speakers limit their remarks to the item being considered and, as necessary, calls down people who are out of order.

Presiding effectively at a meeting is an art that no book or person can fully teach. The tactful presiding officer knows how to courteously discourage Commissioners who talk too much or too often, and how to encourage shy Commissioners who are hesitant to speak at all.

## **Regulating Talk**

The Open Meetings Act gives the public the right to attend and observe; it does not give the public the right to participate. With the exception of public hearings, the board, commission or council has no legal obligation to recognize any speaker. Recognizing the board's obligation towards public service, most boards allow some form of citizen input, usually at the commencement of a meeting.

Excessive talking can assume a variety of forms: bickering or tiresome exchanges of personal opinions among members, endless speeches by citizens, or unnecessarily long and detailed reports by staff. All of these problems can be overcome by tactful action on the part of the chair. If citizens ramble, the chairperson may have no choice but to tell them to confine their remarks to the subject at hand and conclude as quickly as possible. If the problem is created by a talkative board member that talks off point, a simple statement to the effect that "we must remain on topic" will usually suffice, though private visits by the chairperson may be needed to handle chronic talkers.

## **Public Hearings**

The purpose of a public hearing is to present and receive evidence on both sides of an issue. Although the law requires public hearings in some circumstances, the law does not dictate the process or procedure that must be followed. Commonly, the presiding officer will allow anyone wishing to speak on an issue the opportunity to do so and will not limit the time given to each speaker. However, depending on the wishes of the chair or the balance of the members of the board or commission, the chair may limit speakers to, for example, three minutes each. He/she may also prohibit pooling of time, whereby several people will "give" their speaking time to one designated representative. The chair can also regulate or limit content by prohibiting speakers from repeating what other speakers have previously said. Finally, it is not against the law to limit the number of speakers. It is essential, however, that any limitations be applied fairly and evenly; limiting only the speakers on one side of an issue while not doing so to those on the other side is correctly perceived as unfair.

At the start of the hearing, the chairperson should clearly state the subject to be discussed. If the subject is controversial, the following order can be followed: proponents' presentation; opponents' presentation; proponents' rebuttal; opponents' rebuttal; questions from the Commission. Remember that numbers don't always count. There are some topics which naturally draw large, highly-biased crowds. Vocal minorities often fill public hearings to show widespread support. The size of the crowd does not necessarily indicate that the cause is just. The Commission is appointed to serve all the citizens, and a Commissioner must look at the overall picture, and not just at the view presented by one partisan group.

When a decision is announced, the Commission does not have to give the reasons why the decision was reached, although a brief explanation will help prevent the feeling that the outcome of the hearing was decided in advance, and that they wasted their time.

### III. Open Meetings and Public Information

*“Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.”*  
§552.001(a), Tex. Gov’t Code

The foregoing statute recites the underlying purpose behind the laws relating to open government in Texas. The single most critical factor governing the decision-making process for public entities is the fact that, as units of government, they must be open. Decisions cannot be made informally; there is either formal consideration of a matter in compliance with the Open Meetings Act or there is an illegal meeting. See, *Acker v. Tex. Water Comm’n*, 790 S.W.2d 299 (Tex. 1990). With few exceptions, the process of decision-making is open and public. Typically, any member of the public can make inquiries into these processes; this includes competitors, newspapers and other members of the media, and those who are of a mind to file suit or assert some grievance. Because government in Texas is open, public entities must conduct their operations in broad daylight, subject to critical inspection and review by anyone, regardless of purpose or motive, who has even a basic familiarity with applicable law.

#### **The Texas Open Meetings Act**

The essence of the Texas Open Meetings Act is to require governmental bodies to provide advance notice to the general public of the subject of and topics to be discussed at an impending meeting and to grant to the public the right to attend and observe. The fundamental concept behind the Act is to make government, as an instrument of the people, accessible and to make open the workings of government. Every regular, special or called meeting of the governmental body must be open to the public and a notice of the meeting (identifying the topics) must be conspicuously posted not less than 72 hours in advance of the meeting.

A “meeting” under the Act is defined broadly to include virtually any deliberation relating to public business or public policy over which a governmental body has supervision or control. A

quorum of the membership of the governing body must be present throughout the duration of the meeting. A quorum is a majority of the membership, unless some rule of law or city charter establishes a different amount. In the event that members of a governmental body leave before the meeting is formally ended, leaving less than a quorum of the members present, then the meeting must immediately end.

Rulings by the Attorney General indicate that a deliberation among a quorum of a council need not occur in one location or at one point in time. In instances where one member of a council discusses an item of city business with another member, who in turn, communicates the same information to a third, this practice may be regarded as an illegal meeting if this daisy chain of communication occurs among a sufficient number of members so as to constitute a quorum. Members who knowingly conspire to gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum can violate the Act. See, *Tex.Op.Atty.Gen. GA-326* (May 18, 2005)

The agenda must be posted at least 72 hours in advance of the meeting in a conspicuous place that identifies the topics to be discussed at the meeting. In addition, certain municipalities must post the meeting agenda on-line. With few exceptions, all meetings are open to the general public. One need not be a resident of the city nor meet any special criteria for attending. Any person present may record or videotape the conduct of the meeting so long as this activity does not unduly disrupt the progress of the meeting.

However, the Act simply confers the right to the general public to attend the meeting and observe the proceedings of government. It does not entitle any member of the general public to

participate in the meeting, except where a public hearing is being conducted. Although not required by the Act, many governmental bodies typically reserve a portion of their agenda for citizen's comments and allow members of the general public to sign up and speak on any topic relevant to the business of the public entity. However, restrictions exist on the level of interaction between members of the governmental body and the person speaking on the citizen's agenda. Further, governmental bodies may limit the amount of time consumed by any person speaking on a citizen's agenda.

Discussions and deliberations between members of a governmental body must be limited to the items enumerated on the posted agenda. This rule does not apply to a statement of specific factual information given in response to an inquiry by a member of the public or of the governmental body, or a recitation of existing policy in response to the inquiry. In other words, a member of the public may make an inquiry during an open meeting about any subject which is not on the posted agenda. However, the response given, if any, must be limited to a statement of specific factual information or a statement of existing policy. Any discussion or deliberation regarding the subject of the inquiry must be limited to a proposal to place that subject on a future agenda for a future meeting. It must be noted that this provision is inherently vague; all too often, the "discussion" becomes more than merely a recitation of specific factual information. Because of the vague nature of this provision and the difficulty in literal compliance, the standard advice is simply to prohibit any discussion of matters not on a posted agenda, except to the extent that discussion relates to placing the matter on a future agenda.

Governmental bodies may conduct closed meetings (also termed "executive sessions") under certain limited circumstances. A governmental body may deliberate in private during a closed meeting to conduct a private consultation with its attorney but only when the governmental body is seeking the advice of counsel relating to pending or contemplated litigation, a settlement offer, or on a matter in which the attorney-client privileged may be invoked.

Executive sessions are also authorized when deliberating on the appointment, evaluation, duties or discipline of public officers or employees

as well as to hear complaints or charges against an officer or employee of the political subdivision. Thus, for example, a city council may interview a job applicant in closed session and may discuss the terms and conditions of the appointment in closed session. However, any vote must be conducted in open session.

Governmental bodies may also deliberate in closed session to discuss the purchase, exchange, lease or value of real property if an open meeting may have a detrimental effect on a position of the governmental body in negotiations with a third person.

The Act also allows governmental bodies to conduct closed sessions to deliberate on commercial or financial information received from business prospects that the governmental body seeks to have locate, remain or expand in or near the jurisdiction of the political subdivision and with which the governmental body is conducting economic development negotiations. A political subdivision may also deliberate on the offer of a financial or other incentive to a business prospect when conducting economic development negotiations. Economic development corporations, non-profit corporations created by municipalities which are charged with the mission of promoting economic, industrial and commercial development within cities, are subject to the provisions of the Open Meetings Act.

If a closed meeting is permitted under the Act, a governmental body must first convene in open session, announce that a closed meeting will be held, and identify which section or provision of the Act the closed meeting is held under. A tape recording or certified agenda must be made of the proceedings of the closed meeting. Governing bodies are required to preserve the agenda or recording for at least two years following the meeting. However, the content of the agenda or recording is not available for public inspection and must be held in confidence.

Compliance with the provisions of the Act is important for public officials for a variety of reasons. First and foremost, violations of certain provisions of the Act may give rise to criminal prosecution. The mere participation in a closed meeting which is not permitted by the Act is a Class B misdemeanor punishable by a jail sentence of not less than one month nor more than six months, a fine of not less than one

hundred dollars nor more than five hundred dollars, or both. Similar criminal penalties exist if: 1) a member of a governmental body conspires to avoid the open meeting requirements by meeting in numbers of less than a quorum for the purposes of secret deliberations; 2) a member of a governmental body participates in a closed meeting where no certified agenda or tape recording is being kept of the meeting; or, 3) if any person discloses the certified agenda or tape recording of the closed meeting to any person other than a current member of the governing body. The Act also provides that any action taken by a governmental body in violation of the Open Meetings Act is voidable. The provisions of the Act may also be enforced by mandamus and injunctive relief.

The effect of the Open Meetings Act is that political subdivisions can rarely conduct negotiations or perform decision-making functions in private or in confidence. Briefing sessions conducted between the governing body and the staff of the public entity must be open to the public. The Act only applies to the deliberations of the governing body and not the conduct of its staff.

### **The Texas Public Information Act**

The Texas Public Information Act, originally referred to as the Open Records Act, was first adopted in 1973 and is now codified in chapter 552 of the Texas Government Code. With limited categories of exceptions, the Act requires the disclosure of virtually all information collected, assembled or maintained by or for governmental bodies.

The definition of governmental body under the Act includes county commissioner's courts, school district boards of trustees, city councils, governing boards of special districts, political subdivisions of counties and cities, as well as boards, commissions, agencies and departments of the state of Texas that are directed by one or more elected or appointed members. The Act also applies to entities that are supported in whole or in part by public funds or that spend public funds. This includes a chamber of commerce, volunteer fire departments, housing finance corporations, and economic development corporations. It should be noted that the Act does not apply to records or information kept or maintained by the judicial branch of government; records maintained by the judiciary are, however,

subject to disclosure under Rule 12 of the Texas Rules of Judicial Administration.

The Public Information Act applies to recorded information in virtually any medium including paper; film; any magnetic, optical, or solid state device that can store an electronic signal; tape; mylar; linen; silk; and vellum. It includes books, papers, letters, documents, photographs, computer printouts, film, tape, sound recordings, maps and drawings, microfilm and microfiche, and voice, data or video representations held in computer memory. Disclosure is not required for tangible items which do not constitute "information" and some limited exceptions to disclosure exist with regard to personal notes of public officials.

Section 552.022 of the Texas Government Code enumerates by example eighteen different categories of information deemed to be public by statute. This enumeration includes completed reports, audits and investigations made by or for governmental bodies, broad categories of information contained within personnel files of public employees, information in accounts, vouchers and contracts relating to the receipt or expenditure of public funds, final voting records of members of a governmental body, or working papers, research material and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, rules and statements of policy, administrative staff manuals, and settlement agreements.

The Act sets forth a series of exceptions and describes certain categories of documents or information which may be withheld from public disclosure. Generally, these exceptions include personnel information in which would violate an employee's right to privacy, information relating to settlement negotiations or litigation, information relating to the location or price of property, information determined to be subject to the attorney-client privilege, and certain law enforcement records.

The procedures for disclosure are fairly strict. Any person may request that records be made available for inspection and review or may compel the public entity to produce copies. Public entities are required to designate an officer for public information and, in the absence of such designation, the chief administrative officer becomes by default the person responsible for ensuring disclosure. Typically, this would include

city managers, mayors, and department heads. A request for public information need only be in writing and specifically identify the documents or categories of documents sought to be reviewed. The officer for public information is required to “promptly produce public information for inspection, duplication, or both on application by any person to the officer.”

The person seeking the inspection or copies of public documents need not explain or give any reason why he/she seeks disclosure. An officer for public information may only make an inquiry of the requestor to establish proper identification or to clarify the request. As noted, the requested information must be made available for inspection and copying promptly unless the information is in active use or in storage. If the information cannot be produced promptly, then the public entity is required to provide written certification of its active use or storage and must identify a date and hour within a reasonable time when the information will be made available.

If the public entity believes that the requested information fits within an exempted category, it must forward a copy of the request, a statement of the reasons why the public entity believes the documents are exempt, and copies of the actual documents sought to be disclosed, to the Texas Attorney General’s Office for review. The Attorney General has statutory authority to review the information submitted and to rule on whether the information must be disclosed or may be withheld from production. If the public entity fails to forward this information to the Attorney General within 10 working days of the receipt of the request, then the information is deemed to be public and must be disclosed. If the Attorney General renders an opinion that certain records are public and must be disclosed, the only remedy available to public entities to contest this ruling is to file suit in Travis County within ten days of the opinion, seeking a judicial declaration that the records are not public. And even if the Attorney General renders an opinion that determines that certain records may be withheld, this determination does not prevent a requestor from filing suit in a local county seeking a writ of mandamus to compel the public entity to disclose the records. Although Attorney General opinions are persuasive, they are not controlling or binding on courts.

If a public entity fails to provide the disclosures required by the Public Information Act, the person

making the request may sue for mandamus relief to compel the production of the information. Attorney’s fees may be awarded to the prevailing party in such a suit.

**Planning & Zoning Commissioners’ emails are not exempt from public information requirements even if the communication is from the Commissioner’s private email account.**

## **IV. ZONING**

Zoning is generally defined as the division of a jurisdiction into districts (zones), within which permissible uses are prescribed and restrictions on building height, bulk, layout and other requirements are defined. A city’s police power is the legal source from which a municipality may enact zoning ordinances for the protection and preservation of the community. Zoning decisions should be made in accordance with a city’s comprehensive plan and must bear a substantial relationship to the public health, safety, morals or general welfare. Zoning decisions, whether adopting or amending zoning regulations or creating or revising zoning district boundaries, are made by both the planning and zoning commission and the city council; the commission has the responsibility to make recommendations and the council has the final authority to adopt the appropriate ordinance.

### **Zoning Changes**

The basic process for the adoption or amendment of a zoning ordinance involves mailed notices of a planning commission public hearing and a published notice of a city council public hearing. Notice of the public hearing before the commission must be sent to the owners of the property that is the subject of the zoning change as well as to all owners of real property within a radius of 200 feet of the subject property. The identity and address of those owners are obtained from the city’s tax rolls. The 200-foot radius includes streets and public rights-of-way. This notice must be sent at least eleven (11) days before the public hearing (Section 211.007(c) requires the notice to be sent “before the 10<sup>th</sup> day before the hearing date,” thus, at least 11 days). Mailing by regular first class mail is sufficient, certified or registered mailing will comply but is not required. Notice is deemed complete when deposited in the mail.

Following the commission's public hearing, it must make a final report to the council as to whether a zoning change application or regulation should be approved or denied. The council must also conduct a public hearing and may not do so until it has received the commission's final report. Notice of the council's public hearing must be published in the city's official newspaper or in a newspaper of general circulation in the area at least 16 days before the hearing (Section 211.006(a) states that the notice must be published "before the 15<sup>th</sup> day before the date of the hearing," thus, at least 16 days).

Since the Open Meetings Act applies to both the commission and the council, public hearings must be posted on an agenda at least 72 hours before the date of the hearing. Typically, an agenda should identify the public hearing as a specific item preceding an action item on the zoning matter. Since public hearings involve administrative expense and overhead, commissions and councils should avoid tabling a public hearing. If the hearing is not officially closed, then notice of the rescheduled hearing must then either be sent or published, as appropriate. If the process was properly followed and if additional time for consideration is needed, it is advisable to open the public hearing, receive testimony, and formally close the hearing. The action item on the agenda may then be tabled to a later meeting without incurring the burden of mailing or publishing additional notices.

## **The Comprehensive Plan**

Zoning decisions are guided by the city's comprehensive plan. Comprehensive plans, created and adopted in accordance with Chapter 213 of the Local Government Code, are intended to establish long-range development goals for the city and should contain provisions relating to land use, transportation and public facilities. A comprehensive plan generally establishes the overall long-range development strategy of a city. It does not establish or contain zoning regulations nor does it establish zoning district boundaries. A comprehensive plan may be amended following public hearing and planning commission review.

## **The Comprehensive Zoning Ordinance**

Introduction. A city's complete set of zoning regulations is typically referred to as the city's "comprehensive zoning ordinance." The

comprehensive zoning ordinance provides regulations within specified categories of uses, including agricultural, residential (generally, single-family residential), multi-family (including structures intended for habitation that range from duplex dwellings to apartment complexes), retail, commercial, industrial or manufacturing, and limited mixed-use districts referred to as planned developments. It is common for a comprehensive zoning ordinance to specify the particular uses to which land within each category may be put. Rather than being prohibitive in nature (i.e., "thou shalt not. . ."), a use by right within a specified zoning district is specifically enumerated (i.e., "within this district, land may only be used for the following purposes. . . .")

The regulations contained in a comprehensive zoning ordinance include an enumeration of uses by right permissible within zoning districts, minimum lot sizes, front, side and rear yard setback requirements, minimum square footage of primary structures, height restrictions, accessory structure limitations, and floor area ratio (FAR) limitations. An enumeration of the requirements and available uses for special use permits are also established. Provisions that create and empower a planning commission and a board of adjustment are also contained within the comprehensive zoning ordinance. The process for property owners to apply for zoning changes should be described. Provisions for addressing nonconforming uses and structures should also be set forth.

Specific Use Permits. A comprehensive zoning ordinance will also authorize specific (or special) use permits ("SUP's"). It is a misnomer to refer to an SUP as a permit; it is in fact a zoning change which, when granted, is not a right held by the property owner but is instead a zoning regulation applicable to that tract or lot. A specific use permit zoning change typically constitutes an overlay which exists over some predesignated zoning district. In theory, the granting of an SUP will allow the property to be put to an additional specified use while enabling the municipality to impose specific additional conditions on that use on a case-by-case basis. For example, an in-home day care center operation authorized in a residential district only by SUP would enable the governing body to impose specific conditions on the operation of the business such as days and hours of operation, limitations on the number of children, and parking requirements. Since SUP's are in fact zoning changes, the requisite

formalities associated with zoning changes must be followed.

**Planned Developments.** A planned development (“PD”) is generally authorized as a specific zoning category. In theory, a planned development will enable a developer to construct a development that combines mixed uses within a single district and to allow retail or commercial uses within or among a residential area. Master planned communities, golf course communities, and mixed retail and apartment complex areas are good examples. PD’s may also be used for developments seeking architectural uniqueness or consistency that vary in certain aspects from base zoning regulations (for example, masonry exterior requirements may prohibit the use of wood siding; a PD would enable a developer to design a development that has a rustic or western setting using wood siding).

The PD concept has also been used to bend the rules in a comprehensive zoning ordinance. As an example, zoning regulations typically contain minimum square footage requirements for residential dwellings and minimum lot size requirements. A developer seeking to build homes that are less than the minimum square footage established by the base zoning or to plat the subdivision with lots that are smaller than the minimums may request PD zoning for the subdivision. If the PD enabling ordinance does not set forth structure and lot size minimums, an application for PD zoning may be used to obtain approval from the city to build what would otherwise be a nonconforming and illegal development. For obvious reasons, this may constitute an abuse of the zoning process. But in some circumstances it can be justified if there is some substantial relationship between the PD zoning and a legitimate state interest.

A comprehensive zoning ordinance should contain provisions that establish broad standards for planned development zoning. These regulations should typically require that an application for planned development zoning be accompanied with a concept or development plan detailing certain aspects of the proposed development. Upon approval of the application, a set of development regulations are adopted which essentially constitute a comprehensive set of zoning regulations applicable within the PD district. Following the granting of the application and the zoning change to PD, the developer then submits plat applications prior to actual

construction.

## **Procedures for Adoption/Amendment of Zoning Ordinances**

**The Planning and Zoning Commission.** Planning and zoning commissions participate in the development of comprehensive plans, recommend zoning changes to the governing body, and review plat applications. A home rule city must have a zoning commission. A general law city may but need not create one. A planning and zoning commission typically possesses the authority to *recommend* that a rezoning application be approved or denied and to *recommend* adoption or amendment of zoning regulations. The governing body has the ultimate authority to adopt, amend, grant or deny zoning changes. Even though a commission may only have the authority to recommend matters to the governing body, the provisions of the Texas Open Meetings Act apply. (See, Chapter 551, TEX.GOV’T CODE).

**Notices and Public Hearings.** The basic process for the adoption of a zoning ordinance involves mailing of notices of a public hearing before the planning commission and the publication of a notice of a public hearing before the council. Notice of the public hearing before the commission must be sent to the property owners of the property that is subject to the zoning change and to all owners of real property within 200 feet of the property subject to the zoning change. The identity and address of the owners should be obtained from the city’s tax rolls. The 200-foot radius includes streets and public rights-of-way. This notice must be sent at least eleven (11) days before the public hearing (Section 211.007(c) requires the notice to be sent “before the 10<sup>th</sup> day before the hearing date,” thus, at least 11 days). Mailing by regular first class mail is sufficient, certified or registered mailing will comply but is not required. Notice is deemed complete when deposited in the mail.

Following the public hearing by the commission, the commission must make a report to the council as to whether a zoning change application or regulation should be approved or denied. The council may not hold a hearing until the commission’s recommendation is made. A public hearing must then be held by the council. Notice of the council’s public hearing must be published in the city’s official newspaper or in a newspaper of general circulation in the area at least 16 days

before the hearing (Section 211.006(a) states that the notice must be published "before the 15<sup>th</sup> day before the date of the hearing," thus, at least 16 days).

Since the Open Meetings Act applies to both the commission and the council, the public hearings must be posted on the agenda at least 72 hours before the date of the hearing. Typically, an agenda should identify the public hearing as a specific item preceding a consideration and action item on the zoning matter. Since public hearings involve administrative expense and overhead, commissions and councils should avoid tabling a public hearing. If the hearing is not officially closed, then notice of the rescheduled hearing must then either be sent or published, as appropriate. If the process was properly followed and if additional time for consideration is needed, it is advisable to open the public hearing, receive testimony, and formally close the hearing. The action item on the agenda may then be tabled to a later meeting without incurring the burden of mailing or publishing additional notices.

Protests. Section 211.006(d) of the Local Government Code provides a means by which property owners may protest a zoning change. If a written protest is signed by at least 20% of the owners of either 1) the property covered by the proposed change, or 2) the land within 200 feet of the subject property, then a supermajority requirement for approval will apply. If a proper protest is submitted, then the zoning change must be approved by at least a ¾'s majority vote of all members of the council. (Note that the requirement is ¾'s of "all members," not ¾'s of those present at the meeting). The statutes provide no deadline on which the protest must be filed. Assuming a protest is filed at or on the day of the public hearing, little time is afforded the city to verify the validity of the petition. Presumably, in the absence of an ordinance specifying such a deadline, the public hearing may still be opened and closed and the council may then table the consideration and action item to a later date to enable verification of the signatures. This would avoid the administrative burden of republishing notice of the hearing as well as avoiding the possibility that approval of the zoning change by less than a supermajority would be later invalidated.

Joint Hearings. A commission and council may also hold a joint public hearing on a zoning change application. Generally, mailing and

publication of notices of the hearing are still required and the commission must act and vote on the application before the council may act. However, a home rule city may by ordinance adopted by a 2/3's majority vote, prescribe the type of notices to be given of the time and place of the joint public hearing.

### **Deed Restrictions/Restrictive Covenants**

In a deed when is land is conveyed by a seller; it is a restriction binding the owner to refrain from a prescribed use or to utilize land under certain conditions:

1. deed restrictions are contracts enforced by the parties to the contract. Zoning is exercise of police power enforced by City on behalf of public;
2. covenants may include items not in the public interest; and
3. zoning is City wide while deed restrictions will vary by neighborhood.

### **Zoning System**

Includes the zoning maps, the zoning ordinance, the administration, and the comprehensive plan.

1. *Zoning map* - graphic illustration of the land use districts in the City. Land is not rezoned until the map is changed. Map is part of ordinance and must be amended by ordinance;
2. *Ordinance* - rules of land use for the various districts. amending the text are the same for use changes. The rules for amending the text are the same for use changes.
3. *Administration* - continual assessment of the zoning process;
4. *Comprehensive plan* - land use comprehensive plan on which future land use decisions are based.

### **Zoning Terms**

1. *Use by right* - land uses automatically permitted in a district.
2. *Specific use permit* - allows a specific use or an exemption from certain categorical district regulations on a tract, while allowing for specific and unique regulations peculiar to that property. It is a zoning ordinance, not a permit, and final approval rests with the council. The ordinance will

run with land. Conditions must be written, i.e., hours of operation, screening, outside noise, etc.

3. *Conditional Use Permit* – allows specific categorical uses or development features on a specific tract of land. Final approval rests with the commission, not the council. Conditions must be written, i.e., hours of operation, screening, outside noise, etc. See Attachment 1.

4. *Planned development (PD)* – a special or unique district with its own ordinance, regulations and requirements that is often used for mixed use or master planned projects. PD Districts also allow developers to obtain site-specific approvals for developments that may not fit standard area and use zoning categories and that require specific negotiations to ensure that community interests are protected. Planned development districts allow creative development and architectural uniqueness, as well as careful oversight by the commission and council. See Attachments 2 & 3.

5. *Spot zoning* - awarding a zoning change for a specific tract of land to a use that is incompatible with surrounding uses, usually for an improper motive. Spot zoning is rarely found to exist; the theory presumes that the ordinance granting the zoning change had no substantial relationship to the public interest, which is presumed by law.

6. *Strip zoning* - similar to spot zoning but it refers to the elongation of marginal retail and commercial uses along traffic arterials. Strip zoning is not unlawful.

7. *Back-zoning or down-zoning* - a change in zoning classification to a classification permitting development that is less intensive or dense. Down-zoning is not unlawful but is often highly objectionable to developers and property owners because it can reduce land development profitability.

In determining the constitutionality of a zoning ordinance, a court is guided by the rational basis test under both the due process and equal protection clauses of the United States Constitution. Zoning legislation may be held unconstitutional only if shown to bear no relationship to the state's interest in securing the health, safety, morals or general welfare of the public and are clearly arbitrary and capricious. The City Council is afforded considerable

discretion in its zoning decisions. It will not be judged according to whether its zoning decision was necessarily the best course for the community. The appropriate inquiry is whether there was a conceivable or even hypothesized factual basis for the specific zoning decision made. This is not to suggest, however, that a zoning decision can be justified merely by mouthing an irrational basis for an otherwise arbitrary decision. Mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible.

## Zoning Issues

Schools. Often, other political subdivisions are examined in the context of zoning regulations. Frequently, the questions arise in the context of the construction or expansion of public schools and the application, not of use restrictions, but of structural and aesthetic regulations. For example, schools often employ portable buildings for classroom use that are in violation of masonry exterior requirements.

Simply stated, the rule to be applied is as follows: "School district authority predominates over the zoning power of a municipality, absent a claim of unreasonable exercise of power or of nuisance, but that school boards remain subject to the building codes and regulations of the municipality in which they function." *Austin Independent School District v. City of Sunset Valley*, 502 S.W.2d 670 (Tex.1973). The zoning authority of a municipality is subservient to the reasonable exercise of school district authority. The reason is a simple one. The legislature has granted particular powers to each of these governmental bodies. In order to carry out the purposes for which they were created, the reasonable exercise of those powers must not conflict. The supreme court has determined that the school district's authority to locate school facilities overrides the police power of municipalities to zone them out in order that the legislative purpose in delegating this authority to the school district might not be frustrated. A school district may place any school facility within an area zoned residential, unless the school district action is unreasonable or a nuisance, because the school district authority is paramount. *City of Addison v. Dallas Indep. Sch. Dist.*, 632 S.W.2d 771, 772-73 (Tex. App.--Dallas 1982, writ ref'd n.r.e.)

**Churches.** Religious organizations present a significant limitation on municipal zoning authority due to federal law. The free exercise of religion is “among the most cherished rights in our nation. It is one of our founding principles, written into our Constitution and protected by our laws.” (US Dep’t of Justice, Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act, September 22, 2010.) Federal regulation contained in the Religious Land Use and Institutionalized Persons Act of 2000 provides that governments (including municipalities) may not impose land use regulations that impose a substantial burden on religious exercise unless the government can demonstrate that the regulation is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The Act also prohibits discrimination between or among religious assemblies or institutions and limits the implementation of land use restrictions that exclude or unreasonably limit religious assemblies, institutions and structures. The Act mandates a broad interpretation in favor of religious exercise and provides a variety of enforcement mechanisms.

### **Frequently Asked Questions About Zoning**

1. Can the area subject to a zoning change be increased?

No. For a zoning change to occur, there must be public notice of the proposed change in zoning. Since the public notice contains a description of the property for which a zoning change is sought, there be inadequate notice of a change in the increased area.

2. Can the area subject to a zoning change be reduced?

Yes. Since there has been public notice of the portion of land subject to a zoning change, decreasing the amount of land included in a zoning change would not violate the public notice requirements.

3. Can the area subject to a zoning change be zoned to a more intense use than advertised?

No. In such a situation there would not have been adequate public notice. For example, if the public notice stated that there was an application to change land zoning agricultural to residential with lots of 10,000 square feet, you may not zone

the land residential with lots of 5,000 square feet since there was not adequate public notice since the use is more intense than advertised.

4. Can the area subject to a zoning change be zoned to a less intense use than advertised?

Yes. There is adequate public notice. If the public notice stated that there was an application to change land zoned agricultural to residential with lots of 5,000 square feet, you may zone the land residential with lots of 10,000 square feet since there was adequate public notice and the use is less intense than advertised.

5. What is contract zoning?

Contract zoning is an unlawful activity whereby a property owner or developer agrees to develop or use property in a certain way in exchange for receiving a particular zoning classification from a City. This is an area of the law that must be scrutinized if a City attempts to settle zoning/land use litigation by entering into a written settlement agreement.

## **V. SUBDIVISION DEVELOPMENT, PLAT APPROVAL**

### **Chapter 212. Local Government Code**

All cities have the authority to adopt rules governing plats and subdivisions in order to promote “the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.” §212.002, Tex. Loc. Gov’t Code. Counties have similar regulatory authority under Chapter 232 of the Local Government Code. State law is an enabling statute; the Local Government Code simply furnishes the authority to adopt regulations governing sub-divisions, it does not impose the regulations themselves. Although patterns exist, each city’s subdivision regulations can be distinct and unique.

### **Subdivision Defined**

A “subdivision” is generally defined as the division of a tract of land into two or more parts and includes laying out lot lines as well as setting aside streets, alleys and easements that are to be dedicated to the public. Land is formally subdivided through a document called a plat,

which is reviewed and approved by the city, and then recorded with the county's permanent land records.

Although a subdivision of a tract of land can be accomplished informally by simply deeding a part of a larger tract using a legal description that describes the part being sold, most cities require a formal plat before building permits can be issued.

In essence, a plat will define land into lots and blocks within subdivisions or additions. A plat will also show the locations of streets and alleys, identify utility easements, and set aside and dedicate parks and other public property. Notably, this is an oversimplification; subdivision regulations often require additional details to be shown on plats that may include topographical lines at specified intervals, building set-back lines, street construction details, inset maps showing the overall location of the subdivision, the names of adjacent property owners, and a variety of other detailed items. The level of required detail is set by each individual city's regulations.

### **Plat Review Process**

The typical process associated with plat approval involves the submission and approval of a preliminary plan, followed by submission and approval of a final plat. In some cities, the final authority to review and approve plats is vested in the city's planning and zoning commission; in others, the commission has the role of reviewing plat applications and making recommendations to the city council, and the council is the final authority responsible for approving plats.

In some municipalities, the planning commission has final authority over preliminary plan and final plat approval. The approval of a preliminary plan entitles a developer to submit a final plat application in compliance with the approved elements of the preliminary plan.

### **Rules for Plat Reviews**

Platting involves different rules than zoning and presents a fundamentally different approach. Zoning is discretionary, based on considerations of the public health, safety and welfare. Platting, in distinction, is nondiscretionary. Plat review and approval is ministerial in nature, involving little

more than a rote review of an application to confirm compliance with city standards.

These are the basic rules associated with plat review:

#### **1. The 30-Day Rule**

If a plat application is not denied within 30 days after the date the application is filed, the plat is automatically approved by operation of law. Section 212.009 is clear and mandatory; "The municipal authority responsible for approving plats shall act on a plat within 30 days after the date the plat is filed. A plat is considered approved by the municipal authority unless it is disapproved within that period."

If a city has adopted the two-step commission-council review process, the planning commission must act within 30 days. The council must then act on the commission's recommendation within 30 days afterward, even if the commission's approval is by virtue of 30-day inaction.

In cities where councils and planning commissions meet more frequently, and where plat applications are reviewed by sophisticated planning or development services departments, the problem can become more acute. Often, development proposals must be reviewed and approved by several departments to insure compliance with a variety of technical regulations. For example, a city may require a plat application to be approved by the fire department, street department, and city engineers before formal consideration by the planning commission. Multiple departmental approvals often take time. There are no exceptions for these circumstances in Chapter 212. Action within 30 days is mandatory and approval is automatic, notwithstanding a failure to comply with the city's regulations.

Once a plat is approved, it must be endorsed with a certificate of approval. If the plat is approved by inaction, the planning commission or council must, on request, issue a certificate stating the date the plat was filed and that the authority failed to act on the plat within the 30-day period. If a plat is denied, the property owner may request that the city issue a certification stating the reasons for its actions taken on the application.

## **2. Approval Standards**

Section 212.005 states that a city must approve a plat if it satisfies all applicable regulations. Section 212.010 indicates that a plat must be approved if 1) it conforms to the city's general plan and its current and future streets, alleys, parks, playgrounds and public utility facilities; 2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; and 3) it complies with the city's subdivision and other regulations. Other regulations deal with subdivision designs set by zoning regulations (e.g., lot sizes, uses, building sizes, setbacks, etc.), street and alley construction and design requirements, drainage and hydrologic features and design criteria, and fire and public safety code requirements.

The plat review and approval process is simply a checklist exercise. In theory or in actual practice, the city will have a checklist of regulatory requirements with which to compare against a plat application. If the application meets each requirement, the plat must be approved. If certain requirements are not satisfied, the city may but need not deny the application. The effect of an automatic approval of a deficient or noncompliant plat may result in the denial of building permits by a building official if the lot on which the structure is to be built fails to satisfy zoning criteria. In other instances, the deficiency may be simply ignored.

## **3. The Ministerial Nature of Plat Review; Mandatory Approval**

Section 212.010(a) of the Code states that a city "shall" approve a plat if it meets the standards set forth in Section 212.010. The meaning of the word "shall" is clear; if the standards imposed by law are satisfied, the city has no choice but to approve the plat. Thus, the review of an application is ministerial, not discretionary, in nature. Since immunity is grounded on a public official's exercise of discretion, immunity from personal liability is lost if the action required to be taken does not involve the exercise of discretion. For this reason, the platting process can be perhaps the most unsettling land use area to navigate simply because the members of the governing body may subject themselves to personal liability for wrongfully denying a plat application.

## **Frequently Asked Questions**

### **1. Can a plat be tabled?**

No. A plat is approved by operation of law if it is not disapproved within thirty (30) days, as referenced above in § 212.009 of the Tex. Loc. Gov't Code; however, developers, in attempting to resolve differences and avoiding a vote to disapprove or deny a plat, often agree on the record to a continuance. This is beneficial to the developer because he/she is not required to file a new plat and pay a new filing fee. There is no reported case law that approves this procedure.

### **2. Can a plat be approved subject to the staff working out certain problems?**

No. A plat must be approved or disapproved with specific conditions set out. As a practical matter, if the plat is acceptable except for some very minor condition (e.g., no indication of north on the plat, an adjacent road name is improperly labeled, etc.), the plat may be approved subject to it being corrected and the motion to approve the plat should specifically state the necessary addition or modification. It is not advisable, however, to approve a plat subject to a major condition or modification. It is not advisable, however, to approve a plat subject to a major condition or modification (the number of lots will be reduced or increased, easements will be added or removed, etc.). In those situations, problems invariably arise and it is unclear whether there is an approved plat or not.

### **3. If a plat conforms to all applicable ordinances, must the City council approve the plat?**

Yes.

## **VI. Conflicts of Interest**

Ethics is often defined as a principle of right or good conduct; a system of moral principles or values; the study of the general nature of morals and the specific moral choices to be made by the individual in his relationship with others. The Home Rule Charter, if applicable, and Chapter 171 Local Government Code establish rules governing the conduct of the City Council and Mayor.

## Chapter 171 - Local Government Code

The purpose of Chapter 171 is to prevent public officials from using their positions for hidden personal financial gain. Whenever an official has a substantial interest in any matter pending before the body of which he is a member, the official must: (1) prior to any discussion or vote in the matter, file a sworn affidavit disclosing the nature of his interest, and (2) abstain from participating in the discussion and vote on the matter, if a special economic benefit will result.

A person has a substantial interest in a business entity if:

(1) The person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

(2) Funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity has a substantial interest under this section.

<u>1<sup>st</sup> Degree by Consanguinity:</u>	<u>1<sup>st</sup> Degree by Affinity:</u>
Parents	Spouse
Children	Spouse's Parents
Brothers & Sisters	Spouse's Children
	Spouses' Brothers & Sisters
	Stepparents
	Stepchildren

### Examples

1. Plan Commissioner who is employed by or receives more than 10% of his or her gross income from a business entity has a statutory conflict if a contract with the business entity is considered by the Council.
2. Plan Commissioner who is employed by or

receives more than 10% of his or her gross income from a business entity or who owns 10% or more of the stock or \$15,000 more of the value of a business entity may not deliberate and/or participate in a vote affecting that entity.

3. A Plan Commissioner who received a campaign contribution from a developer who seeks a zoning change or plat approval does not have a conflict.

## VII. VESTED RIGHTS; CHAPTER 245, TEXAS LOCAL GOVERNMENT CODE

Chapter 245 of the Local Government Code ensures the imposition of uniform requirements by a regulatory agency during the progress of a project. The chapter requires that the approval, disapproval, or conditional approval of an application for permit be governed by the regulations in effect at the time the original application was filed. §245.002(a), Tex. Local Gov't Code. In addition, if a series of permits is required for a project, the regulations in effect at the time the original application for the first permit in that series is filed shall be the sole basis for the consideration of all subsequent permits required for the completion of the project. §245.002(b), Tex. Local Gov't Code. Chapter 245 freezes regulations on the date the first permit application is filed until the project is complete.

Under Section 245.002(b) of the Code, all permits required for a project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project. In addition, after an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project. §245.002(c), Tex. Local Gov't Code.

### Definitions

The following definitions are found under § 245.001:

(1) "*Permit*" means a license, certificate, approval, registration, consent, permit, or other form of authorization required by law, rule,

regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

(2) "*Political subdivision*" means a political subdivision of the state, including a county, school district, or municipality.

(3) "*Project*" means an endeavor over which a regulatory agency exerts jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

(4) "*Regulatory agency*" means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

The definition of "regulatory agency" expressly includes City Council and by its language necessarily includes Planning and Zoning Commissions, Building and Standards Commissions and Boards of Adjustment. § 245.00 Tex. Local Gov't Code.

### **Projects in Progress**

Any project in progress on or commenced after September 1, 1997 is subject to the provisions under Chapter 245. §245.003 Tex. Local Gov't Code. A project is considered to be in progress on September 1, 1997 if:

1. before September 1, 1997, a regulatory agency approved or issued one or more permits for the project; or
2. an application for a permit for the project was filed with a regulatory agency; and

A project is also in progress if on or after September 1, 1997, a regulatory agency enacts, enforces, or otherwise imposes:

1. an order, regulation, ordinance, or rule that in effect retroactively changes the duration of a permit for the project;
2. a deadline for obtaining a permit required to continue or complete the project that was not enforced or did not apply to the project before September 1, 1997; or

3. any requirement for the project that was not applicable to or enforced on the project before September 1, 1997.

### **Exemptions**

The statute does provide exemptions. Section 245.004 provides that Chapter 245 does not apply to:

1. Permits that are at least two (2) years old, which were issued for the construction of a building or structure intended for human occupancy, and issued under laws, ordinances, procedures, rules or regulations adopting only uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization;
2. Local amendments to the above codes that are enacted solely to address imminent threats of destruction of property or injury to persons;
3. Municipal zoning regulations that do not affect lot size, lot dimensions, lot coverage, or building size, or that do not change development permitted by a restrictive covenant required by a City;
4. Regulations that specifically control only the use of land in a municipality that does not have zoning and that do not affect lot size, lot dimensions, lot coverage, or building zones;
5. Fees imposed in conjunction with development permits;
6. Regulations for sexually oriented businesses, colonias, annexations, or utility connectors;
7. Regulations to prevent imminent destruction of property or injury to persons, including certain flood plain regulations; or
8. Construction standards for public works located on public lands or easements.

### **Dormant Projects**

The statute contains provisions for dormant projects. A project is considered dormant if the permit for the project does not have an expiration date and no progress has been made towards the completion of the project. §245.005, Tex. Loc. Gov't Code. Under §245.005, "progress towards

completion of a project" is defined as being anyone or more of the following:

1. application for a final plat;
2. a good faith attempt to file an application with a regulatory agency;
3. incurred costs for project development;
4. posting of fiscal security to ensure performance; or
5. payment of utility connection fees or impact fees for the project.

### **Expiration of Dormant Projects**

Section 245.005 also provides for the expiration of dormant projects which have been issued permits. Section 245.005, provides that after May 11, 2000, a city may enact an ordinance rule, or regulation that places an expiration date on a permit that has no expiration date if no progress has been made towards completion of the project. (§245.005, Tex. Loc. Gov't Code) However, if a city imposes an expiration date on a dormant project, the expiration date may not be earlier than May 11, 2004. Id. For example, if a regulatory agency after September 1, 1997 issued a permit without an expiration date (preliminary plat) and no progress had been made towards completion of that project, the City, after May 11, 2000, could place an expiration date on the permit; however, the date of expiration for such preliminary plat could not be before May 11, 2004.

## **ATTACHMENTS**

## **ATTACHMENT 1**

## ORDINANCE

**AN ORDINANCE OF THE CITY OF DESOTO, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP OF THE CITY OF DESOTO, AS HERETOFORE AMENDED, BY GRANTING A CHANGE IN ZONING BY GRANTING A SPECIFIC USE PERMIT TO ALLOW FOR THE OPERATION OF AN AUTOMOTIVE FUEL STATION FOR LAND ZONED GENERAL RETAIL (“GR”), IN THE CROSSING SHOPPING CENTER, LOCATED AT 1001 NORTH INTERSTATE HIGHWAY EAST (N. I-35 E), DESOTO, DALLAS COUNTY, TEXAS, BEING ONE TRACT OF LAND AND CONSISTING OF APPROXIMATELY 17,794 SQUARE FEET, LOCATED IN FRONT OF KROGER GROCERY STORE AND APPROXIMATELY 300 FEET WEST OF THE NORTHERN MOST ENTRANCE TO CROSSING SHOPPING CENTER OFF THE FRONTAGE ROAD, AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT “A” ATTACHED HERETO; PROVIDING FOR APPROVAL OF THE SITE PLAN ATTACHED HERETO AS EXHIBIT “B”; PROVIDING FOR THE APPROVAL OF THE LANDSCAPE PLAN ATTACHED HERETO AS EXHIBIT “C”; PROVIDING FOR THE APPROVAL OF THE ELEVATION PLAN ATTACHED HERETO AS EXHIBIT “D”; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Planning and Zoning Commission of the City of DeSoto, Texas, and the governing body of the City of DeSoto in compliance with the laws of the State of Texas and the Ordinances of the City of DeSoto, have given requisite notice of publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, and in the exercise of its legislative discretion, the City Council has concluded that the Comprehensive Zoning Ordinance and Map should be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DESOTO, TEXAS:**

**SECTION 1.** That the Comprehensive Zoning Ordinance and Map of the City of DeSoto, Texas, duly passed by the governing body of the City of DeSoto on the 19th day of August 1997, as heretofore amended, be, and the same are hereby further amended by granting a Specific Use Permit to allow for the operation of an automotive fuel center for land zoned General Retail (“GR”), in the Crossing Shopping, located at 1001 North Interstate Highway East (N. I-35 E), DeSoto, Dallas County, Texas, being one tract of land and consisting of approximately 17,794 square feet, located in front of Kroger Grocery Store and approximately 300 feet west of the northern most entrance to Crossing

Shopping Center off the frontage road, and being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.

**SECTION 2.** That the Specific Use Permit for the operation of an automotive fuel station located in the Crossing Shopping Center, in front of the Kroger Grocery Store, is hereby approved and shall be used only in the manner and for the purposes provided for by the Comprehensive Zoning Ordinance of the City of DeSoto, as heretofore amended, subject to the following special conditions:

- (1) The Property shall be used for the operation of an automotive fuel station only, consisting of a 179 square foot kiosk and five (5) fuel dispensers;
- (2) The Property shall be developed in accordance with the site plan attached hereto as Exhibit "B" and made a part hereof for all purposes;
- (3) The Property shall be developed in accordance with the landscape plan attached as Exhibit "C" and made a part hereof for all purposes; and
- (4) The Property shall be developed in accordance with the Elevation Plan attached hereto as Exhibit "D" and made a part hereof for all purposes.

**SECTION 3.** That all provisions of the Ordinances of the City of DeSoto, Texas, 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 DeSoto, Texas, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**SECTION 4.** That should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

**SECTION 5.** 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 DeSoto, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 6.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provides.

**IT IS ACCORDINGLY SO ORDAINED.**

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
DESOTO, TEXAS ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

**APPROVED:**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

## **ATTACHMENT 2**

## **ORDINANCE 2016-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS AMENDING THE CITY OF MIDLOTHIAN ZONING ORDINANCE AND ZONING MAP RELATING TO THE USE AND DEVELOPMENT OF 12.0± ACRES SITUATED WITHIN THE WILLIAM HAWKINS SURVEY, ABSTRACT NO. 465, CITY OF MIDLOTHIAN, ELLIS COUNTY, TEXAS, AS DESCRIBED IN EXHIBIT “A” HERETO, PRESENTLY ZONED SINGLE FAMILY-THREE (SF-3) DISTRICT, BY REZONING SAID PROPERTY TO PLANNED DEVELOPMENT DISTRICT NO. 89 (PD 89) FOR MULTIFAMILY (MF) AND COMMUNITY RETAIL (CR) USES; ADOPTING A CONCEPTUAL SITE PLAN AND DEVELOPMENT REGULATIONS; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission and the governing body of the City of Midlothian, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Midlothian, Texas, have 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 all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that the City of Midlothian Zoning Ordinance and Zoning Map of the City of Midlothian, Texas, as previously amended, should be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS, THAT:**

### **SECTION 1. CHANGE OF ZONING CLASSIFICATION**

The City of Midlothian Zoning Ordinance and the Zoning Map of the City of Midlothian, Texas, as previously amended, is further amended relating to the use and development of 12.0± acres in the William Hawkins Survey, Abstract No. 465, City of Midlothian, Ellis County, Texas, more particularly described in Exhibit “B” and generally located as shown in Exhibit “A,” respectively, attached hereto and incorporated herein by reference (“the Property”) and presently zoned Single Family-Three (SF-3), by changing the zoning to Planned Development No. 89 (PD-89) for Multi-Family (MF) and Community Retail (CR) uses, subject to the Land Use and Development Standards described in Section 2 of this Ordinance.

### **SECTION 2. LAND USE STANDARDS**

The Property shall be developed and used in accordance with the applicable provisions of the City of Midlothian Zoning Ordinance (“the Zoning Ordinance”), as amended, except to the extent modified by the Land Use and Development Standards set forth below:

- A. Conceptual Site Plan: The Property shall be used and developed substantially in accordance with the Conceptual Site Plan attached hereto as Exhibit “C” and incorporated herein by reference
- B. Base Zoning: Except as otherwise set forth in this Ordinance:
- (1) The residential areas shown on the Conceptual Site Plan (“the Residential Area”) shall be used and developed in accordance with the use and development regulations of the Multifamily (MF) Zoning District; and
  - (2) The non-residential areas of the Property shown on the Conceptual Site Plan (“the Non-Residential Area”) shall be used and developed in accordance with the use and development regulations of the Community Retail (CR) District.
- C. Approved Uses:
- (1) Use and development of the Residential Area shall be limited to senior living and assisted living uses and memory care.
  - (2) No certificate of occupancy for any building located within the Residential Area shall be approved until the owner of the Property has signed and recorded in the Official Public Records of Ellis County, Texas, a restrictive covenant in a form approved by the City Attorney restricting occupancy of the dwelling units constructed in the Independent Living facilities to people sixty-two (62) years of age or older to the extent such restriction is consistent with the Federal Fair Housing Act and other applicable law.
  - (3) The Non-Residential Area shall be used and developed solely for Retail and Service Type Uses as set forth in Midlothian Zoning Ordinance §2.04(g) that are permitted or permitted following approval of a Specific Use Permit (“SUP”) in the CR District; provided, however, use and development of the Non-Residential Area for gun shop sales, services, and/or repair is prohibited.
- D. Development Standards For Senior Living, Assisted Living And Memory Care Uses. The use and development of only the Residential Area shall comply with the following:
- (1) Architectural Design:
    - (a) All buildings and structures located and constructed within the Residential Area shall have an exterior fire resistant, masonry construction for a minimum of forty percent (40%) of all exterior walls for each building, excluding doors and windows, with such masonry to be composed of brick, stone, or other approved masonry in accordance with Section 100.200 (Masonry Definitions) of the Midlothian Zoning Ordinance and other applicable City construction ordinances.

- (b) The materials and architectural design of the exteriors of the structures constructed within the Residential Area shall substantially conform with the elevations set forth in Exhibits D, E, F and G using a combination of decorative wood, stone, and cementitious siding; provided, however, the final color palette for the exterior materials of each building shall be submitted to and approved by City's Development Review Committee prior to issuance of a building permit for such building.
- (c) All asphalt roof shingles shall be laminated architectural shingles with a three-dimensional appearance and incorporate decorative standing seam metal roofing. The architectural theme shall allow for a minimum roof pitch of 4:12.
- (d) The design and style of all garages and carports shall be similar and match the architecture depicted in the elevations.
- (e) All setbacks, unit count, building height and maximum lot coverage shall be in compliance with Exhibit "I," attached hereto and incorporated herein by reference.

(2) Fencing:

- (a) The construction of a perimeter fence around the Residential Area is not required. If a fence is installed around the Residential Area, such fence shall be a wrought iron fence that complies with Section 4.5200 of the Midlothian Zoning Ordinance.
- (b) Gates that restrict vehicular access into the Residential Area shall be equipped with a Knox box or similar device, as approved by the Midlothian Fire Department, to facilitate emergency access into the Residential Area.
- (c) Outdoor trash storage areas shall meet Section 4.5205 of the Midlothian Zoning Ordinance.

(3) Landscaping: The Residential Area shall be developed with landscaping that conforms to the design and specifications shown in the Landscaping Plan attached hereto as Exhibit "H" attached hereto and incorporated herein by reference and as well as comply with the requirements of Section 4.5400 of the Midlothian Zoning Ordinance.

(4) Parking:

- (a) At least 186 off-street vehicle parking space shall be constructed before issuance of a certificate of occupancy for any building constructed in the Residential Area.

- (b) No fewer than 26 covered parking spaces and 17 garages for the parking of at least one (1) vehicle shall be constructed in the Residential Area. Said garage and covered parking spaces shall be counted toward the minimum number of off-street spaces required by paragraph (a), above.
  - (c) All parking spaces shall comply with the location, dimensions, and minimum numbers shown on the Conceptual Site Plan and Sections 4.5600 through 4.5609 of the Midlothian Zoning Ordinance.
- (5) Lighting:
- (a) Any lighting standards installed in the Residential Area shall be pedestrian-scale, shielded and downcast.
  - (b) Lighting standards shall be no taller than 20 feet high.
  - (c) The Development Review Committee shall have the authority to determine if the proposed items comply with the above requirements.
- (6) Signage: All ground signs and building signage installed within the Residential Area shall comply with Sections 4.5800 through 4.5858 of the Midlothian Zoning Ordinance that are applicable to property located within an MF Zoning District.
- (7) Property Management; Common Area Maintenance: A property management entity, which may include a property owner's association, shall be established and obligated to provide for the maintenance of the detention pond site and all associated landscaping and amenities, common street landscaping and irrigation, building structures, internal access drives, and other similar common areas within the Residential Area. Such entity shall be empowered to levy and collect assessments and/or fees to provide funds for the costs of such required maintenance. Any covenants or declarations providing for the establishment of the property management entity shall further provide that the dissolution of such entity and any amendments to the declaration or covenants relating to the obligation to maintain the detention pond and common areas shall not be effective unless approved by the City Council. No final plat for the Residential Area shall be approved until the property management entity has been created and the foregoing declaration or covenants have been approved as to form by the City Attorney, signed by the owner(s) of the Property, and delivered in recordable form to the City.

**E. Development Standards for the Non-Residential Area.**

- (1) Non-Residential Concept Plan. Prior to the approval of a final plat for all or any portion of the Non-Residential Area, a concept plan must be submitted to the City by the owner and/or developer of the Non-Residential Area ("the Non-Residential Concept Plan") and approved in the same manner as a zoning amendment pursuant

to the Zoning Ordinance. When approved, the Non-Residential Concept Plan shall become a part of the use and development regulations for the Non-Residential Area as if they had been originally adopted as part of this Ordinance. The application for Non-Residential Concept Plan shall, at a minimum, graphically show the applicant's intent for the use of the Non-Residential Area and shall include the following minimum features:

- (a) The site topography with contour intervals;
  - (b) The boundary of the Non-Residential Area;
  - (c) Floodplain areas;
  - (d) Generalized locations of areas of existing trees;
  - (e) The proposed land uses and gross acreage for each use;
  - (f) Proposed building sites or lots;
  - (g) Parking and circulation areas;
  - (h) Identification of major access points, rights-of-way or other areas to be dedicated to the City;
  - (i) Location of building setbacks along the site boundaries on dedicated streets and between residential and nonresidential uses;
  - (j) Off-street parking and loading areas;
  - (k) Indication of each phase of development if separate phases are proposed;
  - (l) Other information to adequately describe the proposed development; and
  - (m) Screening and fencing details for the northern property boundary and dumpster screening.
- (2) Planned Development Site Plan. Prior to issuance of a building permit for any lot or tract within the Non-Residential Area, a Planned Development Site Plan (“Site Plan”) shall be submitted and approved in compliance with Section 5.110 of the Midlothian Zoning Ordinance and the Non-Residential Concept Plan, must be approved with respect to said lot or tract in accordance with the following procedures:
- (a) The Development Review Committee (“DRC”) shall initially review the application for a Site Plan and determine if (i) the application is complete

and (ii) the proposed Site Plan is substantially consistent with the approved Non-Residential Concept Plan. If the DRC determines the proposed Site Plan attempts to amend the Non-Residential Concept Plan other than a minor modification to streets that do not alter the general alignment of the streets as shown on the approved Non-Residential Concept Plan, the application for Site Plan shall be returned to the applicant with direction to either modify the application so that it conforms to the approved Non-Residential Concept Plan or make a request for an amendment to the Non-Residential Concept Plan. If the DRC determines the application for Site Plan is complete and the proposed Site Plan is consistent with the Non-Residential Concept Plan and the Zoning Ordinance as amended by this Ordinance, the DRC shall forward the Site Plan application to the Planning and Zoning Commission for review. The DRC shall be under no obligation to forward a Site Plan application to the Planning and Zoning Commission for consideration unless and until it determines the application is complete in all respects.

- (b) Upon receipt of the Site Plan from the DRC, the Planning and Zoning Commission shall review and consider the proposed Site Plan and shall, in its discretion, approve, approve with changes, or deny the application.
- (c) An applicant for a Site Plan may appeal the Planning and Zoning Commission's final decision to approve with modifications or deny a Site Plan application to the City Council. Such request for appeal must be filed by the applicant with the Director of Planning not later than ten (10) days after the decision of the Planning and Zoning Commission. The City Council at a public hearing, for which notice is given in the same manner as a zoning regulation amendment is provided, shall consider the applicant's appeal. The City Council shall have the discretion to approve the Site Plan as proposed by the applicant, approve the Site Plan as approved by the Planning and Zoning Commission (if approved with changes), approve the Site Plan with other changes as determined and desired by the City Council, or deny the Site Plan application.
- (d) The DRC, Planning and Zoning Commission and City Council shall have the right at any time to defer consideration of any Site Plan application that does not meet all applicable submittal requirements specified in this Subsection E or to provide the applicant time to modify the proposed Site Plan to conform to requests for changes from the DRC, Planning and Zoning Commission, or City Council.
- (e) Development and use of the portion of the Property which is subject to an approved Site Plan must conform in all respects with the approved Site Plan.

### **SECTION 3. CONFLICTS.**

To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Midlothian governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling. In the event there is an irreconcilable conflict within the text of this Ordinance, including any exhibits attached hereto, relating to the applicable standard to be enforced with respect to development of the Property, the strictest standard shall be controlling unless the City Council determines by approval of a motion or resolution that the less stringent standard is to apply.

**SECTION 4. SEVERABILITY CLAUSE.**

Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the City of Midlothian Zoning Ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the City of Midlothian Zoning Ordinance, as amended hereby, which shall remain in full force and effect.

**SECTION 5. SAVINGS CLAUSE.**

An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the City of Midlothian Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 6. PENALTY.**

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed two thousand Dollars (\$2,000) and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

**SECTION 7. EFFECTIVE DATE.**

This Ordinance shall become effective from and after the date of its passage and final publication in accordance with the Charter of the City of Midlothian and/or applicable state law and it is accordingly so ordained.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN,  
TEXAS ON THIS THE 25<sup>TH</sup> DAY OF OCTOBER, 2016.**

---

Mayor

**ATTEST:**

---

City Secretary

**APPROVED AS TO FORM:**

---

City Attorney



## Exhibit B Legal Description

FIELD NOTES  
Tract 1  
12.000 Acres

BEING all that certain lot, tract, or parcel of land situated in the W. Hawkins Survey, Abstract No. 465, City of Midlothian, Texas, and being part of a called 51.256 acres tract described by instrument recorded in Volume 465, Page 220 of the Deed Records, Ellis County, Texas (DRECT), and being more particularly described as follows:

BEGINNING at a 1/2" steel rod found in the north line of George Hopper Road (a city street) for the southeast corner of this tract and the existing southeast corner of the 51.256 acres tract and being the southwest corner of Lot 1, Block 1 of the Hillside Addition, an addition to the City of Midlothian, according to the plat thereof recorded in Cabinet B, Slide 12, Plat Records, Ellis County, Texas (PRECT);

THENCE N 83°50'10" W, 627.30 feet (Record bearing basis from the south line of a called 4.031 acre tract of land out of the 51.256 acres tract and described in Volume 2474, Page 1940, OPRECT, along the south line of this tract and the north line of said George Hopper Road to a 1/2" capped steel rod set for the south corner of a corner clip of land between George Hopper Road and the new east line of Fourteenth Street (a variable width right-of-way) for the southerly southwest corner of this tract;

THENCE N 41°35'30" W, 37.19 feet through the original 51.256 acres tract along the said corner clip and a southwesterly line of this tract to a 1/2" capped steel rod set for the northerly southwest corner of this tract;

THENCE continuing through the original 51.256 acres tract along the westerly lines of this tract, and along the east lines of Fourteenth Street, the following bearings and distances, all to 1/2" capped steel rods set for corner: N 00°36'27" E, 187.04 feet, point being the beginning of a counterclockwise curve, with a radius of 712.50 feet, a central angle of 05°59'09", whose long chord bears N 04°00'30" W, 74.41 feet; 74.41 feet along said arc, N 07°00'17" W, 123.52 feet, said point being in the beginning of a clockwise curve, with a radius of 693.00 feet, a central angle of 05°27'42", whose long chord bears N 02°38'50" W, 66.04 feet; 66.06 feet along said arc; N 00°00'24" E, 341.10 feet to a 1/2" steel rod set for the northwest corner of this tract

THENCE through the called 51.256 acres tract and the northerly lines of this tract as follows: S 89°59'36" E, 45.49 feet to a 1/2" steel rod set for corner in the beginning of a tangent curve oriented clockwise; 63.64 feet along the arc of said curve (Central Angle = 14°35'03"; Radius = 250.00 feet; Long Chord = S 82°42'04" E, 63.46 feet) to a 1/2" steel rod set for corner; S 75°24'33" E, 343.90 feet to a 1/2" steel rod set for corner in the beginning of a tangent curve oriented clockwise; 178.32 feet along the arc of said curve (Central Angle = 45°24'33"; Radius = 225.00 feet; Long Chord = S 52°42'16" E, 173.69 feet) to a 1/2" steel rod set for corner; S 30°00'00" E, 104.47 feet to the set for corner in the beginning of a tangent curve oriented clockwise; and 158.70 feet along the arc of said curve (Central Angle = 40°24'41"; Radius = 225.00 feet; Long Chord = S 50°12'21" E, 155.43 feet) to a 1/2" steel rod set in east line of the said 51.256 acre tract and in the centerline of a roadway dedication located between the Wofford Addition as recorded in Cabinet G, Slide 175, PRECT, and the said Hillside Addition;

THENCE S 09°19'08" W, along the east line of this tract and same for the said 51.256 acres tract and along the west line of Lot 1, Block 2 of the said Hillside Addition, passing at approximately 386.36 feet the westerly southwest corner of Lot 1, Block 2, and the northwest corner of Lot 1, Block 1, Hillside Addition, in all, 502.83 feet to the POINT OF BEGINNING, and containing approximately 12.000 acres of land.

## Exhibit C Conceptual Site Plan



# Exhibit D Independent Living Apartment Elevations

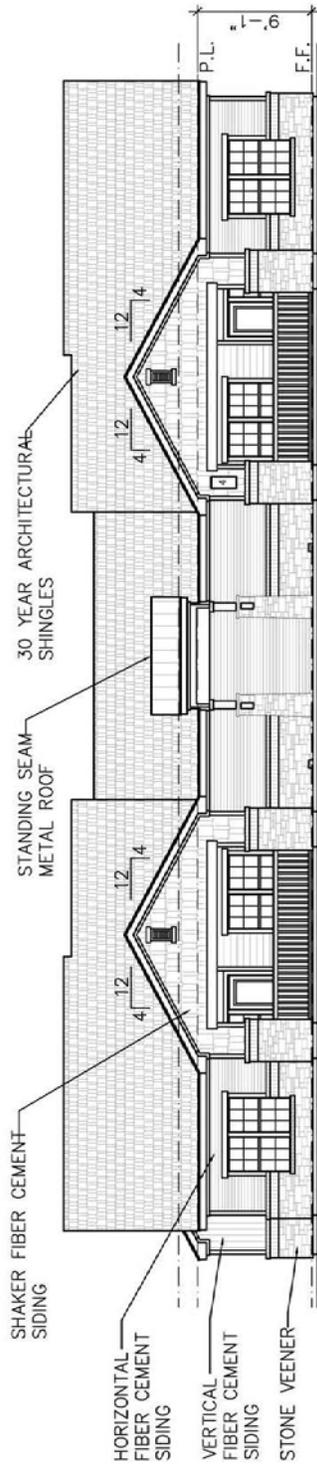


03 IL BUILDING EXTERIOR WEST ELEVATION  
SCALE 3/32" = 1'-0"

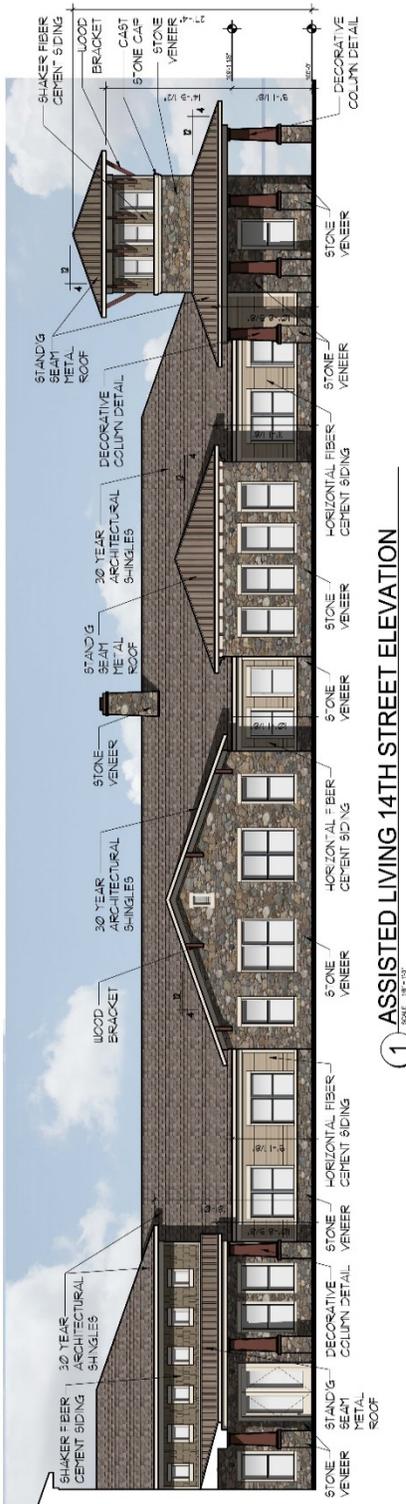


02 IL BUILDING EXTERIOR NORTH ELEVATION  
SCALE 3/32" = 1'-0"

# Exhibit E Independent Living Cottage Elevations



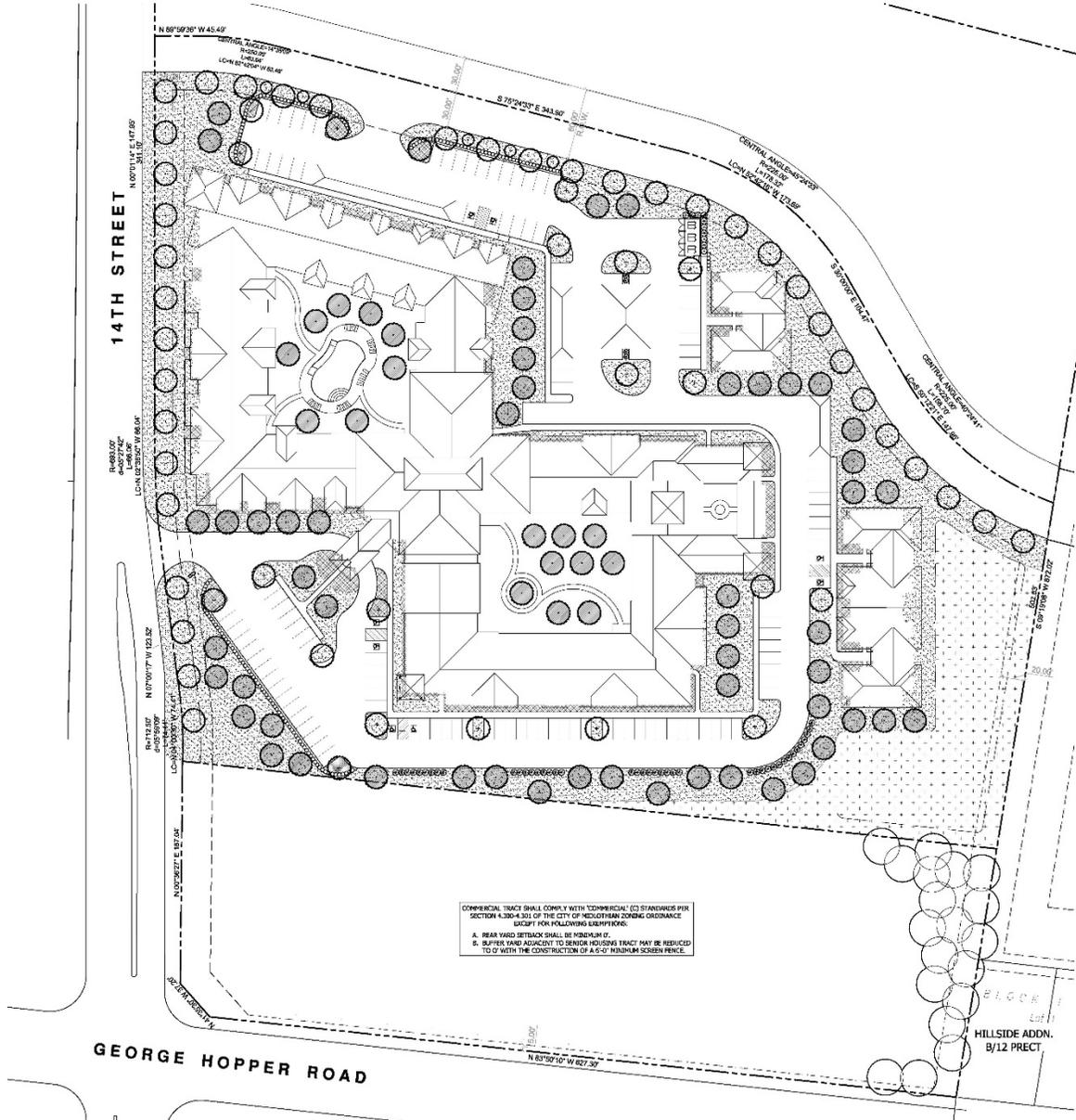
# Exhibit F Assisted Living Facility Elevations



## Exhibit G Memory Care Facility Elevations



# Exhibit H Landscaping Plan



# Exhibit I Density and Dimensional Chart

### CITY REQUIREMENTS

**LANDSCAPE BUFFERS**  
 MINIMUM 15' REQUIRED ADJACENT TO PUBLIC STREETS  
 1 TREE REQUIRED PER 500 SF BUFFER  
 14TH STREET  
 $666 \text{ LF} \times 15' = 9,990 \text{ SF} = 19.98 = 19$  TREES REQUIRED  
 20 TREES PROVIDED  
 PROPOSED NORTH  
 $890 \text{ LF} \times 15' = 13,350 \text{ SF} = 26.7 = 27$  TREES REQUIRED  
 27 TREES PROVIDED  
 MINIMUM 10 SHRUBS PER 500 SF - PARKING ADJACENCY  
 PROPOSED NORTH  
 $169 \text{ LF} \times 15' = 2,535 \text{ SF} = 5.07 \times 10 = 51$  SHRUBS REQUIRED  
 56 SHRUBS PROVIDED

**OFF-STREET PARKING LANDSCAPE**  
 20 SF REQUIRED PER PARKING SPACE  
 $165 \text{ SPACES} \times 20 \text{ SF} = 3,300 \text{ SF}$  REQUIRED  
 = 5,469 SF PROVIDED  
 1 TREE PER 10 SPACES  
 $\frac{165}{10} = 17$  TREES REQUIRED  
 21 TREES PROVIDED

**REQUIRED OPEN SPACE**  
 MINIMUM 25% LANDSCAPE REQUIRED  
 $354,867 \text{ X } .25 = 88,717 \text{ SF}$  REQUIRED  
 APPROX. 102,000 SF PROVIDED

**3" WORTH OF TREES PER 1000 SF REQUIRED AREA**  
 $\frac{88,717}{1000} = 88.7 \text{ X } 3 = 266$  TREES REQUIRED  
 1000 MIN. 266 TREES PROVIDED

### LANDSCAPE LEGEND

	COMMON BERMUDA SOD (CYNODON DACTYLON)		COMMON BERMUDA HYDROPHILICH (CYNODON DACTYLON)		TYPICAL LANDSCAPE SHRUB/GRASS/FLOWER PLANTING BED
	TYPICAL BUFFER CANOPY TREE	SLUR OAK CHINA PINE OAK LIVE OAK CEDAR ELM	QUERCUS MACROCARPA QUERCUS MULLENBERGII QUERCUS VIRGINIANA ULMUS CRASSIFOLIA		TYPICAL BUFFER ORNAMENTAL TREE
	TYPICAL INTERIOR PARKING TREE	SHUMARD OAK FACEBARK ELM CHINESE PISTACHE	QUERCUS SHUMARDII ULMUS PARVIFOLIA PISTACHIA CHINENSIS		TYP. REQUIRED INTERIOR TREE
	TYP. ORNAMENTAL SCREENING	HAIRY GRASS MULLETS SWISS GRASS	MISCANTHUS SINENSIS Panicum VIRGATUM		TYP. EVERGREEN PARKING SCREEN
	TYPICAL BUFFER ORNAMENTAL TREE	GRAPE MYRTLE CRAPPE TREE DESERT WILLOW MEXICAN PLUM	LAGERSTROEMIA INDICA SYDIA ASPIN-CASTIS PHLOXIS LINEARIS PRUNUS NEROLIANS		TYPICAL BUFFER ORNAMENTAL TREE
	TYPICAL BUFFER ORNAMENTAL TREE	SLUR OAK CHINA PINE OAK LIVE OAK CEDAR ELM	QUERCUS MACROCARPA QUERCUS MULLENBERGII QUERCUS VIRGINIANA ULMUS CRASSIFOLIA		TYPICAL BUFFER ORNAMENTAL TREE
	TYPICAL BUFFER ORNAMENTAL TREE	NEEDLEPOINT HOLLY DWARF BURFORD HOLLY INDIAN HAWTHORN	ILEX CORNUTA 'NEEDLEPOINT' ILEX CORNUTA 'BURFORD' RAPHICOLEPS INDICA		TYPICAL BUFFER ORNAMENTAL TREE

Maximum Unit Density per Developable Acres (excludes assisted and memory care units)	Maximum Unit Count			Min Yard Setbacks in Feet <sup>(1)</sup>				Max. Height (Feet)	Minimum Roof Pitch	Max Lot Coverage
	Independent Living (apartment and cottages)	Assisted Living	Memory Care	Rear	Front	Internal Side	Side and Rear on Street greater than 50-foot right-of-way			
12	102 (90 apt. & 12 cottage)	45	9	20	25	5	15	Independent: 3 story not to exceed 48 feet. Assisted/ Memory Care: 1 story	4:12 for main roof and façade accents.	60%

<sup>(1)</sup> Building placement, orientation and architectural design shall substantially conform to building layout depicted in Exhibit "C" ("Concept Site Plan") of this Ordinance.

## **ATTACHMENT 3**

**ORDINANCE NO. 2017-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS, AMENDING THE CITY OF MIDLOTHIAN ZONING ORDINANCE AND ZONING MAP RELATING TO THE USE AND DEVELOPMENT OF 0.3885± ACRES OUT OF THE RANDY HORTON SURVEY, ABSTRACT NO. 508, COMMONLY KNOWN AS 513 SOUTH 9<sup>TH</sup> STREET, CITY OF MIDLOTHIAN, ELLIS COUNTY, TEXAS, PRESENTLY LOCATED IN A RESIDENTIAL THREE (R-3) ZONING DISTRICT BY REZONING SAID PROPERTY TO AN URBAN VILLAGE PLANNED DEVELOPMENT DISTRICT (PD 95) FOR PROFESSIONAL OFFICE USES; ADOPTING A SITE PLAN AND DEVELOPMENT REGULATIONS; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission and the governing body of the City of Midlothian, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Midlothian, Texas, have 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 all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that the City of Midlothian Zoning Ordinance and Zoning Map of the City of Midlothian, Texas, as previously amended, should be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS, THAT:**

**SECTION 1. CHANGE OF ZONING CLASSIFICATION**

The City of Midlothian Zoning Ordinance and the Zoning Map of the City of Midlothian, Texas, as previously amended, be further amended relating to the use and development of 0.3885± acres out of the Randy Horton Survey, Abstract No. 508, commonly known as 513 South 9<sup>th</sup> Street, described more particularly in Exhibit “A” and generally located as shown in Exhibit “B,” respectively, attached hereto and incorporated herein by reference (“the Property”), which is presently zoned Residential Three (R3) District, by changing the zoning of the Property to an Urban Village Planned Development District (PD 95) for Professional Office uses in accordance with Section 2 of this Ordinance.

**SECTION 2. LAND USE AND DEVELOPMENT STANDARDS**

The Property shall be developed and used in accordance with the applicable provisions of the City of Midlothian Zoning Ordinance (“the Zoning Ordinance”), as amended, applicable to the Residential Three (R3) Zoning; provided, however, the Property may also be used and developed for Professional Office purposes subject to the following:

**A. Planned Development Site Plan:** The Property shall be used and developed substantially in accordance with the Planned Development Site Plan (“Site Plan”) attached hereto as Exhibit “C” and incorporated herein by reference.

**B. Parking and Alley Improvements:**

(1) All parking spaces shall comply with the location, dimensions, and minimum numbers shown on the Site Plan.

(2) The Property shall not be used for Professional Office purposes until a joint parking agreement among the owner of the Property and the owner(s) of the properties located at 507 South 9<sup>th</sup> Street and 509 South 9<sup>th</sup> Street complying with Zoning Ordinance Section 4.5604 has been prepared, signed, and recorded in the Official Public Records of Ellis County, Texas.

**C. Signage:**

(1) Any sign located along South 9<sup>th</sup> Street (F.M 663) shall be limited to a ground sign and include landscaping installed at the base of the sign.

(2) The ground sign authorized pursuant to paragraph C(1), above, shall be limited to a maximum height of four (4) feet, a maximum sign area of twenty (20) square feet, and constructed on a masonry base. Landscaping and final location of the monument sign shall be determined prior to issuance of the related sign permit.

(3) Building signage shall be limited to a maximum of six (6) square feet with final placement to be determined prior to issuance of the related sign permit(s).

**D. Platting:** A final plat of the Property shall be approved and recorded prior to the issuance of a building permit for any work to be performed on the Property.

**SECTION 3. CONFLICTS.**

To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Midlothian governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling. In the event there is an irreconcilable conflict within the text of this Ordinance, including any exhibits attached hereto, relating to the applicable standard to be enforced with respect to development of the Property, the strictest standard shall be controlling unless the City Council determines by approval of a motion or resolution that the less stringent standard is to apply.

**SECTION 4. SEVERABILITY CLAUSE.**

Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the City of Midlothian Zoning Ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the City of Midlothian Zoning Ordinance, as amended hereby, which shall remain in full force and effect.

**SECTION 5. SAVINGS CLAUSE.**

An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the City of Midlothian Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 6. PENALTY.**

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed two thousand Dollars (\$2,000) and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

**SECTION 7. EFFECTIVE DATE.**

This Ordinance shall become effective from and after the date of its passage and final publication in accordance with the Charter of the City of Midlothian and/or applicable state law and it is accordingly so ordained.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS ON THIS THE 10TH DAY OF JANUARY, 2017.**

\_\_\_\_\_  
Mayor

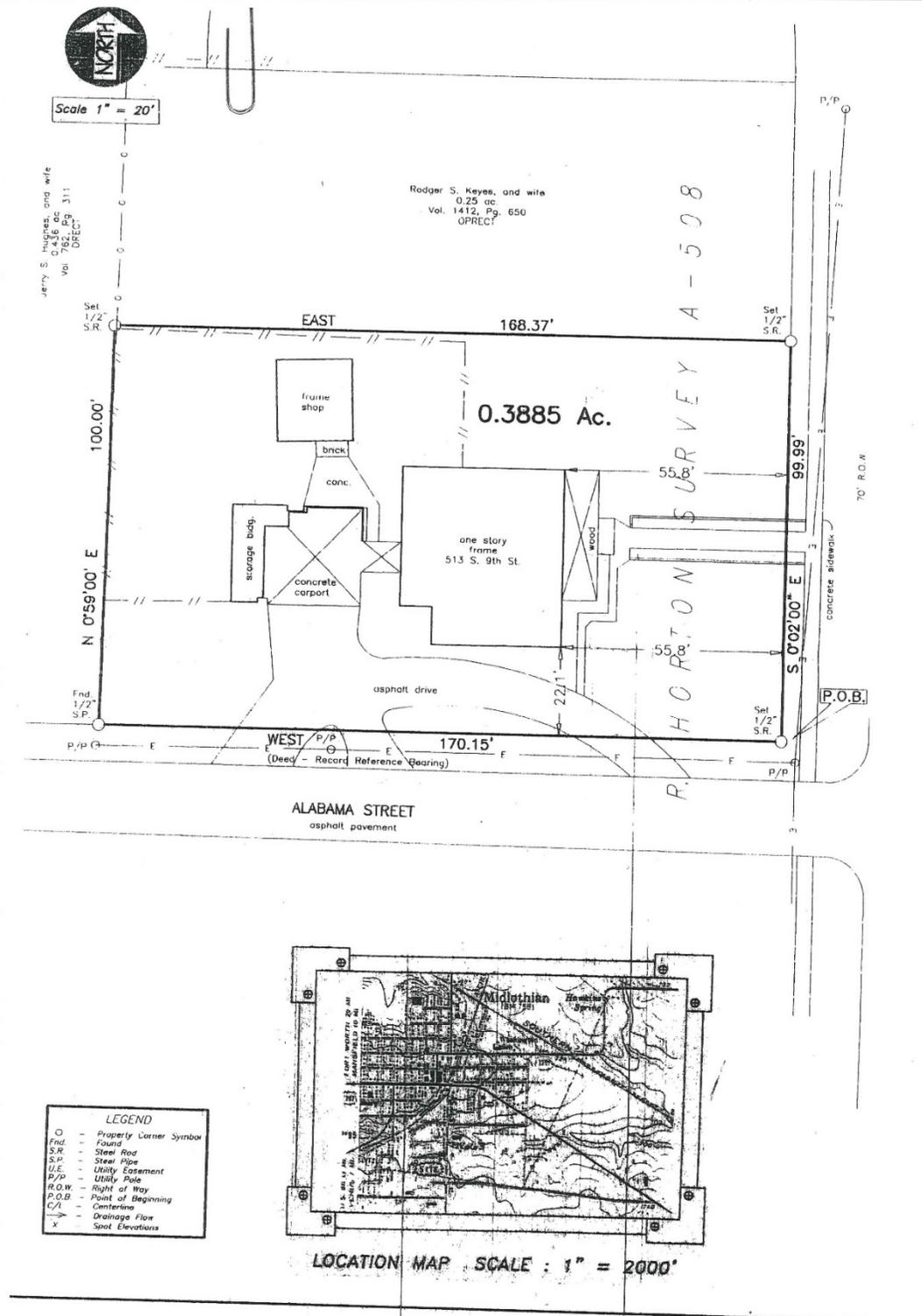
**ATTEST:**

\_\_\_\_\_  
City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

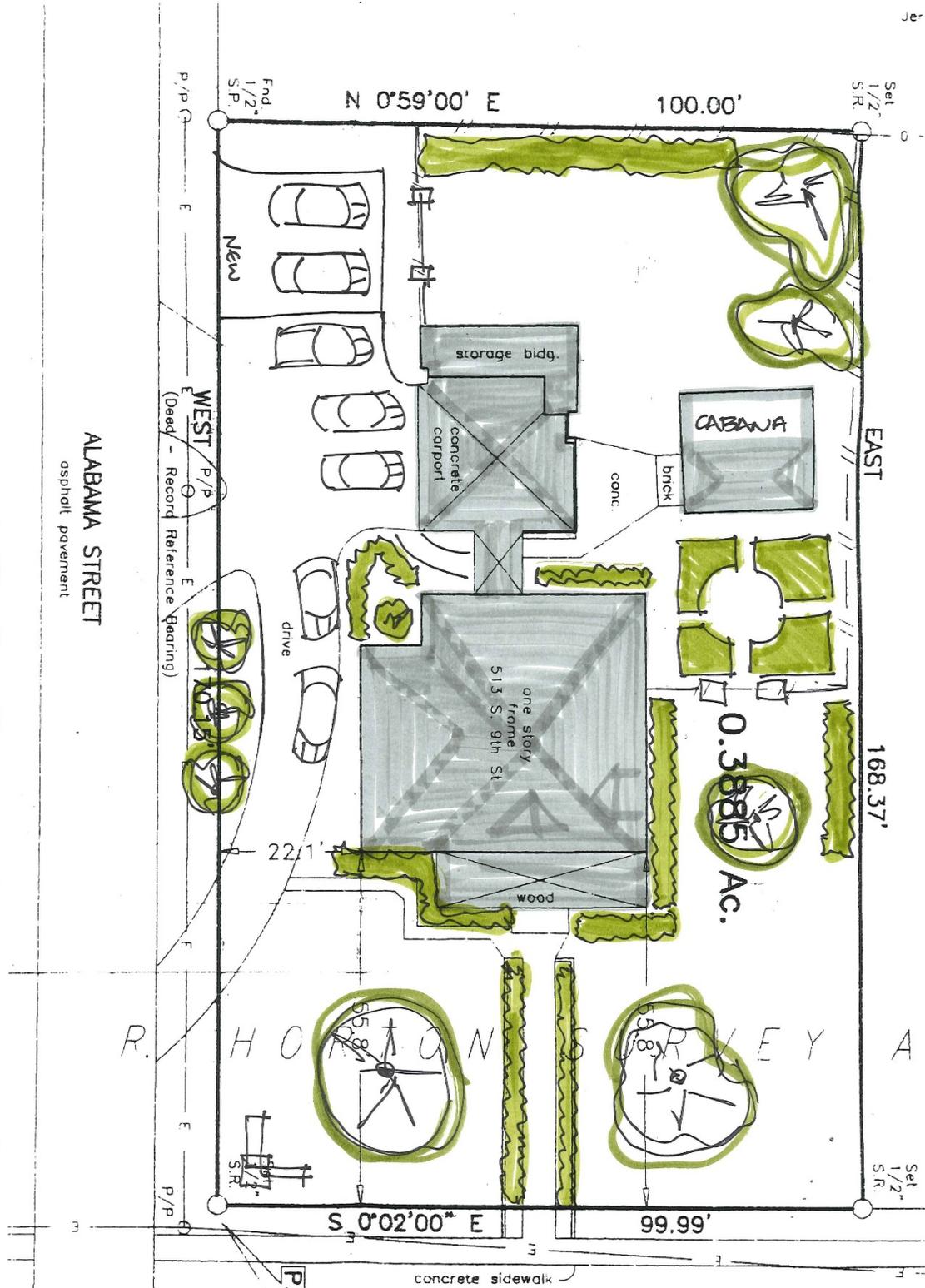
# EXHIBIT A



**EXHIBIT B  
Location Map**



# EXHIBIT C Site Plan



# INTRODUCTION TO PLANNED DEVELOPMENT ZONING\*

Frank F. Turner, FAICP and Terry D. Morgan, Esq.

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## Introduction

Planned development zoning and other flexible zoning techniques were developed to overcome the rigidity of traditional zoning. Traditional zoning divides a jurisdiction into districts (e.g., Single Family 1, Retail, Office). The zoning ordinance specifies regulations (e.g., use, yard, and building bulk requirements) that apply uniformly to all property within the same zoning district. Traditional zoning ensures consistent application of regulations, but it does not easily accommodate innovative development, especially where mixed-use projects are proposed, if the project does not conform to district regulations.<sup>(1)</sup> Traditional zoning also does not permit devising site-specific regulations in response to on-site conditions or to mitigate off-site impacts. Under traditional zoning, changing regulations to meet the needs of a specific project or property requires amending the district's regulations or granting variances to the regulations. Amending district regulations is difficult because the amendment would apply to all property within the district. A variance is difficult because it typically depends on demonstrating a unique hardship related to the physical characteristics of the property. The merits of the development concept alone are not proper reasons for granting a variance. Planned development zoning (also termed planned unit development) was created as a means of tailoring zoning regulation to the specific needs of a project plan and the unique characteristics of a site.

During the 1960s, many organizations, including the Urban Land Institute, National Association of Homebuilders and American Society of Planning Officials, published technical reports on the planned unit development (PUD) concept and model PUD ordinances.<sup>(2)</sup> The term "planned unit development" was coined to describe a site specific zoning process which permits greater regulatory flexibility tied to site plan review. Early PUD literature cites three objectives for creating PUD ordinances: (1) unitary

development review (combining zoning, site planning and

\* The original chapter appeared in *The Southwestern Legal Foundation Proceedings of the Institute on Planning, Zoning, and Eminent Domain* (1992), published by Matthew Bender & CO.; inc. copyright 1993 by Matthew Bender & Company, Inc. and was reprinted with permission all rights reserved.

subdivision regulation); (2) flexible site plan based regulation; and (3) lower development cost. This literature primarily addresses the use of planned development zoning to regulate innovative residential development. Cluster housing, patio homes and zero lot-line homes are types of housing commonly cited as projects that are more easily accomplished as planned developments. These reports also refer to integrating other uses into residential areas and creating mixed use developments through planned development zoning, but the primary focus is residential development.

Planners support the use of planned unit development zoning because it offers the ability to facilitate innovation and respond to specific site conditions. Increasingly traditional land use regulations are criticized for reinforcing the pattern of sterile, homogeneous development characteristic of suburban areas.<sup>(3)</sup> Planning commissioners and city council members also find advantages to planned development zoning because it provides a vehicle for negotiation unavailable in the yes/no options of traditional zoning. This is especially valuable in accommodating the demands of homeowners and other adjacent property owners who want negotiated agreements made enforceable by ordinance. Today, the use of planned development zoning- is firmly established and in common use throughout Texas and the remainder of the country.

### **Methods for Establishing Planned Developments**

The method for establishing and administering planned development zoning varies among cities. Texas zoning legislation (Chapter 211, Local Government Code) does not directly address the use of planned development zoning, but the concept of planned development zoning has been held valid by Texas courts, provided the specific Methods of planned development zoning used by a city conform to the general requirements of state law pertaining to zoning. Planned development zoning establishes land use regulations for a specified area either as a unique zoning district or as an area specific amendment to the regulations of a

standard district. A planned development zoning district may be any size and include one or more land uses. Establishing a planned development zoning district typically includes the approval of a development plan. Requirements for a development plan vary in content and detail. Generally the plan illustrates the boundaries of the area being zoned (or rezoned) and the location of land uses, roads, lots, buildings, other surface improvements, and open space.

The ordinance establishing the district will contain the regulations and standards necessary to execute the plan. A planned development zoning district may be created as a freestanding district or as an overlay district. The use of both methods is further described below.

- **Free Standing PD Districts** - Each PD is a unique district tailored to the specific site and development. Typically, the zoning map designates the area zoned with the letters "PD" followed by a number used to reference the ordinance containing the regulations. The ordinance defines permitted uses, yard, height, bulk and other regulations for the property, similar to any other zoning district.
- **PD Overlay Districts** - PD districts are created by superimposing additional regulations to alter (i.e. add, delete, modify) the standards of the base zoning district. As an example, an area may be zoned Residential-1, permitting single-family houses centered on lots of 9,000 square feet or larger. A PD overlay is attached allowing cluster housing on smaller lots and requiring 15 percent of the area to be common open space. The zoning map shows the base zoning, the PD overlay designation, and an ordinance reference number. The ordinance describes changes to the base zoning requirements. Except as modified by the overlay district, the requirements of the base zoning district still apply.

**Plan Approval** — Most cities use a two step plan approval process. The first step is the approval of a conceptual or schematic development plan concurrent with establishing the zoning district. The second step is the approval of a final development plan prior to application and approval of plats and building permits. Planned residential districts frequently require an intermediate "preliminary" or "tentative" development plan to coincide with preliminary plat approval. Some ordinances, particularly those addressing mixed use, distinguish between a "development plan" for a phase of the project and a "site plan" for individual, non-single family uses. The conceptual plan aids in understanding the development proposal and negotiating the specific regulations to be included in the PD ordinance. Conceptual plans are very useful in coordinating the phased development of large projects. The conceptual plan may be approved administratively or as a part of the actual ordinance establishing the zoning<sup>153</sup>

district. If the plan is administratively approved, it may be amended from time to time so long as it conforms to the district's regulations. Conceptual plans that are directly incorporated into the ordinance establishing the zoning district may only be amended by the same procedure as rezoning.

Administrative approval of the conceptual plan provides greater flexibility by accommodating plan amendments without the necessity of going through the rezoning process. This flexibility can, however, yield an amended plan that is significantly different from the original even if still within the terms of a broadly drawn adopting ordinance. Because of the limited discretion available through an administrative review process, a city may be unable to deny the plan or to impose additional development conditions. For this and other reasons discussed in succeeding sections, the preferred method is to incorporate the conceptual plan into the ordinance establishing the district. Alternatively, if a conceptual plan is administratively approved, the ordinance establishing the PD district should include all requirements and specifications that must be met if approval is later sought for a new or amended conceptual plan.

Generally, the final development (or site) plan is a detailed, scaled drawing of site improvements and buildings. Plan approval is required prior to the release of engineering plans and the issuance of building permits. The plan may be for the entire project or a portion of the project. Plan approval usually is a administrative function assigned by ordinance to staff, the planning commission or city council, although some ordinances confer considerable discretion on decision-makers at this stage of the process.<sup>(4)</sup> The purpose of the review is to ensure that the proposed development conforms to the PD regulations and the prior approved plans. Although the site planning process is typically coupled with planned, development zoning, this is not always the case. Some cities use planned development zoning to modify standard zoning requirements for specific properties without requiring site plan approval concurrent or subsequent to the zoning approval.

**Expiration of PD Approval** - The creation of a planned development district is a legislative action. Once approved, the ordinance will remain in place and run with the land until a subsequent legislative action (i.e., rezoning) occurs. Depending on the terms of a city's zoning ordinance and whether or not a plan

for the development was adopted by ordinance, site plan approval may expire if the project is not built. A new plan may be submitted to replace the expired plan, but the new plan must comply with the ordinance establishing this district and other applicable regulations. Regulations pertaining to the expiration of administratively approved plans must be adopted prior to the acceptance of an application for plan approval. Tex. Loc. Gov't Code section 245.002(a) states: "Each regulatory agency shall consider the approval, disapproval, or conditional approval of any application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates or other properly adopted requirements in effect at the time the original application for permit is filed."

### **Use of Planned Development Zoning in Texas**

In 1991, the authors of this chapter conducted a survey of the twenty largest (by population) cities in Texas to determine their use of planned development zoning. Seventeen of the twenty largest cities in Texas used planned development zoning. Of the three cities not using PD zoning, Houston and Pasadena did not have a zoning ordinance. Lubbock had a zoning ordinance but did not use planned development zoning. All of the cities using planned development zoning had specific sections within their zoning ordinances authorizing planned development regulations and defining procedures for establishing districts. All but three of the ordinances contained very brief purpose statements relating to the use of planned development zoning. Most PD purpose statements generally stated the need for flexibility. Few of the ordinances cited within the purpose statement the relationship of planned development zoning to implementing the community's comprehensive plan.

All but one of the cities could potentially use planned development zoning to regulate any type of development. The ordinances generally permitted planned development districts to be of any size deemed appropriate. Despite the residential origin of planned development zoning, very few of the ordinances showed a bias toward regulating residential vs. non-residential development. The majority of cities surveyed frequently used planned development zoning to regulate permitted uses, intensity and density of use, location and bulk of buildings and the extent of landscaping. Less than a third of the cities frequently used planned development zoning to specify architecture, public improvements

or development phasing. Only a few ordinances required or mentioned the use of a schedule to define the sequence and timing of development.

**Use of Site Plans** - Most of the Texas ordinances reviewed either required or allowed the submittal of a conceptual plan in conjunction with an application for planned development zoning, and required the conceptual plan to be adopted by ordinance as a part of the zoning. Very few of the ordinances specifically addressed the meaning of the plan as a regulation. Most of the ordinances stated that subsequent plans are to conform to the conceptual plan but did not define criteria for determining conformity. Many of the ordinances provided for minor amendments to the conceptual plan without rezoning. The responsibility for approving minor amendments was typically assigned to the planning director. Ordinances varied considerably on what is considered to be a minor amendment. The ability to request a minor amendment presumably resided only with the property owner, since none of the ordinances specifically stated that the city may make minor adjustments to conform the proposed development to new standards or to solve engineering problems.

Final development plans were typically required prior to the issuance of a building permit. Council approval of the final site plan was often required. Only a few ordinances provided for the expiration of development plans. Only one ordinance addressed the issue of vesting plans for partially built developments. A few ordinances required development schedules and stated that the city may call a public hearing to consider appropriate zoning if the schedule is not met and an extension is not approved.

One of the objectives of the PD concept stated in early literature is the integration of zoning, site planning and subdivision regulation. However, only a few of the Texas ordinances reviewed referenced the city's subdivision regulations and the need to coordinate platting and site planning.

One of the most interesting findings of the survey was how frequently the cities used planned development zoning. Seven percent of zoning cases approved during 1991 by the seventeen cities involved the use of planned development districts. Four cities reported that twenty percent or more of their zoning cases involved use of planned development districts. The frequency of use was greatest in the Dallas/Fort Worth area.

**Pros and Cons of PD Zoning Cited by Texas Cities** - The respondents in the cities surveyed were asked to list the reasons they support the use of

planned development zoning and concerns they have about its use. Listed below are their responses.

### **Reasons for Supporting PD Zoning:**

- Greater flexibility;
- Ability to negotiate;
- Ability to assess and mitigate site specific impacts;
- Ability to address public concerns;
- Ability to compensate for deficiencies in standard zoning districts;
- Ability to better regulate large scale mixed use development; and,
- Ability to address site-specific considerations.
- Concerns About Use of PD Zoning:
- Contract zoning (inappropriate bargaining);
- Time consuming to establish and administer PD districts;
- More vulnerable to politics;
- Erosion of standard zoning requirements;
- Over use;
- Lack of an automatic revocation if project is not built;
- Manipulation of regulations to gain approval;
- Lack of consistency among districts; and,
- Difficulty in administering regulations when the district is split among multiple owners.

### **Authority For and Legal Challenges to PD Zoning**

This section of the chapter reviews legal authority for planned development zoning and possible legal challenges to its use. Texas statutory authority and case law are surveyed generally. Additional case law, federal and of other states, are noted where principles may also apply to the use of planned development zoning in Texas.

Planned development zoning was not anticipated in the Standard Zoning Enabling Act, and is not expressly authorized in Texas' zoning enabling act or in special statutes. In the absence of express enabling authority, however, most courts have been willing to broadly construe the state's zoning enabling act to find authority for PDs as valid exercises of the zoning power. In *Teer v. Duddleston*,<sup>(5)</sup> the Texas Supreme Court upheld the City of Bellaire's planned

development district against a challenge by neighbors that PDs were not authorized under the zoning enabling act. In construing the act to allow PDs, the court noted that the enabling act did not specifically prohibit the use of PDs, and concluded, therefore, that PDs were not per se "spot zoning."<sup>(6)</sup>

Planned development zoning has been found to advance the purposes set forth in the standard zoning enabling act, such as the provision of open space and the prevention of overcrowding. A variety of reasons are given by courts interpreting statutes to authorize PDs.<sup>(7)</sup> Authority for PD may also be found in home rule powers. Where home rule powers are strong, as in Texas, enabling statutes act as limitations, not grants of authority on local governmental powers<sup>(8)</sup>

Local governments must follow their own ordinances in regulating PDs<sup>(9)</sup> Generally, local governments may not condition PD approval upon standards not contained in their regulations, nor may they apply more stringent standards than appear in the ordinance. Requirements of other ordinances, however, such as subdivision regulations, may be incorporated by reference into the PD ordinance, or may be implied by a reviewing court based on common definitions<sup>(10)</sup>

**Typical Challenges (and Defenses) to PD Techniques** - All zoning actions are afforded a strong presumption of validity.<sup>(11)</sup> Because PDs depart from traditional concepts of zoning, however, they have been more closely scrutinized by reviewing courts than more typical zoning mechanisms.

**Standards for Review** - In determining whether PD regulations are arbitrary and capricious, or unreasonable, judicial inquiry frequently is focused on the absence of standards by which PDs are established or evaluated. In *Beaver Meadows v. Bd. of County Commissioners*,<sup>(12)</sup> the County attempted to condition the approval of Beaver Meadows' planned development on the provision of off-site facilities and assurances for the provision of emergency medical services. While the trial court upheld these conditions, the Colorado Supreme Court reversed, in favor of Beaver Meadows. The Court held that, while the County ordinance appeared to authorize the Board to review the application, the regulation lacked the necessary detail to support the conditions.<sup>(13)</sup>

If PD ordinances do not contain sufficient standards to enable a reviewing court to determine the reasonableness of the local decision, they may be held invalid as an unlawful delegation of legislative authority."

**In Accordance With a Comprehensive Plan** - General limitations on the amendment of zoning ordinances and other exercises of the zoning power apply to PDs. For example, PD districts must be established in accordance with a comprehensive plan. Where PDs are established as an overlay district or floating zone, the consistency doctrine -- where recognized -- may limit the location of such districts and the types and intensity of uses available.

Under the standard zoning enabling act, the requirement that zoning regulations be "in accordance with a comprehensive plan" may be satisfied by comparing a particular zoning amendment with the comprehensive zoning ordinance map, if such map presents a plan for orderly development.<sup>(15)</sup> On the other hand, if a community has a separately adopted comprehensive plan, the court may rely upon such document in determining whether a particular zoning amendment conforms to the comprehensive plan. Accordingly, in *Mayhew v. Town of Surmyvale*,<sup>(16)</sup> the court determined that the town zoning ordinance was in conflict with its adopted comprehensive plan and, consequently, that the applicant's planned unit development could not be refused on the basis of such zoning ordinance.

**Soot Zoning** - Situations where a zoning amendment is sought to establish a use prohibited by the existing regulations are frequently challenged as "spot zoning." Although PD overlay districts usually incorporate a concept plan for particular uses which identifies specific uses at the time of rezoning, this generally does not render the creation of the district as spot zoning.<sup>(17)</sup> A number of factors will be taken into consideration to determine whether the zoning amendment constitutes spot zoning, such as: use of neighboring property; suitability of the tract for anticipated uses; relationship to valid police power objectives; and size of the tract rezoned.<sup>(18)</sup> The conclusion that a particular zoning amendment involves "spot zoning" can be avoided if the comprehensive plan for the area designates the site as suitable for location of a "floating zone," such as a planned unit development.

**Uniformity** - The uniformity clause in the Standard Zoning Enabling Act requires that similar use be treated uniformly. Courts have upheld PDs challenges under this provision on the interpretation that uniformity is required only within, not among, zoning districts.<sup>(19)</sup> In the *Chrinko* case, the court dismissed the uniformity challenge on the basis that the ordinance accomplished uniformity since the PD "option" was open to all developers.

**Contract Zoning** - Because many PDs are "negotiated," they are susceptible to challenge as unlawful contract zoning. In most jurisdictions, contract zoning is distinguished from permissible conditional zoning on the basis of whether the alleged agreement is bilateral (contract zoning) or unilateral (conditional zoning) in nature. In *Teer v. Duddlesten*,<sup>(20)</sup> supra, the city had obtained the developer's promise to perform conditions attached to the requested planned development amendment. Although the Court of Appeals found that the city had merely preserved its police power instead of bargaining it away with the acceptance agreement, the Supreme Court held that such arrangement amounted to illegal "contract zoning." The Supreme Court held that the city could accomplish its objectives by conditioning the rezoning. Such "conditional zoning" was unilateral in character, according to the Court, and was not personal to the applicant<sup>(21)</sup>

**Statutory Procedures** - In recent cases, most courts invalidating PDs have done so on the basis of the local government's failure to follow statutory procedures or those established by local ordinances. Standard zoning procedures for amendment of zoning ordinances or approval of special use permits must be followed. In *Wallace v. Daniel*,<sup>(22)</sup> a developer sought rezoning of a tract for use as a planned unit development, but failed to submit a detailed description of the proposed development as required by local ordinance. The planning commission recommended -approval of the development without such detail. Although the developer subsequently submitted a specific plan to the county council prior to approval of the ordinance, the court held that the procedure was fatally flawed. Because the planning commission did not have before it essential information concerning the nature of the project, it could not make an effective recommendation to the county council, the court reasoned.

The court in *Wallace* held that the enabling act required by implication that municipalities must follow their own procedures when adopting ordinance amendments. Failure to consider a specific plan when approving a PD amendment recommendation from the planning commission violated this municipal ordinance.<sup>(23)</sup>

**Challenges by PD Applicants** - Challenges by applicants most frequently arise when initial approval or approval of the development plan is heavily conditioned, or when the local government attempts to rezone or otherwise impose new regulations on subsequent phases of the project:

**Excessive Conditions** - A condition imposed on development approval must substantially advance a legitimate governmental objective <sup>(24)</sup> Generally speaking, a PD may be lawfully conditioned on the provision of improvements or amenities to serve the development which are contemplated; in the enabling act; in parallel statutes, such as subdivision laws; in the comprehensive plan; or in the zoning ordinance itself. The issue frequently is raised when the development plan is reviewed by the city. In *Board of Supervisors v. West Chestnut Realty Corp.*,<sup>(25)</sup> the court upheld the denial of the application for development plan on the ground that the developer was required to depict specific improvements, including utilities, at all phases of the application process. According to the court, additional detail was required regarding storm water management, considering the location of the property in relation to storm water facilities. Although the township's ordinance did not expressly require additional detail, the court found that such information was required based upon a reasonable construction of all of the township regulations.

In *Municipality of Upper St. Clair v. Boyce Road Partnership*,<sup>(26)</sup> the issue concerned what conditions the city could apply to subsequent phases of a multi-phase PD project. The court found that the developer's failure to install electric lines underground, failure to submit proof of project financing, and failure to comply with the township's interim floodplain ordinance constituted valid grounds for denying final approval of the third and fourth phases of the project. The court held that the conditions had been imposed at the time of granting final approval to previous phases of the development and that compliance with the conditions was required prior to final approval of subsequent phases.

Ad hoc conditions- unsupported by standards, however, may be invalidated. In *RIB Development Corp. v. City of Norwalk*,<sup>(27)</sup> the PD was denied on the grounds that the development posed safety hazards to school children. The court invalidated the denial, because the PD ordinance contained specific site development standards, but did not include the grounds for denial advanced by the city.

Some PD ordinances include exactions of land or improvements for public facilities as conditions of zoning or plan approval, similar to those imposed on subdivision plats. In such cases, cities must observe constitutional standards in imposing the conditions: In 1994, the United Supreme Court announced its "rough proportionality" standard governing development exactions in *Dolan v. City of Tigard* <sup>(28)</sup> Under this test, a land dedication requirement (and perhaps other forms of development exactions)<sup>(29)</sup> must be "roughly proportional" to the nature and extent of the impacts on community facilities resulting from the development. Although mathematical precision is not required, the test requires that some quantification of this

relationship is necessary. The Texas Supreme Court in applying standards under the State's constitution requires that there be a "reasonable connection" between the exaction and both the need for the facilities exacted and the benefit to the development.<sup>(3°)</sup>

This type of analysis was applied by the Colorado Supreme Court to invalidate a road exaction imposed on a planned development. Thus in *Beaver Meadows v. Bd. of County Commissioners*,<sup>(313)</sup> the board of commissioners conditioned approval of a planned unit development on improving an access road for 4.73 miles and arrangement for emergency medical services to serve the development. Although the county intended to pursue the formation of an improvement district to assist with the costs, the developer was required to pay the total initial cost of the improvement pending the formation of the district. The Colorado Supreme Court invalidated the conditions, reasoning that the county's regulations did not support the conditions imposed in the case. The Court construed the subdivision and planned unit development laws together, concluding that the county had the authority to impose conditions relating to road planning and improvements. The county's regulations, however, contained no criteria for evaluating roads to serve a particular development project. Because the regulations provided no guidance, the developer could not be required to install improvements which would obviously benefit other property owners. The Court also held that the county could have required provision for emergency medical services if the statutory authority were supported by standards in the regulations. In the absence of such local guidelines, the condition to provide emergency services could not be imposed ad hoc. Generally speaking, the conditions applied at the time of development plan approval must be contemplated in the concept plan.<sup>(32)</sup>

**Regulatory Takings** - Where local governments rezone or otherwise impose new regulations on undeveloped phases of a PD, thereby changing uses, reducing intensity of use, or imposing stricter development standards, a property owner may challenge the action as a deprivation of economically viable use of the property under federal or state constitutional provisions prohibiting the taking of private property for public use without just compensation<sup>(33)</sup> Under most circumstances, a court will not evaluate the effect of a regulation on a single interest in the property, but will ascertain the impact on the property when taken as a whole <sup>(34)</sup> Applying this principle in a regulatory taking challenge, a reviewing court should take into account the beneficial uses that already have *been* developed in earlier phases of

the project when weighing the economic impacts of the new regulations.

Before challenging local government zoning regulations, the property owner usually must satisfy ripeness requirements imposed under federal and state law. Typically this requires that the property owner attempt to vary the application of new regulations or modify his development proposal before the claim matures.<sup>(35)</sup> In the case of *Williamson County Regional Planning Comm'n v. Hamilton Bank*, the county disapproved a subdivision plat for the latter phases of a development project because the plat did not comply with newly enacted zoning and subdivision regulations, even though the first phases of the project had already been developed. The Supreme Court overturned the damage award of \$350,000 for a temporary taking of the property because the developer had failed to apply for variances to the regulations. Under the county's testimony, some 300 units could have been constructed on the site under variance provisions. In the context of planned developments, a property owner may be required to seek relief from the *new* regulations by submitting a concrete development proposal, coupled with variance requests, before his claim ripens.

**Vested Rights** - When cities impose new regulations on subsequent phases of a planned development, landowners also may seek to enjoin such actions on the basis of "vested rights." In most cases, challenges will be based on Tex. Loc. Gov't Code ch. 245, a 1999 replacement statute for former "HB 4."<sup>(36)</sup> The new law attempts to make vested rights provisions retrospective to cover the period of the repeal, roughly two years. Because most planned developments involve multiple phases, however, it also is possible that the common law doctrine of vested rights will come into play. Under this seldom applied standard, a city may be estopped from applying new regulations, where a property owner has made substantial expenditures on a development in progress in good faith reliance on a validly issued permit.<sup>(37)</sup>

Chapter 245 of the Texas Local Government Code, the usual vehicle for challenging new regulations, requires that " approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application permit is filed."<sup>(38)</sup> The law further states, "if a series of permits is required for a project, the orders, regulations, ordinances, or other requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for

the completion of the project. All permits required for a project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project (39)

There are certain exemptions to the provisions of Chapter 245 identified in Section 245.004. The exemption of most utility in addressing planned developments is that for "municipal zoning regulations that do not affect lot size, lot dimensions, lot coverage, or building size, or that do not change development permitted by a restrictive covenant required by a city." Thus even if subsequent applications for approval of later phases of a planned development are considered part of the same series of permits for a project, some types of new zoning regulations may be applied to limit development, including use restrictions.

A separate issue under the vesting statute is whether plans associated with establishment of PD districts are the type of "site plans" that qualify as "development permits" under the law. Approval of a planned development zoning district itself is a legislative act and should not be viewed as the issuance of a development permit. However, the concurrent review and approval of a development plan prepared in association with an application for PD zoning may trigger vesting of a "project" as defined by Chapter 245. The outcome depends in large measure on whether the "concept plan" is incorporated as part of the adopting ordinance; if the conceptual Plan is approved as an administrative action, it almost certainly will be considered a "site plan" triggering rights under ch. 245.

Procedures pertaining to the processing of a series of plans, plats and permits required to develop within a planned development district must be carefully drafted to avoid unreasonable freezing of development regulations. Each required approval should expire if applicant fails to proceed to the next required step with a defined time period. The procedures should also provide standards for determining when a plan amendment is substantially different than the original project and therefore may be regulated as a new project. These procedures must be placed before an application is filed for the first permit required to conduct a project. Chapter 245 prohibits retroactive application of new regulations, including permit expiration dates to projects in progress.

Section 245.005 includes language addressing dormant projects, a provision that may be useful considering the extended life of some planned developments. Dormant projects include those projects for which the permit

does not have an expiration date and on which no progress has been made towards completion of the project "Progress towards completion of the project" is defined as being any one or more of the following: application for a final plat, a good-faith attempt to file an application with a regulatory agency, incurred of costs for developing the project, posting of fiscal security to ensure performance, or payment of utility connection fees or impact fees for the project. Fortunately, Section 245.005 also provides for the expiration of some dormant projects that already have permits. After May 11, 2000, cities may place an expiration date on a permit that has no expiration date if no progress has been made toward completion of the project. If a city imposes an expiration date on such a "dormant project," the expiration date may not be earlier than May 11, 2004.

**Discretionary v. Ministerial Actions** - In a recent Dallas Court of Appeals decision, *Bartlett v. Cinemark USA, Inc.*,<sup>(40)</sup> approval of the second stage of a planned development was held to be a ministerial decision rather than an act of discretion on the part of the City Council.

Consequently, the Court found that the City's Council's denial of the development plan for a movie theater complex subjected the City and individual council members to civil rights hal:Jay. In reaching this result, the Court distinguished the Council's role in initially adopting PD zoning (a legislative function) from that the functions it played in acting on the subsequent development plan, which it ultimately characterized as "ministerial" in nature.<sup>(41)</sup>

- Although the facts in the Cinemark case were unique in many respects, the Dallas PD ordinance under consideration was not significantly different from that of many other cities. The ordinance required that the PD district be established on the basis of a detailed site plan approved with the ordinance. The developer could choose to submit the plan in two stages. If this option was taken, the first "conceptual plan" was incorporated .as part of the ordinance establishing the district. A development plan that was consistent with the conceptual plan had to be submitted within six months of approval of the district, supplying additional details for the project.

The case counsels great caution in applying PD standards to approval of site plan approvals after the first "conceptual" site plan is approved. The nature of subsequent site plans must be first determined from the text of the PD ordinance itself, with the key distinction being whether such stages of approval constitute a form of zoning amendment or at least allow the application of some measure of

discretion by the decision-makers. Clearly, the identity of the decisionmaker—whether the City Council, the Planning and Zoning Commission, or the Planning Director—is immaterial to characterization of the decision by the courts. Both the nature of the standards and the nature of the procedures to be applied at subsequent stages of the PD development process are relevant in determining whether such decisions constitute at least some measure of the exercise of discretion. This point in turn is important for determining the scope of immunities available to public officials under the federal civil rights act.

**Subdivision Laws** - Property division within land zoned for PDs is subject to enforcement of subdivision laws and ordinance requirements<sup>(42)</sup> Where residential development is involved, preliminary plats or tentative maps may be approved simultaneous with initial approval of the PD.<sup>(43)</sup> Under the Nevada legislation, cities and counties are given the power to modify subdivision as well as zoning requirements in approving a PD. The statute requires that "all planning, zoning and subdivision matters relating to the platting, use and development of the planned unit development and subsequent modifications of the regulations relating thereto to the extent modification is vested in the city or county, must be determined and established by the city or county [in the PD regulations]."<sup>(44)</sup>

Unintended divisions may occur, however, where property ownership is divided through foreclosure. Although there is little case law on the subject to date, in such instances, subdivision of the PD may be required prior to further rezoning or development approval on the resultant tracts. The result may depend upon the wording of the state subdivision laws. In Texas, for example, any division of a tract into two or more parts constitutes a subdivision.<sup>(45)</sup> There are no express statutory exemptions. Consequently, local ordinance must exempt divisions that would occur by means of foreclosure.<sup>(46)</sup> In other jurisdictions, divisions resulting from foreclosure may be expressly exempt from subdivision requirements.<sup>(47)</sup> On the other hand, the Nevada enabling authority for PDs expressly requires that the property must be rezoned and resubdivided if the landowner abandons the development plan or fails to carry out the plan within the specified period of time.<sup>(48)</sup>

**Rights of Third Parties** - Although PDs typically are conditioned to address complaints of adjoining landowners, local government action may be undone if such conditions amount to a delegation of zoning authority to neighbors.<sup>(49)</sup> By the same token, adjoining property owners do not acquire an

enforceable interest in the zoning of the land as PD or in particular conditions or restrictions governing development of the site. In *American Aggregates Corp. v. Warren County Comm'rs*<sup>(50)</sup>, the county denied the plaintiffs request to build a concrete batching facility on property zoned for industrial purposes adjacent to its sand and gravel pit. The pit abutted a residential neighborhood, also zoned for industrial use. The local ordinance required the plaintiff to submit a planned unit development overlay for the affected area. The County approved the PD, but denied a requested modification for the batching plant following a public hearing at which residents of the adjoining subdivision objected. The Ohio Court of Appeals invalidated the planned unit development, reasoning that Ohio statutes authorized the use of such techniques only for uses zoned for residential purposes. The Court found that the sand and gravel operation did not constitute a nuisance to adjacent neighbors, since such residences were built on industrially-zoned property. The Court also ruled that the county could not impose the PD merely because the land could ultimately be reclaimed for residential purposes in the future.

In *Young v. Jewish Welfare Federation of Dallas*<sup>(51)</sup>, the city revised a site plan submitted in conjunction with approval of a special use permit, authorizing the holder of the special use permit to use right-of-way previously submitted in a deed of dedication as a parking lot. The city had not accepted the 25-foot strip as a public street, and the property owner had withdrawn its offer of dedication. The adjoining property owner sued the city, claiming that the amendment of the site plan without notification to him was unlawful and that he had acquired an interest in the street being placed adjacent to his property. The court rejected the claim, finding that the property had never been dedicated to the city and, consequently, the plaintiff was not entitled to rely upon dedication of the street in purchasing his property.

### **Issues Concerning Planned Development Zoning**

While planned development zoning is a valuable tool in regulating development, its very flexibility can cause a number of problems. Since Texas' zoning statutes do not directly address planned development zoning, cities are provided little guidance on the use of PD zoning and procedures for establishing and administering PD districts. Some of the major concerns identified in the course of this study are reviewed below.

**Ordinance Construction and administration** - Each city's zoning ordinance must authorize the use of planned development zoning and define procedures for the creation and administration of districts. The text of the zoning ordinance governing PD districts should clearly specify whether the district is intended to be free-standing (in which case all pertinent zoning standards must be defined) or function as an overlay district. In the latter case, the ordinance should define the extent to which planned development zoning may be used to vary standard development regulations. Without proper authority PD zoning should not be used to alter subdivision ordinance or building code requirements. Unified development codes and cross authorizations may offer some ability, but this power should not be automatically assumed.

Drafting of specific planned development district regulations must avoid ambiguities to ensure intended results. Most planned development zoning requests involve complex issues and expectations.. The use of conceptual plans and illustrations is helpful in gaining an understanding of what can be done if the zoning is approved; however, unless the ordinance creating the planned development district clearly identifies the extent to which the conceptual plan is part of the district regulations (and hence part of the zoning for the district), the development proposed in subsequent plans may differ considerably from that shown on drawings at the time the zoning was approved, particularly if considerable time has elapsed since the original approval. Controversy over the intent of the ordinance inevitably arises in such circumstances. One technique to avoid ambiguities is to distinguish in the zoning ordinance between those features of a conceptual plan that are "regulatory" in character from those that are purely "informational." The difference is that regulatory elements require rezoning to change; informational features do not.

A related drafting issue is clarification of ambiguities concerning the level of discretion to be applied at later stages of the planned development process. This should be done in the text of the zoning ordinance that defines general standards for PD districts, rather than in the ordinances establishing individual PD districts. Discretion is mandated where the original conceptual plan is very general (or absent altogether), or the adopting ordinance fails to specify all uses or standards that are applicable to development within the PD district (for example, setbacks, heights applicable to structures, etc.). In some cases, the next stage of PD development constitutes in effect a zoning amendment to the original approval, necessitating appropriate notice and hearing procedures. In any event, the standards for approval, where discretion is called for in approving subsequent plans, should necessarily be broad.

Administration of planned development zoning is complicated by numerous factors. All zoning ordinances provide fertile ground for argument. Terminology, definitions and questions of intent seem produce endless debate. This problem seems even greater with planned development zoning. The problems of interpretation and enforcement only grows as the time between zoning approval and development lengthens and is further compounded by changes in property ownership and city staff.

Few planned developments are built as they were originally approved. As time passes, the market changes and unforeseen conditions and circumstances arise. Unfortunately, a change, even a minor change, to the development plan may require rezoning. This is especially true if the PD contains a long list of detailed requirements or if a preliminary development plan was incorporated by reference into the zoning. If rezoning is required, the process takes time, it may be expensive and may lead to opposition and renegotiation. Large planned developments are seldom built all at once. Zoning ordinances (both the general PD provisions of the zoning ordinance or the specific ordinance for the property) should deal with typical phasing problems. A related concern is the vesting of development plans when a portion of the project is built. Again, ordinances should directly define when vesting occurs.

Normally, the creation of a planned development district is initiated by a single property owner/developer. It is usually understood that a large project-will be built in phases by multiple owners/developers, but that the overall development will be coordinated through the zoning and master plan. Planned development ordinances should anticipate how to manage the plan and zoning rights if the owners are not cooperating and disagree on the meaning and distribution of development rights. This problem is common in the major metropolitan areas of Texas. The banking and real estate collapse resulted in foreclosures and the division and transfer of property within planned developments to such an extent that many PDs cannot be developed as zoned. The general provisions of a city's zoning ordinance should contain procedures for resolving issues concerning distribution of development rights and approval of development plans where a planned development district is divided into multiple ownerships.

**Proliferation of Planned Development Zoning** - The survey of Texas cities shows planned development zoning is used frequently. A number of forces have generated this demand. Neighborhood organizations are becoming stronger participants in the development decision-making process. Neighborhood associations

are insisting that negotiated concessions be made enforceable by recording them in the PD ordinance. Developers have found planned development zoning a successful strategy for gaining approval. Developers freely negotiate restrictions and concessions to win approval. Planners have promoted the use of planned development districts as a means of adding regulations that they have not been successful in getting approved as general ordinance amendments. All of the forces have resulted in the growing ad hoc use of planned development zoning.

### **Conclusion**

Planned development zoning can be very valuable tool for regulating development. It offers tremendous flexibility in allowing development regulations to be tailored to the needs of a specific area based on actual conditions and development plans. The technique allows developers and cities to be innovative and more effective in ensuring sound development, consistent with the city's comprehensive plan and compatible with surrounding properties.

Successful use of planned development zoning depends on a well-written local zoning ordinance that defines the purpose, limits and abilities, and methods for establishing and administering PD districts. Specific PDs must be carefully written to ensure the accomplishment of the intended purpose. Overuse of planned development zoning should be guarded against. PDs should not be used to correct deficiencies of a standard district, nor should PDs be used as a means of legislatively granting a variance. Instead, PDs should be reserved to accommodate innovation and to respond to unique site conditions in accordance with the city's comprehensive plan.

### **Notes**

1. Typically, zoning ordinances do not include residential and commercial land use within the same district Texas law does not permit use variances. Thus, planned development zoning is frequently used to regulate mixed-use development.
2. See FHA, Planned-Unit Development with a Homes Association (U.S. Government Printing Office, 1963); NAHB & ULI, Innovation v. Transitions in Community Development: A Comparative Study in Residential Land Use (Urban Land Institute, 1963); Huntoon, PUD: A Better Way for the Suburbs (Urban Land Institute, 1971); So, et al., Planned United Development Ordinances (American Society of Planning Officials, 1973).
3. See Porter, et al., Flexible Zoning-How It Works (Urban Land Institute, 1988).
4. Most zoning ordinances require site plans to be approved by the planning and zoning commission or city council even though this is an administrative function. Councils and commissions often incorrectly assume that site plan review gives them the power to make changes to the plan or to add requirements above those contained in the zoning.
5. 26 Tex. Sup. Ct. J. 544 (July 20, 1983), op. withdrawn and rev'd, 664 S. W. 2d 702 (Tex. 1984).

6. See, e.g., *Ahearn v. Zoning Bd. of Appeals*, 551 N.Y. S. 2d 392 (App. Div. 1990); *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, 426 A2d 327 (D.C. Appl. 1981).
7. See, e.g., *Chrinko v. South Brunswick Township Bd.*, 187 A2d 221 (N.J. L. Div. 1963).
8. *City of College Station v. Turtle Rock Corp.*, 680 S.W. 2d 802, 087 (Tex. 1984).
9. *Board of Supervisors v. West Chestnut Realty Corp.*, 532 A2d 942 (Pa. Commw. Ct. 1987).
10. *Ibid.*
11. *Peabody v. City of Phoenix*, 14 Ariz. App. 576, 485 P. 2d 565 (1971); *City of Waxahachie v. Watkins*, 154 Tex 206, 275 S.W. 2d 477 (1955).
12. 709 P.2d 928 (Colo. 1985).
13. See also *Tri-State Generation & Transmission Co. v. City of Thornton*, 647 P.2d 670 (Colo, 1982); *Doran Investments v. Muhlenberg Township*, 10 Pa. Commw. 143, 309 A. 2d 450 (1973).
14. *Nemeroff Realty Corp. v. Kerr*, 32 N.Y. 2d 873, 299 N.E. 2d 897, 346 N.Y.S. 2d 532 (1973); *Cheney v. Village 2 at New Hope, Inc.*, 420 Pa. 626, 241 A.2d 81 (1968).
15. See *Teer*, N. 5 *supra*.
16. 774 S.W. 2d 284 (Tex. App. - Dallas 1989).
17. *Cheney v. Village 2 at New Hope, Inc.*, N. 15 *supra*, 241 A.2d 81.
18. *City of Pharr v. Tippitt*, 616 S.W. 2d 173 (Tex. 1981).
19. *Orinda Homeowners Comm. v. Bd. of Supervisors*, 90 Cal. Rpt. 88 (Cal. App. 1970); *Chrinko v. South Brunswick Township Planning Bd.*, N. 7 *supra*, 187 A.2d 221.
20. N. 5 *supra*.
21. See also *Rutland Environmental Protection Ass'n v. Kane County*, 334 N.E. 2d 215 (111. Appl. 1975); see generally *Wegner, Moving Toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals*, 1988 *Land Use & Envir. L. Rev.* 245.
22. 409 S.W. 2d 184 (Tex. Civ. App. - Tyler 1966, *writ reftd n.r.e.*)
23. See, e.g., *Turner v. Barber*, 380 S.E. 2d 811 (S.C. 1989).
24. *Nollan v. California Coastal Comm'n*, 483 U.S. 825 107 S. Ct. 3141 (1987); *Leroy Land Development Corp. v. Tahoe Regional Planning Agency*, 735 F. Supp. 1399 (D. Nev. 1990); compare *Arrington v. Mattox*, 767 S.W. 2d 957 (Tex. App. 1989).
25. N. 10 *supra*, 532 A. 2d 942.
26. 531 A. 2d 111 (Pa. Commw. 1987).
27. 242 A.2d 781 (Conn. 1968).
28. 114 S.Ct. 2409 (U.S. 1994).
29. It appears that the Court intended to limit its ruling in this case to exaction's of an interest in land. See *City of Monterrey v. Del Monte Dunes at Monterrey, Ltd., v.*, 119 S.Ct. 1624 (U.S. 1999).]

30. *City of College Station v Turtle Rock Corp.*, 680 S.W. 2d 802 (Tex. 1984).
31. N. 12 *supra*, 709 P.2d 928.
32. *Board of Supervisors v. West chestnut Realty Corp.*, N. 10 *supra*, 532 A. 2d 942.
33. See *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978); *Mayhew v. Town of Sunnyvale*, 964 S.W. 2d 922 (Tex. 1998)
34. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987); *Presbytery of Seattle v. King County*, 787 P.2d 907 (1990); but see *Ciampetti v. United States*, 18 C. Ct. 548 (1989); *Corrigan v. City of Scottsdale*, 149 Ariz. 553, 720 P.2d 528 (1985); see generally *Shonkwiler & Morgan, Land Use Litigation*, Section 3.05 (West 1991 Supp.).
35. *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 105 S. et 3108 (1985); *City of El Paso v. Madero Development & Construction Co., Inc.*, 803 S.W. 2d 396 (Tex. App. – El Paso 1991, writ denied); *Mac Donald, Sommer & Prates v. County of Yolo*, 477 U.S. 340 (1986); see generally *Shonkwiler & Morgan N. 37 supra*, at Ch. 8; *Morgan, "Regulator Takings: A State and Federal Perspective," 1991 Institute of Planning, Zoning & Eminent Doman, Ch. 6 (Matthew Bender 1991).*
36. BB 4, formerly Tex. Gov't Code sections 481.141 et seq, was inadvertently repealed by the 1997 Legislature. Other states also have vested rights legislation, see e.g.s., Colo. Rev. Stat. Section 24-68-101 et seq.; Nev. Rev. Stat. Section 278 A.520 to 278A.540; see generally *Morgan, "The Texas Permit Processing Law: Legislating Vested Development Rights" in 1996 Institute on Planning, Zoning and Eminent Domain, ch. 3]*
37. See *Caruthers v. Board of Adjustment*, 290 S.W.2d 340 (Tex. Civ. App-Houston 1956); *Biddle v. Board of Adjustment*, 316 S.W. 2d 437 (Tex. Civ. App.-Houston 1958); see generally *Cunningham & Kremer, "Vested Rights, Estoppel and the Land Development Process," 29 Hastings L.J. 625 (1978).*
38. Section 245.002(a).
39. *Id.* at subsection (b).
40. 908 S.W.2d 229 (Tex. App. Dallas 1995, no writ.
41. Administrative actions may involve the exercise of discretion, in which case "qualified" immunity extend to public officials under the civil rights act; where no discretion is involved, officials may be subject to damages for violation of constitutional rights such as alleged in the *Cinemark* case.
42. *Prince George's County v. M&B Construction Co.*, 197 A2d 683 (Md. 1972).
43. See e.g., Nev. Rev. Stat. Section 278A.460.
44. *Ibid.*
45. See, e.g., Tex. Loc. Gov't Code Section 212.004.
46. See Tex. Loc. Gov't Code Section 212.0045.  
  
See, e.g., Nev. Rev. Stat Section 278.320 (1)(c), providing that "any division of land which is ordered by any court in this state or created by operation of law" is not a subdivision.
47. Nev. Rev. Stat Section 278A.580.
48. See, e.g., *Williams v. Whitten*, 451 S.W. 2d 535 (Tex. Civ. App. — Tyler 1970, *no writ*). 171

See also *Minton v. St. Worth Planning Comm'n*, 786 S.W. 2d 563 (Tex. App. — Ft. Worth 1990).

50. 528 N.E. 2d 1266 (Ohio App.).

51 371 SM. 2d 767 (Tex. Civ. App. -- Dallas 1963, writ refd n.r.e.).

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PLANNED DEVELOPMENT DISTRICTS  
SPECIFIC USE PERMITS AND  
SITE PLAN APPROVAL

TEXAS ZONING AND LAND USE PLANNING

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**PLANNED DEVELOPMENT DISTRICTS,  
SPECIFIC USE PERMITS AND  
SITE PLAN APPROVAL**

**by Myron Dornic**

**Planned Development Districts**, Specific (or Special) Use Permits, and Site Plan approval processes all share a couple common characteristics. First, each of these processes involves site specific regulation. Second, none of these zoning processes is expressly provided for in the state's zoning enabling legislation (Chapter 211 of the Texas Local Government Code).<sup>1</sup> Rather, these are processes that have evolved over time. They have been validated to varying degrees by surviving court challenges. Typically each of these zoning processes are administered in such a fashion as to permit approving bodies to add site specific conditions to their approvals. Because these processes did not strictly originate through statutory prescription, procedures and terminology vary from municipality to municipality. Nevertheless, because all must ultimately be consistent with the regulatory framework for zoning established by the Local Government Code, municipalities do not have unfettered latitude in this regard.

**Specific Use Permits/Special Use Permits**

Special permits are thought to be the first site specific zoning amendments validated by the Texas courts. At least as early as 1947, the City of Dallas zoning code provided that the City Council could authorize by special permit "in any use district" the location of a number of specific uses listed in the code. The code provided that such special permits required a public hearing and a recommendation by the City's Plan Commission. One of those listed uses was "private housing projects and shopping centers."<sup>2</sup>

An initial legal question regarding this scheme was whether it complied with the uniformity requirement of the zoning enabling act. Section 211.005 (b) of the Texas Local Government Code provides that "[z]oning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district." It could be argued that allowing individual decisions on certain uses violates the uniformity requirement because some uses would be allowed on some lots within a zoning district, and disallowed on other lots within the same zoning district. Add to this the fact that special permits are often approved with site specific conditions, and you arguably have a further departure from the uniformity requirement because the same type of building can be approved in one area of a district with one set of conditions and in another area of a district with a wholly different set of conditions. By 1950 the Dallas Code had been amended to expand the role of the Plan Commission to make a recommendation "containing such requirements and safeguards as are necessary to protect adjoining property."<sup>3</sup>

When Dallas' 1950 code was used to approve a special permit to allow A-1 zoning district apartment uses in a single family residential district, it is not surprising that the special permit was challenged in a number of respects. Nearby property owners filed suit and alleged that the approval with conditions illegally placed the ultimate decision regarding whether the rezoning would be



effective in the hands of the property owner rather than the City Council. They reasoned that the applicant could decide whether to comply with the conditions or leave the permissible uses of the property as only single family. They also alleged that the City Council illegally delegated legislative authority to the City Plan Commission by granting a permit to develop under a general plan approved by the City Plan Commission without final approval by the City Council.

The reviewing court in the case of *Prince v. Cothram*, however, found for the City. It held that the property was effectively rezoned to A-1 uses. The court found no significance in the fact that the City Plan Commission had recommended against the rezoning, or that the plan ultimately approved by the City Council contained changes from the one that was submitted to the City Plan Commission. Moreover, the court found that there had been no improper delegation since irrespective of the lack of specificity in the code procedures, the ordinance approving the special permit provided that the general plan had been approved by both the Plan Commission and the City Council.<sup>4</sup>

This *Prince* case was followed in 1953 by *Clesi v. Northwest Dallas Improvement Association*<sup>5</sup> where the Court of Civil Appeals upheld a scheme requiring the approval of a site plan for only some special permit uses, and by *Nichols v. City of Dallas*<sup>6</sup> in 1961 where the court expressly approved the city's special permit process because it followed the process outlined for zoning amendments in the Local Government Code. In the *Nichols* case, the court held that this process was necessary as only a city's legislative body has statutory authorization to amend the zoning ordinances. Moreover the court validated the fact that the special permit was approved with conditions that required the building official to exercise some judgment as to compliance therewith. The court reiterated the rule that an administrative delegation is not invalid if the legislative body has set forth standards to limit discretion, and these standards, though general, are capable of reasonable interpretation.

The early Dallas cases did not distinguish the special permit process from the type of zoning ordinance amendment that would effectuate a total change to the base zoning of a property. However, by 1967, the Court of Civil Appeals in Amarillo was pronouncing that the Specific Use Permit process had been "recognized and approved by the Courts of Texas."<sup>7</sup> Moreover, the court approved of language in the adopting ordinance specifying that the special permit conditions were 'not conditions precedent to the granting of the special permit, but were to be construed as conditions precedent to the granting of a building permit and certificate of occupancy.'<sup>8</sup> Similar language is incorporated by many localities into their specific use permit ordinances as a safeguard on the legal concern that to do otherwise would give the property owner control over the effectiveness of the zoning through the property owner's decision on whether to comply with the conditions.

Following the early Dallas cases, there appears to have been little reported case law in Texas going directly to the validity of the special permit process. However, the following principles can be gleaned from the history and case law related to specific/special use permits:

- *The approval of special use permits or specific use permits (SUPs) must strictly follow the zoning amendment process. There must be requisite notice and public hearings. The approval must be by the governing body after recommendation from the zoning commission. (While boards of adjustment have statutory authority to approve special exceptions (if the*

*local zoning ordinance provides for such and also provides adequate standards for their approval), planning and zoning commissions are without authority to made a final determination on the approval of any type of special use.<sup>9</sup> ) The approval of an SUP must be by ordinance.<sup>10</sup>*

- *Compliance with site specific conditions and a site plan may be required.<sup>11</sup>*
- *The ordinance may delegate discretion to an administrative official (or administrative body) to determine compliance with conditions provided that standards are sufficiently expressed to limit discretion and are capable of reasonable interpretation.<sup>12</sup>*
- *Especially in controversial cases, approvals should be supported by a finding(s) that applicable Code standards have been met. Findings should be supported by evidence in the record.<sup>13</sup>*
- *To preserve discretion, Code standards should be written generally and with mindfulness of the purposes given in the state's zoning enabling act and the character of legislative police power authority.<sup>14</sup>*
- *The Texas scheme may be somewhat atypical.*

In some other jurisdictions, a special use permit is equivalent to a special exception. Courts in some states have held that even where a legislative body has reserved to itself the authority to grant special permits, the legislative body is acting in an administrative capacity in making permit decisions.<sup>15</sup> This can be significant because it can effect the amount of discretion the governing body has in deciding to issue the permit, whether the governing body can consider factors not enumerated in the code, what standard of review a court will give to a decision,<sup>16</sup> whether mandamus will be available to an applicant, whether an applicant has a property right in the permit, whether Section 1983 of the Civil Rights Act can be implicated for a wrongful denial, and even whether members of the governing body can be held personally liable for a wrongful denial.<sup>17</sup> So far, Texas courts have held to the position that decisions by governing bodies on the granting of specific use permits are legislative decisions and that wide legislative discretion is enjoyed. However, Texas courts have also recognized that there are instances in which a legislative body has acted administratively in granting a zoning approval.<sup>18</sup> To preserve the legislative character of SUP decisions, municipalities should be careful to process specific use permits/special use permits in such a manner as to include all indicia of zoning ordinance amendments.<sup>19</sup>

### **Planned Development Districts**

Following the approval of Specific Use Permits by the Texas courts, the Planned Development District was perhaps the natural progression for the approval of site specific zoning. Rather than simply adopting conditions and a site plan for a specific use within a standard zoning classification, a Planned Development District generally replaces the base zoning in total with new site specific zoning rules for the subject property. This is not to say that a Planned Development

ordinance cannot reference the standards of another base zoning classification. In very many instances they do. The point is that the ordinance must generally expressly make such reference. Moreover, where the usual course is for specific use permits to create more rigorous standards for specific uses, planned development districts allow an offset of more rigorous standards in some instances and more relaxed standards in other instances.

As with Specific Use permits, references to Planned Development District zoning began to appear in Texas case law without any comment on whether this type of zoning not specifically contemplated by Chapter 211 of the Local Government Code was indeed permissible. While the requirement for a Specific Use Permit could at least facially be considered to impart some level of uniformity on all properties with a specific base zoning, planned development districts generally made no pretext at all concerning uniformity -at least not with respect to replication of standards in like districts. Nevertheless, it appears that even opposing litigants in the earliest Texas cases took no hope that the uniformity clause of the state's zoning enabling act would offer an avenue for overturning the adoption of such districts. In fact, in one of the earliest cases to specifically mention planned development districts, neighboring land owners were actually opposing the removal of planned development district zoning in favor of a general business zoning classification.<sup>20</sup> It wasn't until 1983 when the Texas Supreme Court expressly addressed the validity of Planned Development Districts in the case of *Teer v. Duddleston*. The original opinion in that case specifically upheld the concept of Planned Development Districts against an attack that such zoning was not authorized by the state's zoning enabling statute. On the uniformity challenge, the court found that within the Planned Development District regulations apply generally. This original opinion was subsequently withdrawn, but it has been suggested that the Supreme Court's analysis on the validity of Planned Development District zoning will no readily be forgotten.<sup>21</sup>

Since the *Teer* case, the validity of Planned Development zoning has gained widespread acceptance in Texas. Nevertheless, this type of zoning finds its foundations in a variety of legal principles that have been tested regularly if not frequently within this state and within other jurisdictions. The following principles concerning Planned Development Districts (PDs or PDDs) can be gleaned from their history in this state as well a look at recent cases both within the state and across the nation:

#### Adoption of a Planned Development District

- *The decision to grant or to deny an application for Planned Development District zoning is a legislative act. The governing body is entitled to consider all facts and circumstances which may affect the property, the community and the welfare of its citizens.*<sup>22</sup>

#### Delegation of Approval Responsibilities and Amendments

The governing body may delegate to an administrative official or to the zoning commission responsibilities for approving site plans for conformity with the zoning standards. The following principles will apply to such delegation:

- *Standards must be adequately defined.*<sup>23</sup>

- *Administrative approval does not include the latitude to add wholly new standards or conditions.*<sup>24</sup>

- *Delegation of authority for minor amendments is probably permissible.*

*See Bailey v. Zoning Board of Adjustment of the City of Philadelphia, 801 A.2d 492 (Pa. 2002) (finding that a Planning Commission given substantial review and recommendation responsibilities by ordinance and charter had the power to adopt a minor amendment policy, but that the policy adopted was invalid in that it included other than de minimis changes).*

Factors: Policy was adopted by Commission rule and was not approved by Council.

Local ordinance provided that plans recommended for approval by Commission were deemed approved if Council did not act on them. (?)

Previous 30 years of Council acquiescence in the policy. (X)

- *Major amendments should follow the zoning amendment process.*

*See Texas Local Government Code Chapter 211. See also Attorney General Opinion JM 97-062 (opining that only zoning boards of adjustment have authority to grant zoning variances).*

- *Administrative bodies such as zoning commissions do not have authority to vary adopted standards as part of administrative approvals. Nor, does the municipal governing body have such authority.*

Attorney General Opinion JM 97-062 (only zoning boards of adjustment have authority to grant zoning variances). [Legislative bodies may grant amendments, but need to follow the Local Government Code's zoning amendment process.]

- *Placing final approval or an appeal within the legislative body does not necessarily mean that legislative discretion will attach.*

*See Bartlett v. Cinemark U.S.A., Inc., 908 S.W.2d 229, 235 (Tex. App. – Dallas 1995, no writ) (holding that City Council members who voted to reject a development plan under a planned development district ordinance were acting in an administrative capacity and were thus not entitled to legislative absolute immunity in an action under Section 1983 of the Civil Rights Act). See also Bryan v. City of Madison, Mississippi, 213 F.3d 267 (5th Cir. 2000) (espousing two guidelines for determining a decision is legislative: 1) whether the underlying facts are generalizations concerning a policy or state of affairs [legislative], and 2) the particularity of the impact of the decision – does it single out specific individuals and affect them differently from others [administrative]).*<sup>25</sup>

## Appeals

*It is wise to include an appeal process from administrative decisions. (But, note that appeals to a Board of Adjustment from the decision by an administrative official is the only appeal process expressly recognized by the Zoning Enabling Act.)*

## Conditions of Approval

With respect to all approvals, the following general requirements apply to conditions just as they would to basic zoning decisions:

- *Conditions must be reasonable in general.*<sup>26</sup>
- *Conditions must serve a legitimate public purpose.*<sup>27</sup>
- *There should be a rational relationship between the condition and the public purpose it is designed to serve.*<sup>28</sup>
- *Conditions must comport with other applicable statutes and law (e.g., Texas Impact Fee Act).*
- *Conditions cannot revert zoning at some point in the future (or otherwise amount to a zoning change at some point in the future without following the zoning amendment procedures of Chapter 211 of the Local Government Code).*
- *Conditions should directly relate to some proper purpose defined by the relevant state enabling legislation.*<sup>29</sup>
- *Where decision-making bodies are acting in an administrative capacity, such as in approving subsequent development plans after zoning has been established, conditions that fall outside of the scope to the authority delegated by the zoning ordinance cannot be added as a requirement of the administrative approval.*<sup>30</sup>

## Conditions as Exactions

Conditions involving requirements for the dedication of land/easements, construction of public facilities, or payment of fees require analysis under the legal principles related to exactions.

- *If a condition amounts to an exaction (either a requirement to dedicate land or a monetary exaction), the Dolan rule applies and there must be an individualized determination of a rough proportionality, both in nature and extent, between the exaction and the impact associated with development pursuant to the approval.*<sup>31</sup>
- *In granting an approval, if an otherwise applicable ordinance would violate Dolan's rough proportionality standard, an approving body may require less than full compliance with such ordinance.*<sup>32</sup>

- *Proffers of dedications or public improvements may avoid Dolan 's rough proportionality, requirements, however, where extraneous to the impacts of the development for which approval is sought, there may be a risk of challenges alleging illegal contract zoning.*

*See McLean Hospital Corporation v. Town of Belmont, 778 N.E.2d 1016 ( Mass. App. Ct.-Suffolk 2002)(Hospital rezoning that included open space, a cemetery, protection for historical features, and commitments related to affordable housing, recreational benefits and traffic management challenged as contract zoning.)*

#### Vesting and Reasonable Investment-Backed Expectations

- *Approval of a Planned Development District (or an SUP) may define the scope of a "project for purposes of vesting.*

*See City of Suffolk v. Board of Zoning Appeals for the City of Suffolk, 580 S.E.2d 796 (Va. 2003)(finding an entire 310 acre P.D. to have vested based on \$158,000 in expenditures spent to develop property pursuant to the P.D. ordinance even though the bulk of the expense was alleged to have been spent on a 10 acre portion that the developer had removed from the P.D. by rezoning).*

Factors: BZA decision was being upheld rather than a de novo review.

Infrastructure was over-designed for uses allowed under subsequent rezoning.

- *Acceptance of a permit application prior to approval of a rezoning may lead to vesting from the date of the submittal of that application.*

*See Canal/Norcrest/Columbus Action Committee v. City of Boise, 48 P.3d 1266 (Idaho, 2002)(vesting development from date of submission of CUP application even though it was later determined that approval of a P.D. was required for the use.*

Factors: Subsequent P.D. application may have been treated as an amendment.

Rezoning application may have qualified as a permit application

- *Construction of public or private improvements in reliance on a Planned Development District ordinance may result in vesting at common law.*

*See AWL Power, Inc. v. City of Rochester, 813 A.2d 517(N.H. 2002)(holding in part that state's vested rights statute supplements rather than supplants common law vesting rules . The court found the development vested even though relatively little activity had occurred in five and a half years).*

- *Where considerable expense has been incurred on predevelopment processes, issuance of a building permit may not necessarily be a prerequisite to common law vesting.*

See In re: 224 Acres of Land v. Delaware Agricultural Lands Foundation, 808 A.2d 753 (Del. 2002)(abandoning the state's common law "permit plus" vesting rule in favor of a balancing test weighing public interest against developer's substantial reliance on ordinance under which developer proceeded).

Factors: Full cooperation of local officials (change was triggered by state agency)

No vesting statute (?)

- *Adoption of a Planned Development District and reliance thereon can be one factor in determining whether property owner's investment-backed expectations were reasonable for purposes of takings analysis.*

See City of Glenn Heights v. Sheffield Development Company, Inc., 61 S.W.3d 634 (Tex. App. -Waco 2001, writ granted)(circumstances regarding development and reliance under adopted P.D. detailed in determining that City unreasonably interfered with property owner's investment-backed expectations in downzoning property for less density).

- *Election of remedies doctrines prevent simultaneous actions for monetary damages and injunction/mandamus relief under vested rights.*

City of Glenn Heights v. Sheffield Development Company, Inc., 55 S.W.3d 158 (Tex. App-Dallas 2001, writ denied)(takings decision found to preclude action under vested rights statute for downzoning of P.D. in this companion case to the case listed above).

## **Conditional Uses and Site Plan Approval**

Whereas a "conditional use permit" in many jurisdictions may be the equivalent of a specific use permit as discussed above. In Texas, the term "conditional use" is often used to describe a use that is permitted by right under standard zoning district classifications if there is compliance with certain specifically listed conditions that are found in the code. In this sense, conditional use zoning does not really amount to site specific zoning, particularly if an administrative official is designated to determine whether conditions have been met. On the other hand, it is not unusual for a Code to require that a site plan approval accompany an application to establish a conditional use. In either case, the delegation of the determination of compliance with listed conditions, whether or not in conjunction with a site plan, must conform to the general legal principles of delegation discussed in more detail in the preceding section on Planned Development Districts. Specifically, standards must be sufficiently expressed to limit discretion and are capable of reasonable interpretation.<sup>33</sup> Conditions that fall outside of the scope to the authority delegated by the zoning ordinance cannot be added as a requirement of the administrative approval.<sup>34</sup> There must be a rational relationship between a condition of approval and the objectives of the approval standard.<sup>35</sup> The Dolan rough proportionality requirement will apply to any condition that amounts to an exaction.<sup>36</sup> And finally, just because the governing body may have reserved to itself final approval of a conditional use or a

site plan does not mean that the governing body has discretion to add conditions that are not tied to the applicable standards established by the zoning.<sup>37</sup>

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<sup>1</sup> A reference to specific use permits was added to Section 211.0035 of Chapter 211 in 1991 as a prohibition on requiring specific use permits for pawnshops. However, there is reference does not define what a specific use permit is, or what process is involved in its approval.

<sup>2</sup> Article 165-20 of City of Dallas Ordinance No. 4047.

<sup>3</sup> See, Prince v. Cothram, 227 S.W.2d 863, 866 (Tex. Civ. App. Dallas, 1950).

<sup>4</sup> Id.

<sup>5</sup> 263 S.W.2d 820 (Tex. Civ. App. – Dallas 1953 writ ref d n.r.e).

<sup>6</sup> 347 S.W.2d 326 (Tex. Civ. App.-Dallas 1961, writ ref d n.r.e.).

<sup>7</sup> City of Lubbock v. Whitacre, 414 S.W. 2d 497, 498-99 (1967, writ ref d n.r.e.).

<sup>8</sup> Id. at 502.

<sup>9</sup> See Op. Atty. Gen. JM 97-493.

<sup>10</sup> In keeping with the zoning amendment process outlined by Chapter 211 of the Texas Local Government Code.

<sup>11</sup> See Clesi, 263 S.W.2d at 830 and Nichols, 347 S.W.2d at 332-33.

<sup>12</sup> Nichols, 347 S.W.2d at 333.

<sup>13</sup> While Texas courts have not generally required specific findings in zoning cases, cent case law from other jurisdictions suggests that even with a presumption of validity in favor of the approving body it may be advisable to have findings. See Schwardt v. County of Watonwan, 656 N.W.2d 383, 389 (Minn. 2003)(In a case involving the approval of a permit for hog feed lot, the court indicates in dicta that an abuse of discretion might be suggested where an approval is granted without explanation in the face of compelling evidence presented by the opposition).

<sup>14</sup> Otherwise, the process may take on the character of administrative decision-making.

<sup>15</sup> See , ANDERSON, AMERICAN LAW OF ZONING, Section 21.10 (1990).

<sup>16</sup> Id.

<sup>17</sup> See Bartlett v. Cinemark U.S.A., Inc., 908 S.W.2d 229, 235 (Tex. App. – Dallas 1995, no writ)(holding that City Council members who voted to reject a development plan under a planned development district ordinance were acting in an administrative capacity and were thus not entitled to legislative absolute immunity in an action under Section 1983 of the Civil Rights Act).

<sup>18</sup> Id.

<sup>19</sup> See *infra* text accompanying note 24 for court analysis regarding characteristics of legislative vs. administrative decisions.

<sup>20</sup> See Bacchus v City of Dallas, 450 S.W.2d 389 (Tex. Civ. App.-Dallas 1970), *aff'd*, 454 S.W.2d 391 (Tex. 1970).

<sup>21</sup> For a full discussion of the withdrawn opinion in the Teer case, see J. MIXON, TEXAS MUNICIPAL ZONING LAW, 17.12 (1993).

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<sup>22</sup> Mayhew v. Town of Sunnyvale, 964 S.W.2d 922 (Tex. 1998).

<sup>23</sup> **See supra text accompanying note 13.**

<sup>24</sup> See Rhodes v. Shapiro, 494 S.W.2d 248 (Tex. Civ. App. -Dallas 1975, writ dismissed) (planning commission was not authorized to add a condition prohibiting HUD financing to development plan approval under zoning for the property established by a planned development district ordinance).

<sup>25</sup> For a recent case from another circuit, see Kaahumanu v. County of Maui, 315 F.3d 1215 (9th Cir. 2003) (holding that the fact that Council reserved to itself authority to approve or deny a conditional use permit (through what appeared to be **the typical zoning amendment process**) **does not in and of itself make the decision legislative. Consequently it did not give Council members absolute legislative immunity on a Section 1983 claim. Instead, the court looked to four factors:** 1) ad hoc decision vs. policy making, 2) application to individual vs. public at large, 3) legislative formality, and 4) **hallmarks of traditional legislation.**) **But contrast, Kirshenman v. Hutchinson County Board of Commissioners, 656 N.W.2d 330 (S.D. 2003)**(holding that even the decision of a Zoning Board of Adjustment in granting a conditional use permit was legislative in nature and therefore subject to referendum under South Dakota law).

<sup>26</sup> **In line with the general proscription that zoning decisions may not be arbitrary or unreasonable. See, e.g., Clesi, 263 S.W.2d at 826.**

<sup>27</sup> See Nollan v. California Coastal Commission, 483 U.S. 825 (1987) and its progeny.

<sup>28</sup> Id.

<sup>29</sup> Texas Local Govt. Code § 211.001.

<sup>30</sup> **See supra note 24.**

<sup>31</sup> Town of Flower Mound v. Stafford Estates, 71 S.W.3d 18 (Tex. App. -Fort Worth 2002, pet. filed).

<sup>32</sup> See Dudek v. Umatilla County, 69 P.3d 751 (Or. App. 2003).

<sup>33</sup> **See supra note 12 and accompanying text.**

<sup>34</sup> **See supra note 24 and accompanying text.**

<sup>35</sup> **See supra note 27 and accompanying text.**

<sup>36</sup> **See supra note 31 and accompanying text.**

<sup>37</sup> **See supra note 17 and accompanying text.**



## ***Consent Session Agenda Item: 1***

**Meeting Date: August 6, 2018**

**ITEM DESCRIPTION:**

Consider approving City Council Meeting minutes for July 23, 2018.

**BACKGROUND OF ISSUE:**

Approve City Council Meeting minutes for July 23, 2018

**FINANCIAL IMPACT:**

N/A

**RECOMMENDATION:**

Staff recommends approval.

**EXHIBITS**

July 23, 2018 City Council Work Session Meeting minutes  
July 23, 2018 City Council Regular Session Meeting minutes



**MINUTES OF CITY COUNCIL  
WORK SESSION  
JULY 23, 2018**

**The Work Session of the City Council of the City of Seagoville, Texas was called to order at 6:31 p.m. on Monday, July 23, 2018, at City Hall, 702 N. Hwy 175, Seagoville, Texas with a quorum present, to wit:**

Dennis Childress	Mayor
Jon Epps	Mayor Pro Tem
Jose Hernandez	Councilmember
Rick Howard	Councilmember
Harold Magill	Councilmember
Mike Fruin	Councilmember

The following staff members were also present: City Manager Patrick Stallings, Police Chief Ray Calverley, Community Development Director Ladis Barr, City Attorney Alexis Allen, Finance Director Patrick Harvey, Water Utilities Director Phil DeChant, Director of Administrative Services Cindy Brown, and City Secretary Kandi Jackson.

**A. Presentation of 3<sup>rd</sup> Annual Back to School Bash**

*City Manager Stallings stated the Back to School Bash is to help fund school supplies for the local school district.*

*Community Development Director Barr stated this will be 3<sup>rd</sup> Annual Back to School Bash. He stated the Back to School Bash Event has grown from the years past. The City of Seagoville will provide barricades to close streets in the downtown area, two (2) port-o-lets with one being handicap and one regular, two (2) sanitizing stations, eight (8) to ten (10) trash cans, and one (1) employee from the street department to attend the trash cans and barricades. The event will be held Sunday, August 5, 2018 from 1:00 p.m. to 4:00 p.m.*

*Billy Chasteen at 732 Jack St, stated the purpose of the Back to School Bash is to help provide school supplies to the local school district.*

*In response to a question by Councilmember Hernandez, Mr. Chasteen stated this event will benefit all three elementary schools in the City of Seagoville.*

*City Manager Stallings stated the City will provide three (3) employees consisting of one (1) Police Officer and two (2) Community Service Employees. He also stated Staff is requesting direction from Council concerning the event.*

*Councilmember Hernandez stated he supports the Back to School Bash Event if the City is not expected to take ownership. Mr. Chasteen stated he will take ownership of the event. He also stated the main purpose is to provide school supplies for the children to bring positive attention to the downtown area.*

**Adjourned at 6:48 p.m.**

**APPROVED:**

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Mayor Dennis K. Childress

**ATTEST:**

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Kandi Jackson, City Secretary



**MINUTES OF CITY COUNCIL  
SPECIAL SESSION  
JULY 23, 2018**

**The Regular Session of the City Council of the City of Seagoville, Texas was called to order at 7:00 p.m. on Monday, July 23, 2018, at City Hall, 702 N. Hwy 175, Seagoville, Texas with a quorum present, to wit:**

Dennis Childress	Mayor
Jon Epps	Mayor Pro Tem
Jose Hernandez	Councilmember
Rick Howard	Councilmember
Harold Magill	Councilmember
Mike Fruin	Councilmember

The following staff members were also present: City Manager Patrick Stallings, Police Chief Ray Calverley, Community Development Director Ladis Barr, City Attorney Alexis Allen, Finance Director Patrick Harvey, Water Utilities Director Phil DeChant, Director of Administrative Services Cindy Brown, and City Secretary Kandi Jackson.

**Invocation** – *Invocation was led by Councilmember Magill.*

**Pledge of Allegiance** – *Pledge of Allegiance was led by Mayor Childress.*

**Mayor's Report** – *Mayor Childress thanked everyone that was able to attend the funeral for Kenny Dickerson's son. He also stated that portrays the support of the City.*

**Citizens Public Comment Period-** *This portion of the meeting is to allow each speaker up to six (6) minutes to address the council on items not posted on the current agenda. Council may not discuss these items but may respond with factual data or policy information, or place the item on a future agenda. Citizens wishing to speak on posted agenda items will be called upon at that time. Anyone wishing to speak shall submit a Speaker Request Form to the City Secretary.*

*None*

**CONSENT AGENDA-** The Consent Agenda contains items which are routine in nature and will be acted upon in one motion.

- 1. Consider approving City Council Meeting minutes for July 16, 2018 (City Secretary)**

- 2. Discuss and consider approving a Resolution of the City of Seagoville, Texas, approving the terms and conditions of an Interlocal Agreement between the City of Seagoville and Dallas County Health and Human Services for food establishment inspections and environmental health services for Fiscal Year 2018-2019 and authorizing the City Manager to execute said agreement; providing for the repeal of any and all Resolutions in conflict; providing for severability clause; and providing for an effective date (Community Development Director)**

*Motion to approve Consent Agenda as read – Hernandez, seconded by Howard; motion passed with all ayes. 5/0*

**REGULAR AGENDA-**

- 3. Discuss and consider the appointment of two (2) members of the Planning & Zoning Commission and two (2) members of the Seagoville Economic Development Corporation to the Downtown Corridor Advisory Group (City Secretary)**

*Motion to approve the appointment of two (2) members of the Planning & Zoning Commission, Mr. Grimes and Mr. Englert, and two (2) members of the Seagoville Economic Development Corporation, Ms. Sherman and Mr. Ashley, to the Downtown Corridor Advisory Group – Hernandez, seconded by Epps; motion passed 4/1. For: Howard, Hernandez, Magill, and Epps; Against: Fruin.*

- 4. Discuss and consider changing garage size requirements (Councilmember Magill)**

*Councilmember Magill stated changing the garage size to twenty-four (24) foot deep would allow for sufficient storage and parking. He also stated larger garages would prevent parking in the streets.*

*Councilmember Hernandez stated he researched the garage requirements in surrounding cities and he believes the best way to approach this issue is for Staff to ask developers to include a certain percentage of homes with larger garages during the Planned Development process. He also stated another solution is for homebuyers to request a larger garage at the time of purchase.*

*Community Development Director Barr stated people commonly use garages for storage. He also stated adding the extra footage may accommodate the larger pick-up trucks but it is still very common for garages to be used as storage.*

*Councilmember Epps asked for clarification concerning the size of the garage that Councilmember Magill is requesting be made mandatory. He also stated he spoke to some homeowners that have small garages and they do not have an issue.*

*Councilmember Fruin stated he would support the mandatory larger garage if an Ordinance is passed requiring garage owners to use the garage for parking. He also stated that would require more work for Staff and he feels like it is an impossible situation.*

*After some discussion, motion was made to move forward with larger garage size requirements – Magill, no second; motion failed.*

**5. Water and Sewer and Drainage Funds Budget Workshop (Finance Director)**

*Finance Director Harvey presented the water and sewer and drainage funds budget.*

**6. Receive Councilmember Reports/Items of Community Interest - as authorized by Section 551.0415 of the Texas Government Code.**

*Councilmember Epps stated he is pleased with the Stafford Addition.*

*Councilmember Fruin gave kudos to the Chief of Police because monitored the trucks parking at the Valero and he is well pleased with the results.*

*Councilmember Magill stated he visited Shorty's Texas Bar B Que and the building looks nice. He also stated there is a room in the back of the building for meetings.*

*Councilmember Hernandez thanked Staff for their hard work in preparing the budgets.*

*Mayor Childress stated the Health Fair will be September 26, 2018 from 10:00 a.m. to 2:00 p.m. and Leadership Seagoville will be held every Thursday night beginning October 4, 2018 through November 15, 2018.*

**7. Future Agenda Items – Council to provide direction to staff regarding future agenda items. These items will not be discussed and no action will be taken at this meeting.**

*Councilmember Hernandez stated he would like a discussion item on the Agenda to prohibit animals in grocery stores and indoor restaurants.*

**8. Recess into Executive Session at 7:57 p.m.**

**Recess into Executive Session in compliance with Texas Government Code:**

**A. §551.075. Deliberation regarding the purchase, exchange, lease, or value of real property located on Simonds Road**

**9. Reconvene into Regular Session at 8:19 p.m.**

**Council will reconvene into open session, and take action, if any, on matters discussed in Executive Session.**

*No action taken.*

**Adjourned at 8:19 p.m.**

**APPROVED:**

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Mayor Dennis K. Childress

**ATTEST:**

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Kandi Jackson, City Secretary

## *Consent Session Agenda Item 2*

**Meeting Date:** August 6, 2018

**ITEM DESCRIPTION:**

Discuss and consider calling a public hearing on August 20, 2018 and August 21, 2018 to receive citizen input on the proposed FY 2018 – 2019 budget and tax rate.

**BACKGROUND OF ISSUE:**

This provides additional notification to the public of the public hearing dates. The City Council is required to call two (2) public hearings, due to the proposed and current tax rate of \$.743800 exceeds John Ames' office effective tax rate calculation of \$.691994.

**FINANCIAL IMPACT:**

Funds are budgeted in the City Secretary's budget for Public Notices.

## ***Regular Session Agenda Item: 3***

**Meeting Date: August 6, 2018**

### **ITEM DESCRIPTION:**

Discuss and consider a Resolution of the City of Seagoville, Texas, accepting the Certified Tax Roll of Dallas and Kaufman County Appraisal Districts; and providing an effective date.

### **BACKGROUND OF ISSUE:**

Dallas County Appraisal District has provided a certified appraisal roll of \$680,761,805. Kaufman County has provided a certified appraisal roll of \$2,768,585. These appraisal rolls are utilized as a basis for computing property tax revenue for the upcoming budget year.

### **FINANCIAL IMPACT:**

N/A

### **EXHIBITS:**

Resolution

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS**

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS, ACCEPTING THE CERTIFIED TAX ROLL OF DALLAS AND KAUFMAN COUNTY APPRAISAL DISTRICTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City has received the certified appraisal roll from Dallas County Appraisal District in the amount of \$680,761,805; and

**WHEREAS**, the City has received the certified appraisal roll from Kaufman County Appraisal District in the amount of \$2,768,585; and

**WHEREAS**, this information is essential to the calculation of the City's property tax rates for the 2019 budget year;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:**

**SECTION 1.** The City accepts the certified appraisal rolls as calculated by the Dallas County Appraisal District and the Kaufman County Appraisal District.

**SECTION 2.** All resolutions of the City of Seagoville heretofore adopted which are in conflict with the provisions of this resolution be, and the same are hereby repealed, and all resolutions of the City of Seagoville not in conflict with the provisions hereof shall remain in full force and effect.

**SECTION 3.** If any article, paragraph, subdivision, clause or provision of this resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

**SECTION 4.** This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

**DULY ORDERED** by the City Council of the City of Seagoville, Texas, this the 6th day of August, 2018.

**APPROVED:**

\_\_\_\_\_  
DENNIS K CHILDRESS, MAYOR

**ATTEST:**

\_\_\_\_\_  
KANDI JACKSON, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
ROBERT E HAGER, CITY ATTORNEY

## ***Regular Session Agenda Item: 4***

**Meeting Date: August 6, 2018**

### **ITEM DESCRIPTION:**

Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas, accepting the proposed property tax rate for fiscal year 2018-2019; accepting the calculation of the effective tax rate; and providing for the publication as provided by the Texas Property Tax Code.

### **BACKGROUND OF ISSUE:**

The City of Seagoville's current tax rate was adopted in 2017 at \$0.743800 per hundred-dollar taxable valuation. The FY 2017 adopted tax rate is inclusive of Operations and Maintenance tax of \$0.707498 and a Debt Service rate of \$0.036302.

For FY 2019, the City of Seagoville proposes to maintain the tax rate at the current level of \$0.743800. This recommended rate is less than the 2019 rollback tax rate of \$.751634 as calculated by John R. Ames, Dallas County Tax Assessor-Collector.

The rates will be published in the Daily Commercial Record as required by State Law. Under Section 26.05(d) of the Property Tax Code of the State of Texas, since the City of Seagoville is proposing a tax increase, defined as an increase over the lowest of the effective or rollback rate, the City must have two public hearings. The public hearings are scheduled for August 20, 2018 and August 27, 2018. The tax rate is scheduled for adoption on September 10, 2018.

Please note the vote for this resolution requires a roll call as to how each Councilmember cast his/her vote.

### **FINANCIAL IMPACT:**

The proposed tax rate is estimated to generate revenue of \$4,643,438 for the General Fund and \$242,485 for the Debt Service Fund.

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS  
RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, ACCEPTING THE PROPOSED PROPERTY TAX RATE FOR FISCAL YEAR 2018-2019; ACCEPTING THE CALCULATION OF THE EFFECTIVE TAX RATE; AND PROVIDING FOR THE PUBLICATION AS PROVIDED BY THE TEXAS PROPERTY TAX CODE.**

**WHEREAS**, the City of Seagoville has received the calculated effective tax rate as presented by the Dallas County Tax Assessor/Collector's Office; and

**WHEREAS**, the Texas Property Tax Code Chapter 26, as heretofore amended, provides the specific procedures in which to consider the proposed tax rate;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:**

**SECTION 1.** The City Council of the City of Seagoville, Texas, does hereby propose the rate of \$0.743800 per \$100 valuation as the proposed property tax rate for fiscal year 2018-2019.

**SECTION 2.** The City Council of the City of Seagoville, Texas, met in a public meeting on August 6, 2018, and accepted this resolution with a majority vote as follows.

Per the Charter, Section 3.05, Mayor Dennis K. Childress is not entitled to vote as a member City Council on all legislative or any other matter except in order to break a tie vote of the City Council.

Mayor Pro Tem Jon Epps	AYE	NAY	ABSTAIN	ABSENT
Councilmember Jose Hernandez	AYE	NAY	ABSTAIN	ABSENT
Councilmember Rick Howard	AYE	NAY	ABSTAIN	ABSENT
Councilmember Mike Fruin	AYE	NAY	ABSTAIN	ABSENT
Councilmember Harold Magill	AYE	NAY	ABSTAIN	ABSENT

**SECTION 3.** The content and vote taken on this resolution shall be published in the official newspaper of the City as provided by the Texas Property Tax Code.

**DULY PASSED AND APPROVED** by the City Council of the City of Seagoville, Texas, on this the 6th day of August, 2018.

**APPROVED:**

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DENNIS K CHILDRESS, MAYOR

**ATTEST:**

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KANDI JACKSON, CITY SECRETARY

## ***Regular Session Agenda Item: 5***

**MEETING DATE: August 6, 2018**

### **ITEM DESCRIPTION**

Discuss and consider an Ordinance of the City of Seagoville, Dallas and Kaufman Counties, Texas, amending the Comprehensive Zoning Ordinance and map of the City of Seagoville, Kaufman County, Texas, as heretofore amended, by granting a change in zoning from Planned Development-13-01–Amended 1 (PD-13-01-A1) to Planned Development-13-01-Amended 2 (PD-13-01-A2) for the property location at 1706 South U.S. Highway 175, Seagoville, Kaufman County, Texas, and being more particularly described as Lots 1, 2A, 2B and 3, Block A, of the Sudduth Addition and being legally described in Exhibit “A”, attached hereto and incorporated herein; providing for amended development regulations; providing a repealing clause; providing a severability clause; providing a savings clause; providing a penalty of fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and providing an effective date.

### **BACKGROUND OF ISSUE:**

About 44 acres of the land is currently used for Seagoville Trade Days parking lot, vendors, and animal confinements. The rest of the land is vacant (undeveloped) and/or is in the floodplain of the East Fork of the Trinity River.

The land was annexed into the city limits of Seagoville on May 14, 2012. The initial planned development (PD) was approved by City Council on April 1, 2013, by Ordinance 04-13. The first amendment to the PD was adopted by City Council in January 2016 by Ordinance 01-16. That version of the planned development is recognized as PD-13-01A.

This application request is for a second amendment to the PD. As with all planned development amendments and zoning changes, the request requires review and recommendation by the Planning & Zoning Commission as well as final approval by the City Council.

The existing zoning, land uses, and relevant portions of the City’s comprehensive plan are each attached to the previous item on the City Council agenda. The report also provides a recommendation from Staff on whether the City Council should deny or approve the applicant’s request.

### **FINANCIAL IMPACT:**

No city funds will be used for the development of this project.

## **PLANNING AND ZONING COMMISSION RECOMMENDATION:**

The Commission voted 5 to 1 in favor of recommending the **APPROVAL** of the request to amend the current planned development at the Kaufman County address of 14064 Highway 175 (also known as Seagoville 911 address of 1706 South Highway 175 and also known as Lots 1 through 3 Block A of Sudduth Addition) to increase the number of permitted uses on the subject parcels.

Additionally, because of the number and types of expanded uses and the related discussion of when these uses may occur, the Commission voted six (6) to zero (0) in favor of recommending the **APPROVAL** for increasing the number of hours the operation could be open to the public from Friday through Sunday of every weekend to Wednesday through Sunday of every week. This was not part of the submitted application, but something that the Planning & Zoning Commission felt made sense to approve at this time rather than having the applicants return to ask for an amendment to the PD just to expand the hours of operation due to public demand for access to the facilities at times outside the currently approved times.

If approved, this version of the planned development should be recognized as **PD-13-01-A2**. (The second amendment to the planned development initially approved as the first planned development in 2013.)

## **EXHIBIT:**

1. Ordinance (14 pages)

AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SEAGOVILLE, DALLAS AND KAUFMAN COUNTIES, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP OF THE CITY OF SEAGOVILLE, KAUFMAN COUNTY, TEXAS, AS HERETOFORE AMENDED, BY GRANTING A CHANGE IN ZONING FROM PLANNED DEVELOPMENT-13-01-AMENDED 1 (PD-13-01-A1) TO PLANNED DEVELOPMENT-13-01-AMENDED 2 (PD-13-01-A2) FOR THE PROPERTY LOCATED AT 1706 SOUTH U.S. HIGHWAY 175, SEAGOVILLE, KAUFMAN COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS LOTS 1, 2A, 2B AND 3, BLOCK A, OF THE SUDDUTH ADDITION AND BEING LEGALLY DESCRIBED IN EXHIBIT "A", ATTACHED HERETO AND INCORPORATED HEREIN; PROVIDING FOR AMENDED DEVELOPMENT REGULATIONS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Planned Development-13-01 ("PD-13-01) was approved by the adoption of Ordinance No. 04-13 on April 15, 2013; and

**WHEREAS**, on or about January 4, 2016, the first amendment to PD-13-01 ( PD-13-01-A1) was approved by the adoption of Ordinance 01-16 to provide for additional uses and amended development regulations; and

**WHEREAS**, the City has received an application for a second amendment to PD-13-01 (PD-13-01-A2) to provide for new allowable uses; and

**WHEREAS**, the City Planning and Zoning Commission and the governing body of the City of Seagoville, Texas, in compliance with the laws of the State of Texas, and pursuant to the Comprehensive Zoning Ordinance of the City of Seagoville, have given requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally, and to all persons interested and situated in the affected area and in the vicinity thereof, the said governing body is of the opinion that Zoning Application No. PD-13-01-A2 should be approved, and in the exercise of legislative discretion have concluded that the Comprehensive Zoning Ordinance and Map should be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:**

**SECTION 1.** That the Comprehensive Zoning Ordinance and Map of the City of Seagoville, Texas, duly passed by the governing body of the City of Seagoville, Texas, as heretofore amended, be and the same is hereby amended by granting a change in zoning from Planned Development-13-01 (PD-13-01-A1) to Planned Development-13-01-Amended 1 (PD-13-01-A2), for the property located at 1706 South U. S. Highway 175, Seagoville, Kaufman County, Texas and being more particularly described as Lots 1, 2A, 2B and 3, Block A of the Sudduth Addition and being legally described in Exhibit A, which is attached hereto and incorporated herein.

**SECTION 2.** That for the purposes of this Ordinance, the following definitions shall apply:

1. *Allowable Uses* shall mean the uses allowed for each lot after providing proof of compliance with all local, county, state and federal regulations governing each use and obtaining all the appropriate permits.
2. *Car Corral* shall mean a location wherein automobile dealers may display vehicles for sale, accept applications and preapprove applicants for purchase of a vehicle on market days only. Finalizing the purchase shall not be permitted at the site and shall be carried through at the dealership. The number of vehicles located on the site for this purpose on any market day shall not exceed one hundred (100).
3. *Flea market* shall mean an occasional or periodic market held in an open area or structure where goods are offered for sale to the general public by individual sellers from open or semi-open facilities or temporary structures.
4. *Market days* shall mean Friday, Saturday and Sunday from 6:00 am to 6:00 pm. and shall include any federal holidays which fall specifically on Monday.
5. *Special events* shall mean any carnivals, carnival games, rodeos, concerts and/or similar activities not associated with a flea market as defined herein; a live musical performance during market days shall not be included in the definition of concert or special event.

**SECTION 3.** The property shall be developed and used in accordance with Ordinance No.

4-13 and Ordinance No. 01-16, except as amended herein, and the following regulations:

1. The following use and regulations shall be allowable uses, **as defined herein**, on Lot 1, Block A of the Sudduth Addition:
  - (a) Single family residence and accessory buildings, as set forth and depicted on the Conceptual Site Plan, which is attached hereto and incorporated herein as Exhibit B, and as provided in Chapter 25, Article 25.02, Division 4, R-1 Single Family District Regulations, and other applicable provisions of Chapter 25, City of Seagoville Code of Ordinances.
  - (b) May be used for Holiday displays, including a drive-through holiday park and pumpkin patch, for a public purpose for the months of October, November and December.
  - (c) Amusement rides (temporary and permanent)
  - (d) Apple Cannon
  - (e) Bowling Alley
  - (f) Communication, broadcasting, receiving and transmitting towers, including all types of amateur and professional radio, television, phone, cable, and other over-the-air methods.
  - (g) Concerts
  - (h) Easter Park
  - (i) Events Center (meetings, weddings, birthdays)
  - (j) Farmers Market
  - (k) Fossil/Arrowhead dig
  - (l) Game Room (video games, carnival style games)
  - (m) Gift Shop
  - (n) Go Cart Track
  - (o) Haunted House / Hayride / Zombie Paintball
  - (p) Hotel / Motel
  - (q) Ice Skating
  - (r) Kid's Mini City
  - (s) Microbrew
  - (t) Miniature Golf
  - (u) Nursery Plant Sales
  - (v) Paintball
  - (w) Petting Zoo/Educational Center Walk-Through
  - (x) Restaurant – Full Service
  - (y) Santa's Country Village
  - (z) Snack Bar
  - (aa) Train (track or trackless)
  - (bb) Walk around beer

- (cc) Water Park
  - (dd) Zoo
  - (ee) No additional uses, accessory uses or structures are allowed without an amendment to this regulation and ordinance.
2. The following use and regulations shall be allowable uses on Lot 2A, Block A of the Sudduth Addition:
- (a) Shall be developed and used as a flea market, as defined and set forth herein and/or any other allowable use set forth in this Ordinance and the City of Seagoville Zoning Ordinance, Chapter 25, Division 16, *except as specifically prohibited below*.
  - (b) Amusement rides (temporary and permanent)
  - (c) A car corral, as defined herein, shall be permitted on market days only and shall not be stored upon the property on any other days.
  - (d) Communication, broadcasting, receiving and transmitting towers, including all types of amateur and professional radio, television, phone, cable, and other over-the-air methods.
  - (e) Concerts
  - (f) Drive-Through Holiday Park. A drive-through holiday park may be permitted upon the property. Decorations, small temporary structures and facades shall be constructed without the requirement of a building permit. Any and all electrical wiring, temporary and permanent, shall be required to comply with the electrical code and shall require an electrical permit.
  - (g) Bowling Alley
  - (h) Events Center (meetings, weddings, birthdays)
  - (i) Farmers Market
  - (j) Game room (video games, carnival style games)
  - (k) Gift Shop
  - (l) Hotel / Motel
  - (m) Ice Skating
  - (n) Kid's Mini City
  - (o) Microbrew
  - (p) Nursery Plant Sales
  - (q) Restaurant – Full Service
  - (r) Snack Bar
  - (s) Soccer or Athletic Field. Construction of a soccer or athletic field shall be permitted upon the property, including any area(s) designated as flood plain, provided construction is consistent with state, local and federal law.
  - (t) Train, either track or trackless.
  - (u) Special Events. After obtaining the appropriate permits, a maximum of ten (10) special events per calendar year may be held on the property.

Special events may be permitted during non-market days (as defined herein) from 8:00 a.m. to 11:00 p.m.

- (v) Storage containers shall be permitted provided that the same are not visible from the highway or frontage. Storage containers may be rented to vendors.
  - (w) Water Park
  - (x) Walk around beer
  - (y) No additional uses, accessory uses or structures are allowed without an amendment to this regulation and ordinance.
  - (z) Prohibited Uses - In no event shall the following uses be permitted on Lot 2A, which are as follows:
    - (1) Automotive sales;
    - (2) Automotive laundry/car wash;
    - (3) Mechanic or automotive repair service;
    - (4) Gasoline or petroleum sales;
    - (5) Drive-through window service;
    - (6) Drive-in service;
    - (7) Convenience stores;
    - (8) Storage facilities for the purposes of storing motor vehicles, recreational vehicles, boats, campers and trailers; and/or
    - (9) firearm sales.
  - (z) In no event shall any structure or construction of any nature, excluding the permitted uses below for Lot 2B, be permitted within the area designated as flood plain.
3. The following use and regulations shall be allowable uses, **as defined herein**, on Lot 2B, Block A of the Sudduth Addition:
- (a) Apple Cannon
  - (b) BMX track
  - (c) Camping
  - (d) Communication, broadcasting, receiving and transmitting towers, including all types of amateur and professional radio, television, phone, cable, and other over-the-air methods.
  - (e) Concerts
  - (f) Easter Park
  - (g) Fossil / Arrowhead dig
  - (h) Go-Cart Tracks
  - (i) Haunted House / Hayride / Zombie Paintball
  - (j) Ice Skating
  - (k) Miniature Golf
  - (l) Nursery Plant Sales
  - (m) Paintball
  - (n) Petting Zoo / Educational Center walk through
  - (o) Recreational Vehicle Parking

- (p) Rodeos
  - (q) Santa's Country Village
  - (r) Train, either track or trackless
  - (s) Walk around beer
  - (t) Water Park
  - (u) Zoo
  - (v) No additional uses, accessory uses or structures are allowed without an amendment to this regulation and ordinance.
4. The following use and regulations shall be allowable uses, **as defined herein**, on Lot 3, Block A of the Sudduth Addition:
- (a) May be developed and used as a flea market, as defined and set forth herein and/or any other allowable use set forth in this Ordinance and the City of Seagoville Zoning Ordinance, Chapter 25, Division 16, *except as specifically prohibited below*.
  - (b) Amusement rides (temporary and permanent)
  - (c) Bowling Alley
  - (d) A car corral, as defined herein, shall be permitted on market days only and shall not be stored upon the property on any other days.
  - (e) Communication, broadcasting, receiving and transmitting towers, including all types of amateur and professional radio, television, phone, cable, and other over-the-air methods.
  - (f) Concerts
  - (g) Storage containers shall be permitted provided that the same are not visible from the highway or frontage. Storage containers may be rented to vendors.
  - (h) Drive-Through Holiday Park. A drive-through holiday park may be permitted upon the property. Decorations, small temporary structures and facades shall be constructed without the requirement of a building permit. Any and all electrical wiring, temporary and permanent, shall be required to comply with the electrical code and shall require an electrical permit.
  - (i) Events Center (meetings, weddings, birthdays)
  - (j) Farmers Market
  - (k) Game Room (video games, carnival style games)
  - (l) Gift Shop
  - (m) Hotel / Motel
  - (n) Ice Skating
  - (o) Kid's Mini City
  - (p) Microbrew
  - (q) Miniature Golf
  - (r) Nursery Plant Sales
  - (s) Restaurant – Full Service

- (t) Snack Bar
- (u) Soccer or Athletic Field. Construction of a soccer or athletic field shall be permitted upon the property, including any area(s) designated as flood plain, provided construction is consistent with state, local and federal law.
- (v) Storage containers shall be permitted provided that the same are not visible from the highway or frontage. Storage containers may be rented to vendors.
- (w) Train, either track or trackless
- (x) Walk around beer
- (y) Water Park
- (z) No additional uses, accessory uses or structures are allowed without an amendment to this regulation and ordinance
- (aa) Prohibited Uses - In no event shall the following uses be permitted on Lot 3, which are as follows:
  - (1) Automotive sales;
  - (2) Automotive laundry/car wash;
  - (3) Mechanic or automotive repair service;
  - (4) Gasoline or petroleum sales;
  - (5) Drive-through window service;
  - (6) Drive-in service;
  - (7) Convenience stores;
  - (8) Storage facilities for the purposes of storing motor vehicles, recreational vehicles, boats, campers and trailers; and/or
  - (9) firearm sales.

5. The following development regulations and standards shall be applicable to the Planned Development:

- (a) Prior to the commencement of **any** construction on any lot, the appropriate permits **must** be obtained from the City of Seagoville.
- (b) In the event permits are required from any federal and/or state agencies related to the use of the structure, such permit shall be obtained and a copy provided to the City of Seagoville upon making application to the City for the construction permit.
- (c) The enclosed pavilions and/or rental spaces currently constructed on Lots 2A and 3 shall be maintained in a good condition. Construction of an additional eight (8) large structures and up to thirty-nine (39) small structures, constructed to conform to the same or similar size and materials as the existing structures, shall be permitted after obtaining the appropriate permit. The following shall apply:

- (1) Building materials and construction which constitute an amendment to these regulations and ordinance for pavilions shall require:
  - (a) Metal steel exterior
  - (b) Concrete foundation
- (2) Compliance with local codes for all building codes, fire codes or any other applicable codes shall apply to all existing and new pavilions and rental spaces.
- (3) Between Suite 1652 and Suite 1710, there shall be an unobstructed driveway and fire lane of twenty four (24) feet as provided in Exhibit B.
- (4) No flea market customer parking is permitted in front of the buildings adjacent to SH 175, except for loading and unloading goods during specified business.
- (5) Vendor spaces shall be a minimum of 10' by 10'.
- (6) Carports and/or similar structures shall be permitted on vendor spaces located on unimproved surfaces for the purposes of providing shade and cover. A permit is required and all such structures shall meet the following requirements:
  - a. Shall be constructed of similar and/or like materials and colors as existing structures located on the site;
  - b. Supporting poles for carports and/or similar structures placed on the property shall be set in concrete and those placed on the property after the adoption of this Ordinance shall be able to withstand winds up to one hundred fifteen (115 mph) miles per hour; and,
  - c. Shall only be permitted behind the existing structures.
- (d) Eight (8) concrete pads, measuring 18 X 24 feet, may be constructed and maintained without permanent walls and roof. Said pad may be covered with non-permanent enclosure during market hours, as provided herein. In no event, however, shall any temporary wood structures or canopy frames be allowed on non-market days.
- (e) All other structure for uses other than Flea Market use shall be constructed in compliance with any and all federal, state and local construction requirements after having obtained the appropriate permit(s).
- (d) General Parking Regulations for Flea Market Use.
  - (1) Parking is permitted on the improved surface area designated on the Concept Plan, which is attached hereto and incorporated herein as Exhibit B.
  - (2) Overflow parking may be permitted on unimproved surfaces.
  - (3) All handicapped parking spaces shall be in compliance and meet the minimum requirements set forth by state and federal laws.

- (e) Miscellaneous Standards of Development.
  - (1) Driveways or fire lanes shall be constructed and maintained in accordance with the adopted fire code of the City of Seagoville and as depicted on Exhibit B.
  - (2) Building materials shall comply with the City of Seagoville ordinances except as may be provided herein.
  - (3) R-panel fencing shall be permitted behind the buildings.
- (f) Sign Regulations. After obtaining the appropriate permits, all signage permitted on the property shall comply with the provisions of the City of Seagoville Sign Ordinance, as amended.
- (g) Current dumpster do not have to be screened; however, any additional dumpsters shall be screened from view from public right of ways in accordance with the code of ordinances.
- (h) Water tanks shall be permitted for the purposes of supplying potable drinking water and water for the operation of the toilets. All such water tanks shall be inspected and approved by the appropriate enforcement authority.
- (i) Public Safety Requirements.
  - (1) On market days and during all special events, a Medical Aid Station shall be required. A Medical Aid Station may be an enclosed building, enclosed booth or tent, clearly marked as a Medical Aid Station. The Medical Aid Station shall be stocked with adequate supplies. In addition, at least one licensed (1) Emergency Medical Technician (EMT) shall be present during market days and at special events. Said EMT shall be provided one (1) cart for use getting to and for transporting patients.
  - (2) On market days and during all special events, at least one (1) off-duty Seagoville Police Officer shall be retained and be present on the property patrolling the perimeter of the venue during business hours for the safety of the public and enforcing local, state and federal laws.

**SECTION 4.** The property shall be developed and used only in accordance with the conceptual plan attached as Exhibit “B” and incorporated herein for all purposes, and which is hereby approved.

**SECTION 5.** That the above property shall be used only in the manner and for the purpose provided for by the Comprehensive Zoning Ordinance of the City of Seagoville, as heretofore amended and as amended herein.

**SECTION 6.** That all provisions of the Ordinances of the City of Seagoville, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 7.** That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

**SECTION 8.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 9.** 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 Seagoville, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 10.** That this ordinance shall take effect immediately from and after its passage and the publication of its caption, as the law and charter in such cases provide.

**DULY PASSED** by the City Council of the City of Seagoville, Texas, this the 6<sup>th</sup> day of August, 2018.

APPROVED:

\_\_\_\_\_  
DENNIS K. CHILDRESS, MAYOR

ATTEST:

\_\_\_\_\_  
KANDI JACKSON, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
ROBERT E HAGER, CITY ATTORNEY  
(/cdb – amended 07/30/2018)

**EXHIBIT "A"**  
**(Legal Property Description)**

All of the Sudduth Addition being all of the parcel of land in the Andrew Nail Survey, Abstract No. 355 and the D. Wilkerson Survey, Abstract No. 566, Kaufman County, Texas, recorded as Instrument 201-0010392 in office of Deed Records of Kaufman County, Texas, on June 13, 2012.

**Lot 1 of the Sudduth Addition** is described as COMMENCING at the point described as Point of Beginning as the subdivision's metes and bounds description in the southwest line of the Andrew Nail Survey; thence South 43 degrees 22 minutes 52 seconds East with the southwest line of said Andrew Nail Survey a distance of 262.78-feet to a 3/8-inch iron rod set in the north right-of-way line of U.S. Highway 175; thence North 78 degrees 01 minutes 09 seconds West along the north right-of-way line of U.S. Highway 175 a distance of 1,228.67-feet to a 3/8-inch iron rod found at the southeast corner of the above mentioned 10.000-acre tract in the above mentioned D. Wilkerson Survey to the **POINT OF BEGINNING**; thence North 43 degrees 49 minutes 09 seconds East a distance of 598.57-feet to a set 3/8-inch iron rod in the southeast line of the above mentioned 10.000-acre tract; thence North 59 degrees 19 minutes 54 seconds West a distance of 472.33-feet to a set 3/8-inch iron rod to a point in the Andrew Nail Survey as the north corner of Lot 1; thence South 28 degrees 40 minutes 26 seconds West a distance of 502.36-feet to a set 3/8-inch iron rod in the Andrew Nail Survey as the west corner of Lot 1; thence South 71 degrees 53 minutes 17 seconds East a distance of 148.53-feet to a set 3/8-inch iron rod to a point in the D. Wilkerson Survey as an ell corner of Lot 1; thence South 09 degrees 56 minutes 01 second West a distance of 88.36-feet to a set 3/8-inch iron rod to a point in the D. Wilkerson Survey as an ell corner of Lot 1; thence South 44 degrees 52 minutes 42 seconds West a distance of 88.72-feet to a set 3/8-inch iron rod in the north right-of-way line of U.S. Highway 175 in the D. Wilkerson Survey; thence North 78 degrees 01 minutes 09 seconds West along the north right-of-way line of U.S. Highway 175 a distance of 173.32-feet to the **POINT OF BEGINNING** of Lot 1, containing 5.000 acres of land.

**Lot 2 of the Sudduth Addition** is described as all lands in the Sudduth Addition that are not described as being in Lot 1 or Lot 3.

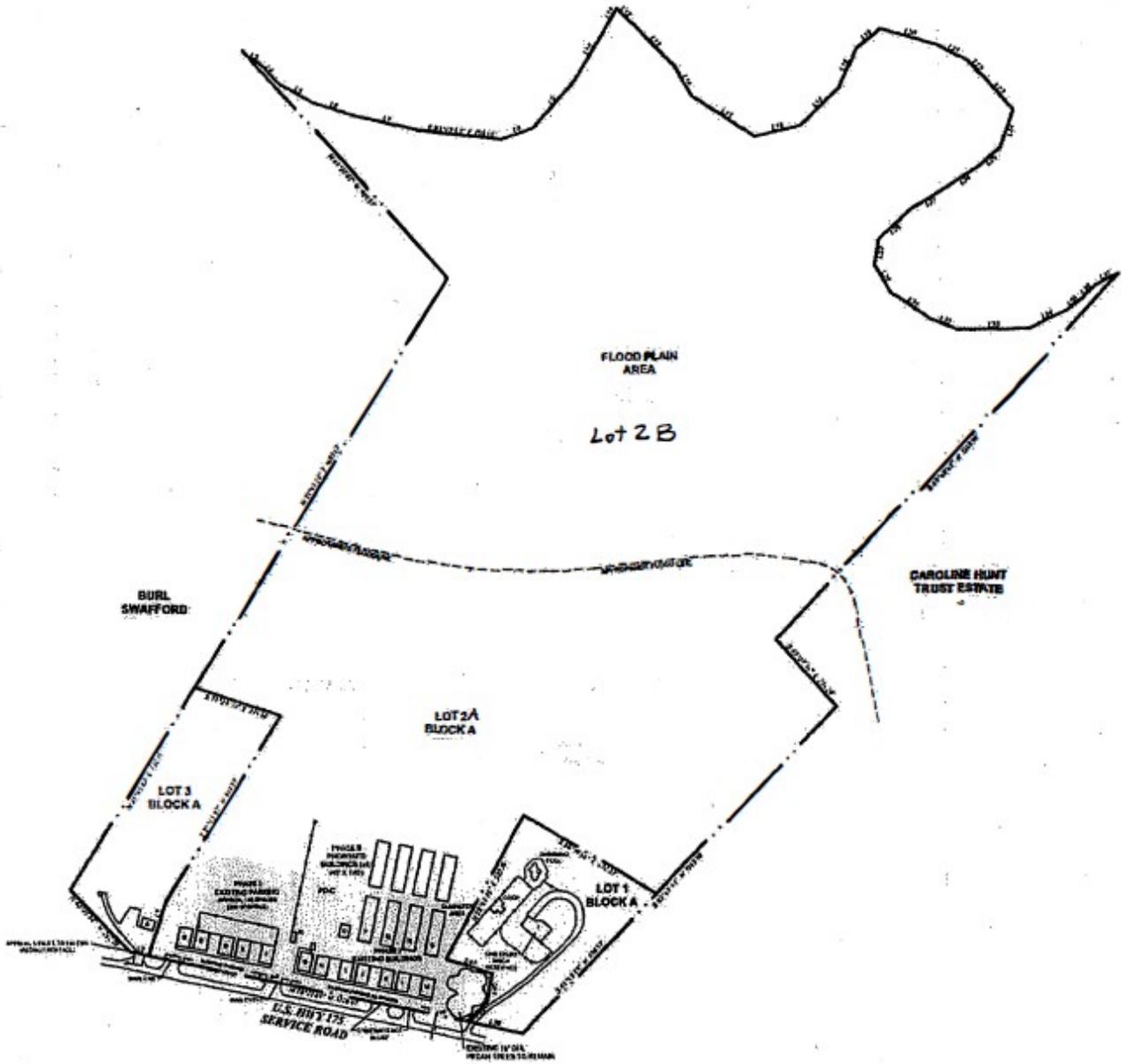
Lot 2A is more particularly described as those portions of Lot 2 that are *outside* of the floodplain on the most current version of a FEMA Flood Insurance Rate Map, as updated and amended.

Lot 2B is more particularly described as those portions of Lot 2 that are *inside* of the floodplain on the most current version of a FEMA Flood Insurance Rate Map, as updated and amended.

**Lot 3 of the Sudduth Addition** is described as BEGINNING at the point described as Point of Beginning as the subdivision's metes and bounds description in the southwest line of the Andrew Nail Survey; thence South 43 degrees 22 minutes 52 seconds East with the southwest line of said Andrew Nail Survey a distance of 262.78-feet to a 3/8-inch iron rod set in the north right-of-way line of U.S. Highway 175; thence North 78 degrees 01 minutes 09 seconds West along the north right-of-way line of U.S. Highway 175 a distance of 58.73-feet to a set 3/8-inch iron rod in the

Andrew Nail Survey as the southeast corner of Lot 3; thence North 18 degrees 30 minutes 27 seconds East to a set 3/8-inch iron rod to a point in the Andrew Nail Survey an ell corner in the common line of Lots 1 and 2; thence North 31 degrees 45 minutes 00 seconds East a distance of 666.87-feet to a set 3/8-inch iron rod to a point in the Andrew Nail Survey as the northeast corner of Lot 1; thence North 71 degrees 29 minutes 33 seconds West to the west line of the boundary of the Sudduth Addition and also being the southeast line of said Burl Swafford 65-acre tract; thence South 31 degrees 45 minutes 00 seconds a distance of 730.75-feet to the **POINT OF BEGINNING** of Lot 3, containing 5.000 acres of land.

**EXHIBIT "B"**  
**(Concept Plan)**



**CONCEPTUAL PLAN**



## *Regular Session Agenda Item: 6*

**Meeting Date:** August 6, 2018

### **ITEM DESCRIPTION**

Discuss service dogs in restaurants and stores.

### **BACKGROUND OF ISSUE:**

This item was requested by Councilmember Hernandez.

### **FINANCIAL IMPACT:**

N/A

### **RECOMMENDATION:**

N/A

### **EXHIBITS**

N/A

## ***Regular Session Agenda Item: 7***

**MEETING DATE: August 6, 2018**

### **ITEM DESCRIPTION**

Conduct a public hearing on a zoning request Z2018-11 to change zoning from R-5 (Residential-5 Single Family) to C (Commercial on two (2) tracts of land being a combined total of approximately 0.4-acres of real property described as Lot 17 and Lot 18, Block A of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 209 and 211 Avenue B.

### **BACKGROUND OF ISSUE:**

The applicants are requesting that the two (2) subject parcels be rezoned to the C, Commercial, zoning district. The request agrees with the 2002 Comprehensive Plan (Chapter 4 on Thoroughfare Plan, which was updated in 2009, and Chapter 5 on Future Land Use). The parcels are currently vacant and have been for several years. There are no plans to develop these lots at this time.

The adjoining lands to the west (and addressed on Hall Road) have all been zoned C, Commercial, since prior to 1978. More specifically, the lot immediately adjacent to the west has an existing gas station and convenience store that has been in operation for several years. Both land uses are allowed in the Local Retail and Commercial zoning districts.

The existing zoning, land uses, and relevant portions of the City's comprehensive plan are each referenced in the attached staff report.

### **FINANCIAL IMPACT:**

No city funds will be used for the development of this project.

### **PLANNING AND ZONING COMMISSION RECOMMENDATION:**

Prior to the Planning and Zoning Commission meeting on Tuesday, July 10, 2018, no (zero) property owners responded in writing or verbally for or against this request. No (zero) letters had been returned as undeliverable by the U.S. Postal Service. Two (2) property owners spoke against the request at the Planning and Zoning Commission meeting. Since the meeting, no (zero) property owners responded in writing or verbally for or against this request. No (zero) letters had been returned as undeliverable by the U.S. Postal Service.

The Commission voted two (2) to two (2) in favor of recommending the approval of the request

to change the current zoning of about 0.4-acres at 209 and 211 Avenue B (also known as all of Lot 17 and part of Lot 18 Block A of the Shady Grove Estate 3<sup>rd</sup> Inst. Addition) from the R-5, Residential Single-Family, zoning district to the C, Commercial, zoning district.

Staff is in support of this application. We recognize that eventually all properties along U.S. Highway 175 are going to be zoned retail, commercial or industrial. In this area, the most likely zoning will be Local Retail or Commercial. As these two (2) lots already abut existing commercial property, changing the zoning to Commercial makes the most sense.

**EXHIBITS:** Each of the following items are designed for printing on letter-sized paper unless otherwise listed.

1. Staff Report (10 pages)
2. 2017 aerial photograph from DCAD website
3. Dimensional reference map from DCAD website
4. Zoning map reference (dimensional map with zoning added)
5. Zoning application (5 pages)
6. Public hearing notice to newspaper
7. Public hearing notice to property owners within 200 feet
8. List of property owners within 200 feet of boundary of subject parcel
9. Portion of approved minutes of July 10, 2018 P&Z meeting related to this item



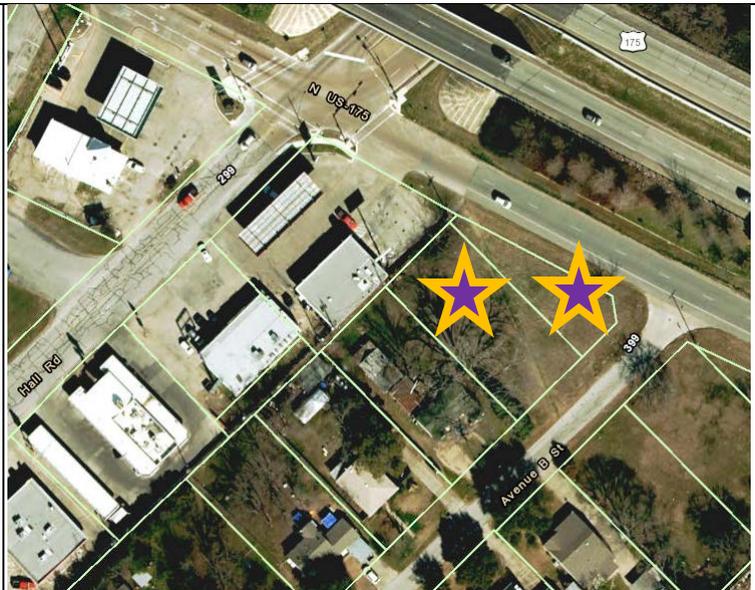
COMMUNITY DEVELOPMENT  
702 NORTH HIGHWAY 175  
SEAGOVILLE, TX 75159  
PHONE: (972) 287-2050

**DATE:** AUGUST 6, 2018  
**AUTHOR:** JENNIFER BONNER, JUNIOR PLANNER  
**APPLICANT:** JACK WILSON  
**PARCELS:** 500-485-000-10170000 AND 500-485-000-10180000  
**LOCATION:** 209 AND 211 AVENUE B (ALL OF LOT 17 & PART OF LOT 18 BLOCK A OF SHADY GROVE ESTATES 3<sup>RD</sup> INST. ADDITION)

**REQUEST SUMMARY:**

The applicant is requesting that the subject parcels (under the purple stars outlined in orange on the map to the right) at 209 and 211 Avenue B have their zoning changed to C, Commercial. The two lots abut one another. Part of Lot 18 was taken for Highway 175 right-of-way. The remainder of that lot has frontage on the east-bound service road as well as Avenue B.

Both lots abut an existing gas station and convenience store located in a C, Commercial, zoning district. Both land uses are allowed in the Local Retail and Commercial zoning districts.



**REQUEST LOCATION:** Inside City, Dallas County

SIZE OF PROJECT	EXISTING ZONING	SURROUNDING ZONING	EXISTING LAND USE	SURROUNDING LAND USE
About 0.4-acres	R-5, Single Family Residential	<b>Northwest:</b> C, Commercial <b>Southwest:</b> R-5, Single Family Residential <b>Northeast:</b> R-5, Single Family Residential <b>Southeast:</b> R-5, Single Family Residential	Low Density Residential	<b>Northwest:</b> Commercial <b>Southwest:</b> Low Density Residential <b>Northeast:</b> Retail <b>Southeast:</b> Low Density Residential

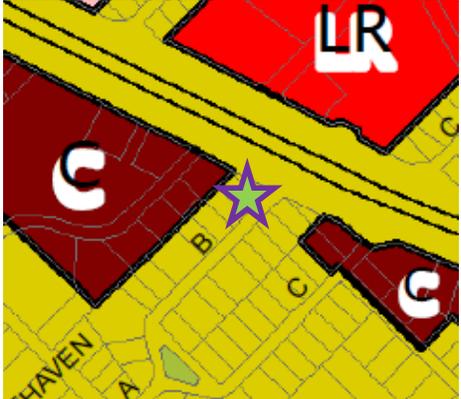
**PLANNING AND ZONING COMMISSION RECOMMENDATION:**

The Commission voted two (2) to two (2) in favor of recommending the approval of the request to change the current zoning on about 0.4-acres at 209 and 211 Avenue B (also known as all of Lot 17 and part of Lot 18 Block A of the Shady Grove Estate 3<sup>rd</sup> Inst. Addition) from the R-5, Residential Single-Family, zoning district to the C, Commercial, zoning district.

Staff is in support of this application. We recognize that eventually all properties along U.S. Highway 175 are going to be zoned retail, commercial or industrial. In this area, the most likely zoning will be Local Retail or Commercial. As these two (2) lots already abut existing commercial property, changing the zoning to Commercial makes the most sense.

Detailed explanations follow on the attached pages.	
<b>STANDARD:</b>	<b>STAFF ANALYSIS:</b>
Development Calendar (Deadlines)	Has Met
Application Requirements	Has Met
Zoning Code	Has Met

**COMPARISON TO ADOPTED CITY MASTER PLANS**

STAFF ANALYSIS		PLAN GOALS OR GUIDELINES
<b>2002 Comprehensive Land Use Plan and Map</b>		
<p>The lots in the request (under the green star outlined in purple on the map to the right) is in an area that the Future Land Use Plan and Map shows to be Retail. The yellow areas to the south of the property are expected to become Low Density Residential.</p> <p>At this particular location, the Land Use Plan calls for the first three (3) lots on this side of Avenue B to become Retail. The applicant only owns -and is requesting the change on - the first two (2) lots.</p>	Meets Standard	
<b>2009 Master Street Plan and Map</b>		
<p>The properties in the request (under the green star outlined in purple on the map to the right) have no access to Hall Road (labeled and shown by an orange line).</p> <p>Partial Lot 18 has access to both the eastbound service/frontage road along U.S. Highway 175 (grey line) as well as residential street Avenue B. Lot 17 only has access onto Avenue B. No additional right-of-way for either street is required at this time.</p>	Meets Standard	
<b>2009 Zoning Plan and Map</b>		
<p>The lot in the request (under the green star outlined in purple on the map) is in the R-5, Single Family Residential zoning district (mustard yellow color).</p> <p>The applicant is requesting that the lots be changed to the C, Commercial zoning district (brown-red color), which abut the subject parcels along their west property lines. The light grey lines are the approximate parcel lines.</p>	Meets Standard	

REVIEW CRITERIA	STAFF ANALYSIS	
1. Will the use be designated, located, and operated so that the public health, safety, and welfare will be protected?	Yes	City water is available along Avenue B. Municipal sewer is available along both Avenue B and the highway frontage/service road. Because there is no planned development at this time, it is difficult to know if there is sufficient capacity to serve a specific land use on the site.
2. Will the land use be compatible with other area properties located nearby?	Yes	The lot adjacent to the northwest matches the requested zoning district of this parcel.
3. Will the use be in compliance with all of the provisions of the Zoning Amendments portion of the Municipal Code?	Yes	The requirements for changing the zoning have been met.

REVIEW CRITERIA	STAFF ANALYSIS	
4. Will the use be compliant with all applicable provisions in the Code for the district in which the use is to be located?	Yes	When the lots develop, the land's use will need to meet the requirements of their district. No development is planned at this time.
5. Will the use facilitate public convenience at that location?	Yes	Both lots have access to existing public streets.
6. Will the use conform to off-street parking and loading requirements?	Yes	When the lots develop, the land's use will need to meet the requirements of their district. No development is planned at this time.
7. Are all of the ingress, egress, and pedestrian ways adequate?	Yes	The lots are currently vacant. There is no development is planned at this time.
8. Have safeguards limiting noxious or offensive emissions, including light, noise, glare, dust, and odor been addressed?	Yes	When the lots develop, these requirements will need to be addressed. No development is planned at this time.
9. Will the proposed landscaping and screening be compliant with all City regulations?	Yes	The parcels are currently in compliance. These requirements will need to be addressed when the lot develops.
10. Will the signage be compliant with those portions of the Municipal Code?	Yes	There is no signage on the property. These items will be reviewed when the lot develops.
11. Will all open space(s) be maintained by the owner/developer?	Yes	The applicant is maintaining the property and will continue to do so.
12. Are the size and shape of the site as well as the arrangement of the proposed structure(s) in keeping with the intent of the Code?	Yes	The lots are currently vacant. There is no development is planned at this time. These requirements will need to be addressed when the lot develops.
13. Will granting the permit be authorizing less than the minimum requirements in regards to height, area, setbacks, parking, or landscaping?	Yes	The lots are currently vacant. There is no development is planned at this time. These requirements will need to be addressed when the lot develops.
14. Have the provisions of the existing master thoroughfare plan been met to protect the public interest?	Yes	At this time there is sufficient right-of-way along both the U.S. Highway 175 frontage/service road as well as Avenue B.
15. Have the provisions of any existing future land use plan been met to protect the public interest?	Yes	Chapter 5 (Future Land Use) of the 2002 Comprehensive Plan provides suggestions on locations for different types of land use. The subject lot is shown in an area to be Retail.
16. Have the provisions of any existing capital improvements plan been met to protect the public interest?	N/A	There currently is no active capital improvement plan. The most recent plan (2008) has completed all improvements, but the pay-off has not yet been finalized.
17. Have the provisions of any community facilities plan been met to protect the public interest?	N/A	Changing the zoning of parcels is not affected by the Community Facilities portion of any City Plan.
18. Have the provisions of any other adopted document for providing required necessary public facilities been met to protect the public interest?	Yes	Chapter 8 (Public Facilities) of the 2002 Comprehensive Plan addresses municipal facilities primarily. Changing the zoning of parcels does not affect the provisions of any City Plan.

**Public Comments Received:**

Besides the two (2) parcels in question, there are fourteen (14) adjoining properties, one (1) public street, and one (1) public highway within 200-feet of the boundary of the subject area. The owners of each parcel were notified in compliance with the 200-foot rule by mail on Tuesday, June 26, 2018. A legal ad was also published

# STAFF REPORT

## Z2018-11

per the Texas Local Government Code in the Tuesday, June 26, 2018 edition of the Daily Commercial Record newspaper. Prior to the Planning and Zoning Commission meeting on Tuesday, July 10, 2018, no (zero) property owners have responded in writing or verbally for or against the request and no (zero) letters had been returned as undeliverable by the U.S. Postal Service. Two (2) property owners spoke against the request at the Planning and Zoning Commission meeting. As of the date of this report, July 31, 2018, no (zero) additional property owners have responded in writing or verbally for or against the request. Additionally, no (zero) letters have been returned as undeliverable by the U.S. Postal Service. Any responses received after the emailing of the packet to the Council will be available for review at the meeting.

### Other Staff Comments:

At the end of this Staff Report is a table that compares the types of land uses listed in the zoning code for each zoning district. Reference the table on the right to determine which symbols depict land uses that would be permitted, prohibited, or require a special use permit in the land use table. The land use table is arranged by zoning district and then each district is listed alphabetically. **Note:** Language in each of the “higher” (more intense) business districts specifies that the uses permitted in the “lower” zoning districts are allowed without being specifically listed each of those uses again.

Land Use Table Key:	Zoning District:
P = Permitted land use	R-5, Residential Single-family
S = Special Use Permit (SUP) required	O, Office
A blank box means that land use is <i>prohibited</i> in that zoning district.	LR, Local Retail
	C, Commercial

Type of Land Use	Zoning District			
	R-5	O	LR	C
Accessory buildings	P			
Addition of pre-packaged food or beverages sales to a retail or business already operating	S	S	S	S
Airport or airport facilities	S	S	S	S
Art gallery	P	P	P	P
Breezeway attaching accessory to the main building	P			
Carnival	S	S	S	S
Cemetery	S	S	S	S
Children’s home on 5 acres or more	S	S	S	S
Church or religious worship facility	P			
Circus	S	S	S	S
Commercial amusement, temporary	S	S	S	S
Community building on 3 acres or more	S	S	S	S
Concrete batching plant	S	S	S	S
Convalescent home on 5 acres or more	S	S	S	S
Daycare or nursery with fewer than four unrelated children	P			
Daycare or nursery with more than four unrelated children	S	S	S	S
Detached dwelling for servants employed on-site	P			
Dog kennels on farm of 5 acres or more	S	S	S	S
Drive-in theatre on 10 acres or more	S	S	S	S
Driving range	S	S	S	P
Earth excavation	S	S	S	S
Educational institutions	S	S	S	S
Electrical public utility regulating station	S	S	S	S
Farm without on-site retail or wholesale business	P			
Fire station	P			
Garden without on-site retail or wholesale business	P			
Golf course without driving range	P			
Government use - local, county, state, federal	S	S	S	S
Gravel excavation	S	S	S	S
Greenhouse	S	S	S	S

Type of Land Use	Zoning District			
	R-5	O	LR	C
Greenhouse without on-site retail or wholesale business	P			
Homes for narcotics on 20 acres or more	S	S	S	S
Homes for the alcoholic on 20 acres or more	S	S	S	S
Homes for the feeble-minded on 20 acres or more	S	S	S	S
Homes for the insane on 20 acres or more	S	S	S	S
Hospital on 5 acres or more	S	S	S	S
Kindergarten - public or private	S	S	S	S
Landing airfield or facilities	S	S	S	S
Library	P	P	P	P
Maternity home on 5 acres or more	S	S	S	S
Miniature golf course	S	S	S	P
Miniature train ride	S	S	S	S
Mixed-Use projects of private housing and shopping center on 3 acres or more	S	S	S	S
Museum	P			
Natural gas public utility regulating station	S	S	S	S
Neighborhood recreation center (swimming pool, social or hobby rooms)	P			
Normal household pets	P			
Nursery	S	S	S	S
Nursery school - public or private	S	S	S	S
Nursery without on-site retail or wholesale business	P			
Old people's home on 5 acres or more	S	S	S	S
Orchard without on-site retail or wholesale business	P			
Park	P			
Passenger train station	P			
Philanthropic institutions	S	S	S	S
Playgrounds	P			
Pony rides	S	S	S	S
Private carport and/or garage	P	P	P	P
Private school, equivalent to a public school	P	S	S	S
Public school (elementary through high school)	P	S	S	S
Public stable on 5 acres or more	S	S	S	S
Public utility - privately or publicly owned	S	S	S	S
Radio or television broadcasting stations	S	S	S	S
Radio or television broadcasting towers	S	S	S	S
Radio or television transmitter tower	S	S	S	S
Railway right-of-way and tracks, passenger station but not including railroad yards, team tracks or storage yards	P			
Religious institutions	S	S	S	S
Riding academy on 5 acres or more	S	S	S	S
Rock quarry	S	S	S	S
Rodeo	S	S	S	S
Sale of pre-packaged food/beverages, in combination, that exceeds 10% of an establishment's gross annual sales revenues	S	S	S	S
Sand excavation	S	S	S	S
Sewage treatment plant	S	S	S	S
Single-family residence (detached)	P			
Telephone exchange without office, repair or storage facilities	P			
Temporary and seasonal sales establishment, such as flea market or produce stand	S	S	S	S
Temporary buildings to be used for construction purposes only	P			
Travel trailer park	S	S	S	S
Veterinary hospital on 5 acres or more	S	S	S	S
Water pumping plant	P			
Water supply reservoir	P			

**STAFF REPORT  
Z2018-11**

Type of Land Use	Zoning District			
	R-5	O	LR	C
Water tower or artesian well	P			
Wind energy conversion system (WEC)	S	S	S	S
Railway ROW & tracks, but no railroad yards, team tracks or storage yards	P			
Ambulance service		P	P	P
Architect or engineers' offices		P	P	P
Attorneys' offices		P	P	P
Business offices		P	P	P
Consultants' offices		P	P	P
Doctors' & dentists' offices		P	P	P
Equipment storage (no repairs)		P	P	P
Financial offices		P	P	P
General offices		P	P	P
Multi-family dwelling units		S	S	S
Personal services		P	P	P
Political offices		P	P	P
Professional offices		P	P	P
Real estate offices		P	P	P
Records warehousing & storage		P	P	P
Salesman's offices		P	P	P
Single-family dwelling units		S	S	S
Antique shop			P	P
Aquarium			P	P
Auto laundry inside a building without boiler, heating & steam-cleaning facilities			P	P
Auto repair garage - all work inside a building			P	P
Auto seat covering			P	P
Bakery, retail			P	P
Bank			P	P
Barber & beauty shop			P	P
Bicycle repairs without outside storage or display			P	P
Bird & pet shops, retail			P	P
Book or stationery store			P	P
Bowling alley - if air-conditioned & soundproofed			P	P
Brewpub			S	S
Camera shop			P	P
Candy shop			P	P
Caterer			P	P
Cleaning & pressing shops smaller than 6,000 square feet			P	P
Cleaning, dyeing & laundry station for receiving & delivery of articles only			P	P
Clothing - retail sales only			P	P
Convenience store or mini-mart between 1,000 & 5,000 square feet			S	S
Curtain cleaning shop smaller than 6,000 square feet			P	P
Department store			P	P
Drive-in for food, beverage, or other service			S	S
Drive-in theatre			S	
Drive-through for food, beverage, or other service			S	S
Dyeing plant smaller than 6,000 square feet			P	P
Electric substation			P	P
Electrical goods, retail sales only			P	P
Electrical repairing - domestic equipment & autos, retail sales only			P	P
Event center in stand-alone building			S	
Exterminating company, retail			P	P
Feed store			S	
Film developing & printing			P	P

STAFF REPORT  
Z2018-11

Type of Land Use	Zoning District			
	R-5	O	LR	C
Fix-it shops without outside storage or display			P	P
Florist, retail sales only			P	P
Frozen food lockers, retail			P	P
Furniture repairs & upholstering, retail only without outside storage or display			P	P
Furniture store - retail			P	P
Gasoline/motor fuel sales			P	P
Gasoline/motor fuel sales, automated			P	P
Grocery store over 5,000 square feet			P	P
Hardware - retail sales only			P	P
Household & office appliances - retail			P	P
Household & office furniture - retail			P	P
Ice delivery station			P	P
Jewelry - retail			P	P
Job printing			P	P
Laundry - custom laundering & finishing smaller than 6,000 square feet without pickup or delivery			P	P
Letter & mimeograph shop			P	P
Meat market, retail sales only			P	P
Micro-brewery			S	S
Mortuary use in stand-alone buildings			S	
Motor raceway			S	
Moving picture theater			P	P
Novelty or variety shop			P	P
Nursery, retail sale of plants & trees			P	P
Office			P	P
Office building			P	P
Optical goods - retail			P	P
Outside display, new materials			P	P
Outside storage units			P	P
Paint - retail sales only			P	P
Parking lot without public garage for passenger cars & trucks			P	P
Pharmacy/drug store			P	P
Photographer's or artist's studio			P	P
Photographic supplies - retail			P	P
Piano & musical instruments, retail sales only			P	P
Plumbing shop without warehouse facilities, retail sales only			P	P
Portable storage units (PODs) - sales & storage			P	P
Public garage			P	P
Restaurant (dine-in only) over 4,000 square feet			P	P
Restaurant (dine-in only) smaller than 4,000 square feet			S	S
Restaurant (dine-in/convenience) over 4,000 square feet			P	P
Restaurant (dine-in/convenience) smaller than 4,000 square feet			S	S
Restaurant (fast food)			S	S
Restaurant (outdoor/patio dining)			S	S
Restaurant (private club)			S	S
Retail sales			P	P
Retail store or shop for custom work or the making of articles on-site			P	P
Roller skating rink			S	
Rug cleaning shop, chemical type, smaller than 6,000 square feet with all operations inside a building			P	P
Sample room			P	P
Seamstress, dressmaker, or tailor			P	P
Seed store			P	P
Shoe repair shop, retail sales only			P	P
Sporting goods - retail sales only			P	P

**STAFF REPORT  
Z2018-11**

Type of Land Use	Zoning District			
	R-5	O	LR	C
Studio for the display & sale of glass, china, art objects, cloth & draperies			P	P
Studios, dance, music, drama, health massage & reducing			P	P
Taxi stand			P	P
Tobacco shop			S	S
Tool sharpening, retail only without outside storage or display			P	P
Toys - retail sales only			P	P
Used car lot			S	P
Walk-up for food, beverage, or other service			S	S
Wallpaper - retail sales only			P	P
Washateria where the customer can wash & handle his laundry			P	P
Wearing apparel including clothing, shoes, hats, millinery & accessories			P	P
Wedding services in stand-alone building			S	
Wholesale sales office			P	P
Wine-tasting room			S	S
Aquarium, wholesale				P
Artificial flower manufacture				P
Artificial limb manufacture				P
Auto painting				P
Auto upholstery				P
Automobile dealers				P
Automobile laundry				P
Awning manufacture, cloth, metal, wood				P
Bakery, commercial				S
Bar				S
Beer tavern				S
Book bindery				P
Book printing				P
Bottling works with or without syrup manufacture				P
Bowling alley				P
Bus & truck storage				P
Cabinet shop				P
Candy manufacture				P
Canvas awning manufacture				P
Car barns				P
Carpenter shop				P
Carpet cleaning - with dustproof room & dust-catching equipment				P
Carting, express, hauling or storage				P
Cement storage				P
Ceramic products smaller than 6,000 square feet				P
Cleaning & dry cleaning establishment over 6,000 square feet				P
Clothing manufacture				P
Cold storage plant				P
Commercial amusement				P
Commercial colleges				P
Contractor's storage yard				P
Dance hall				S
Dog kennel				S
Dry goods, wholesale & storage				P
Dyeing plant over 6,000 square feet				P
Egg candling & grading				P
Electrical & neon sign manufacture				P
Electrical repairing				P
Electro-plating; electro-tying				P

Type of Land Use	Zoning District			
	R-5	O	LR	C
Engraving plant				P
Envelope manufacture				P
Feed store, wholesale & storage				P
Florist, wholesale				P
Food products manufacture, wholesale				P
Frozen food lockers, wholesale				P
Furniture auction sales				P
Furniture repair & upholstery - wholesale				P
Handcraft shop smaller than 6,000 square feet				P
Hauling, light or heavy				P
Homes for narcotics				S
Homes for the alcoholic				S
Homes for the feeble-minded				S
Homes for the insane				S
Household goods, storage				P
Ice cream manufacture				P
Ice manufacture				P
Job printing & book printing				P
Laundry, commercial				P
Leather products manufacture				P
Lithographing				P
Loading or storage tracks				P
Loose-leaf book manufacture				P
Lounge				S
Lumberyard (building material)				P
Market - public				P
Mattress making & renovating without dust precipitating equipment				P
Milk depot, wholesale				P
Millinery manufacture				P
Mirror re-silvering				P
Motel				P
Motion picture studio, commercial films				P
Motorcycle repairing				P
Moving & storage company				P
Newspaper printing				P
Night club				S
Optical goods manufacture				P
Outside display, used materials				S
Outside storage, new materials				S
Outside storage, used materials				S
Outside storage of any material over 8-feet tall				S
Paint mixing, but no cooking or baking operations				P
Paper products & paper box manufacture				P
Penal or correctional institutions for insane, feeble-minded, liquor or narcotic				P
Photoengraving plant				P
Plastic products, molding, casting & shaping				P
Print shop				P
Printing equipment, supplies, repairs				P
Publishing company				P
Sale of manufactured homes on 3.5 acres or more				S
Sale of mobile homes on 3.5 acres or more				S
Schools - all types including trade & commercial colleges				P
Secondhand furniture				P

**STAFF REPORT  
Z2018-11**

Type of Land Use	Zoning District			
	R-5	O	LR	C
Seed store, wholesale sales & storage				P
Sheetmetal shop				P
Shoe store, wholesale sales & storage				P
Skating rink				P
Stone monument works - retail				P
Storage & sales of used auto parts & accessories without open storage or display				P
Storage of trucks, & gravel				P
Streetcar barns				P
Taxicab storage & repairs				P
Team tracks & unloading docks, railroads				P
Tire retreading & recapping				P
Tourist camp				P
Trade schools of all types				P
Transfer & baggage company				P
Travel center				S
Trunk manufacturing				P
Typesetting				P
Venetian blind manufacturing				P
Veterinary hospital				S
Warehouse, wholesale offices, sales & storage				P
Water distillation				P
Winery, boutique				S





# DCAD Property Map

Exhibit 3



Exhibit 3



all R-5

all R-5

all R-5

all R-5

R-5

LR

LOT1 LR

LR

PUTNAM-HOFFMAN AMENDED ADDITION

PUTNAM SMITH

SHADY GROVE ESTATES 3RD INST.

SHADY GROVE

Exhibit 4



# ZONING APPLICATION

City of Seagoville, Texas

ANTICIPATED MEETING DATES: P&Z: \_\_\_\_\_ City Council: \_\_\_\_\_

DATE OF PRE-APPLICATION CONFERENCE WITH CITY REPS & PLANNER (required): \_\_\_\_\_

**Application Type:**

- Initial Zoning (newly annexed or Agricultural property)
- Rezoning (property currently zoned)
- Planned Development (PD) – see Zoning Ordinance for special requirements and procedures
- Specific Use Permit (SUP) – see Zoning Ordinance for special requirements and procedures

Name of Subdivision or Project: N.A.

Physical Location of Property: U.S. HIGHWAY 175 SERVICE ROAD AT AVENUE B  
[General Location – approximate distance to nearest existing street corner]

Brief Legal Description of Property (must also attach accurate Surveyor's metes and bounds description): LEGAL DESCRIPTION AND PLAT OF PROPERTY IS ATTACHED HERETO AS EXHIBIT "A" PAGES 1(A) AND 2(A)  
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Acreage: \_\_\_\_\_ Existing Zoning: R-5 Requested Zoning: COMMERCIAL  
[Attach a detailed description of requested zoning & development standards, if a PD]

Applicant / Owner's Name: JACK WILSON Applicant of  Owner (circle one)

Contact Person: JACK WILSON Title: OWNER

Company Name: N.A.

Street/Mailing Address: 204 E. FARMERS RD City: SEAGOVILLE State: TX Zip: 75159

Phone: (972) 287-4700 Fax: (972) 287-2303 Email Address: N.A.

Engineer / Representative's Name: N.A.

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Street/Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Email Address: \_\_\_\_\_

**SUBMITTAL DEADLINE: 30 DAYS PRIOR TO P&Z PUBLIC HEARING DATE.** (All zoning applications must be advertised in the newspaper, and notices must be mailed to all property owners within 200 feet of the subject property. Please contact City staff in advance for submittal deadlines.)

**All applications must be COMPLETE before they will be scheduled for P&Z agenda.** It is the applicant's responsibility to be familiar with, and to comply with, all City submittal requirements (in the Zoning & Subdivision Ordinances, and any separate submittal policies, requirements and/or checklists that may be obtained from City staff), including the number of plans to be submitted, application fees, etc. Please contact City staff in advance for submittal requirements.

**All application materials (one copy) must be delivered to the City's Planner.** The name, address, phone number, etc. of the City's Planner can be obtained from City staff. Failure to submit all materials to the City's Planner may result in delays scheduling the zoning application for a P&Z agenda.

**Notice of Public Records.** The submission of plans/drawings with this application makes such items public record, and the applicant understands that these items may be viewed by the general public. Unless the applicant expressly states otherwise in writing, submission of this application (with associated plans/drawings) will be considered consent by the applicant that the general public may view and/or reproduce (i.e., copy) such documents.

I hereby certify that I am the Owner, or the duly authorized agent of the Owner (proof of authorization attached), for the purposes of this application, and that all information submitted herein is complete, true and correct to the best of my knowledge. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

Signed: Jack Wilson Title: OWNER Date: 5/30/18



SUBSCRIBED AND SWORN TO before me, this the 30 day of May, 2018.  
[Month] [Year]

Notary Public in and for the State of Texas: Ritha Edwards  
My Commission Expires On: 10/29/2018

Office Use Only: Date Rec'd: 5/30/18 Fees Paid: \$ NC Check #: N/A Receipt #: \_\_\_\_\_  
Zoning Case # 22018-11 Accepted By: AKB Official Submittal Date: 5/30/18

JACK H. WILSON  
204 E. FARMERS ROAD  
SEAGOVILLE, TEXAS 75159

RECEIVED  
MAY 30 2018  
BY: JWB

Office: 972-287-4700  
Cell: 214-926-5354

May 30, 2018

City of Seagoville  
702 N. Highway 175  
Seagoville, Texas 75159

Attention: Mr. Ladis Barr, Community Development Director

Dear Mr. Barr:

Pursuant to our recent conversation, I am requesting that the City of Seagoville rezone the property my wife and I own as described herein and as further described in the attached Exhibit "A" and Exhibit A-1."

The properties are currently zoned "Residential," and I am requesting the zoning be changed to "Commercial."

The State of Texas acquired portions of Lot No. 18 and Lot No. 9-A by condemnation 54 years ago in 1964 for the purpose of widening U. S. 175. Both tracts front the current U. S. 175 Highway. We own both of these partial lots as well as Lot No. 17, adjoining partial Lot No. 18, and Lots No. 9 and No. 8, adjoining partial Lot 9-A. All of these properties are in Shady Grove Estates Installment 3.

The logical use for these properties is for business purposes because of their close proximity to U. S. Highway 175. These properties are between the Exxon Service Station at U. S. 175 and Hall Street and Oak Tree Nursery, with easy on and off access to Highway 175.

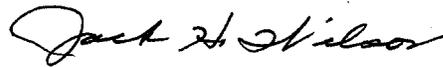
Almost 100% of the properties fronting both sides of U. S. 175, commencing at the most Westerly edge (Stark Road) and extending to the most Easterly edge of the city limits of Seagoville are currently being used for "Commercial" or "Local Retail" purposes.

City of Seagoville  
May 30, 2018  
Page -2-

If the City of Seagoville approves the rezoning, it enhances the chances that the City of Seagoville may be able to receive some sales tax revenue from the property as well as a higher taxable value to the City of Seagoville.

Your consideration in regard to this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink that reads "Jack H. Wilson". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Jack H. Wilson

JHW:lw  
Enclosures

Tract I:

Lot 17 and 18, Block A, Shady Grove Estates Third Installment, an Addition to the City of Seagoville, DALLAS County, Texas, according to the map or plat thereof recorded in Volume 12, Page 235, of the Plat Records of DALLAS County, Texas.

Tract II:

Lot 8 and 9, Block B, Shady Grove Estates Third Installment, an Addition to the City of Seagoville, DALLAS County, Texas, according to the map or plat thereof recorded in Volume 12, Page 235, of the Plat Records of DALLAS County, Texas.

Tract IV:

Being a portion of Lot 9A of an unrecorded plat of Shady Grove Estates and being a tract out of land adjacent to the 3rd Installment of Shady Grove Estates Addn., an addition to the City of Seagoville, Dallas County, Texas, according to the Map thereof recorded in Vol. 12, Pg. 235 of the Map Records of Dallas County, Texas and described as follows:

Beginning at the NW corner of Lot 9, Blk B of Shady Grove Estates Addn, 3rd Inst. according to the plat in Vol. 12, Pg 235 Map Records, Dallas County, Texas;

THENCE in a Southeasterly direction along the SW R O W of US Highway 175, a distance of 174' to point for corner, said point being in the NW line of the D. S. Sullivan Tract;

THENCE in a Southwesterly direction 57.5' more or less to the East or SE corner of the hereinabove mentioned Lot 9, a point for corner;

THENCE in a Northwesterly direction along the NE line of said Lot 9, a distance of 165' more or less to the POINT OF BEGINNING.

RECEIVED  
MAY 30 2018

BY: 913

# EXHIBIT "A" (PAGE 2)

TOWN OF SEAGOVILLE

ROVE ESTATES 3RD INST. ADDITION  
4-13-48 VOL. 12 - 235

SCALE OF 60 FT. E

1ST 489

ABST  
SHEET 1-A

HALL ST.

U.S. 175

RECEIVED  
MAY 30 2018

BY: *AJC*

(A)

W. W. Sanderson  
2-16-56

A. Rex Putnam

To State  
C/C Judgment  
Filed 6-11-64  
Vol. 335-1613

To State  
0.097 Ac

207 AVE  
206

B

To Public  
8-8-52

James L. Blackman  
4-1-69  
C.C. Judg.  
to  
Bessie H. Blackman  
1-29-76

A. Rex Putnam

0.258 Ac  
To State

9-A  
SOUTH FALLS  
8-6-52

(B)

J.A. Corder  
5-16-58  
to  
Dtha D.

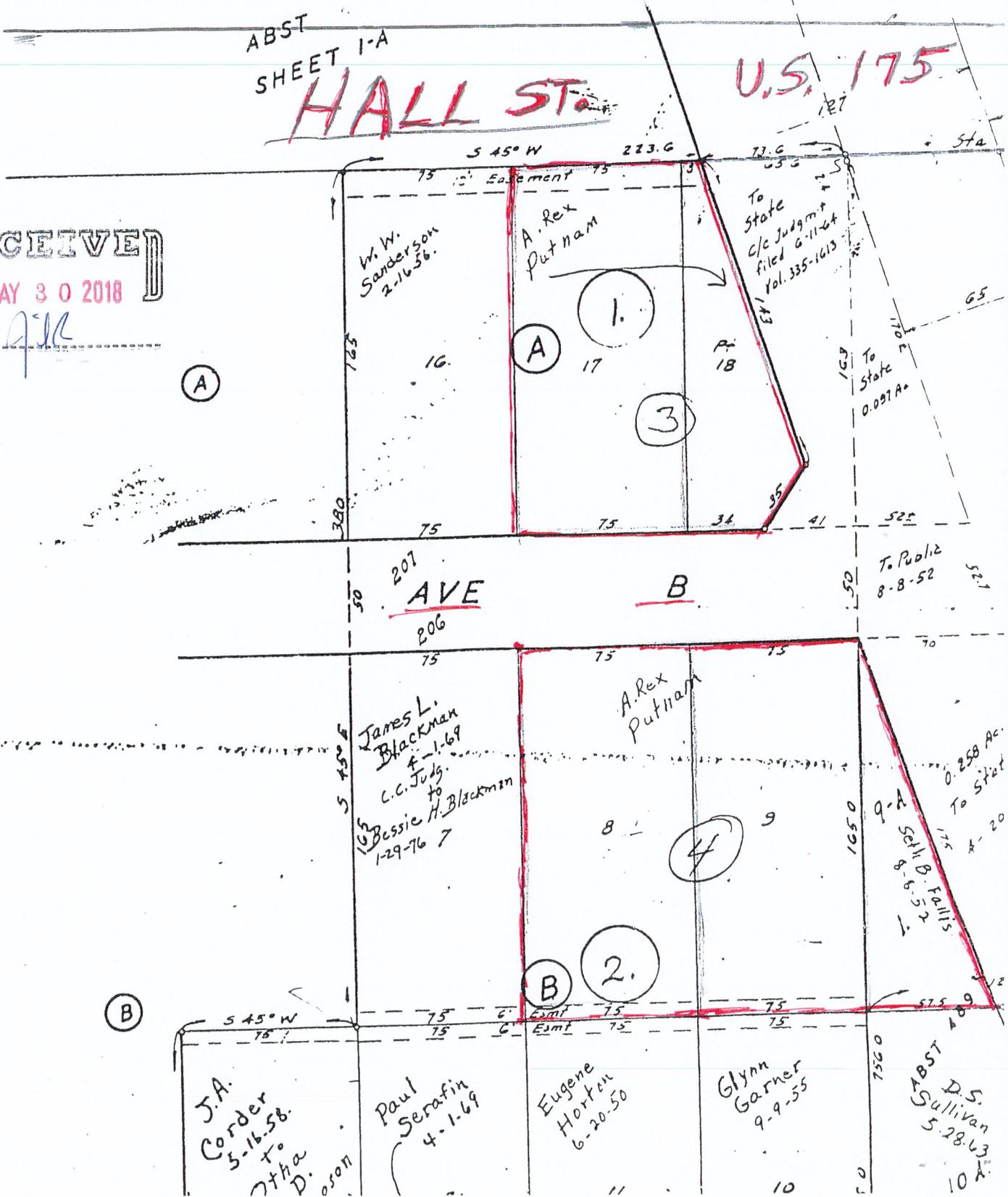
Paul Serafin  
4-1-69

Eugene Hortell  
6-20-50

Glynn Garner  
9-9-55

D.S. Sullivan  
5-28-63

ESTATES TO SEAGOVILLE





June 22, 2018

COMMUNITY DEVELOPMENT  
702 NORTH HIGHWAY 175  
SEAGOVILLE, TX 75159  
PHONE: (972) 287-2050

via email: [notices@dailycommercialrecord.com](mailto:notices@dailycommercialrecord.com)  
Daily Commercial Record  
706 Main Street  
Dallas, Texas 75202

Please publish the legal notice below in the June 25, 2018 issue of your newspaper. Please send the affidavit of publication to the ATTN: Jennifer Bonner at the address above. If you need to contact Jennifer, her office direct number is (972) 287-6833 and her email is [jbonner@seagoville.us](mailto:jbonner@seagoville.us) Jennifer's normal office hours are Monday through Friday from 8:00 AM to 5:00 PM.



**NOTICE OF PUBLIC HEARINGS  
SEAGOVILLE PLANNING & ZONING COMMISSION AND CITY COUNCIL  
ZONING CASE Z2018-11**

A public hearing will be held by the Seagoville Planning and Zoning Commission on Tuesday, July 10, 2018, at 6:30 PM in the City Council Chambers of the Seagoville City Hall building at 702 North U.S. Highway 175; Seagoville, TX 75159 to consider changing the current zoning on approximately 0.4-acres being all of Lot 17 and part of Lot 18 of Shady Grove Estates Inst. Third Addition (commonly known as 209 and 211 Avenue B) from the R-5, Residential Single Family, zoning district to the C, Commercial zoning district.

A public hearing will also be held by the Seagoville City Council on Monday, August 6, 2018, at 6:30 PM in the City Council Chambers of the Seagoville City Hall building at 702 North U.S. Highway 175; Seagoville, TX 75159 to consider the recommendation from the Planning and Zoning Commission on this request.

All individuals may appear at the public hearings to state their opinions or may send a written notice prior to 4:30 PM on the day of each public hearing to Jr. Planner Jennifer Bonner at 702 North U.S. Highway 175; Seagoville, TX 75159.

CITY OF SEAGOVILLE  
Kandi Jackson  
City Secretary

Jennifer Bonner  
Jr. Planner



COMMUNITY DEVELOPMENT  
702 NORTH HIGHWAY 175  
SEAGOVILLE, TX 75159  
PHONE: (972) 287-2050

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As an adjoining property owner, this is the first of 3 opportunities to voice your opinion about this project for the record. The second and third opportunities will be at each of the public hearings listed above.

*Please indicate your opinion in this matter by checking the appropriate box below.  
Please provide any additional comments that you might have in the provided space.  
Please also sign and complete the name and address portion below.*

I am in favor of  against  Zoning Request Z2018-11 as it is described herein.

Additional Comments (attach additional sheets as necessary): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature(s): \_\_\_\_\_

Printed Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

City, State & Zip code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**Property Owners List  
Rezone of 209 and 211 Avenue B**

Mailed out a total of 16 certified letters on Tuesday, June 26, 2018, before 5:00 PM

Subject or adjainer?	Site Address	DCAD Account	Owner	Mailing Address 1	Address 2	City	State	Zip
Subject	209 Avenue B	500-485-000-101-70000	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Subject	211 Avenue B	500-485-000-101-80000	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Adjoiner	212 Hall Road	650-489-781-102-40200	Sahil Establishment LLC	212 Hall Road		Seagoville	TX	75159-5902
Adjoiner	208 Hall Road	650-489-781-103-10000	Rogers D. L. Corporation	5013 Davis Boulevard		North Richland Hills	TX	76180-6874
Adjoiner	202 Hall Road	650-489-781-103-00000	Rogers D. L. Corporation	c/o Cardwell & Doss	P.O. Box 2323	Ponca City	OK	74602-2323
Adjoiner	208 Hall Road	650-489-781-102-90000	Sabeer LLC	5007 Richmond Road		Tyler	TX	75703-1221
Adjoiner	117 Avenue B	500-485-000-101-20000	Edward L. Carroll	117 Avenue B		Seagoville	TX	75159-2903
Adjoiner	203 Avenue B	500-485-000-101-40000	Michael A. & Sally E. Roberts	806 North Kaufman Street		Seagoville	TX	75159-2934
Adjoiner	205 Avenue B	500-485-000-101-50000	Gary L. & Yvonne P. Carrier	205 Avenue B		Seagoville	TX	75159-2905
Adjoiner	207 Avenue B	500-485-000-101-60000	David K. & Marva R. Adkins	7910 County Road 3700		Murchison	TX	75778-2910
Adjoiner	202 Avenue B	500-475-000-200-50000	Richard Wayne Timm	202 Avenue B		Seagoville	TX	75159-2906
Adjoiner	204 Avenue B	500-475-000-200-60000	Priscilla Duncan	204 Avenue B		Seagoville	TX	75159-2906
Adjoiner	206 Avenue B	500-475-000-200-70000	Javier Gaona	206 Avenue B		Seagoville	TX	75159-2906
Adjoiner	208 Avenue B	500-475-000-200-80000	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Adjoiner	210 Avenue B	500-475-000-200-90000	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Adjoiner	212 Avenue B	500-475-000-200-90100	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Adjoiner								

Exhibit 8



# MINUTES

for the

## SEAGOVILLE PLANNING AND ZONING COMMISSION

Meeting scheduled to begin at

**6:30 p.m. on Tuesday, July 10, 2018**

in the City Hall Council Chambers

at 702 North U.S. Highway 175; Seagoville, Texas

Chairman Mike Dupuis called the meeting to order at 6:30 p.m.

Commissioners present: Commissioner & Chairman Mike Dupuis  
Commissioner & Vice-Chairman Scott Englert  
Commissioner James Sudduth  
Commissioner Lowell Sherman  
Commissioner Howard Sanders

Commissioners absent: Commissioner David Grimes  
Position 3 is vacant.

City Staff present: Community Development Director Ladis Barr  
Jr. Planner/P&Z Liaison Jennifer Bonner

Commissioner Lowell Sherman gave the invocation and then led those present in the Pledge of Allegiance.

1. **Approval of Minutes:** Vice-Chairman Scott Englert moved to accept the minutes of the June 24, 2018, meeting. Commissioner Sherman seconded the motion. The commissioners voted unanimously to accept the minutes as presented.
2. **Election of officers:** Motion by Commissioner James Sudduth for the current officers (Chairman Mike Dupuis and Vice Chair Scott Englert elected on May 15th) to remain in office for another year. Second by Commissioner Lowell Sherman. The board voted unanimously (five to zero) to extend the term of current officers for one year.
3. **Public Hearings:**
  - A. **Zoning Request Z2018-11:** Chairman Dupuis opened the public hearing at 6:33 p.m. Staff began by stating that this item and the next are very, very similar to one another as they are across the street from each other. This application is for two (2) lots abutting a gas station and convenience store on the corner of Hall Road and Highway 175. The subject lots are on the corner of Avenue B and Highway 175 frontage road and are

currently rezoned R-5. The applicant is asking the zoning for both lot 17 and partial lot 18 be changed to C, Commercial. Lot 18 is partial because part of the lot was taken for Highway 175 right-of-way when it was built. Total area of the two (2) lots when combined is about 0.4-acres so should be large enough to some sort of commercial use. Staff is recommending that all properties along this portion of Highway 175 will eventually be commercial or retail. With existing adjoining commercial property, it makes the most sense for this change to go to Commercial instead of Local Retail.

Planner Bonner continued by stating that the next page of the Staff Report has several maps. The first is the Land Use Plan which calls for three (3) lots on this side of Avenue B to go to become a Retail use. This request is for only two (2) of those lots. These lots do not have access onto Hall Road – shown in orange on the Master Thoroughfare Map - but lots do both have access to Avenue B, which is easier to identify in the Zoning Map below. The Zoning Map also makes it easier to see how the existing Commercial property abuts the subject parcels. Going through the review criteria, there really aren't any issues to prevent this request as there is already highway frontage and visibility, access to water and sewer, matching an abutting zoning district. There is no development planned at this time that staff has been made aware of so there are no specifics that they can review against for that a development plan could provide.

There are fourteen (14) adjoining lots were notified plus public street and public highway. Adjoining owners were notified by mail. Newspaper ad was run. As of today, there have been no written or verbal responses to the notifications sent out other than the applicant who also owns other properties within the 200-foot notification boundary. The Staff Report has the land use table and an example motion language. Following the Staff Report in the packet is some maps printed from the online mapping portion of DCAD's website (one with an aerial photo, one without, and another copy of the one without then having the zoning districts added on to it); the application with several attachments about the lots provided with the application; a copy of the newspaper notice; a copy of the adjoining owner's notice; and list of adjoining property owners requiring notification. Chairman Dupuis asked if anyone had questions for staff. No response for the Commission.

Applicant Mr. Jack Wilson came to the podium. He stated that he and his wife brought the property about 10 years ago. Since he will be 89 in a few days, he supposed it was time to dispose of the property. He has nothing in mind at this point but wants to put something in that conforms, is decent, and won't clobber up the neighborhood. Mrs. Wilson had nothing to add when asked by the Chairman.

Chairman Dupuis asked for comments from the public. Mrs. Glenda Dupuis rose and spoke first. She lives at 104 Avenue C. Avenues B and C create a rectangular block that connects to the highway frontage road on the northeast end of both streets and Avenue A to Kaufman Street on the southwest end. Avenue A has no addresses on it. One of her concerns is that Avenue B will become a through street to Kaufman Street because exiting vehicles will not be able to go back to Hall Road since the frontage road is one

way in the direction away from Hall Road. Her other concern is that the lot will develop for a 24-hour fast food restaurant which would bring a lot of activity into the neighborhood. The lots are not very large. She can understand Mr. Wilson wanting to develop the property at the end of his career. She also can understand that properties along the frontage road being some sort of business. She isn't sure whether this is the time and place to raise these concerns since there isn't any plan yet, but she really is concerned about a 24-hour fast food place. She would not appreciate being in her neighborhood because of how the traffic it brings would have a negative effect to her very old, very quiet, little neighborhood. She would like it to remain quiet. She would like the commissioners to think about these things before any huge decisions about what to allow to go there in the future. She thanked the Commission for letting her speak and then sat down.

Chairman Dupuis asked if anyone else wished to speak. Ms. Donna Martin of 301 Avenue C came to the podium. She apologized but she hadn't been to a city meeting before so wasn't sure what she was stepping into. She got a letter a few months ago. She called and asked about that and was told that at time that she wouldn't have to worry because she was residential. Now she gets this letter and it is showing the property behind her house. Her house is shown in this blue square (labeled Commercial) and she wants to know what is going on. No, she doesn't want a fast food restaurant going in behind her house. She doesn't think some of the other neighbors know or understand what is going on. Again this is her first time at a city meeting. Continued referencing the letter from a couple months of go again. If Putnam was extended, it would go straight into her house. No, she doesn't want any kind of business going in behind her house. Doesn't know what else to say. Ms. Martin sat down. Chairman Dupuis thanked her for her comments and asked if anyone else wished to speak. No one else rose and so the Chairman closed the public comment portion of the hearing at 6:43 p.m. He stated that members of the public are welcome to stay and listen but are asked not to comment or otherwise disrupt the meeting. The Commissioners discussion followed.

Chairman Dupuis asked Commissioner Lowell Sherman first for his thoughts. Commissioner Sherman asked about everything up to this point would all be Commercial. Building Official Ladis Barr stated that these properties already back up to existing Commercial (gas station and convenience store on the corner of Hall Road and the frontage road), so if approved, this request would extend the Commercial zoning to Avenue B along the frontage road. Vice-Chair Englert was asked for his comments. The Vice-Chair stated that he understands the concerns of the neighbors about traffic going through to Kaufman Street to get back to Hall Road. He also was looking at the table of uses and saw that fast food would require a special use permit, which would come back before this board again. With the rest of the property already being commercial, he can understand the request for these two (2) lots to each have a commercial zoning. Chairman Dupuis asked Commissioner Howard Sanders for his thoughts and comments. Commissioner Sanders stated that he also can understand the Commercial

request. But he also understands that since the neighbors are here and have concerns since there is no proposed specific plan, he thinks we need to figure out what is going to go in at this location to help the neighbors feel better about the zoning change. Chairman Dupuis asked Commissioner Sudduth if he had any comments and he stated that he did not. Vice Chair Englert asked Commissioner Sanders if his suggestion was to delay a zoning approval until the Commission knew what was proposed to go on the site. Commissioner Sanders replied that he felt that this is what the citizens were asking for.

The Chair said that everyone on the commission except him had had their chance to speak, but as a resident of the neighborhood, he needed to now excuse himself from the room so that a decision could be made. Vice Chair Englert took over the meeting and asked for a motion from the Commission. Commissioner Sudduth moved to approved the request as submitted. Commissioner Sherman seconded the motion. A vote was cast by the raising of hands. Two (2) commissioners voted in favor (Sudduth and Sherman) of recommending approval and two (2) commissioners voted against the motion (Sanders and Englert) which resulted in a tie vote. As only four (4) commissioners were present during the vote, the resulting recommendation of the Planning and Zoning Commission to City Council is neutral (neither for nor against). The Vice Chair asked staff what he needed to do with the results. Planner Bonner stated nothing, because City Council must work with the results of the vote. Chairman Dupuis was asked to return to the room by Official Barr and Vice-Chairman Englert provided him with the results of the vote. The Chairman announced the next piece of business.

- B. Zoning Request Z2018-12:** Chairman Dupuis opened the public hearing at 6:50 p.m. Junior Planner Jennifer Bonner began by stating that this item is across Avenue B from last item of business. This application is for three (3) lots. The subject lots are on the corner of Avenue B and Highway 175 frontage road and are currently rezoned R-5. The applicant is asking the zoning for both lots 8 and 9 and partial lot 9-A be changed to C, Commercial. Lot 9-A is partial because part of the lot was taken for Highway 175 right-of-way when it was built. Total area of the lots when combined is about 0.7-acres. These lots back-up to lots zoned Commercial but are being used as residences. This area also is expected to become Retail per the Land Use Plan, which shows four (4) lots on this side of Avenue B – but again the request is only for those three (3) lots owned by the applicant and closest to the highway.

Planner Bonner continued by stating these lots have the same type of review criteria answers – access to water and sewer, frontages and visibility on highway frontage road and Avenue B, abutting existing commercial zoning, no specific development plans at this time, etc. The lot farthest to the southwest – when looking at the zoning map – actually does not abut existing commercial property like the other two (2) lots, but are in the area identified on the Land Use Plan as becoming Retail. She stated she doesn't have addresses for the lots on Avenue C that back-up to these lots, but can clearly see on the 2009 Zoning Map that the first two (2) lots addressed on Avenue C side of this

## ***Regular Session Agenda Item: 8***

**MEETING DATE: August 6, 2018**

### **ITEM DESCRIPTION**

Discuss and consider an Ordinance of the City of Seagoville, Dallas and Kaufman Counties, Texas, amending the Comprehensive Zoning Ordinance and map, as heretofore amended, by granting a change in zoning from R-5 (Residential-5 Single Family) to C (Commercial) on two (2) tracts of land being a combined total of approximately 0.4-acres of real property described as Lot 17 and Lot 18, Block A, of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 209 and 211 Avenue B, Seagoville, Dallas County, Texas, as described and depicted in Exhibit "A", which is attached hereto and incorporated herein; providing for the repealing of all Ordinances in conflict; providing for a repealing clause; providing for a savings clause; providing for a severability clause; providing for a penalty of fine not to exceed Two Thousand Dollars (\$2,000.00) for each offense; and providing for an effective date.

### **BACKGROUND OF ISSUE:**

The applicants are requesting that the two (2) subject parcels be rezoned to the C, Commercial, zoning district. The request agrees with the 2002 Comprehensive Plan (Chapter 4 on Thoroughfare Plan, which was updated in 2009, and Chapter 5 on Future Land Use). The parcels are currently vacant and have been for several years. There are no plans to develop these lots at this time.

The adjoining lands to the west (and addressed on Hall Road) have all been zoned C, Commercial, since prior to 1978. More specifically, the lot immediately adjacent to the west has an existing gas station and convenience store that has been in operation for several years. Both land uses are allowed in the Local Retail and Commercial zoning districts.

The existing zoning, land uses, and relevant portions of the City's comprehensive plan are each referenced in the attached staff report.

### **FINANCIAL IMPACT:**

No city funds will be used for this project.

### **PLANNING AND ZONING COMMISSION RECOMMENDATION:**

Prior to the Planning and Zoning Commission meeting on Tuesday, July 10, 2018, no (zero) property owners responded in writing or verbally for or against this request. No (zero) letters had

been returned as undeliverable by the U.S. Postal Service. Two (2) property owners spoke against the request at the Planning and Zoning Commission meeting. Since the meeting, no (zero) property owners responded in writing or verbally for or against this request. No (zero) letters had been returned as undeliverable by the U.S. Postal Service.

The Commission voted two (2) to two (2) in favor of recommending the **APPROVAL** of the request to change the current zoning on about 0.4-acres at 209 and 211 Avenue B (also known as all of Lot 17 & part of Lot 18 Block A of Shady Grove Estates 3<sup>rd</sup> Inst. Addition) from the R-5, Residential Single Family, zoning district to the C, commercial, zoning district.

Staff is also in support of this application. We recognize that eventually all properties along U.S. Highway 175 are going to be zoned retail, commercial or industrial. In this area, the most likely zoning will be Local Retail or Commercial. As these two (2) lots already abut existing commercial property, changing the zoning to Commercial makes the most sense.

**EXHIBITS:** Each of the following items are designed for printing on letter-sized paper unless otherwise listed.

1. Ordinance and Exhibit A (3 pages)

**CITY OF SEAGOVILLE, TEXAS**

**ORDINANCE NO. \_\_\_\_-2018**

**AN ORDINANCE OF THE CITY OF SEAGOVILLE, DALLAS AND KAUFMAN COUNTIES, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP, AS HERETOFORE AMENDED, BY GRANTING A CHANGE IN ZONING FROM R-5 (RESIDENTIAL-5 SINGLE FAMILY) TO C (COMMERCIAL) ON TWO (2) TRACTS OF LAND BEING A COMBINED TOTAL OF APPROXIMATELY 0.4-ACRES OF REAL PROPERTY DESCRIBED AS LOT 17 AND LOT 18, BLOCK A, OF SHADY GROVE ESTATES 3<sup>RD</sup> INST. ADDITION, COMMONLY REFERRED TO AS 209 AND 211 AVENUE B, SEAGOVILLE, DALLAS COUNTY, TEXAS, AS DESCRIBED AND DEPICTED IN EXHIBIT “A”, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN; PROVIDING FOR THE REPEALING OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

Whereas, the Planning and Zoning Commission of the City of Seagoville and the City Council of the City of Seagoville, in compliance with the laws of the State of Texas with reference to the granting of zoning classifications and changes, have given requisite notices by publication and otherwise, and have held due public hearings and afforded a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, and the City Council of the City of Seagoville is of the opinion and finds that a zoning change should be granted, and that the Comprehensive Zoning Ordinance and Map should be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:**

**SECTION 1:** That the Comprehensive Zoning Ordinance and Map of the City of Seagoville, Texas, is heretofore amended, be and the same is hereby amended by granting a change in zoning from R-5 (Residential Single Family-5) to C (Commercial) on two (2) tracts of land being a combined total of approximately 0.4-acres of real property described as Lot 17 and Lot 18, Block A, of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 209 and 211 Avenue B, Seagoville, Dallas County, Texas, as described and depicted in Exhibit “A,” which is attached hereto and incorporated herein.

**SECTION 2:** That the land shall be used only for the purposes set out in accordance with the City of Seagoville’s Zoning Ordinance and all other ordinances, codes, and policies of the City of Seagoville, as amended.

**SECTION 3:** That all provisions of the Ordinances of the City of Seagoville, Texas, in conflict with the provisions of this ordinance, as amended, be hereby repealed and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 4:** That should any sentence, paragraph, subdivision, clause, phrase, or section of this ordinance or the Comprehensive Zoning Ordinance, as amended hereby, be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance or the Comprehensive Zoning Ordinance as a whole, or any part or provision thereof, other than the part declared to be invalid, illegal, or unconstitutional.

**SECTION 5:** That any person, firm, or corporation violating, disobeying, neglecting, refusing to comply with, or resisting the enforcement of any of the provisions or terms of this ordinance or the Comprehensive Zoning Ordinance, as amended hereby, shall be subject to the same penalty of two thousand dollars (\$2,000.00) for each offense as provided for in the Comprehensive Zoning Ordinance of the City of Seagoville, as heretofore amended. Each and every day such a violation continues or is allowed to exist shall constitute a separate offense.

**SECTION 6:** That this ordinance shall take effect immediately from and after its passage and the publication of its caption, as the law and charter in such cases provide.

**DULY PASSED** by the City Council of the City of Seagoville, Texas this 6<sup>th</sup> day of August, 2018.

**APPROVED:**

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Dennis, K. Childress, Mayor

**ATTEST:**

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Kandi Jackson, City Secretary

**APPROVED AS TO FORM:**

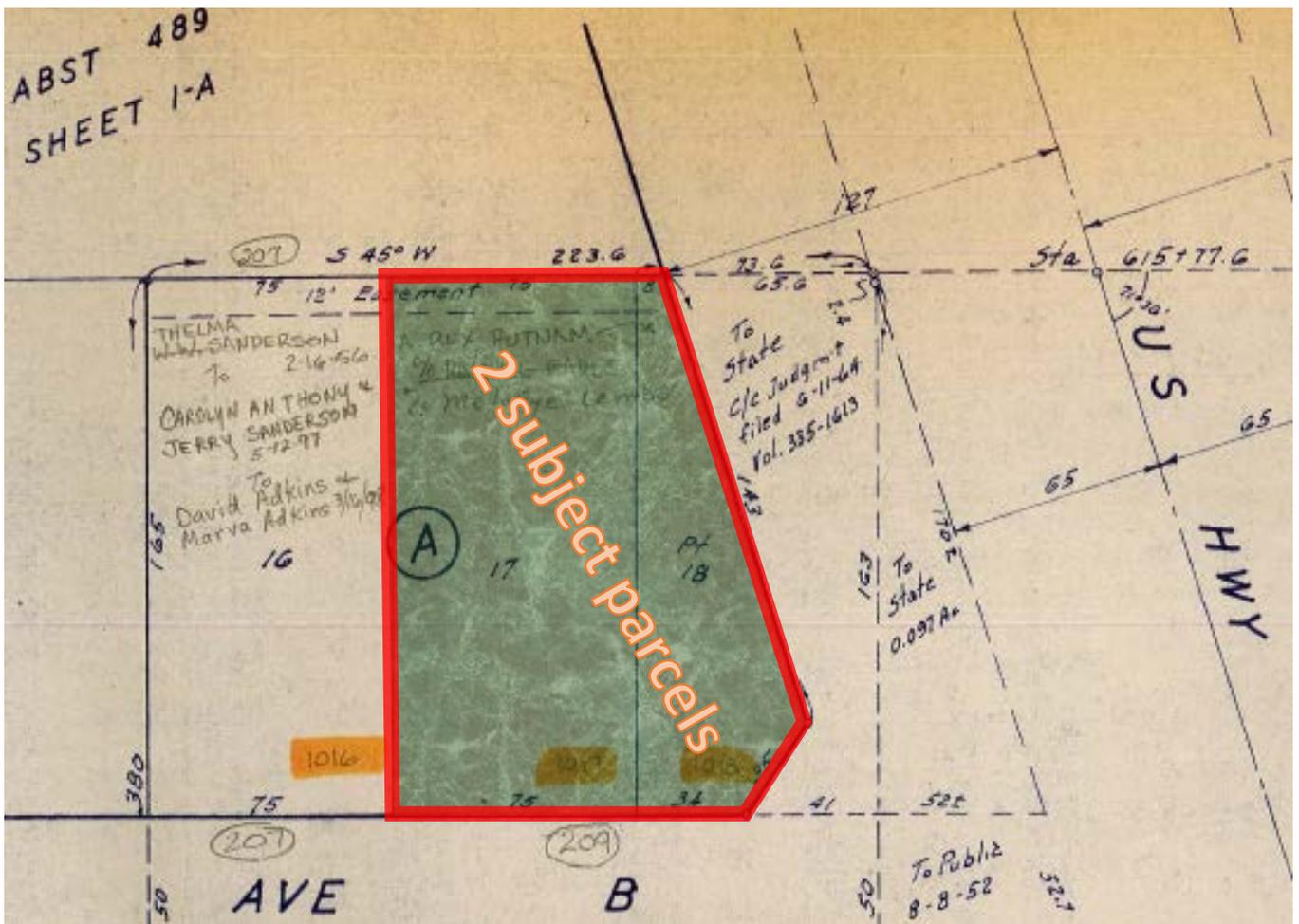
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Robert E Hager, City Attorney  
(/cdb 07/30/2018)

### Exhibit A

Tract 1 - Lot 17, Block A of Shady Grove Estates Third Installment, an Addition to the City of Seagoville, Dallas County, Texas, and according to the map or plat thereof recorded in Volume 12 on Page 235 of the Plat Records of Dallas County, Texas, and being commonly referred to as 209 Avenue B, Seagoville, Dallas County, Texas.

Tract II - Lot 18, Block A of Shady Grove Estates Third Installment, an Addition to the City of Seagoville, Dallas County, Texas, and according to the map or plat thereof recorded in Volume 12 on Page 235 of the Plat Records of Dallas County, Texas, and being commonly referred to as 211 Avenue B, Seagoville, Dallas County, Texas.



## ***Regular Session Agenda Item: 9***

**MEETING DATE: August 6, 2018**

### **ITEM DESCRIPTION**

Conduct a public hearing on a zoning request Z2018-12 to change zoning from R-5 (Residential-5 Single Family) to C (Commercial) on three (3) tracts of land being a combined total of approximately 0.7-acres of real property described as Lot 8, Lot 9, and Lot 9A, Block B, of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 208, 210 and 212 Avenue B.

### **BACKGROUND OF ISSUE:**

The applicants are requesting that the three (3) subject parcels be rezoned to the C, Commercial, zoning district. The request agrees with the 2002 Comprehensive Plan (Chapter 4 on Thoroughfare Plan, which was updated in 2009, and Chapter 5 on Future Land Use). The parcels are currently vacant and have been for several years. There are no plans to develop these lots at this time.

Two (2) of the three (3) adjoining parcels to the east (and addressed on Avenue C) have all been zoned either LR (Local Retail) or C (Commercial) since prior to 1978. However, these lots all are still being used as residences and have been for several decades – as legal, non-conforming uses of the land.

The existing zoning, land uses, and relevant portions of the City's comprehensive plan are each referenced in the attached staff report.

### **FINANCIAL IMPACT:**

No city funds will be used for the development of this project.

### **PLANNING AND ZONING COMMISSION RECOMMENDATION:**

Prior to the Planning and Zoning Commission meeting on Tuesday, July 10, 2018, no (zero) property owners responded in writing or verbally for or against this request. No (zero) letters had been returned as undeliverable by the U.S. Postal Service. Three (3) property owners spoke against the request at the Planning and Zoning Commission meeting. Since the meeting, two (2) additional property owners have responded in writing against the request and no (zero) property owners have responded in favor of the request. No (zero) additional letters have been returned as undeliverable by the U.S. Postal Service.

The Commission voted two (2) to two (2) in favor of recommending the denial of the request to change the current zoning of about 0.7-acres at 208, 210, and 212 Avenue B (also known as all of Lots 8 & 9 and part of Lot 9-A Block B of the Shady Grove Estate 3<sup>rd</sup> Inst. Addition) from the R-5, Residential Single-Family, zoning district to the C, Commercial, zoning district.

Staff is in support of this application. We recognize that eventually all properties along U.S. Highway 175 are going to be zoned retail, commercial or industrial. In this area, the most likely zoning will be Local Retail or Commercial. As two (2) of these three (3) lots already abut land that is already zoned C, Commercial, changing the zoning to Commercial makes the most sense.

**EXHIBITS:** Each of the following items are designed for printing on letter-sized paper unless otherwise listed.

1. Staff Report (10 pages)
2. 2017 aerial photograph from DCAD website
3. Dimensional reference map from DCAD website
4. Zoning map reference (dimensional map with zoning added)
5. Zoning application (5 pages)
6. Public hearing notice to newspaper
7. Public hearing notice to property owners within 200 feet
8. List of property owners within 200 feet of boundary of subject parcel
9. Portion of approved minutes of July 10, 2018 P&Z meeting related to this item



COMMUNITY DEVELOPMENT  
702 NORTH HIGHWAY 175  
SEAGOVILLE, TX 75159  
PHONE: (972) 287-2050

**DATE:** AUGUST 6, 2018  
**AUTHOR:** JENNIFER BONNER, JUNIOR PLANNER  
**APPLICANT:** JACK WILSON  
**PARCELS:** 500-485-000-20080000, 500-485-000-20090000, AND 500-485-000-20090100  
**LOCATION:** 208, 210, & 212 AVENUE B (LOTS 8 & 9 AND PART OF LOT 9-A BLOCK B OF SHADY GROVE ESTATES 3<sup>RD</sup> INST. ADDITION)

**REQUEST SUMMARY:**

The applicant is requesting that the subject parcels (under the green stars outlined in purple on the map to the right) at 208, 210, and 212 Avenue B have their zoning changed to C, Commercial. These lots are directly across Avenue B from the previous public hearing item.

The three lots abut one another. Part of Lot 9-A was taken for highway right-of-way so the balance of that lot has frontage on both the eastbound service road as well as Avenue B. Lots 9 and 9-A both abut other property zoned C, Commercial, but that are actually being used as residences. Lot 8 abuts the R-5, Residential Single Family, zoning district along its entire perimeter.



**REQUEST LOCATION:** Inside City

SIZE OF PROJECT	EXISTING ZONING	SURROUNDING ZONING	EXISTING LAND USE	SURROUNDING LAND USE
About 0.7-acres	R-5, Single Family Residential	<b>Northwest:</b> R-5, Single Family Residential <b>Southwest:</b> R-5, Single Family Residential <b>Northeast:</b> R-5, Single Family Residential <b>Southeast:</b> C, Commercial	Low Density Residential	<b>Northwest:</b> Low Density Residential <b>Southwest:</b> Low Density Residential <b>Northeast:</b> Retail <b>Southeast:</b> Commercial

**PLANNING AND ZONING COMMISSION RECOMMENDATION:**

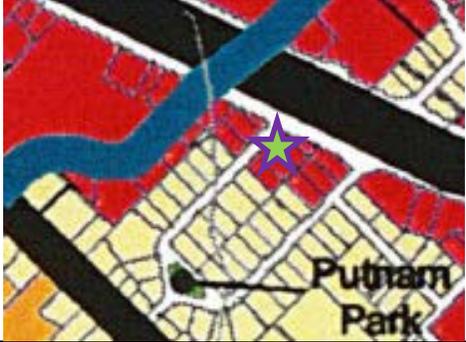
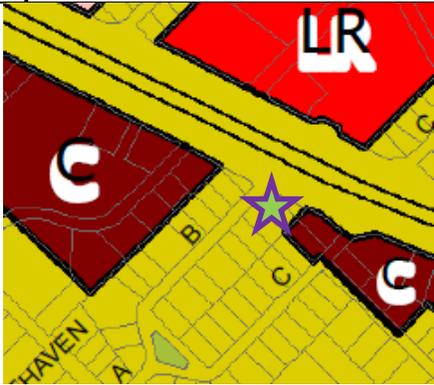
The Commission voted two (2) to two (2) in favor of recommending the denial of the request to change the current zoning on about 0.7-acres at 208, 210, and 212 Avenue B (also known as all of Lots 8 and 9 plus part of Lot 9-A Block B of the Shady Grove Estate 3<sup>rd</sup> Inst. Addition) from the R-5, Residential Single-Family, zoning district to the C, Commercial, zoning district.

Staff is in support of this application. We recognize that eventually all properties along U.S. Highway 175 are going to be zoned retail, commercial or industrial. In this area, the most likely zoning will be Local Retail or

Detailed explanations follow on the attached pages.	
<b>STANDARD:</b>	<b>STAFF ANALYSIS:</b>
Development Calendar (Deadlines)	Has Met
Application Requirements	Has Met
Zoning Code	Has Met

**STAFF REPORT  
Z2018-12**

Commercial. Because two (2) of these three (3) lots already abut existing commercial property, changing the zoning to Commercial makes the most sense.

<b>COMPARISON TO ADOPTED CITY MASTER PLANS</b>		
<b>STAFF ANALYSIS</b>	<b>PLAN GOALS OR GUIDELINES</b>	
<b>2002 Comprehensive Land Use Plan and Map</b>		
<p>The lots in the request (under the green star outlined in purple on the map to the right) is in an area that the Future Land Use Plan and Map shows to be Retail. The yellow areas to the south of the property are expected to become Low Density Residential.</p> <p>At this particular location, the Land Use Plan calls for the first four (4) lots on this side of Avenue B to become Retail. The applicant only owns –and is requesting the change on - the first three (3) lots.</p>	Meets Standard	
<b>2009 Master Street Plan and Map</b>		
<p>The properties in the request are under the green star outlined in purple on the map to the right.</p> <p>Partial Lot 9-A has access to both the eastbound service/frontage road along U.S. Highway 175 (grey line) as well as residential street Avenue B. Lots 8 &amp; 9 only has access onto Avenue B. No additional right-of-way will be required at this time.</p>	Meets Standard	
<b>2009 Zoning Plan and Map</b>		
<p>The lots in the request (under the green star outlined in purple on the map) is in the R-5, Single Family Residential zoning district (mustard yellow color).</p> <p>The applicant is requesting that the lots be changed to the C, Commercial zoning district (brown-red color), which abuts two (2) of the three (3) subject parcels along their east property lines. The light grey lines in the map to the right are the approximate parcel lines.</p>	Meets Standard	

<b>REVIEW CRITERIA</b>	<b>STAFF ANALYSIS</b>	
1. Will the use be designated, located, and operated so that the public health, safety, and welfare will be protected?	Yes	City water is available along Avenue B. Municipal sewer is available along both Avenue B and the highway frontage/service road. Because there is no planned development at this time, it is difficult to know if there is sufficient capacity to serve a specific land use on the site.
2. Will the land use be compatible with other area properties located nearby?	Yes	Two (2) of the lots immediately adjacent to the southeast are in a Commercial zoning district – and matching this request. The third lots currently abuts residentially-zoned property on all sides.

REVIEW CRITERIA	STAFF ANALYSIS	
3. Will the use be in compliance with all of the provisions of the Zoning Amendments portion of the Municipal Code?	Yes	The requirements for the change in zoning have been met.
4. Will the use be compliant with all applicable provisions in the Code for the district in which the use is to be located?	Yes	When the lots develop, the land's use will need to meet the requirements of their district. No development is planned at this time.
5. Will the use facilitate public convenience at that location?	Yes	All of the lots have access to existing public streets.
6. Will the use conform to off-street parking and loading requirements?	Yes	When the lots develop, the land's use will need to meet the requirements of their district. No development is planned at this time.
7. Are all of the ingress, egress, and pedestrian ways adequate?	Yes	The lots are currently vacant. There is no development is planned at this time.
8. Have safeguards limiting noxious or offensive emissions, including light, noise, glare, dust, and odor been addressed?	Yes	When the lots develop, these requirements will need to be addressed. No development is planned at this time.
9. Will the proposed landscaping and screening be compliant with all City regulations?	Yes	The parcels are currently in compliance. These requirements will need to be addressed when the lot develops.
10. Will the signage be compliant with those portions of the Municipal Code?	Yes	There is no signage on the property. These items will be reviewed when the lot develops.
11. Will all open space(s) be maintained by the owner/developer?	Yes	The applicant is maintaining the property and will continue to do so.
12. Are the size and shape of the site as well as the arrangement of the proposed structure(s) in keeping with the intent of the Code?	Yes	The lots are currently vacant. There is no development is planned at this time. These requirements will need to be addressed when the lot develops.
13. Will granting the permit be authorizing less than the minimum requirements in regards to height, area, setbacks, parking, or landscaping?	Yes	The lots are currently vacant. There is no development is planned at this time. These requirements will need to be addressed when the lot develops.
14. Have the provisions of the existing master thoroughfare plan been met to protect the public interest?	Yes	At this time there is sufficient right-of-way along both the U.S. Highway 175 frontage/service road as well as Avenue B.
15. Have the provisions of any existing future land use plan been met to protect the public interest?	Yes	Chapter 5 (Future Land Use) of the 2002 Comprehensive Plan provides suggestions on locations for different types of land use. The subject lot is shown in an area to be Retail.
16. Have the provisions of any existing capital improvements plan been met to protect the public interest?	N/A	There currently is no active capital improvement plan. The most recent plan (2008) has completed all improvements, but the pay-off has not yet been finalized.
17. Have the provisions of any community facilities plan been met to protect the public interest?	N/A	Changing the zoning of parcels is not affected by the Community Facilities portion of any City Plan.
18. Have the provisions of any other adopted document for providing required necessary public facilities been met to protect the public interest?	Yes	Chapter 8 (Public Facilities) of the 2002 Comprehensive Plan addresses municipal facilities primarily. Changing the zoning of parcels does not affect the provisions of any City Plan.

**Public Comments Received:**

**STAFF REPORT  
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Besides the two (2) parcels in question, there are fourteen (14) adjoining properties, one (1) public street, and one (1) public highway within 200-feet of the boundary of the subject area. The owners of each parcel were notified in compliance with the 200-foot rule by mail on Tuesday, June 26, 2018. A legal ad was also published per the Texas Local Government Code in the Tuesday, June 26, 2018 edition of the Daily Commercial Record newspaper. Prior to the Planning and Zoning Commission meeting on Tuesday, July 10, 2018, one (1) property owners have responded in writing against the request and none (zero) had been returned in favor of the request. No (zero) letters had been returned as undeliverable by the U.S. Postal Service. Three (3) property owners spoke at the Planning and Zoning Commission meeting. As of the date of this report, July 31, 2018, two (2) additional property owners have responded in writing against the request and no (zero) property owners have responded in favor of the request. No (zero) additional letters have been returned as undeliverable by the U.S. Postal Service. Any responses received after the emailing of the packet to the Council will be available for review at the meeting.

**Other Staff Comments:**

At the end of this Staff Report is a table that compares the types of land uses listed in the zoning code for each zoning district. Reference the table on top of the next page to determine which symbols depict land uses that would be permitted, prohibited, or require a special use permit in the land use table. The land use table is arranged by zoning district and then each district is listed alphabetically. Note:

<b>Land Use Table Key:</b>	<b>Zoning District:</b>
<b>P</b> = Permitted land use	<b>R-5</b> , Residential Single-family
<b>S</b> = Special Use Permit (SUP) required	<b>O</b> , Office
A blank box means that land use is <i>prohibited</i> in that zoning district.	<b>LR</b> , Local Retail
	<b>C</b> , Commercial

language in each of the “higher” (more intense) business districts specifies that the uses permitted in the “lower” zoning districts are allowed without being specifically listed each of those uses again.

Type of Land Use	Zoning District			
	R-5	O	LR	C
Accessory buildings	P			
Addition of pre-packaged food or beverages sales to a retail or business already operating	S	S	S	S
Airport or airport facilities	S	S	S	S
Art gallery	P	P	P	P
Breezeway attaching accessory to the main building	P			
Carnival	S	S	S	S
Cemetery	S	S	S	S
Children’s home on 5 acres or more	S	S	S	S
Church or religious worship facility	P			
Circus	S	S	S	S
Commercial amusement, temporary	S	S	S	S
Community building on 3 acres or more	S	S	S	S
Concrete batching plant	S	S	S	S
Convalescent home on 5 acres or more	S	S	S	S
Daycare or nursery with fewer than four unrelated children	P			
Daycare or nursery with more than four unrelated children	S	S	S	S
Detached dwelling for servants employed on-site	P			
Dog kennels on farm of 5 acres or more	S	S	S	S
Drive-in theatre on 10 acres or more	S	S	S	S
Driving range	S	S	S	P
Earth excavation	S	S	S	S
Educational institutions	S	S	S	S
Electrical public utility regulating station	S	S	S	S
Farm without on-site retail or wholesale business	P			
Fire station	P			
Garden without on-site retail or wholesale business	P			

STAFF REPORT  
Z2018-12

Type of Land Use	Zoning District			
	R-5	O	LR	C
Golf course without driving range	P			
Government use - local, county, state, federal	S	S	S	S
Gravel excavation	S	S	S	S
Greenhouse	S	S	S	S
Greenhouse without on-site retail or wholesale business	P			
Homes for narcotics on 20 acres or more	S	S	S	S
Homes for the alcoholic on 20 acres or more	S	S	S	S
Homes for the feeble-minded on 20 acres or more	S	S	S	S
Homes for the insane on 20 acres or more	S	S	S	S
Hospital on 5 acres or more	S	S	S	S
Kindergarten - public or private	S	S	S	S
Landing airfield or facilities	S	S	S	S
Library	P	P	P	P
Maternity home on 5 acres or more	S	S	S	S
Miniature golf course	S	S	S	P
Miniature train ride	S	S	S	S
Mixed-Use projects of private housing and shopping center on 3 acres or more	S	S	S	S
Museum	P			
Natural gas public utility regulating station	S	S	S	S
Neighborhood recreation center (swimming pool, social or hobby rooms)	P			
Normal household pets	P			
Nursery	S	S	S	S
Nursery school - public or private	S	S	S	S
Nursery without on-site retail or wholesale business	P			
Old people's home on 5 acres or more	S	S	S	S
Orchard without on-site retail or wholesale business	P			
Park	P			
Passenger train station	P			
Philanthropic institutions	S	S	S	S
Playgrounds	P			
Pony rides	S	S	S	S
Private carport and/or garage	P	P	P	P
Private school, equivalent to a public school	P	S	S	S
Public school (elementary through high school)	P	S	S	S
Public stable on 5 acres or more	S	S	S	S
Public utility - privately or publicly owned	S	S	S	S
Radio or television broadcasting stations	S	S	S	S
Radio or television broadcasting towers	S	S	S	S
Radio or television transmitter tower	S	S	S	S
Railway right-of-way and tracks, passenger station but not including railroad yards, team tracks or storage yards	P			
Religious institutions	S	S	S	S
Riding academy on 5 acres or more	S	S	S	S
Rock quarry	S	S	S	S
Rodeo	S	S	S	S
Sale of pre-packaged food/beverages, in combination, that exceeds 10% of an establishment's gross annual sales revenues	S	S	S	S
Sand excavation	S	S	S	S
Sewage treatment plant	S	S	S	S
Single-family residence (detached)	P			
Telephone exchange without office, repair or storage facilities	P			
Temporary and seasonal sales establishment, such as flea market or produce stand	S	S	S	S
Temporary buildings to be used for construction purposes only	P			

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Type of Land Use	Zoning District			
	R-5	O	LR	C
Travel trailer park	S	S	S	S
Veterinary hospital on 5 acres or more	S	S	S	S
Water pumping plant	P			
Water supply reservoir	P			
Water tower or artesian well	P			
Wind energy conversion system (WEC)	S	S	S	S
Railway ROW & tracks, but no railroad yards, team tracks or storage yards	P			
Ambulance service		P	P	P
Architect or engineers' offices		P	P	P
Attorneys' offices		P	P	P
Business offices		P	P	P
Consultants' offices		P	P	P
Doctors' & dentists' offices		P	P	P
Equipment storage (no repairs)		P	P	P
Financial offices		P	P	P
General offices		P	P	P
Multi-family dwelling units		S	S	S
Personal services		P	P	P
Political offices		P	P	P
Professional offices		P	P	P
Real estate offices		P	P	P
Records warehousing & storage		P	P	P
Salesman's offices		P	P	P
Single-family dwelling units		S	S	S
Antique shop			P	P
Aquarium			P	P
Auto laundry inside a building without boiler, heating & steam-cleaning facilities			P	P
Auto repair garage - all work inside a building			P	P
Auto seat covering			P	P
Bakery, retail			P	P
Bank			P	P
Barber & beauty shop			P	P
Bicycle repairs without outside storage or display			P	P
Bird & pet shops, retail			P	P
Book or stationery store			P	P
Bowling alley - if air-conditioned & soundproofed			P	P
Brewpub			S	S
Camera shop			P	P
Candy shop			P	P
Caterer			P	P
Cleaning & pressing shops smaller than 6,000 square feet			P	P
Cleaning, dyeing & laundry station for receiving & delivery of articles only			P	P
Clothing - retail sales only			P	P
Convenience store or mini-mart between 1,000 & 5,000 square feet			S	S
Curtain cleaning shop smaller than 6,000 square feet			P	P
Department store			P	P
Drive-in for food, beverage, or other service			S	S
Drive-in theatre			S	
Drive-through for food, beverage, or other service			S	S
Dyeing plant smaller than 6,000 square feet			P	P
Electric substation			P	P
Electrical goods, retail sales only			P	P
Electrical repairing - domestic equipment & autos, retail sales only			P	P

Type of Land Use	Zoning District			
	R-5	O	LR	C
Event center in stand-alone building			S	
Exterminating company, retail			P	P
Feed store			S	
Film developing & printing			P	P
Fix-it shops without outside storage or display			P	P
Florist, retail sales only			P	P
Frozen food lockers, retail			P	P
Furniture repairs & upholstering, retail only without outside storage or display			P	P
Furniture store - retail			P	P
Gasoline/motor fuel sales			P	P
Gasoline/motor fuel sales, automated			P	P
Grocery store over 5,000 square feet			P	P
Hardware - retail sales only			P	P
Household & office appliances - retail			P	P
Household & office furniture - retail			P	P
Ice delivery station			P	P
Jewelry - retail			P	P
Job printing			P	P
Laundry - custom laundering & finishing smaller than 6,000 square feet without pickup or delivery			P	P
Letter & mimeograph shop			P	P
Meat market, retail sales only			P	P
Micro-brewery			S	S
Mortuary use in stand-alone buildings			S	
Motor raceway			S	
Moving picture theater			P	P
Novelty or variety shop			P	P
Nursery, retail sale of plants & trees			P	P
Office			P	P
Office building			P	P
Optical goods - retail			P	P
Outside display, new materials			P	P
Outside storage units			P	P
Paint - retail sales only			P	P
Parking lot without public garage for passenger cars & trucks			P	P
Pharmacy/drug store			P	P
Photographer's or artist's studio			P	P
Photographic supplies - retail			P	P
Piano & musical instruments, retail sales only			P	P
Plumbing shop without warehouse facilities, retail sales only			P	P
Portable storage units (PODs) - sales & storage			P	P
Public garage			P	P
Restaurant (dine-in only) over 4,000 square feet			P	P
Restaurant (dine-in only) smaller than 4,000 square feet			S	S
Restaurant (dine-in/convenience) over 4,000 square feet			P	P
Restaurant (dine-in/convenience) smaller than 4,000 square feet			S	S
Restaurant (fast food)			S	S
Restaurant (outdoor/patio dining)			S	S
Restaurant (private club)			S	S
Retail sales			P	P
Retail store or shop for custom work or the making of articles on-site			P	P
Roller skating rink			S	
Rug cleaning shop, chemical type, smaller than 6,000 square feet with all operations inside a building			P	P
Sample room			P	P

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Type of Land Use	Zoning District			
	R-5	O	LR	C
Seamstress, dressmaker, or tailor			P	P
Seed store			P	P
Shoe repair shop, retail sales only			P	P
Sporting goods - retail sales only			P	P
Studio for the display & sale of glass, china, art objects, cloth & draperies			P	P
Studios, dance, music, drama, health massage & reducing			P	P
Taxi stand			P	P
Tobacco shop			S	S
Tool sharpening, retail only without outside storage or display			P	P
Toys - retail sales only			P	P
Used car lot			S	P
Walk-up for food, beverage, or other service			S	S
Wallpaper - retail sales only			P	P
Washateria where the customer can wash & handle his laundry			P	P
Wearing apparel including clothing, shoes, hats, millinery & accessories			P	P
Wedding services in stand-alone building			S	
Wholesale sales office			P	P
Wine-tasting room			S	S
Aquarium, wholesale				P
Artificial flower manufacture				P
Artificial limb manufacture				P
Auto painting				P
Auto upholstery				P
Automobile dealers				P
Automobile laundry				P
Awning manufacture, cloth, metal, wood				P
Bakery, commercial				S
Bar				S
Beer tavern				S
Book bindery				P
Book printing				P
Bottling works with or without syrup manufacture				P
Bowling alley				P
Bus & truck storage				P
Cabinet shop				P
Candy manufacture				P
Canvas awning manufacture				P
Car barns				P
Carpenter shop				P
Carpet cleaning - with dustproof room & dust-catching equipment				P
Carting, express, hauling or storage				P
Cement storage				P
Ceramic products smaller than 6,000 square feet				P
Cleaning & dry cleaning establishment over 6,000 square feet				P
Clothing manufacture				P
Cold storage plant				P
Commercial amusement				P
Commercial colleges				P
Contractor's storage yard				P
Dance hall				S
Dog kennel				S
Dry goods, wholesale & storage				P
Dyeing plant over 6,000 square feet				P

Type of Land Use	Zoning District			
	R-5	O	LR	C
Egg candling & grading				P
Electrical & neon sign manufacture				P
Electrical repairing				P
Electro-plating; electro-tying				P
Engraving plant				P
Envelope manufacture				P
Feed store, wholesale & storage				P
Florist, wholesale				P
Food products manufacture, wholesale				P
Frozen food lockers, wholesale				P
Furniture auction sales				P
Furniture repair & upholstery - wholesale				P
Handcraft shop smaller than 6,000 square feet				P
Hauling, light or heavy				P
Homes for narcotics				S
Homes for the alcoholic				S
Homes for the feeble-minded				S
Homes for the insane				S
Household goods, storage				P
Ice cream manufacture				P
Ice manufacture				P
Job printing & book printing				P
Laundry, commercial				P
Leather products manufacture				P
Lithographing				P
Loading or storage tracks				P
Loose-leaf book manufacture				P
Lounge				S
Lumberyard (building material)				P
Market - public				P
Mattress making & renovating without dust precipitating equipment				P
Milk depot, wholesale				P
Millinery manufacture				P
Mirror re-silvering				P
Motel				P
Motion picture studio, commercial films				P
Motorcycle repairing				P
Moving & storage company				P
Newspaper printing				P
Night club				S
Optical goods manufacture				P
Outside display, used materials				S
Outside storage, new materials				S
Outside storage, used materials				S
Outside storage of any material over 8-feet tall				S
Paint mixing, but no cooking or baking operations				P
Paper products & paper box manufacture				P
Penal or correctional institutions for insane, feebleminded, liquor or narcotic				P
Photoengraving plant				P
Plastic products, molding, casting & shaping				P
Print shop				P
Printing equipment, supplies, repairs				P
Publishing company				P

**STAFF REPORT  
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Type of Land Use	Zoning District			
	R-5	O	LR	C
Sale of manufactured homes on 3.5 acres or more				S
Sale of mobile homes on 3.5 acres or more				S
Schools - all types including trade & commercial colleges				P
Secondhand furniture				P
Seed store, wholesale sales & storage				P
Sheetmetal shop				P
Shoe store, wholesale sales & storage				P
Skating rink				P
Stone monument works - retail				P
Storage & sales of used auto parts & accessories without open storage or display				P
Storage of trucks, & gravel				P
Streetcar barns				P
Taxicab storage & repairs				P
Team tracks & unloading docks, railroads				P
Tire retreading & recapping				P
Tourist camp				P
Trade schools of all types				P
Transfer & baggage company				P
Travel center				S
Trunk manufacturing				P
Typesetting				P
Venetian blind manufacturing				P
Veterinary hospital				S
Warehouse, wholesale offices, sales & storage				P
Water distillation				P
Winery, boutique				S



3  
Subject  
Parcels



# DCAD Property Map

Exhibit 3

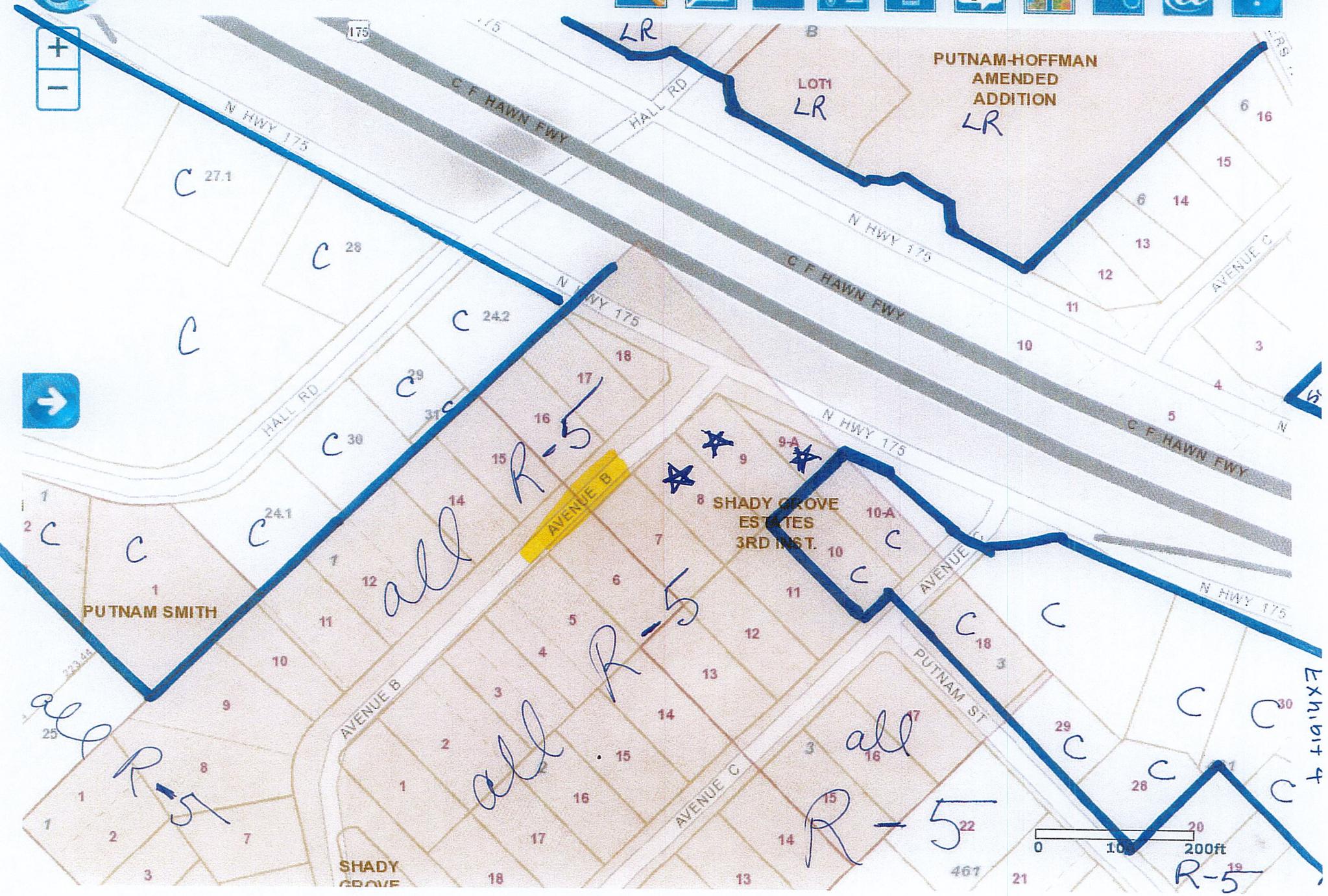


Exhibit 3

Zoning Map

Exhibit 4

DCAD Property Map



PUTNAM-HOFFMAN AMENDED ADDITION LR

LOT1 LR

all R-5

all R-5

all R-5

R-5



Exhibit 4



# ZONING APPLICATION

City of Seagoville, Texas

ANTICIPATED MEETING DATES: P&Z: \_\_\_\_\_ City Council: \_\_\_\_\_

DATE OF PRE-APPLICATION CONFERENCE WITH CITY REPS & PLANNER (required): \_\_\_\_\_

**Application Type:**

- Initial Zoning (newly annexed or Agricultural property)
- Rezoning (property currently zoned)
- Planned Development (PD) – see Zoning Ordinance for special requirements and procedures
- Specific Use Permit (SUP) – see Zoning Ordinance for special requirements and procedures

Name of Subdivision or Project: N.A.

Physical Location of Property: U.S. HIGHWAY 175 SERVICE ROAD AT AVENUE B B  
[General Location - approximate distance to nearest existing street corner]

Brief Legal Description of Property (must also attach accurate Surveyor's metes and bounds description): LEGAL DESCRIPTION AND PLAT OF PROPERTY IS ATTACHED HERETO AS EXHIBIT "A" PAGES 1(A) AND 2(A)  
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Acreage: \_\_\_\_\_ Existing Zoning: R-5 Requested Zoning: COMMERCIAL  
[Attach a detailed description of requested zoning & development standards, if a PD]

Applicant / Owner's Name: JACK WILSON Applicant of Owner (circle one)

Contact Person: JACK WILSON Title: OWNER

Company Name: N.A.

Street/Mailing Address: 204 E. FARMERS RD City: SEAGOVILLE State: TX Zip: 75159

Phone: (972) 287-4700 Fax: (972) 287-2303 Email Address: N.A.

Engineer / Representative's Name: N.A.

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Street/Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Email Address: \_\_\_\_\_

**SUBMITTAL DEADLINE: 30 DAYS PRIOR TO P&Z PUBLIC HEARING DATE.** (All zoning applications must be advertised in the newspaper, and notices must be mailed to all property owners within 200 feet of the subject property. Please contact City staff in advance for submittal deadlines.)

**All applications must be COMPLETE before they will be scheduled for P&Z agenda.** It is the applicant's responsibility to be familiar with, and to comply with, all City submittal requirements (in the Zoning & Subdivision Ordinances, and any separate submittal policies, requirements and/or checklists that may be obtained from City staff), including the number of plans to be submitted, application fees, etc. Please contact City staff in advance for submittal requirements.

**All application materials (one copy) must be delivered to the City's Planner.** The name, address, phone number, etc. of the City's Planner can be obtained from City staff. Failure to submit all materials to the City's Planner may result in delays scheduling the zoning application for a P&Z agenda.

**Notice of Public Records.** The submission of plans/drawings with this application makes such items public record, and the applicant understands that these items may be viewed by the general public. Unless the applicant expressly states otherwise in writing, submission of this application (with associated plans/drawings) will be considered consent by the applicant that the general public may view and/or reproduce (i.e., copy) such documents.

I hereby certify that I am the Owner, or the duly authorized agent of the Owner (proof of authorization attached), for the purposes of this application, and that all information submitted herein is complete, true and correct to the best of my knowledge. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

Signed: Jack Wilson Title: OWNER Date: 5/30/18



SUBSCRIBED AND SWORN TO before me, this the 30 day of May 2018.  
[Month] [Year]  
Notary Public in and for the State of Texas: Ritha Edwards  
My Commission Expires On: 10/29/2018

Office Use Only: Date Rec'd: 5/30/18 Fees Paid: \$ N.C. Check #: N/A Receipt #:  
 Zoning Case # 22018-11 Accepted By: J.W.B. Official Submittal Date: 5/30/18

JACK H. WILSON  
204 E. FARMERS ROAD  
SEAGOVILLE, TEXAS 75159

RECEIVED  
MAY 30 2018  
BY: *QJB*

Office: 972-287-4700  
Cell: 214-926-5354

May 30, 2018

City of Seagoville  
702 N. Highway 175  
Seagoville, Texas 75159

Attention: Mr. Ladis Barr, Community Development Director

Dear Mr. Barr:

Pursuant to our recent conversation, I am requesting that the City of Seagoville rezone the property my wife and I own as described herein and as further described in the attached Exhibit "A" and Exhibit A-1."

The properties are currently zoned "Residential," and I am requesting the zoning be changed to "Commercial."

The State of Texas acquired portions of Lot No. 18 and Lot No. 9-A by condemnation 54 years ago in 1964 for the purpose of widening U. S. 175. Both tracts front the current U. S. 175 Highway. We own both of these partial lots as well as Lot No. 17, adjoining partial Lot No. 18, and Lots No. 9 and No. 8, adjoining partial Lot 9-A. All of these properties are in Shady Grove Estates Installment 3.

The logical use for these properties is for business purposes because of their close proximity to U. S. Highway 175. These properties are between the Exxon Service Station at U. S. 175 and Hall Street and Oak Tree Nursery, with easy on and off access to Highway 175.

Almost 100% of the properties fronting both sides of U. S. 175, commencing at the most Westerly edge (Stark Road) and extending to the most Easterly edge of the city limits of Seagoville are currently being used for "Commercial" or "Local Retail" purposes.

City of Seagoville  
May 30, 2018  
Page -2-

If the City of Seagoville approves the rezoning, it enhances the chances that the City of Seagoville may be able to receive some sales tax revenue from the property as well as a higher taxable value to the City of Seagoville.

Your consideration in regard to this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink that reads "Jack H. Wilson". The signature is written in a cursive style with a large initial "J" and "W".

Jack H. Wilson

JHW:lw  
Enclosures

Tract I:

Lot 17 and 18, Block A, Shady Grove Estates Third Installment, an Addition to the City of Seagoville, DALLAS County, Texas, according to the map or plat thereof recorded in Volume 12, Page 235, of the Plat Records of DALLAS County, Texas.

Tract II:

Lot 8 and 9, Block B, Shady Grove Estates Third Installment, an Addition to the City of Seagoville, DALLAS County, Texas, according to the map or plat thereof recorded in Volume 12, Page 235, of the Plat Records of DALLAS County, Texas.

Tract IV:

Being a portion of Lot 9A of an unrecorded plat of Shady Grove Estates and being a tract out of land adjacent to the 3rd Installment of Shady Grove Estates Addn., an addition to the City of Seagoville, Dallas County, Texas, according to the Map thereof recorded in Vol. 12, Pg. 235 of the Map Records of Dallas County, Texas and described as follows:

Beginning at the NW corner of Lot 9, Blk B of Shady Grove Estates Addn, 3rd Inst. according to the plat in Vol. 12, Pg 235 Map Records, Dallas County, Texas;

THENCE in a Southeasterly direction along the SW R O W of US Highway 175, a distance of 174' to point for corner, said point being in the NW line of the D. S. Sullivan Tract;

THENCE in a Southwesterly direction 57.5' more or less to the East or SE corner of the hereinabove mentioned Lot 9, a point for corner;

THENCE in a Northwesterly direction along the NE line of said Lot 9, a distance of 165' more or less to the POINT OF BEGINNING.

RECEIVED  
MAY 30 2018

BY: JLB

# EXHIBIT "A" (PAGE 2)

TOWN OF SEAGOVILLE

ROVE ESTATES 3RD INST. ADDITION  
4-13-48 VOL. 12-235

SCALE OF 60 FT. E

1ST 489

ABST  
SHEET 1-A

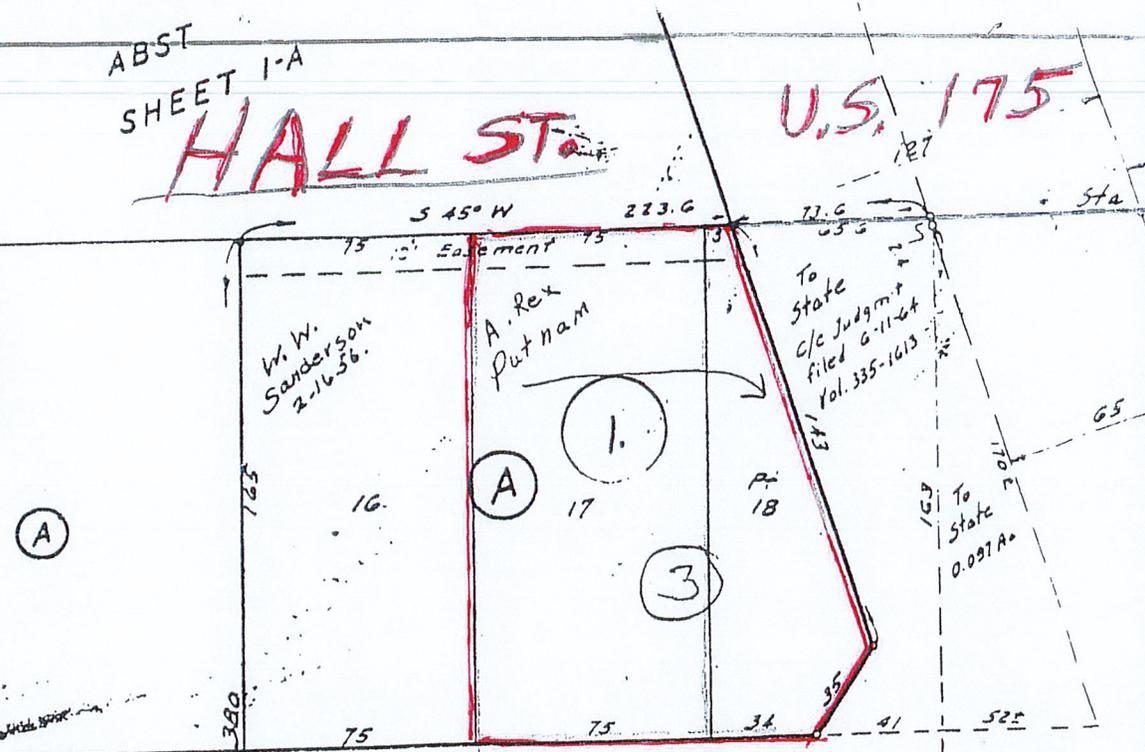
HALL ST.

U.S. 175

RECEIVED  
MAY 30 2018

BY: *AJK*

(A)

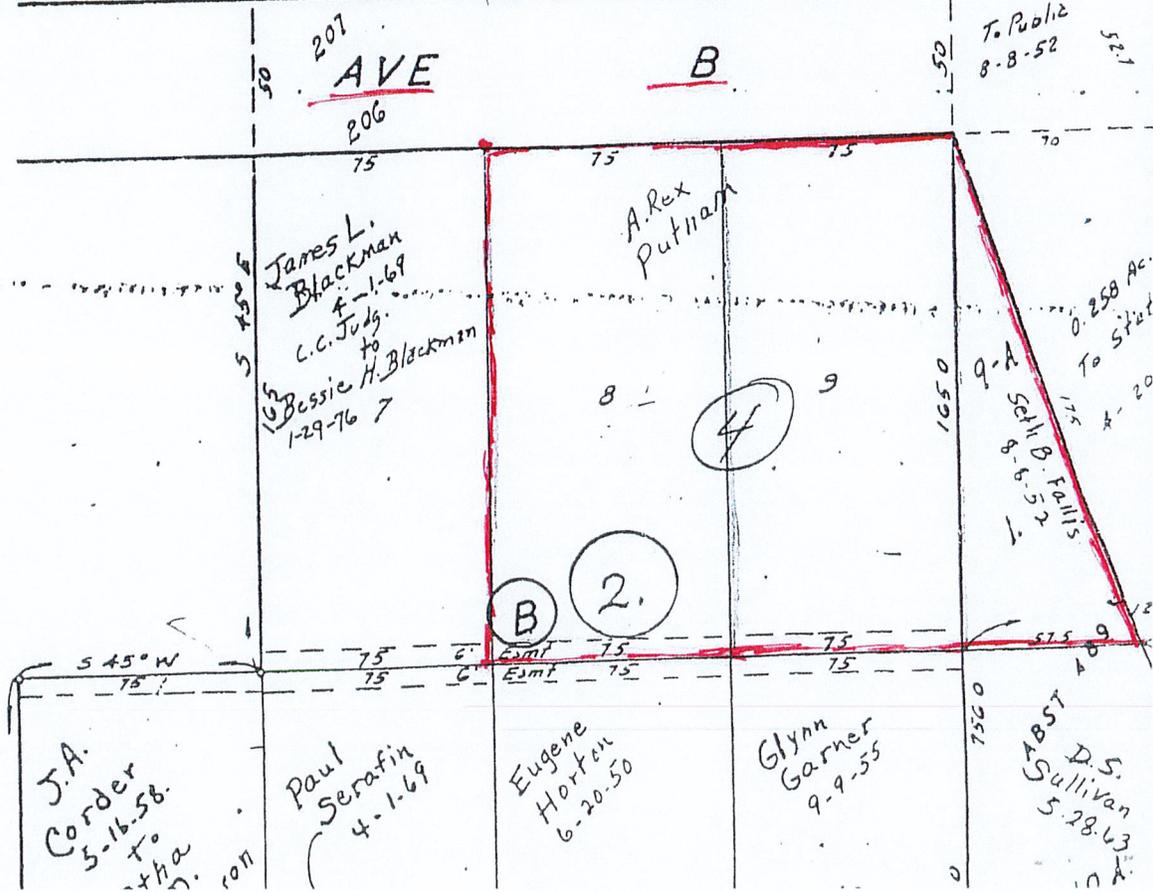


ESTATES TO SEAGOVILLE

207  
AVE  
206

B

(B)





June 22, 2018

COMMUNITY DEVELOPMENT  
702 NORTH HIGHWAY 175  
SEAGOVILLE, TX 75159  
PHONE: (972) 287-2050

via email: [notices@dailycommercialrecord.com](mailto:notices@dailycommercialrecord.com)  
Daily Commercial Record  
706 Main Street  
Dallas, Texas 75202

Please publish the legal notice below in the June 25, 2018 issue of your newspaper. Please send the affidavit of publication to the ATTN: Jennifer Bonner at the address above. If you need to contact Jennifer, her office direct number is (972) 287-6833 and her email is [jbonner@seagoville.us](mailto:jbonner@seagoville.us) Jennifer's normal office hours are Monday through Friday from 8:00 AM to 5:00 PM.



**NOTICE OF PUBLIC HEARINGS  
SEAGOVILLE PLANNING & ZONING COMMISSION AND CITY COUNCIL  
ZONING CASE Z2018-12**

A public hearing will be held by the Seagoville Planning and Zoning Commission on Tuesday, July 10, 2018, at 6:30 PM in the City Council Chambers of the Seagoville City Hall building at 702 North U.S. Highway 175; Seagoville, TX 75159 to consider changing the current zoning on approximately 0.7-acres being all of Lots 8, 9, and part of Lot 9A of Shady Grove Estates Third Inst. Addition (commonly known as 208, 210 and 212 Avenue B) from the R-5, Residential Single Family, zoning district to the C, Commercial zoning district.

A public hearing will also be held by the Seagoville City Council on Monday, August 6, 2018, at 6:30 PM in the City Council Chambers of the Seagoville City Hall building at 702 North U.S. Highway 175; Seagoville, TX 75159 to consider the recommendation from the Planning and Zoning Commission on this request.

All individuals may appear at the public hearings to state their opinions or may send a written notice prior to 4:30 PM on the day of each public hearing to Jr. Planner Jennifer Bonner at 702 North U.S. Highway 175; Seagoville, TX 75159.

CITY OF SEAGOVILLE  
Kandi Jackson  
City Secretary

Jennifer Bonner  
Jr. Planner



COMMUNITY DEVELOPMENT  
702 NORTH HIGHWAY 175  
SEAGOVILLE, TX 75159  
PHONE: (972) 287-2050

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As an adjoining property owner, this is the first of 3 opportunities to voice your opinion about this project for the record. The second and third opportunities will be at each of the public hearings listed above.

*Please indicate your opinion in this matter by checking the appropriate box below.  
Please provide any additional comments that you might have in the provided space.  
Please also sign and complete the name and address portion below.*

I am in favor of  against  Zoning Request Z2018-12 as it is described herein.

Additional Comments (attach additional sheets as necessary): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature(s): \_\_\_\_\_

Printed Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

City, State & Zip code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**Property Owners List  
Rezoning of 208, 210, and 212 Avenue B**

Mailed out a total of 17 certified letters on Tuesday, June 26, 2018, before 5:00 PM

Subject or adjoiner?	Site Address	DCAD Account	Owner	Mailing Address 1	Address 2	City	State	Zip
Subject	208 Avenue B	500-475-000-200-80000	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Subject	210 Avenue B	500-475-000-200-90000	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Subject	212 Avenue B	500-475-000-200-90100	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Adjoiner	203 Avenue B	500-485-000-101-40000	Michael A. & Sally E. Roberts	806 North Kaufman Street		Seagoville	TX	75159-2934
Adjoiner	205 Avenue B	500-485-000-101-50000	Gary L. & Yvonne P. Carrier	205 Avenue B		Seagoville	TX	75159-2905
Adjoiner	207 Avenue B	500-485-000-101-60000	David K. & Marva R. Adkins	7910 County Road 3700		Murchison	TX	75778-2910
Subject	209 Avenue B	500-485-000-101-70000	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Subject	211 Avenue B	500-485-000-101-80000	Jack H. Wilson	204 East Farmers Road		Seagoville	TX	75159-3010
Adjoiner	202 Avenue B	500-475-000-200-50000	Richard Wayne Timm	202 Avenue B		Seagoville	TX	75159-2906
Adjoiner	204 Avenue B	500-475-000-200-60000	Priscilla Duncan	204 Avenue B		Seagoville	TX	75159-2906
Adjoiner	206 Avenue B	500-475-000-200-70000	Javier Gaona	206 Avenue B		Seagoville	TX	75159-2906
Adjoiner	207 Avenue C	500-475-000-201-40000	Estate of Floyd D. Grimes	c/o Mary Grimes	207 Avenue C	Seagoville	TX	75159-2909
Adjoiner	209 Avenue C	500-475-000-201-30000	Max W. Noel	209 Avenue C		Seagoville	TX	75159-2909
Adjoiner	211 Avenue C	500-475-000-201-20000	Resident	211 Avenue C		Seagoville	TX	75159-2909
Adjoiner	213 Avenue C	500-475-000-201-10000	Gilberto A. Rodriguez & Lady Diana B. Jimenez	213 Avenue C		Seagoville	TX	75159-2909
Adjoiner	301 Avenue C	500-475-000-201-00000	Martin, Ricky C. & Donna E.	301 Avenue C		Seagoville	TX	75159-2911
Adjoiner	301 Avenue C	500-475-000-201-00100	Davis, Patricia	P. O. Box 870245		Mesquite	TX	75187-0245
Adjoiner								

Exhibit 8

request. But he also understands that since the neighbors are here and have concerns since there is no proposed specific plan, he thinks we need to figure out what is going to go in at this location to help the neighbors feel better about the zoning change. Chairman Dupuis asked Commissioner Sudduth if he had any comments and he stated that he did not. Vice Chair Englert asked Commissioner Sanders if his suggestion was to delay a zoning approval until the Commission knew what was proposed to go on the site. Commissioner Sanders replied that he felt that this is what the citizens were asking for.

The Chair said that everyone on the commission except him had had their chance to speak, but as a resident of the neighborhood, he needed to now excuse himself from the room so that a decision could be made. Vice Chair Englert took over the meeting and asked for a motion from the Commission. Commissioner Sudduth moved to approved the request as submitted. Commissioner Sherman seconded the motion. A vote was cast by the raising of hands. Two (2) commissioners voted in favor (Sudduth and Sherman) of recommending approval and two (2) commissioners voted against the motion (Sanders and Englert) which resulted in a tie vote. As only four (4) commissioners were present during the vote, the resulting recommendation of the Planning and Zoning Commission to City Council is neutral (neither for nor against). The Vice Chair asked staff what he needed to do with the results. Planner Bonner stated nothing, because City Council must work with the results of the vote. Chairman Dupuis was asked to return to the room by Official Barr and Vice-Chairman Englert provided him with the results of the vote. The Chairman announced the next piece of business.

- B. Zoning Request Z2018-12:** Chairman Dupuis opened the public hearing at 6:50 p.m. Junior Planner Jennifer Bonner began by stating that this item is across Avenue B from last item of business. This application is for three (3) lots. The subject lots are on the corner of Avenue B and Highway 175 frontage road and are currently rezoned R-5. The applicant is asking the zoning for both lots 8 and 9 and partial lot 9-A be changed to C, Commercial. Lot 9-A is partial because part of the lot was taken for Highway 175 right-of-way when it was built. Total area of the lots when combined is about 0.7-acres. These lots back-up to lots zoned Commercial but are being used as residences. This area also is expected to become Retail per the Land Use Plan, which shows four (4) lots on this side of Avenue B – but again the request is only for those three (3) lots owned by the applicant and closest to the highway.

Planner Bonner continued by stating these lots have the same type of review criteria answers – access to water and sewer, frontages and visibility on highway frontage road and Avenue B, abutting existing commercial zoning, no specific development plans at this time, etc. The lot farthest to the southwest – when looking at the zoning map – actually does not abut existing commercial property like the other two (2) lots, but are in the area identified on the Land Use Plan as becoming Retail. She stated she doesn't have addresses for the lots on Avenue C that back-up to these lots, but can clearly see on the 2009 Zoning Map that the first two (2) lots addressed on Avenue C side of this

block from the frontage road are zoned Commercial. She stated that she had made a mistake in the digital version of the packet by attaching the wrong Exhibits 2, 3, and 4 but had corrected them in the paper copies of the packets provided to the commissioners tonight. She ended her comments by summarizing the legal notifications and that only one (1) person other than the applicant (who is also an adjoining property owner) had submitted a written response and it was against the request.

Chairman Dupuis asked if Mr. Wilson had any comments that he wished to add. He replied no so the Chairman opened the floor for public comments. Mrs. Glenda Dupuis at 104 Avenue C rose to speak. She began by asking a question was that the last item just voted on was on the west side of Avenue B and about the gas station and convenience store on Hall. Chairman Dupuis replied that is correct. Mrs. Dupuis asked then this is the request for next door. The chairman responded that this request is for the opposite side of Avenue B from the last request. Mrs. Dupuis said that there is no Commercial on that side of Avenue B. The area is all residential. So what is zoned Commercial other than the nursery on the east side of Avenue C? Official Barr got up and went to the zoning map to show the members of the audience the commercial zoning. Planner Bonner explained that the first few lots on both sides of Avenue C are zoned Commercial but are being used residentially. Mrs. Dupuis asked how the zoning could have been allowed to happen. Planner Bonner said that she had recently found the 1978 zoning map and that it shows the lots she is asking about as being zoned commercially then so the zoning change was something that happened many years ago. Mrs. Dupuis asked if the City was planning on changing the use of those private houses into businesses. Official Barr responded that only the property owners can change the use of property. The City can only look at the zoning of the land and its development. Mrs. Dupuis wondered if the owners of the land zoned commercial even know that they are zoned that way. Planner Bonner said that this is the reason why she included a zoning map with the owners' notifications for the public hearings on tonight's agenda. Mrs. Dupuis said that she has lived in that area her entire life and never knew that there was commercial property in the neighborhood except for the nursery on the corner of Avenue C and the frontage road. She has a problem with there being commercial in the neighborhood. She wanted the addresses for the lots zoned commercial. Planner Bonner stated that she didn't have any addresses, but definitely the first two (2) lots on both sides of Avenue C are zoned Commercial. Mrs. Dupuis asked specifically about a pink brick house behind the nursery. Both Official Barr and Chairman Dupuis stated she only had limited time to mention her concerns. Mrs. Dupuis stated that she was very much against this request. Both Vice Chair Englert and Planner Bonner stated that all of the houses between the frontage road and Putnam Street are zoned Commercial in addition to the first two (2) lots on the west side of Avenue C from the frontage road towards Putnam. Mrs. Dupuis closed by saying she is against this request and will be going out into the neighborhood to bring everyone out to the City Council meeting. Chairman Dupuis asked if anyone else wished to speak.

Mr. John Martin approached the podium to speak. His mother has lived in this

neighborhood for quite a while. Regular citizens don't understand the paperwork. What does this mean for those that already live there? Official Barr said that the Commercial zoning allows certain types of uses. The property owner has to develop and use the property in a way that meets and fits into the Commercial zoning. Mr. Martin said so this is retail? Official Barr explained that the lots in question are currently zoned R-5, Residential Single Family. The request is to change that to Commercial, which would allow Local Retail and Commercial uses if the zoning change is approved. Mr. Martin doesn't really understand that. He wants to know if this is a residential neighborhood and has been for a long time, how can ...? And why does the City need more commercial? It already has plenty of little warehouses by Bruce Park and towards Malloy Bridge and nothing really looks all that good. Why are you wanting to put something in the middle of a neighborhood? Official Barr responded that tonight we are only looking at the zoning. The applicant has no particular use or plan in mind right now. Mr. Martin stated that if the applicant has no particular plan now, why do we need to change the zoning to Commercial? Shouldn't the voice of the people of the neighborhood be stronger than the one owner of the property. Official Barr stated that the use of the property is determined by the owner. And all he has done at this point is to request the zoning change. This commission and the City Council review the request and City Council makes the decision on whether to approve or not. Mr. Martin continued by asking then what happens to the residences and property that his parents own? What happens if the change is approved and a business moves into their backyard? It isn't like they bought the property with the business already there. He doesn't see how this could be allowed to happen to the residents. Official Barr stated that every city is going to have development. The zoning controls what uses are allowed in that location. Mr. Martin mentioned old downtown Seagoville and how everyone gave up on that location. Why can't development happen there? Don't try to move into a neighborhood where folks are trying to raise kids and grandkids. He stated this is his first time at a city meeting. He yielded floor to the next speaker.

Ms. Donna Martin at 301 Avenue C approached the podium to speak. She stated she has lived at this address for over 25 years. She has no idea when the property was zoned commercial. As far as she knew, it was a residential area when her and her husband moved in. If you are talking about her house – the second house off the frontage road along Avenue C – No, she doesn't want business in her backyard. She doesn't know how to go about getting her property zoned from commercial back to residential. She is totally against this request. She loves where she lives. It is home for her and where the grandkids come to visit. Neighborhood cook-outs and visits. No, there are plenty of places to go shopping in retail stores. Really upset. Against this request for commercial.

Chairman Dupuis asked if anyone else wished to speak. No one else approached the podium so he closed the public hearing at 7:03 p.m. He stated that members of the public are welcome to stay and observe, but are asked not to comment or otherwise disrupt the meeting. Since he lives in the neighborhood, he recused himself from the

room for the Commissioners' discussion which followed.

Vice-Chairman Englert asked Commissioner Lowell Sherman first for his thoughts. Commissioner Sherman asked about City Council role for clarification on the existing homeowners. He was trying to verify that all existing homeowners continue to use the property are they are now unless they choose to let the requested change affect them. Official Barr reminded the audience that they cannot comment when someone there started to speak. He then confirmed for Commissioner Sherman that the City Council has final say in this matter. Vice-Chairman Englert explained that P&Z is only making a recommendation to the Council. The recommendation may be for or against the request - or it could be a tie vote. But there is no effect on the zoning of the adjoining owners. Commissioner Sherman said there is no effect on the existing zoning of the adjoining owners. The Vice-Chair said that what is being looked at is just the zoning on the three (3) lots in the request. There is nothing we can do tonight on the other lots zoned Commercial, but that are being used residentially.

Vice Chair Englert asked for comments from Commissioner Sanders. Commissioner Sanders said he would need to hold the same position. Commissioner Sudduth asked Official Barr if when development comes in if the P&Z would be able to control the direction of exiting vehicles to only the service road. Official Barr stated that he didn't think there was anything in the codes that could control the direction of exiting traffic to only the frontage road. Commissioner Sudduth confirm that screening fence and other limitations would still be required between the commercial and residential properties when development occurs. Official Barr stated that yes, a 6-foot screening fence or wall would be required between residential and retail or commercial property. With no other commissioner comments, the vice-chair asked for a motion. With no response, he moved to deny the request to change the zoning from R-5 to C, Commercial zoning district. Commissioner Sanders seconded the motion. A vote was cast by the raising of hands. Two (2) commissioners voted in favor (Sanders and Englert) of recommending denial and two (2) commissioners voted against the motion (Sudduth and Sherman) which resulted in a tie vote. Commissioner Sudduth stated he voted the way he did because no person is ever going to build a house for a residence on the subject property so the land becomes vacant forever if not rezoned to retail or commercial. As only four (4) commissioners were present during the vote, the resulting recommendation of the Planning and Zoning Commission to City Council is neutral (neither for nor against). Chairman Dupuis was asked to return to the room by Official Barr and Vice-Chairman Englert provided him with the results of the vote. Planner Bonner stated to the members of the public still in the room, that if they received one of the letters she sent and has an opinion one way or another, please return the letter to her. She will be updating the response information before she forwards it to City Council's consideration. After a certain number of responses from the adjoining notified owners, City Council's decision is controlled by the public per state law. If they want their voice heard, they really need to respond to the letter sent. Other people outside the notification area can write their own letter to City Council as well as speak at that meeting, but the control is limited to those

in the notification area. The Chairman then announced the next piece of business.

- C. **Zoning Request Z2018-14:** Chairman Dupuis opened the item at 7:10 p.m. Junior Planner Jennifer Bonner began the Staff Report by stating that she would go a little more in-depth with this item since it has been a while since we have seen this type of project for review. There will be a few extra steps to get through this particular review. She has three (3) motions that will need to be addressed to each of the items that are being reviewed tonight. This item will be represented tonight by Harry Chapman of Noble RE, LLC and he also here on behalf of Franz Architecture for the shell of a building which is planned to house a Starbucks restaurant and drive-thru. Only the building shell and exterior items are being reviewed tonight in their request the approval of the site plan, building elevations, and the landscape and irrigation plan for the proposed structure. This lot is currently in the review process of platting for a property line adjustment between this lot and the lot to the east. The site is located between South Crestview Drive and the westbound service/frontage road for U.S. Highway 175 and between the Walgreens Pharmacy and the Tractor Supply businesses. The building will face U.S. Highway 175 so will have a site address of 140 South U.S. Highway 175. The proposed elevations in the submittal and tonight's packet match one of the company's standard façades.

Planner Bonner continued by stating that this site is in an area zoned PD-LR, Planned Development with Local Retail base zoning. The original PD language was adopted in September 1986 and requires 70% masonry of non-glassed areas. A copy of the proposed site plans, landscape and irrigation plans, and elevations/facades for the planned structure are attached in Exhibit 6. As mentioned a moment ago, the lot is going through a property line adjustment, but a revised drawing has not been submitted yet to address the staff's comments on that plat. What is in the packet on 11" by 17" paper in Exhibit 7 shows the recorded plat for Seagoville Corners III Addition showing the current lot shape and Exhibit 8 has the draft version of the property line adjustment showing the reduction of this lot to only the amount of area needed for the Starbucks. Staff recommends approving the site and concept plans with conditions – Planner Bonner will go over in more detail as she goes on - to make changes to fire lane turning radii and other site adjustments (primarily moving parking lot and other improvements out of easements). Staff recommends approving the site's landscaping and irrigation plans with condition to match changes mentioned to the site and concept plans. Staff recommends approving the building's shell and elevations because they are meeting the required 70% masonry exterior materials of the PD.

Moving on to page 2 of the Staff Report, the 2002 Future Land Use Plan and Map shows this area to be Retail. The lot will have access to both South Crestview Drive and the westbound service road of U.S. Highway 175. Crestview Drive is a fairly new street. The 2009 Master Thoroughfare Plan and Map calls for Crestview Drive to 80-feet of right-of-way, but when the road was built in the last couple of years, the agreement with Community Development at that time was build the street with 60-feet of right-of-way

## ***Regular Session Agenda Item: 10***

**MEETING DATE: August 6, 2018**

### **ITEM DESCRIPTION**

Discuss and consider an Ordinance of the City of Seagoville, Dallas and Kaufman Counties, Texas, amending the Comprehensive Zoning Ordinance and Map, as heretofore amended, by granting a change in zoning from R-5 (Residential-5 Single Family) to C (Commercial) on three (3) tracts of land being a combined total of approximately 0.7-acres of real property described as Lot 8, Lot 9, and Lot 9A, Block B, of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 208, 210 and 212 Avenue B, Seagoville, Dallas County, Texas, as described and depicted in Exhibit "A", which is attached hereto and incorporated herein; providing for the repealing of all Ordinances in conflict; providing for a repealing clause; providing for a savings clause; providing for a severability clause; providing for a penalty of fine not to exceed Two Thousand Dollars (\$2,000.00) for each offense; and providing for an effective date.

### **BACKGROUND OF ISSUE:**

The applicants are requesting that the three (3) subject parcels be rezoned to the C, Commercial, zoning district. The request agrees with the 2002 Comprehensive Plan (Chapter 4 on Thoroughfare Plan, which was updated in 2009, and Chapter 5 on Future Land Use). The parcels are currently vacant and have been for several years. There are no plans to develop these lots at this time.

The three lots abut one another. Part of Lot 9-A was taken for highway right-of-way so the balance of that lot has frontage on both the eastbound service road as well as Avenue B. Lots 9 and 9-A both adjoin lands to the east (and addressed on Avenue C) which have been zoned LR, Local Retail, or C, Commercial, since prior to 1978 but that are actually being used as residences. Lot 8 abuts the R-5, Residential Single Family, zoning district along its entire perimeter.

The existing zoning, land uses, and relevant portions of the City's comprehensive plan are each referenced in the attached staff report.

### **FINANCIAL IMPACT:**

No city funds will be used for this project.

### **PLANNING AND ZONING COMMISSION RECOMMENDATION:**

Prior to the Planning and Zoning Commission meeting on Tuesday, July 10, 2018, no (zero) property owners responded in writing or verbally for or against this request. No (zero) letters had been returned as undeliverable by the U.S. Postal Service. Three (3) property owners spoke against the request at the Planning and Zoning Commission meeting. Since the meeting, two (2) additional property owners have responded in writing against the request and no (zero) property owners have responded in favor of the request. No (zero) additional letters have been returned as undeliverable by the U.S. Postal Service.

The Planning and Zoning Commission voted two (2) to two (2) in favor of recommending the **DENIAL** of the request to change the current zoning on about 0.7-acres at 208, 210 and 212 Avenue B (also known as all of Lots 8 and 9 & part of Lot 9-A Block B of Shady Grove Estates 3<sup>rd</sup> Inst. Addition) from the R-5, Residential Single Family, zoning district to the C, commercial, zoning district.

Staff is in support of this application. We recognize that eventually all properties along U.S. Highway 175 are going to be zoned retail, commercial or industrial. In this area, the most likely zoning will be Local Retail or Commercial. Because two (2) of these three (3) lots already abut existing commercial property, changing the zoning to Commercial makes the most sense.

**EXHIBITS:** Each of the following items are designed for printing on letter-sized paper unless otherwise listed.

1. Ordinance and Exhibit A (4 pages)

**CITY OF SEAGOVILLE, TEXAS**

**ORDINANCE NO. \_\_\_\_-2018**

**AN ORDINANCE OF THE CITY OF SEAGOVILLE, DALLAS AND KAUFMAN COUNTIES, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP, AS HERETOFORE AMENDED, BY GRANTING A CHANGE IN ZONING FROM R-5 (RESIDENTIAL-5 SINGLE FAMILY) TO C (COMMERCIAL) ON THREE (3) TRACTS OF LAND BEING A COMBINED TOTAL OF APPROXIMATELY 0.7-ACRES OF REAL PROPERTY DESCRIBED AS LOT 8, LOT 9 AND LOT 9A, BLOCK B, OF SHADY GROVE ESTATES 3<sup>RD</sup> INST. ADDITION, COMMONLY REFERRED TO AS 208, 210 AND 212 AVENUE B, SEAGOVILLE, DALLAS COUNTY, TEXAS, AS DESCRIBED AND DEPICTED IN EXHIBIT “A”, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN; PROVIDING FOR THE REPEALING OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

Whereas, the Planning and Zoning Commission of the City of Seagoville and the City Council of the City of Seagoville, in compliance with the laws of the State of Texas with reference to the granting of zoning classifications and changes, have given requisite notices by publication and otherwise, and have held due public hearings and afforded a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, and the City Council of the City of Seagoville is of the opinion and finds that a zoning change should be granted, and that the Comprehensive Zoning Ordinance and Map should be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:**

**SECTION 1:** That the Comprehensive Zoning Ordinance and Map of the City of Seagoville, Texas, is heretofore amended, be and the same is hereby amended by granting a change in zoning from R-5 (Residential Single Family-5) to C (Commercial) on three (3) tracts of land being a combined total of approximately 0.7-acres of real property described as Lot 8, Lot 9 and Lot 9A, Block B, of Shady Grove Estates 3<sup>rd</sup> Inst. Addition, commonly referred to as 208, 210 and 212 Avenue B, Seagoville, Dallas County, Texas, as described and depicted in Exhibit “A,” which is attached hereto and incorporated herein.

**SECTION 2:** That the land shall be used only for the purposes set out in accordance with the City of Seagoville’s Zoning Ordinance and all other ordinances, codes, and policies of the City of Seagoville, as amended.

**SECTION 3:** That all provisions of the Ordinances of the City of Seagoville, Texas, in conflict with the provisions of this ordinance, as amended, be hereby repealed and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 4:** That should any sentence, paragraph, subdivision, clause, phrase, or section of this ordinance or the Comprehensive Zoning Ordinance, as amended hereby, be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance or the Comprehensive Zoning Ordinance as a whole, or any part or provision thereof, other than the part declared to be invalid, illegal, or unconstitutional.

**SECTION 5:** That any person, firm, or corporation violating, disobeying, neglecting, refusing to comply with, or resisting the enforcement of any of the provisions or terms of this ordinance or the Comprehensive Zoning Ordinance, as amended hereby, shall be subject to the same penalty of two thousand dollars (\$2,000.00) for each offense as provided for in the Comprehensive Zoning Ordinance of the City of Seagoville, as heretofore amended. Each and every day such a violation continues or is allowed to exist shall constitute a separate offense.

**SECTION 6:** That this ordinance shall take effect immediately from and after its passage and the publication of its caption, as the law and charter in such cases provide.

**DULY PASSED** by the City Council of the City of Seagoville, Texas this 6<sup>th</sup> day of August, 2018.

**APPROVED:**

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Dennis, K. Childress, Mayor

**ATTEST:**

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Kandi Jackson, City Secretary

**APPROVED AS TO FORM:**

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Robert E Hager, City Attorney  
(/cdb 07/30/2018)

## **Exhibit A**

Tract I – Being Lot 8, Block B, of Shady Grove Estates Third Installment, an Addition to the City of Seagoville, Dallas County, Texas, and according to the map or plat thereof recorded in Volume 12 on Page 235 of the Plat Records of Dallas County, Texas, and commonly known as 208 Avenue B, Seagoville, Dallas County, Texas.

Tract II - Being Lot 9, Block B, of Shady Grove Estates Third Installment, an Addition to the City of Seagoville, Dallas County, Texas, and according to the map or plat thereof recorded in Volume 12 on Page 235 of the Plat Records of Dallas County, Texas, and commonly known as 210 Avenue B, Seagoville, Dallas County, Texas.

Tract III – Being Lot 9-A, described by metes and bounds as beginning at the NW corner of Lot 9, Block B Shady Grove Estates Addition, 3<sup>rd</sup> Inst. according to the plat in Volume 12 on Page 235 of the Plat Records of Dallas County, Texas; thence 174 feet in a southeasterly direction along the southwest ROW of U.S. Highway 175 to a point in the NW line of the D. S. Sullivan Tract; thence 57.5 feet, more or less, in a southwesterly direction to the east or SE corner of the hereinabove mentioned Lot 9 for a corner; thence 165 feet, more or less, along the NE line of said Lot 9 to the Point of Beginning, and being more commonly known as 212 Avenue B, Seagoville, Dallas County, Texas.



# ***Regular Session Agenda Item: 11***

**Meeting Date: August 6, 2018**

## **ITEM DESCRIPTION**

Receive Councilmember Reports/ Items of Community Interest

## **BACKGROUND OF ISSUE:**

Section 551.0415 of the Texas Government Code authorizes a quorum of the governing body of a municipality or county to receive reports about items of community interest during a meeting without having given notice of the subject of the report if no action is taken. Section 551.0415 defines an “item of community interest” to include:

- (1) expressions of thanks, congratulations, or condolence;
- (2) information regarding holiday schedules;
- (3) an honorary or salutory recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in status of a person’s public office or public employment is not an honorary or salutory recognition for purposes of this subdivision;
- (4) a reminder about an upcoming event organized or sponsored by the governing body;
- (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

## **FINANCIAL IMPACT:**

N/A

## **EXHIBITS**

N/A

## ***Regular Session Agenda Item: 12***

**Meeting Date: August 6, 2018**

**ITEM DESCRIPTION:**

Future Agenda Items

**BACKGROUND OF ISSUE:**

Council provides direction to staff regarding future agenda items. These items will not be discussed and no action will be taken at this meeting.

**FINANCIAL IMPACT:**

N/A

**EXHIBITS**

N/A

## *Executive Session Agenda Item: 13*

**Meeting Date: August 6, 2018**

**ITEM DESCRIPTION:**

Recess into Executive Session in compliance with Texas Government Code:

§ 551.074 Personnel, to deliberate the appointment, employment, evaluation, reassignment, duties discipline, or dismissal of a public officer or employee to wit: Economic Development Director

**BACKGROUND OF ISSUE:**

N/A

**FINANCIAL IMPACT:**

N/A

**EXHIBITS**

N/A

## *Executive Session Agenda Item: 14*

**Meeting Date:** August 6, 2018

**ITEM DESCRIPTION:**

Reconvene into Regular Session

Council will reconvene into open session, and take action, if any, on matters discussed in Executive Session.

**BACKGROUND OF ISSUE:**

N/A

**FINANCIAL IMPACT:**

N/A

**EXHIBITS**

N/A