

ORDINANCE 23-039

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF THE PROPERTY BEING APPROXIMATELY 21.16 ACRES OUT OF THE WILLIAM H. COLE SURVEY, ABSTRACT NO. 200, FROM "A" (AGRICULTURAL DISTRICT) TO "B-2" (LOCAL RETAIL DISTRICT) WITH A CONDITIONAL USE PERMIT (CUP) TO ALLOW FOR A BATTERY STORAGE SITE AS A PERMITTED USE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 211 of the Texas Local Government Code and Section 31-39 of the City of Killeen Code of Ordinances, the City Council, upon application, may amend the City of Killeen Zoning Ordinance following a recommendation by the Planning and Zoning Commission and a public hearing;

WHEREAS, Westwood Professional Services, on behalf of McClean Commercial, LTD, presented to the City of Killeen, a request for an amendment to the City of Killeen Zoning Ordinance by changing the classification of the property being approximately 21.16 acres out of the William H. Cole Survey, Abstract No. 200, from "A" (Agricultural District) to "B-2" (Local Retail District) with a Conditional Use Permit (CUP) to allow for a battery storage site as a permitted use;

WHEREAS, the Planning and Zoning Commission of the City of Killeen, following a public hearing on April 3, 2023, duly recommended approval of the application for amendment with the condition that the applicant provide training in accordance with the needs of the Killeen Fire Department;

WHEREAS, due notice of the filing of said request and the date of hearing thereon was given as required by law, and hearing on said request was set for 5:00 P.M., on the 9th day of May 2023, at the City Hall, City of Killeen; and

WHEREAS, the City Council at said hearing duly considered said request, the action of the Planning and Zoning Commission, and the evidence in support thereof, and the City Council being of the majority opinion that the applicant's zoning request should be approved as recommended by the Planning and Zoning Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:

SECTION I. That the zoning classification of the property being approximately 21.16 acres out of the William H. Cole Survey, Abstract No. 200, from "A" (Agricultural District) to "B-2" (Local Retail District) with a Conditional Use Permit (CUP) to allow for a battery storage site as a permitted use, said request having been duly recommended for approval of the applicant's request for "B-2" (Local Retail District) with a Conditional Use Permit (CUP) to allow for a battery storage site as a permitted use, as shown on the site plan exhibit submitted by the applicant dated March 15, 2023, with the condition that the applicant provide training in accordance with the needs of the Killeen Fire Department, for the property locally addressed as 8390 Featherline Road, Killeen, Texas.

SECTION II. That should any section or part of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the validity, force, or effect of any other section or parts of this ordinance.

SECTION III. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION IV. That this ordinance shall take effect immediately upon passage of the ordinance.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 9th day of May 2023, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:


Debbie Nash-King, MAYOR

ATTEST:


Laura J. Calcote, CITY SECRETARY

APPROVED AS TO FORM


Holli C. Clements, CITY ATTORNEY
Case #23-11



CITY COUNCIL MEMORANDUM FOR ORDINANCE

DATE: May 2, 2023.
TO: Kent Cagle, City Manager
FROM: Edwin Revell, Executive Director of Development Services
SUBJECT: Zoning Case #23-11: "A" (Agricultural District) to "B-2" (Local Retail District) with a Conditional Use Permit (CUP)

BACKGROUND AND FINDINGS:

Property Information:

Property Owner: McClean Commercial, LTD
Agent: Westwood Professional Services
Current Zoning: "A" (Agricultural District)
Proposed Zoning: "B-2" (Local Retail District) with a Conditional Use Permit (CUP) to allow for a battery storage site as a permitted use
Current FLUM Designation: 'Residential Mix'

Summary of Request:

Westwood Professional Services, on behalf of McClean Commercial, LTD, has submitted a request to rezone approximately 21.16 acres out of the William H. Cole Survey, Abstract No. 200, from "A" (Agricultural District) to "B-2" (Local Retail District) with a Conditional Use Permit (CUP) to allow for a battery storage site as a permitted use.

If approved, the applicant intends to develop a battery storage site on the property. The applicant states that the proposed battery storage will create better power reliability for the residents of the City of Killeen during times of power instability by preventing brownout and blackout events and providing general stability to the local grid. The battery energy storage facility will also provide support to the neighboring Oncor substation to limit transmission congestion and increase operating reliability.

Killeen Code of Ordinances Chapter 31 Compliance:

In accordance with Killeen Code of Ordinances Sec. 31-291, electric utility substations are permitted by-right in the "B-2" (Local Retail) district.

Sec. 31-441(a) states, "the purpose of the conditional use permit process is to identify those land uses that may be appropriate within a zoning district but, due to their location, function, or operation, could have a harmful impact on adjacent properties or the surrounding area, and to

provide a procedure whereby such uses may be permitted by further restricting or conditioning the same so as to mitigate or eliminate such potential adverse impacts. The conditional use permit runs with the land, regardless of ownership, until termination of the permit.”

Given the proximity of the site to the existing substation, staff finds that the proposed battery storage site is appropriate in this location, with the condition that adequate screening be provided between the proposed site and the adjacent undeveloped residential properties to the north and west.

Zoning/Plat Case History:

The subject property was annexed into the city limits on April 26, 2005, via Ordinance No. 05-31 and was subsequently rezoned “A” (Agricultural District). The subject property is currently unplatted, however, the applicant has submitted a plat application (Plat case #23-018P Tract A Goldeneye Addition).

Character of the Area:

North: Vacant lot zoned “A” (Agricultural District)

South: Existing electric substation zoned “B-2” (Local Retail District) and vacant lot zoned “R-1” (Single-Family Residential District)

West: Vacant lot zoned “A” (Agricultural District)

East: Existing single-family residential subdivision (Yowell Ranch Phase 2) zoned Planned Unit Development (PUD)

Future Land Use Map Analysis:

This property is located within ‘Controlled Growth’ area on the Growth Sector Map and designated as ‘Residential Mix’ on the Future Land Use Map (FLUM) of the 2022 Comprehensive Plan.

The ‘Residential Mix’ place type creates neighborhoods built with a traditional walkable block/street grid network that allows a flexible mix of residential building typologies. Commercial uses need to be context sensitive.

The ‘Controlled Growth’ sector includes areas in the city limits and approved Municipal Utility Districts (MUDs) that have access to city infrastructure in close proximity. Developments proposed in this sector are evaluated for adherence to the Big Ideas and Recommendations of the plan, particularly those related to housing and neighborhood options and improve the fiscal health and sustainability of Killeen.

The request is consistent with the following Big Ideas of the 2022 Comprehensive Plan:

- Resource stewardship and fiscally responsible growth ensure a more prosperous community for the long haul.

The Comprehensive Plan calls for managing development of land and capital investments (such as streets, utilities, and drainage) to ensure a more prosperous community for the long haul

and similar to the need for these common resident services listed here, staff finds that the request is necessary to keep up with demands for electric utility in the area.

If approved, the applicant intends to develop a battery storage site on the property and explains that, with the increasing population growth and development in the Killeen area, this system will support Oncor's ability to meet electricity demand, while also stabilizing the overall grid via energy regulation. The applicant has proposed to screen the facility and provide landscaping along the frontage and between the adjacent properties, as shown on the site plan exhibit, in order to protect the character of the area.

Neighborhood Analysis:

Land Use:

- This property is located within Killeen Development Zone #8.
- Current land use mix within this area comprises approximately:
 - 1% non-residential
 - 99% residential

Zoning district breakdown in DZ8:

- 15% agricultural,
- 15% non-residential zoning districts,
- 41% residential zoning districts,
- 29% Special Districts, SUP and PUD

'Residential Mix' promotes:

Use Mix: up to 25% non-residential, 95% residential uses

Primary Uses: Single-Family, Accessory Dwelling Unit (ADU), Townhouses, Smallplex (2-4 Units), Live-work

Secondary Uses: Small Office, Small Retail, Restaurant, Accessory Commercial Unit (ACU), School, House of Worship

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: Water, sanitary sewer, and drainage utility service is located within the City of Killeen municipal utility service area and available to the subject tract.

Transportation and Thoroughfare Plan:

Ingress and egress to the property is from Featherline Road, which is classified as a 110-foot wide Minor Arterial on the City of Killeen Thoroughfare Plan.

Environmental Assessment:

The property is not within any FEMA regulatory Special Flood Hazard Area (SFHA). There are no other known wetland areas on or adjacent to the property as identified on the National Wetlands Inventory.

Public Notification:

Staff notified sixty-three (63) surrounding property owners regarding this request. Of those property owners notified, forty-four (44) reside outside of the 200-foot notification boundary required by the State, but within the 400-foot notification boundary required by Council; and eleven (11) reside outside of Killeen. As of date of this staff report, staff has received one (1) written response in support regarding the request.

Staff Findings:

Please see the Future Land Use Map Analysis and Neighborhood Analysis sections.

THE ALTERNATIVES CONSIDERED:

The City Council may:

- Disapprove the applicant’s CUP request;
- Approve the applicant’s request with additional and/or amended conditions; or
- Approve the applicant’s CUP as presented.

Which alternative is recommended? Why?

Staff recommends approval of the applicant’s request to rezone the subject property from “A” (Agricultural) to “B-2” (Local Retail District) with a Conditional Use Permit (CUP) to allow for a battery storage site as shown on the site plan exhibit submitted by the applicant dated March 15, 2023.

Staff finds the request consistent with the Big Ideas of the 2022 Comprehensive Plan as indicated in the Comprehensive Plan Analysis. Additionally, staff finds the request is an essential infrastructure improvement project that may help ensure power reliability for the residents in Killeen. The proposed landscape screening will provide an adequate buffer between the proposed use and the future residential development.

CONFORMITY TO CITY POLICY:

This zoning request conforms to the City’s policy and procedures, as detailed in Chapter 31 of the Killeen Code of Ordinances.

RECOMMENDATION:

At their regular meeting on April 3, 2023, the Planning and Zoning Commission recommended approval the applicant’s request - with the condition that the applicant provide training in accordance with the needs of the Killeen Fire Department - by a vote of 6 to 1 with Commissioner Jones in opposition.

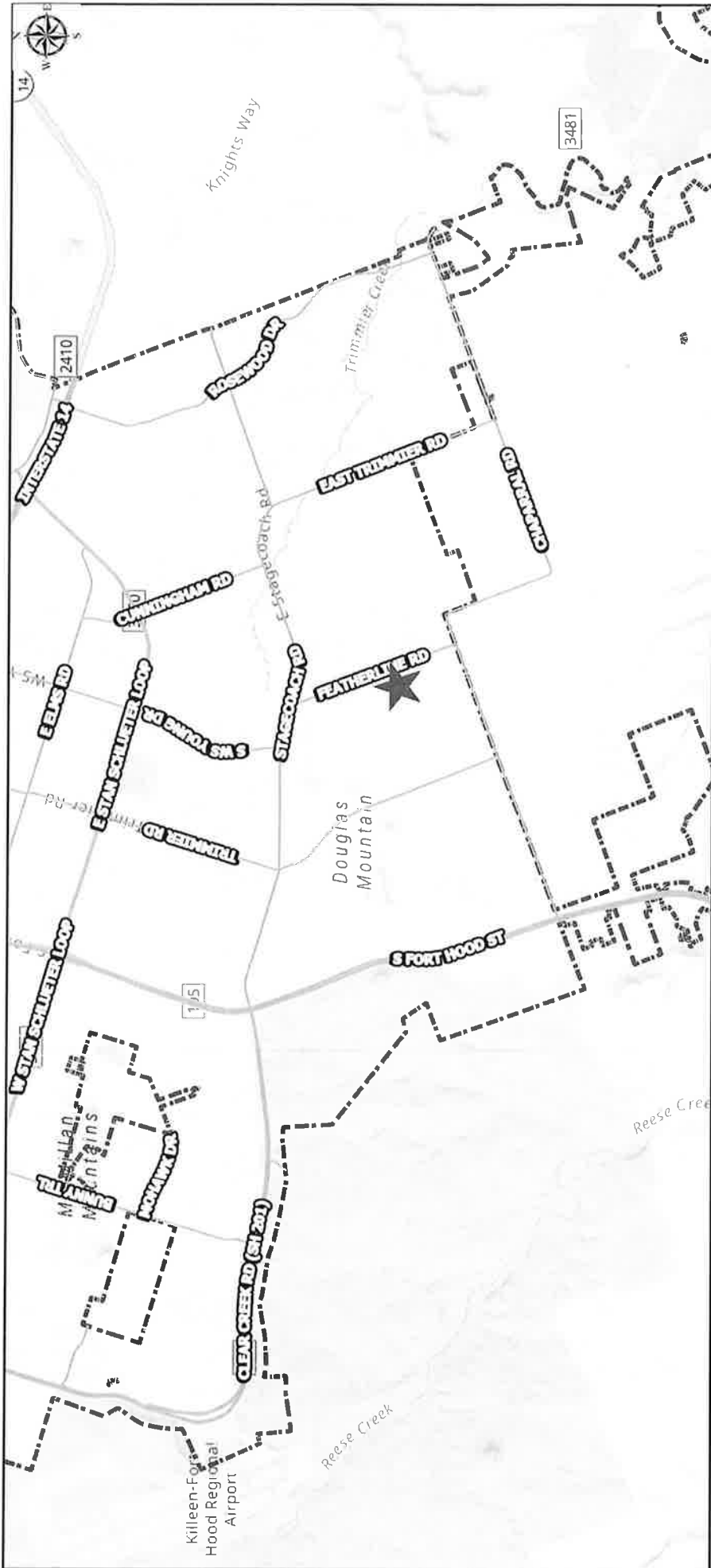
Commissioner Jones stated that he believes the proposed development is a waste of money because it does not provide enough electricity to accommodate Killeen.

DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Planning and Legal staff.

ATTACHED SUPPORTING DOCUMENTS:

Maps
Site Photos
Exhibit
Site Plan
Response
Minutes
Ordinance
Considerations



LOCATION MAP
Council District: 3



Subject Property Legal Description: APPROX. 21.16 ACRES OUT OF A0200BC W H COLE, 2, ACRES 108.6

Zoning Case 2023-11

A TO B-2 w/ CUP

Legend

- Major Roads
- City Limits
- Zoning Case Location



AERIAL MAP

Council District: 3

0 265 530 Feet



Subject Property Legal Description: APPROX. 21.16 ACRES OUT OF A0200BC W H COLE, 2, ACRES 108.6

Zoning Case 2023-11

A TO B-2 w/ CUP

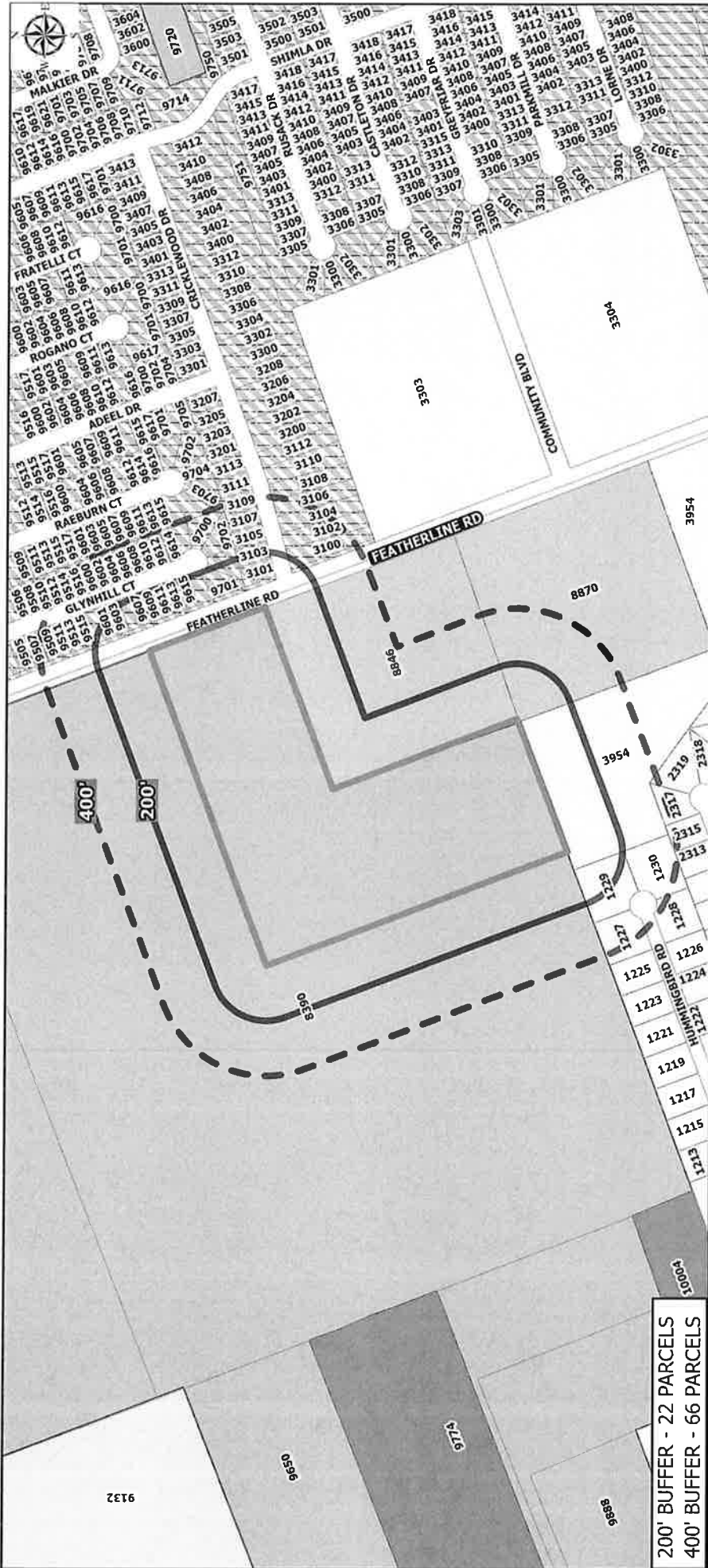
Legend

Citylimits



Zoning Case





NOTIFICATION MAP
 Council District: 3
 0 265 530 Feet

Subject Property Legal Description: APPROX. 21.16 ACRES OUT OF A0200BC W H COLE, 2, ACRES 108.6

Zoning Case 2023-11
A TO B-2 w/ CUP

Legend

Current Zoning

- A
- A-R1
- B-2
- B-3
- PUD
- R-1
- SR-1

200' BUFFER - 22 PARCELS
 400' BUFFER - 66 PARCELS

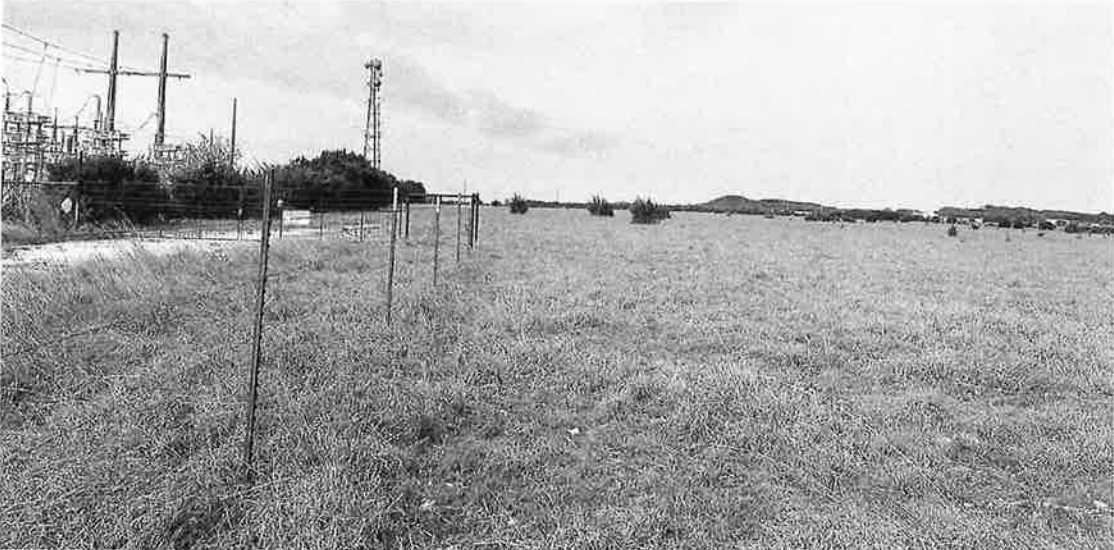
Subject Property Legal Description: APPROX. 21.16 ACRES OUT OF A0200BC W H COLE, 2, ACRES 108.6

SITE PHOTOS

Case #23-11: "A" to "B-2" w/ CUP



View of the subject property looking west:



View of the subject property looking northwest:

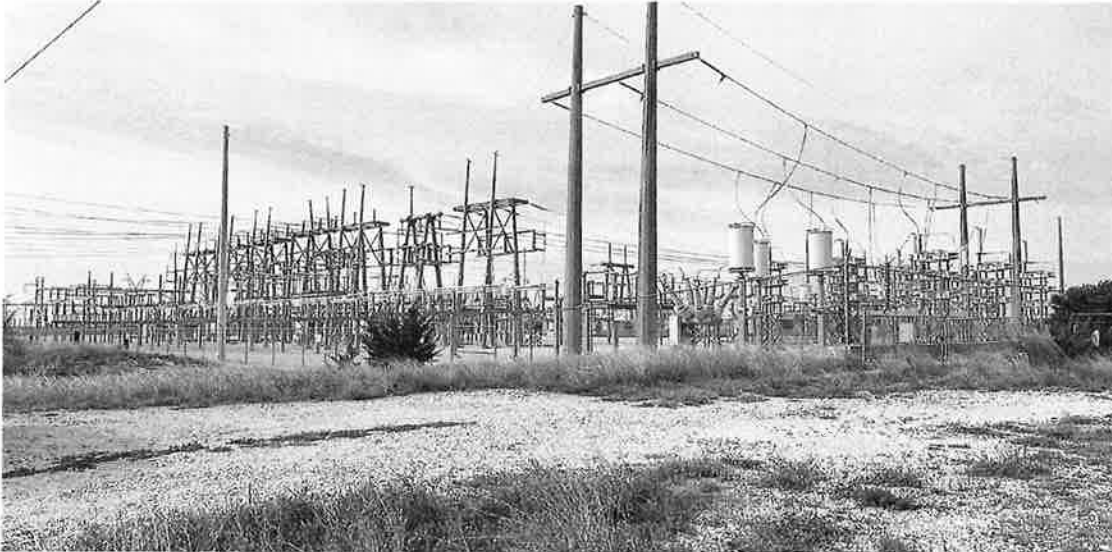


SITE PHOTOS

Case #23-11: "A" to "B-2" w/ CUP



View of the surrounding property to the south (existing electric substation):



View of the surrounding property to the east (existing Yowell Ranch Phase Two subdivision):





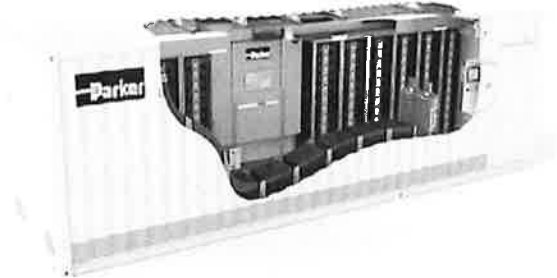
RELIABLE ENERGY FOR TEXAS

Seeking Land for Battery Energy Storage Facilities

ERCOT (Electric Reliability Council of Texas) supplies electricity to over 26 million Texans. That’s about 90% of our state! As we gradually increase our dependency on renewable resources, it becomes more difficult to continuously match supply with demand. There is an increasing need for flexible resources to maintain system reliability.



THE SOLUTION: Battery Energy Storage Systems



This is a set of specially developed batteries that store electricity. They can:

- Store/Redeploy Renewable Generation During Times of Need
- Support Local Grid Reliability
- Respond To Urgent Grid Conditions Almost Instantly
- Protect Us From Blackouts And Power Outages
- Help Ensure All Texan’s Electric Demands Are Met

Battery Energy Storage Systems are becoming widely used on global electric grids and have exhibited outstanding operating records.

Black Mountain Energy Storage is currently seeking to lease or purchase land to build battery energy storage facilities.

We are looking for 5-10 acre sites adjacent to existing electric transmission infrastructure that will comfortably accommodate a Battery Energy Storage facility. If you would like to participate, you can expect:



REVIEW

Participants will go through a 12-18 month review. A system operator will perform several electrical studies to determine if the existing network will accommodate the proposed facility.



ENVIRONMENT

A project developer will perform an environmental study to ensure that no adverse environmental impacts result from the installation or operation of the proposed facility.

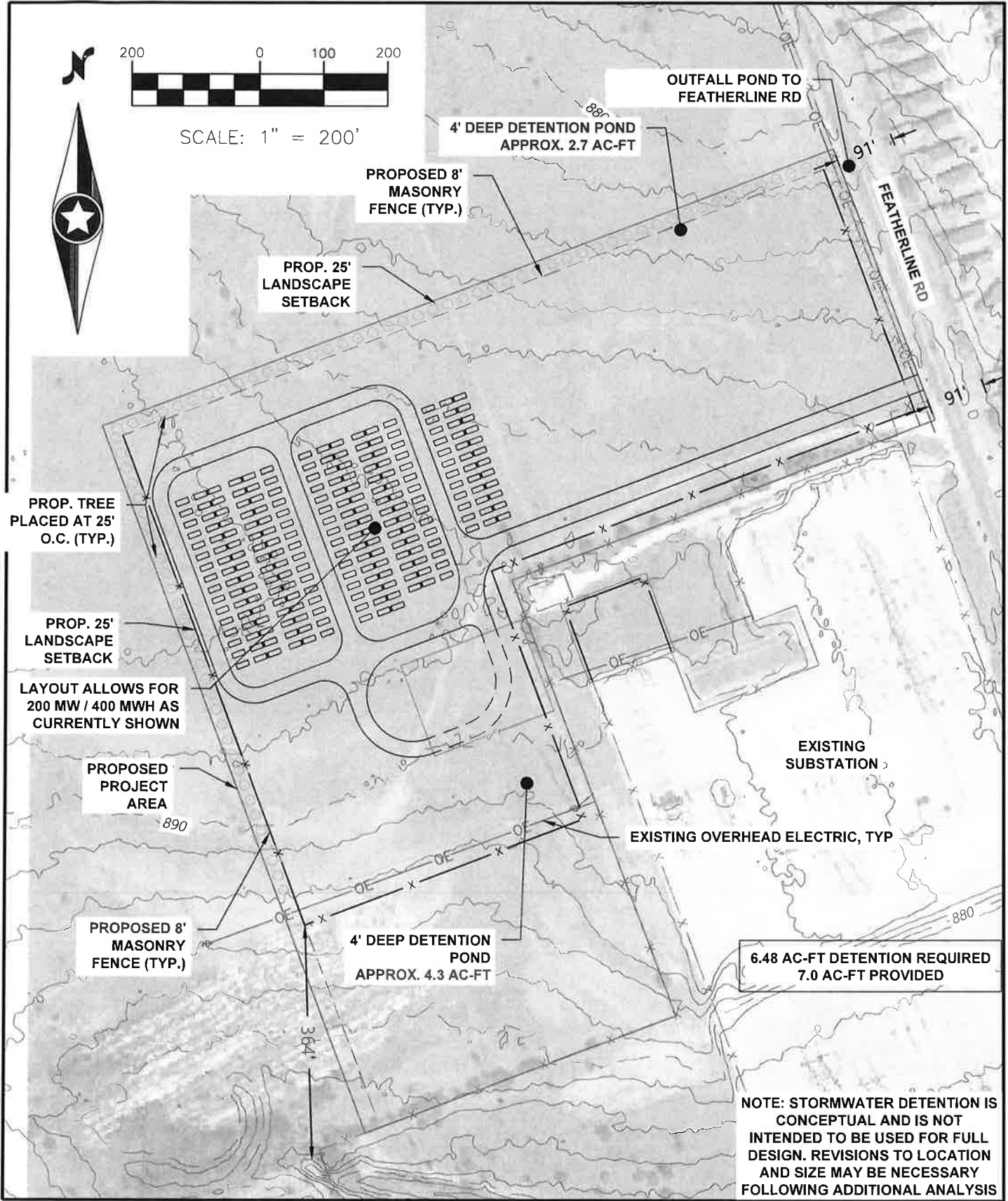


FINANCE

Pending the results of the two previous steps, **Black Mountain Energy Storage will seek out financial partners** to back the project. Black Mountain will also cover any tax increase on leased land.

About Black Mountain

Black Mountain Energy Storage is a team of project developers that build and operate battery energy storage facilities. Founded in 2020, we aim to bring reliable, emissions-free capacity to the electric grid and provide long-term value to utilities and low cost and sustainable power for their customers. The company was created by Black Mountain, a private team of early mover project developers specializing in identifying and capturing high-growth opportunities in the global energy sector with decades of geological and operational experience.



Westwood

Phone (215) 855-7477 1684 South Broad Street, Suite 120
Toll Free (888) 937-5150 Lansdale, PA 19446
westwoodps.com

Westwood Professional Services, Inc.

GOLDENEYE

CITY OF KILLEEN
BELL COUNTY, TX

UTILITY & DRAINAGE LAYOUT

DATE: 05/03/2023

CUT HERE

YOUR NAME: D+SC Enterprises, Inc. **PHONE NUMBER:** (254) 290-1042

CURRENT ADDRESS: 2110 Southport Dr., Killen TX 76542

ADDRESS OF PROPERTY OWNED: 3954 Chaparral Rd., Killen, TX 76542

COMMENTS: This property consists of 26 acres that is adjacent to and adjoining the proposed project for battery storage. I am in support of the project and zoning request. If you have any questions, you can call me at the number above or email me at scosper2@gmail.com

SIGNATURE: Rodney Scott Cosper, President D+SC Enterprises
Rodney Scott Cosper **REQUEST:** "A" to "B-2" w/ CUP **SP0#** 223-11/2

RECEIVED

MAR 31 2023

PLANNING

MINUTES
PLANNING AND ZONING COMMISSION MEETING
APRIL 3, 2023
CASE #23-11
“A” to “B-2” W/ CUP

HOLD a public hearing and consider a request submitted by Westwood Professional Services, on behalf of McClean Commercial, LTD (**Case #Z23-11**) to rezone approximately 21.16 acres out of the William H. Cole Survey, Abstract No. 200, from “A” (Agricultural District) to “B-2” (Local Retail District) with a Conditional Use Permit (CUP) to allow a battery storage site as a permitted use. This property is locally addressed as 8390 Featherline Road, Killeen, Texas.

Ms. Larsen presented the staff report for this item. She stated that, if approved, the applicant intends to develop a battery storage site on the property. The intent of the proposed battery storage facility is to establish better power reliability for customers during times of power instability by preventing brown and blackout events and providing power stability to the grid.

Ms. Larsen stated that the request is consistent with the Big Ideas of the 2022 Comprehensive Plan. The battery storage system will support Oncor’s ability to meet electricity demand, while also stabilizing the overall grid via energy regulation. She also stated that the applicant intends to provide a landscaped screening buffer along the north and west boundary of the proposed development. Staff recommends approval of the applicant’s CUP request.

Mr. Dan Ditto was present to represent the request.

Chairman Minor asked if they are asking for a tax abatement. Mr. Ditto said they are early in the development, but they believe that will be a conversation for a later date.

Commissioner Ploeckelmann asked if there will be any Federal subsidies for this project. Mr. Ditto stated that he did not have that information. He also stated that the request at this time is just to rezone the property.

Commissioner Ploeckelmann asked what the safety record for these battery storage sites is. Mr. Ditto stated that the battery storage containers are highly regulated. If a fire occurs, the units should remain shut, and the fire will burn itself out.

Commissioner Ploeckelmann asked if any specialized equipment that our Fire Department may not currently have would be necessary to put out such a fire. Mr. Ditto stated that no specialized equipment would be necessary because the fire would be able to burn out on its own if containers remained shut.

Commissioner Jones asked the applicant to clarify the amount of energy the battery units would be able to supply. Mr. Ditto stated that the facility would be able to provide electricity to 100,000 customers for two hours. He further clarified that the battery site is not meant to supply power to all residences in Killeen at any one time.

Commissioner O'Brien asked if they intend to build more than one of these battery storage sites in the same area. Mr. Ditto stated that there is not a plan to build another battery storage site in Killeen.

Vice Chair Gukeisen stated that the battery storage site is meant to support the regional grid, so if there is a strain on the grid in a nearby city, the power would be directed to support it.

Commissioner Wilson asked who would get priority in case of a strain on the grid. Mr. Ditto stated that the system would give support instantaneously to wherever the nearest strain is located.

Chairman Minor asked if Black Mountain Energy Storage would be willing to provide training to the Fire Department, if needed. Mr. Ditto said that has been considered, and they are open to discussing the training needs of the Fire Department.

Chairman Minor opened the public hearing at 6:02 p.m.

Ms. Michele Mazzaferro stated that she is in support of the request but had questions for the applicant about whether a similar project has been done at other communities, how it would affect the property value of the surrounding residences, and if it is safe to have battery storage sites so close to residential neighborhoods.

Mr. Ditto stated that a substation is already located on the property, so the proposed facility should not affect property values. He also stated that the safety of the surrounding residences would not be affected.

With no one else wishing to speak, the public hearing was closed at 6:06 p.m.

Commissioner Jones moved to recommend disapproval of the applicant's request. The motion died for lack of a second.

Commissioner Ploeckelmann moved to approve the request as presented. Commissioner Wilson seconded.

Vice Chair Gukeisen moved to amend the motion to include a condition that the applicant provide training to the Fire Department, as needed. Commissioner Jones seconded, and the amendment passed by a vote of 7 to 0.

Commissioner Jones asked if the training would be one-time, or if the training would be required on an ongoing basis.

Vice Chair Gukeisen withdrew his motion to amend the recommendation to include training.

Vice Chair Gukeisen moved to amend the motion to include training in accordance with the needs of the Killeen Fire Department. Commissioner Jones seconded, and the motion to amend passed by a vote 7 to 0.

The motion to approve the applicant's request with the condition that the applicant provide training in accordance with the needs of the Killeen Fire Department passed by a vote 6 to 1 with Commissioner Jones in opposition.

Commissioner Jones stated that he believes the proposed development is a waste of money because it does not provide enough electricity to accommodate Killeen.

CONSIDERATIONS

Texas Supreme Court in Pharr v. Tippitt, 616 S. W 2nd 173 (Tex 1981) established general guidelines which the Planning and Zoning Commission and City Council should take into consideration when making their respective recommendation and decision on a zoning request.

A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

Is the request designed to lessen congestion in the streets; secure safety from fire, panic or other dangers; promote health and the general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; or facilitate the adequate provision of transportation, water, sewers, schools, parks and other public requirements?

What if any, is the nature and degree of an adverse impact upon neighboring lands?

The suitability or unsuitability of the tract for use as presently zoned.

Whether the amendment bears a substantial relationship to the public health, safety, morals or general welfare or protects and preserves historical and cultural places and areas.

Whether there is a substantial public need or purpose for the new zoning.

Whether there have been substantially changed conditions in the neighborhood.

Is the new zoning substantially inconsistent with the zoning of neighboring lands? (Whether the new zoning is more or less restrictive.)

The size of the tract in relation to the affected neighboring lands – is the tract a small tract or isolated tract asking for preferential treatment that differs from that accorded similar surrounding land without first proving changes in conditions?

Any other factors which will substantially affect the health, safety, morals or general welfare.

B. Conditional Use Permit (if applicable)

Whether the use is harmonious with and adaptable to buildings, structures and use of abutting property and other property in the vicinity of the premises under construction.

C. Conditions to Consider

1. Occupation shall be conducted only by members of family living in home.
2. No outside storage or display
3. Cannot change the outside appearance of the dwelling so that it is altered from its residential character.
4. Cannot allow the performance of the business activity to be visible from the street.
5. Cannot use any window display to advertise or call attention to the business.
6. Cannot have any signs
7. No off-street parking or on-street parking of more than two (2) vehicles at any one time for business related customer parking.
8. No retail sales.
9. Length of Permit.